ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing - Case Study 25
(Day 131)

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Thursday, 26 March 2015 at 10am

Before
The Chair: Justice Peter McClellan AM
Commissioners: Justice Jennifer Ann Coate
Mr Robert Atkinson AO APM
Mr Robert Fitzgerald AM
Professor Helen Milroy
Mr Andrew Murray

Counsel Assisting: Ms Gail Furness SC

1 MS FURNESS: Thank you, your Honour. Your Honour,
2 Professor Patrick Parkinson is with us this morning.
3
4 Professor, can I ask you to introduce yourself and
5 your job, as it were.
6
7 PROF PARKINSON: Patrick Parkinson, Professor of Law at
8 the University of Sydney.
9
10 MS FURNESS: Professor, you provided a submission to us in
11 early March this year?
12
13 PROF PARKINSON: Yes.
14
15 MS FURNESS: Last night you provided a two-page
16 supplementary submission.
17
18 PROF PARKINSON: This morning. Even later.
19
20 MS FURNESS: I don't think that has been able to come up
21 on our system, as yet.
22
23 THE CHAIR: No, but we have read it.
24
25 MS FURNESS: Can I invite you, Professor, to speak to both
26 of your submissions.
27
28 PROF PARKINSON: Sure. Thank you for the invitation to
29 come. I am one of the few people, I guess, who is giving
30 evidence who is not a stakeholder in that sense, and as an
31 academic, I have tried to tackle what I see as the most
32 difficult issues, or some of them. Some of which, I think,
33 may have been skated over a little bit in the consultation
34 paper.
35
36 THE CHAIR: Professor, I think maybe you should explain to
37 those listening that notwithstanding that you're not a
38 stakeholder, you've had a significant role in relation to
39 Towards Healing.
40
41 PROF PARKINSON: Yes, thank you, your Honour. I have had
42 a significant involvement, not only in Towards Healing but
43 helping many churches over the years in dealing with these
44 issues, and also the State government in terms of the New
45 South Wales Child Protection Council.
46
47 THE CHAIR: You might tell us what your roles have been.

1
2 PROF PARKINSON: Thank you. I was a reviewer twice,
3 10 years apart, for the Catholic Church's protocol,
4 Towards Healing. I've advised other churches on protocols
5 over the years - the Anglicans, the Church of Christ and
6 others - and for three years I was the on the New South
7 Wales Child Protection Council which developed the first
8 screening mechanisms, in the early 1990s, for employment in
9 child-related work. So that's some of my background in the
10 area.
11
12 MS FURNESS: And you're a Professor of Law at the
13 University of Sydney.
14
15 PROF PARKINSON: I'm Professor of Law, specialising in
16 family law and child abuse.
17
18 MS FURNESS: Thank you.
19
20 PROF PARKINSON: In terms of the issues I've sought to
21 address, the first of them is the fundamental question of
22 how we allocate responsibility for what is a significant
23 proposed redress scheme, in monetary terms, and I notice
24 that as we get to the pointy edge of this process, there's
25 some cost-shifting and burden-shifting going on in these
26 submissions.
27
28 Could I just take you to the Commonwealth's response,
29 for example. It is saying that the responsibility must be
30 with the institutions where the abuse occurred. I of
31 course understand that entirely, but it is, I think, a more
32 complex issue than maybe that submission suggests. It
33 talks about the institutions taking legal, financial and
34 moral responsibility, but in what the Commission is
35 proposing there is, in a sense, a strict liability
36 approach, and I think rightly so.
37
38 So what I've done in that little two-page addendum on
39 gradations of responsibility is try to unpack what I was
40 saying in my submission itself about the levels of
41 culpability that there are. At the highest level, the most
42 grievous failure to protect, organisations where a senior
43 manager, be it a principal of a school, be it a bishop of a
44 church, whatever, knew about the abuse and failed to take
45 action.
46
47 Then, going down the scale, there are situations where

1 they ought to have known something seriously wrong was
2 happening - some suspicious behaviour - but didn't ask the
3 questions which a reasonable person might have asked.
4
5 Then through to situations where they knew nothing
6 about the abuse but they might have some level of
7 responsibility because they set up the activity in which
8 the abuse occurred - churches which might organise youth
9 groups, for example; a sports organisation which organises
10 sporting events.
11
12 But even below that is the issue of organisations
13 which have taken on a responsibility which the government
14 otherwise would have had to have taken on. So situations
15 where the child or children were abused, no reasonable
16 person could have known that before the disclosure many
17 years after the events, and it was so often the churches
18 and organisations like Barnardos which took on the
19 responsibility to care for the children nobody else would
20 care for, and had they not done so, then State governments,
21 Territory governments, maybe even the Commonwealth
22 Government would have had to have stepped in and directly
23 provided that service.
24
25 Then through my list I've got 18 different categories,
26 to situations where, even applying today's standards of
27 child protection, probably they couldn't have prevented the
28 abuse which occurred.
29
30 So the issue of legal and moral responsibility is
31 complex, and in my paper I suggest in terms of
32 psychological treatment, which I believe it is the most
33 important aspect of the whole proposal of the Commission,
34 there has to be a Commonwealth role.
35
36 My preferred solution to it is that the organisations,
37 through a trust fund, provide reasonable gap funding beyond
38 the amount that Medicare provides and beyond the amount
39 that, if there is a private health insurer, the private
40 health insurer provides. But that does entail some
41 modifications to the Medicare system for funding
42 psychological counselling, because I'm not sure that the
43 methodologies are necessarily fit for purpose, in terms of
44 treatment - but I'll leave the psychologists to assess
45 that.
46
47 So in the first part of my submission I try to unpack

1 the balance between institutional responsibility and
2 societal responsibility. I suggest that this has to be
3 shared, as we socialise so many costs in our society.
4
5 Secondly, I focus on the issue of deeds of release.
6 The one gap I found, if I may say so, in the consultation
7 paper, was that it seemed to let the insurance companies
8 off the hook - that insurers have insured for 20, 30 years,
9 at least, liabilities in this area. But the threshold is
10 one of legal liability or the threat thereof. Unless we
11 have deeds of release at the end of a redress process, it
12 seems to me there is no incentive or obligation on the
13 insurance companies to contribute to what is a very
14 substantial fund.
15
16 So, for that and other reasons I've given in my
17 submission, I do think that deeds of release are
18 appropriate at the end of a redress scheme. Another
19 concern is the possibility that if deeds of release are not
20 required, that the amount of money provided under a redress
21 scheme would become seed funding for litigation which is
22 irresponsible and is unlikely to succeed, and then the
23 survivor is much worse off than they would otherwise be.
24
25 The last part of the paper deals with some
26 characteristics of a redress scheme, the criteria for
27 inclusion, which picks up some of the gradations: what if
28 the abuse occurs on the premises of a church which has
29 rented out its church hall to the local dance company?
30 Does the liability extend to a sort of occupiers liability,
31 if you like? I don't think it can do.
32
33 I also suggest that if we are going to get up an
34 effective scheme, which has governmental support, then
35 I think it has to be time limited. My understanding of the
36 consultation paper was that it wouldn't be time limited.
37 I suggested five years. There's no magic in that figure,
38 but I was taking that figure from the graph in the
39 consultation paper which suggests, I think rightly, that
40 there will be a peak, in the first three years, of
41 applications and then it will dwindle off.
42
43 But I wouldn't like to see the scheme entirely
44 stopped. It seems to me that once a scheme has been
45 running for five years, there are learnings from that and
46 there are people available who could act in the spirit of
47 the scheme without having the organisational structure of

1 the scheme in terms of offices, websites, annual reports
2 and so on. So, for example, there would be assessors from
3 one organisation who could take on responsibility for
4 assessing another organisation. Those sorts of strategies
5 could be in place after five years, so it wouldn't be five
6 years and then nothing.
7
8 I've also suggested that there should be institutional
9 members of the scheme and other organisations which
10 purchase services on a fee-for-service basis, because there
11 will be some major players in this area, organisations who
12 have had a lot of time already in this Royal Commission,
13 and others who may only have one or two cases. So
14 I comment on those issues.
15
16 Then, finally, I deal with issues around civil
17 liability. I don't believe, myself, there should be any
18 limitation periods. I don't even believe there should be a
19 long stop, which was proposed in the consultation paper.
20 The reason I say that is because we know, particularly for
21 some men - and with the men I've spoken to - it has been
22 50 years after the abuse, and the issue becomes, well, can
23 they make out their claim and can the organisation
24 reasonably defend that claim? I think those are issues
25 which can be dealt with factually by the court, by lawyers
26 giving advice on the likelihood of success, without having
27 a long stop provision.
28
29 I do think it would be a mistake to have retrospective
30 changes to liability rules. I believe retrospective
31 legislation of any kind is a moral hazard, it is a moral
32 problem and is usually grossly unfair. We typically might
33 do it for the best of the reasons, but those best of
34 reasons become bad precedents for governmental and
35 parliamentary activity in an area. To be liable for
36 something one could not have prevented and could not have
37 insured against seems to me to be another form of moral
38 wrong.
39
40 Finally, I raised issue of volunteers and the extent
41 to which any civil liability should extend to volunteers.
42 I suggest on public policy grounds that probably it
43 shouldn't do. That's picking up the idea in the
44 consultation paper not of vicarious liability but of
45 liability based upon having taken reasonable steps to
46 protect. I think that's appropriate for employees but
47 going too far with volunteers.

1
2 So I hope I've tackled at least some of the more
3 difficult issues.
4
5 THE CHAIR: Professor, thank you, thank you for your
6 thoughts. Can I just understand the document you've
7 provided this morning. I'm not quite sure how one uses the
8 document. Looking at redress, of course, we're not seeking
9 there to find a breach of a duty of care.
10
11 PROF PARKINSON: No.
12
13 THE CHAIR: But, of course, your gradations both
14 contemplate breach of duty but also causation issues.
15
16 PROF PARKINSON: Yes.
17
18 THE CHAIR: Is there a point somewhere along the second
19 page where you say, "If you fall into that category, then
20 you fall outside redress from the particular institution"?
21 Is that how we should read the document?
22
23 PROF PARKINSON: I think if I may say, your Honour, we
24 should read it in two ways. The first one is in terms of
25 how we fund and take responsibility for the ongoing
26 psychological needs of the victims. I wrote this partly in
27 response to the idea that the institution should have the
28 entirety of the liability and that community, through
29 Medicare, should have none. I don't think that's right,
30 and this is the reason why, because there are gradations of
31 responsibilities. It is absolutely appropriate for the
32 institutions to take a large amount of the responsibility,
33 and I support the strict liability approach, but in terms
34 of the costs of counselling and therapy, I suggest it
35 should be shared with society.
36
37 THE CHAIR: Does there come a point when it falls outside
38 the institutions' responsibility?
39
40 PROF PARKINSON: Then, yes, to come to that second issue
41 of where does the cost cut off point come. I think it's
42 probably at 15.
43
44 THE CHAIR: You mean beyond 14?
45
46 PROF PARKINSON: No, sorry, beyond 15. Because on the
47 strict liability approach, even if an organisation 10 or 15

1 years ago took all the steps we would now expect an
2 organisation to have taken, still the abuse may have
3 occurred. That's the reality. If we are going to have a
4 redress scheme based upon strict liability, that's where
5 I think it stops.
6
7 Items 16 and 17 are complicated issues where the
8 opportunity for abuse may or may not have come through some
9 connection with the organisation, but I think it is just
10 too hard to work that out and I would leave that to civil
11 liability myself.
12
13 THE CHAIR: Secondly, your comments on deeds of release
14 are, of course, valuable. You know that some redress
15 schemes that have been operated by institutions to date
16 have not sought deeds of release?
17
18 PROF PARKINSON: Yes.
19
20 THE CHAIR: And in some respects, the Sydney Archdiocese,
21 I think, has stopped asking for it.
22
23 PROF PARKINSON: Right.
24
25 THE CHAIR: I don't know that we've seen any evidence
26 that, as a consequence, people are using their redress
27 money to fund litigation. Do you have any evidence to
28 suggest that that would happen?
29
30 PROF PARKINSON: I have no evidence to suggest it will
31 happen. I have a concern it might happen. In terms of the
32 organisations which have not asked for deeds of release,
33 obviously the Commission is in a much better position than
34 I am to know who they are and why, but if it is the
35 Catholic Church, essentially the Catholic Church itself is
36 insuring through Catholic Church Insurances, and so the
37 issue of liability is not a problem in the same way that it
38 would be if a commercial insurance company were --
39
40 THE CHAIR: It is not the same, but there are still
41 commercial issues that come to bear. We do understand what
42 you say about the incentive for the insurer, but a deed of
43 release as an incentive for an insurers has the capacity to
44 work against the survivor, doesn't it, because a modest
45 amount offered today may be accepted but, on reflection and
46 proper advice, may be nowhere near what that person may
47 have ultimately achieved through the common law process.

1
2 PROF PARKINSON: Indeed that is so, but all of us who are
3 the lawyers in this room will be aware of the varying
4 qualities of advice that people get, particularly perhaps
5 in the area of civil liability and tortious wrongs, and how
6 many cases are started without reasonable prospects of
7 success, particularly in this area. These are the
8 balancing exercises.
9
10 THE CHAIR: They are. They're difficult questions.
11
12 MS FURNESS: Thank you. Professor, in terms of the
13 document you provided this morning - and if that could
14 perhaps be put up on the screen - I want to ask you about
15 paragraphs 16 and 17.
16
17 PROF PARKINSON: Yes.
18
19 MS FURNESS: These are activities or events which would
20 fall outside a redress scheme or eligibility for a redress
21 scheme; is that right?
22
23 PROF PARKINSON: In my view, yes.
24
25 MS FURNESS: In your view, yes. Items 16 and 17 are the
26 same, except 16 concerns an employee and 17 concerns a
27 volunteer; is that right?
28
29 PROF PARKINSON: Yes.
30
31 MS FURNESS: The proposition is that if sexual abuse was
32 perpetrated by an employee or volunteer who may have gained
33 access to the abused child in part because of that role,
34 but the abuse didn't occur in the context of any activity
35 or service run by the organisation, they wouldn't be
36 eligible. Is that right?
37
38 PROF PARKINSON: That's the position I'm putting, yes.
39
40 MS FURNESS: Let me give you a factual example. In
41 relation to 16, if it was some form of child care agency
42 and they had employed a person, and that person necessarily
43 gained access to the child through that employment, and
44 then they offered the parents of that child to babysit or
45 take the child on other activities, those activities and
46 that babysitting were not in the context of that
47 organisation - isn't it the case that there should be some

1 eligibility for a redress scheme in that factual scenario?
2
3 PROF PARKINSON: Whenever one --
4
5 THE CHAIR: Ms Furness, I think we should add one more
6 fact. Ms Furness is talking about a real case.
7
8 PROF PARKINSON: I know.
9
10 THE CHAIR: That is, it was a breach of the rules of the
11 institution that the carer should babysit for any child.
12
13 MS FURNESS: Perhaps, your Honour, if Professor can answer
14 it in two parts: one, leaving aside the policies and two,
15 with the policies.
16
17 PROF PARKINSON: I am familiar with the case. I was going
18 to respond by saying that whenever one draws lines, there
19 are hard cases which might fall inside or outside that
20 line. It is inevitable. But let me respond with another
21 example of, again, a case that I know.
22
23 MS FURNESS: Just before you do that, can you answer my
24 example, Professor?
25
26 PROF PARKINSON: I was trying not to.
27
28 MS FURNESS: I know you were, that's why I'm asking to you
29 answer it.
30
31 PROF PARKINSON: I think to respond as well as I can,
32 without a significant factual inquiry in each case it could
33 be very difficult to work out which side of the line a case
34 ought to fall. So in the case that you are talking about,
35 my understanding is that but for that work, there's no
36 possibility that he would have known those parents, known
37 those children and been in a position to babysit. But
38 I was about to posit another example in which the
39 opportunity may or may not have arisen through the
40 organisation. The redress scheme I don't think is capable,
41 in the way that you're conceiving it, at least, to engage
42 in very detailed and complex factual inquiries.
43
44 MS FURNESS: I'm sorry, Professor, but if, indeed, in your
45 16 and 17 we referred to "did gain access" and so, in
46 effect, provide two more paragraphs, if it was "did gain
47 access", you would accept, wouldn't you, that it would be

1 part of the eligibility criteria?
2
3 PROF PARKINSON: To rewrite my paragraph 16 as "did gain
4 access and would not otherwise have had the opportunity for
5 access, then I would be comfortable saying that's falling
6 within the right line of the eligibility.
7
8 MS FURNESS: Turning to the volunteer --
9
10 PROF PARKINSON: May I add one more thing about that?
11
12 MS FURNESS: Certainly.
13
14 PROF PARKINSON: It all depends, I think, on the extent to
15 which you envisage a redress scheme engaging in quite
16 detailed factual analysis in the way that a court or
17 tribunal might do. Victims compensation schemes, for
18 example, don't do that; it's very much done on the papers.
19 So there's a cost issue around any scheme where we need to
20 engage in quite detailed factual explorations before
21 working out eligibility.
22
23 MS FURNESS: In relation to a volunteer, again, if that
24 volunteer did gain access because of that role and the
25 volunteer was required to go through some checking process
26 to ensure suitability for the role, where would that fit?
27
28 PROF PARKINSON: Again, I would caution against trying to
29 include volunteers too easily. If I may at this point give
30 my example.
31
32 MS FURNESS: Certainly.
33
34 PROF PARKINSON: It is of a man who was a music teacher
35 professionally but who was also involved in the music
36 ministry of a church and abused a number of kids over a
37 long period of time, for some of whom, if I remember the
38 facts correctly, the association first came through being
39 part of a community, a congregation in the church. It
40 being irrelevant, probably, that he was part of the music
41 team, he might have known those families just by being a
42 member of the congregation. There would have been other
43 children who he taught the piano, or whatever, without any
44 connection with the church.
45
46 So you have five children who have been abused. Will
47 you say that two are in and three are not? Will you say

1 that it matters that he was in the music ministry, but if
2 he wasn't, he was just an ordinary member, there wouldn't
3 be eligibility. I think there are enormous problems.
4
5 I've stressed at the end of my submission the danger
6 that we create such barriers and hurdles to children's
7 organisations that organisations are deterred from
8 providing the sorts of activities for children that are so
9 beneficial to them. We don't want to see a decline in
10 youth groups and holiday camps and sports organisations
11 because the liability risk is too high.
12
13 MS FURNESS: Thank you. Thank you very much, Professor.
14 Thank you, your Honour.
15
16 THE CHAIR: Thank you, Professor and thank you for the
17 contribution you've made throughout our work.
18
19 PROF PARKINSON: Thank you very much, your Honour.
20
21 MS FURNESS: Thank you, your Honour. The next person to
22 speak to their submission is a representative of the
23 government of Tasmania.
24
25 Thank you, Ms Vickers. Would you introduce yourself
26 and tell the Royal Commission of your role?
27
28 MS VICKERS: Good morning. My name is Catherine Vickers
29 and I'm the director of strategic legislation and policy in
30 the Department of Justice. My role tends to involve law
31 reform projects and major policy issues. This work, of
32 course, has been a large focus of the Department's work and
33 the Government's work since the inception of the
34 Commission.
35
36 MS FURNESS: Thank you. I invite you to speak to your
37 submission, Ms Vickers.
38
39 MS VICKERS: First of all, I'd like to say thank you for
40 the invitation to attend, and the Tasmanian Government has
41 been pleased to participate in this project. We
42 acknowledge the work of the Royal Commission in collating a
43 large body of evidence and work, and we hope to be able to
44 contribute to the work in a constructive way and
45 demonstrate leadership in moving forward and considering
46 some of these complex public policy issues.
47

1 The focus of my statement or the government's
2 statement today is really on civil law reform and redress
3 and it follows from previous submissions we've made to
4 issues papers and the submission that has been recently
5 published.
6
7 Tasmania believes civil law reform and redress are key
8 components in providing justice to survivors of child sex
9 abuse. The Royal Commission's work and our own work has
10 highlighted many barriers to victims who may wish to pursue
11 civil claims, and I don't proceed to go over all the
12 details of those things, but we that see limitations,
13 financial means, emotional resources, the adversarial and
14 protracted nature of civil law, evidentiary burdens,
15 finding an entity, the relationship between entities and
16 individuals within those organisations often confound
17 victims in being able to pursue claims.
18
19 I wanted today just to focus on two points that we've
20 made in our submissions in relation to limitation periods
21 and statutory duties.
22
23 As the Commission would probably know, governments
24 over time have responded to calls for reform in relation to
25 limitations. Many of us here and on the Commission would
26 recall the work based on his Honour David Ipp's report into
27 the law of negligence. Most of that work was brought about
28 by an insurance crisis and also later by victims of dust
29 disease and latent diseases.
30
31 In considering that work, Tasmania changed its law and
32 introduced new provisions in relation to limitations. We
33 have provisions where we have three years from the date of
34 discoverability, and there are also long stop provisions
35 and provisions in relation to children or minors under a
36 disability.
37
38 I really only raise that today to say that at the time
39 these provisions were being considered through the work of
40 his Honour David Ipp, at that point the Tasmanian
41 government considered it inappropriate to restrict reforms
42 just to a class of victims, and at the time, many would
43 recall, there was a lot of pressure in relation to
44 asbestosis and dust diseases, but our government had
45 recognised that there were other types of latent injuries
46 that existed in the community and they ought to be
47 included, such as post-traumatic stress disorder, injuries

1 that were being suffered by the survivors of sexual abuse,
2 and that is clearly on the record in Hansard.
3
4 So we accept that this work now is moving reform for
5 our government in terms of limitations. We don't believe
6 that we have the law perfectly right and obviously as we
7 move forward in this process we are conscious that we may
8 need to make further reforms to address particular victims
9 or people wishing to pursue civil law actions.
10
11 We're currently watching with interest some of the
12 developments - we know that Victoria have tabled some law
13 reform and we are interested to see how they will proceed
14 over time.
15
16 The second point I wanted to make is that Tasmania is
17 not in favour of absolute liability. We consider it more
18 appropriate and effective to apply a duty that makes
19 institutions liable for child sex abuse committed by
20 members unless the institution is able to prove that it
21 took all reasonable precautions to prevent that abuse.
22
23 We prefer this approach, as it has the potential to
24 promote good governance and risk mitigation into the
25 future. We've also seen this approach being used in areas
26 such as workers compensation.
27
28 Absolute or strict liability, whilst seemingly making
29 it easier for people to sue, doesn't provide incentives for
30 organisations to change practice and remove risk within
31 their business models.
32
33 We're happy to examine these areas of civil law reform
34 and we believe that they may go some way to dressing
35 barriers that many survivors face in taking civil
36 litigation, but we do acknowledge there are significant
37 other issues that potential plaintiffs face, such as
38 evidentiary burdens and matters I alluded to earlier.
39
40 This probably leads me to the reason why Tasmania
41 favours a redress scheme to civil action. We think that
42 redress can offer a more timely, efficient and less
43 stressful avenue for many survivors to access justice. It
44 is also fairer and can provide equal access. As you
45 probably are aware from our submission, we have expressed
46 some concern that we don't want to limit any reform that we
47 make just to victims or survivors of institutionalised

1 child sex abuse; we're concerned that a lot of child sex
2 abuse can occur within other settings, such as families and
3 that many people in institutions also suffered different
4 types of abuse, such as physical or emotional abuse.
5
6 In responding to policy questions posed by the work of
7 the Commission, our position is that we prefer a scheme
8 that can benefit all classes of victims.
9
10 We also think, because many of these victims have been
11 survivors of horrific acts, which I think our society would
12 view as criminal - and to that end it has shaped our
13 thinking - our position is that in the absence of any
14 commitment by the Commonwealth to establish a national
15 scheme, our preferred position is that we build on our
16 existing victims of crime compensation scheme.
17
18 As you already know from some of our submissions, we
19 have a scheme. We think there are significant benefits to
20 adopting this approach but building on the existing
21 framework. It would provide a consistent framework for
22 survivors of child sexual abuse to access redress. It's
23 more equitable. We wouldn't seek to distinguish between
24 types of child sex abuse. We could address past and
25 ongoing abuse issues into the future. It also
26 characterises the behaviour of perpetrators as criminal,
27 and that may be important for some survivors of these acts.
28
29 For government, it is also about building on current
30 administrative infrastructure, and that can provide us with
31 some benefits. It may be easier to access for victims. As
32 we've heard over the last few days, there are often very
33 complicated arrangements within non-government
34 organisations and their structures, so it would provide an
35 open door for victims.
36
37 Such a model, of course, would require further work
38 and cooperation from non-government organisations and
39 entities, and we would be seeking cooperation in terms of
40 funding and reengagement and apology processes. I believe
41 we would also need some legislative framework for
42 appropriate information sharing between non-government
43 organisations and our own so that assessment of claims,
44 reengagement and those sorts of things could occur.
45
46 We also accept that we may need to consider the
47 current burden of proof provisions within our Victims of

1 Crime Compensation Act. It is currently at the balance of
2 probabilities, but we're aware and, as you know, we've
3 run a redress scheme in the past where plausibility
4 was considered more appropriate in those sorts of matters.
5
6 Non-government cooperation is vitally important for
7 us, for two reasons. We need to develop a sustainable
8 model and we need to ensure that institutions can
9 contribute to the costs of running that. We also recognise
10 that many survivors want responsibility for the things that
11 happened to them attributed to those organisations or
12 people that were directly responsible. So we would like to
13 work with the non-government sector and church groups and
14 various other bodies to ensure that they would be able to
15 participate in any apology, explanation or reengagement
16 with people, as we've seen through your work and other
17 research that these are key principles of the redress
18 scheme.
19
20 Finally, I'd probably like to say that while
21 government may lead change through law reform and statute
22 changes, partnership and collaboration are vital to
23 achieving justice for all victims and we would be seeking
24 to work with other non-government entities to achieve that.
25 Thank you.
26
27 MS FURNESS: Thank you.
28
29 THE CHAIR: Ms Vickers, thank you, those thoughts are very
30 helpful. I assume that in proffering modification to your
31 victims of crime scheme and anticipating that the
32 institutions would contribute or participate in some way,
33 you don't see any practical impediments? I know there
34 would be a lot of negotiations and legislative drafting and
35 so on, but you don't ultimately see any practical
36 impediments to that happening?
37
38 MS VICKERS: It is probably early to say, but in any sort
39 of area of law reform, at the end of the day an Act of
40 Parliament is the law, but we know that we can't achieve
41 law change by just pushing ahead with legislative reform
42 without engaging with people. So it is really early days,
43 but we would be looking at recovery provisions and those
44 sorts of things.
45
46 In my experience in doing law reform generally, we
47 would be building on the work of the Commission, discussion

1 paper out, receiving submissions. It has been important
2 for us to participate in this process because we can get a
3 feel for where some institutions are heading and what they
4 think they may be liable for, but there could be some
5 practical problems in terms of people coughing up their
6 contribution to any scheme.
7
8 THE CHAIR: That leads me to the next question. Let's
9 assume there are problems - perhaps the institution has no
10 money or has ceased to exist. Would it be contemplated
11 that government would, nevertheless, fund the scheme to
12 provide appropriate redress for the people who have come
13 from those institutions?
14
15 MS VICKERS: I think the government doesn't accept that it
16 is absolutely the funder of last resort, but clearly it may
17 be in some situations, particularly if we're characterising
18 some of the behaviours that are perpetrated as essentially
19 criminal conduct. That fits within a framework of criminal
20 injuries compensation model.
21
22 THE CHAIR: You know, of course, that the numbers that
23 we've proffered in the discussion paper are more than you
24 might have contemplated under your schemes previously?
25
26 MS VICKERS: Certainly.
27
28 THE CHAIR: Is that a problem?
29
30 MS VICKERS: I think that would be a matter that the
31 government would have to consider. We run a scheme which
32 has various caps. We currently have caps and limits on the
33 victims of crime compensation scheme. Those matters would
34 all need to be reviewed in the course of any changes to our
35 legislation and model.
36
37 THE CHAIR: A complementary issue it that is clear to all
38 of the Commissioners from what we've learned that many
39 people who have suffered from abuse have a need for
40 counselling perhaps lifelong or at various stages of their
41 life. Your scheme that you've had in place has gone some
42 way along that journey, but would it be recognised by
43 government in your State that there is a need to address,
44 for some people, a lifelong need?
45
46 MS VICKERS: Currently under the victims of crime
47 compensation scheme that we run, a person may receive a sum

1 of money but they also have money set aside for counselling
2 and health and wellbeing type services. In that, if the
3 money is exhausted, it is not common but it is not uncommon
4 for people to reapply again for a further source of moneys.
5 So I think as a policy position, the government recognises
6 that victims of some crimes at present do need ongoing
7 counselling.
8
9 THE CHAIR: When you say "apply", I assume some are
10 treated favourably?
11
12 MS VICKERS: I believe they are. So I think there's a
13 recognition that some people need additional supports, and
14 I think the work and matters that are set out in the paper
15 do highlight those things, and we accept that that will be
16 the case.
17
18 THE CHAIR: We're also interested in your State's views
19 about this question of the duty of care and how it should
20 be framed. Why wouldn't absolute liability impose or bring
21 a response from an institution that it would do everything
22 it could to avoid there being a problem?
23
24 MS VICKERS: That's an interesting question, your Honour.
25 I think that we'd probably base some of our thinking on
26 workers' compensation type models and motor accident
27 insurance models. On the flip side, it may be an impetus
28 for organisations to do everything, but on the other side
29 there's always, "Well, it doesn't matter anyway, because
30 whatever we do, we're liable." We factor in that sort of
31 approach. I don't know whether that's fair, and I think
32 these are initial thoughts that we have presented to the
33 Commission.
34
35 THE CHAIR: It is interesting, I don't know what your
36 legislative structure in Tasmania is, but in some parts of
37 Australia the States have imposed absolute criminal
38 liability for offences committed by corporations:
39 pollution is one; industrial safety is another.
40
41 MS VICKERS: And there are projects around directors'
42 liability that are seeking to wind some of that back, so
43 we're mindful, through the COAG process, that some of those
44 matters have been re-examined and certain governments are
45 more keen to reduce regulatory burden.
46
47 THE CHAIR: Yes.

1
2 MS FURNESS: Ms Vickers, the Tasmanian Government had an
3 Abuse in State Care Scheme?
4
5 MS VICKERS: Yes, we did.
6
7 MS FURNESS: That ran for about a decade?
8
9 MS VICKERS: Yes.
10
11 MS FURNESS: That covered children who had been abused in
12 entirely State-run institutions?
13
14 MS VICKERS: No, it covered - well, not entirely State-run
15 institutions. It recognised the State did outsource some
16 of those functions. Basically, the eligibility was set
17 around whether a child was a ward of State. "Ward of
18 State" was the old terminology; now we would talk about
19 children on care orders. So it was essentially for
20 children that were under some State guardianship or ward
21 order.
22
23 MS FURNESS: Was the decision taken to include
24 non-government organisations that were funded to provide
25 that care because the State took responsibility because of
26 the child protection arrangement?
27
28 MS VICKERS: Primarily, yes.
29
30 MS FURNESS: How did you come about the 10-years period
31 over which you accepted claims?
32
33 MS VICKERS: I'm not sure whether I can easily answer
34 that. It was run in four rounds and I think it was more
35 about being reactive to what was happening in the
36 community - that people might have felt that they hadn't
37 been able to participate, or there was another group that
38 was coming through. The cut-off date, as you're probably
39 aware, was fairly arbitrary. Essentially, it ran for that
40 time to try and capture as many people as possible.
41
42 MS FURNESS: So is it the case that as the numbers started
43 to dwindle, you got closer to a cut-off date?
44
45 MS VICKERS: Yes. You would be aware, too, that the first
46 three rounds were for a higher cap and then the last round,
47 for economic reasons and other reasons, had been lowered

1 slightly - by half, actually.
2
3 MS FURNESS: Did you receive some criticism from the
4 community for halving the cap for those who came later?
5
6 MS VICKERS: I couldn't answer that. The scheme was
7 predominantly run through the Department of Health and
8 Human Services, so I probably wouldn't seek to answer that.
9
10 MS FURNESS: Thank you, your Honour.
11
12 COMMISSIONER MURRAY: I have a question, just a brief one
13 to you, please, Ms Vickers. The victims of crime
14 compensation tribunals throughout Australia, where there
15 haven't been specific redress mechanisms for abuse cases of
16 the type we're considering, have been regarded as the
17 default redress scheme. Do you and your government
18 consider that for future cases of abuse in this class, the
19 victims of crime compensation tribunal will be the primary
20 redress mechanism?
21
22 MS VICKERS: Yes, we would. It would mitigate against
23 having to create another specialist tribunal to assess
24 certain claims, so we would like to build upon what we
25 currently have for both the past and the future.
26
27 COMMISSIONER MURRAY: So you would expect the Royal
28 Commission to be concentrating on how those schemes might
29 be adjusted to ensure redress is adequate?
30
31 MS VICKERS: Yes.
32
33 COMMISSIONER MURRAY: Thank you.
34
35 THE CHAIR: Thank you, Ms Vickers. Again, like others,
36 can I thank you for your contribution and your government's
37 contribution. It has mean most thoughtful and we're
38 grateful.
39
40 MS VICKERS: Thank you.
41
42 MS FURNESS: Your Honour and Commissioners, the next
43 people to speak to their submission are representatives of
44 the YMCA.
45
46 Thank you. Mr Mell, would you introduce yourself and
47 your role in the organisation?

1
2 MR MELL: My name is Ron Mell, I'm the CEO of YMCA
3 Australia. YMCA Australia provides a leadership and
4 support role to YMCAs across the YMCA movement in
5 Australia.
6
7 MS FURNESS: Is YMCA Australia responsible for
8 disseminating policies and procedures to the State-based
9 YMCAs?
10
11 MR MELL: Not so much State-based, but to the independent
12 YMCAs. No independent YMCAs create their own policies
13 although YMCA Australia does prepare national policies and
14 standards which, once endorsed by the membership of the
15 movement, do become standards and policies which local
16 YMCAs have to comply with.
17
18 MS FURNESS: Thank you. Ms Whitwell?
19
20 MS WHITWELL: Yes, I'm Jacki Whitwell. I'm the executive
21 manager of social policy with YMCA Australia.
22
23 MS FURNESS: Mr Mell and Ms Whitwell, can I invite you to
24 speak to your submission?
25
26 MR MELL: Thank you. The Australian YMCA is part of an
27 international YMCA movement and in Australia comprises
28 24 YMCAs operating, as I had said, independently, as
29 independent legal entities, and today we do work with
30 hundreds of thousands of children and young people every
31 day across Australia.
32
33 Over the past two years, this Royal Commission has
34 highlighted to the YMCA two major areas of introspection
35 and for action. Firstly, we have doubled our ongoing
36 efforts to ensure that every YMCA within Australia offers a
37 safe environment for the children and young people who come
38 for support, come to play, come to learn or come seeking
39 some care.
40
41 In the context of redress, the YMCA believes that
42 being able to assure survivors that we are doing everything
43 possible to ensure the protection of children now is an
44 important and integral part of the redress process. This
45 has resulted in YMCAs across Australia adopting a new
46 national "Safeguarding Children and Young People" policy
47 which, amongst other standards which require immediate

1 adoption, will also ensure that all YMCAs engage an
2 external independent expert to accredit and audit our child
3 protection practices, and we continue to influence the
4 movement or the culture of the movement to reinforce a
5 concept of extended guardianship to all who work or
6 volunteer within the YMCA.
7
8 The second area of introspection and action is through
9 addressing those times in the past when children and young
10 people were abused while in YMCA care. In other words, an
11 approach to redress which looks to the past and complements
12 our focus on the present and the future. The work of the
13 Royal Commission has been invaluable to us in developing
14 this approach for the YMCA movement, and we continue to
15 learn from the Royal Commission and from other agencies.
16
17 The YMCA has developed an approach to redress, and it
18 is in a draft form, and it has not, as yet, been endorsed
19 by the YMCA movement. Being a federated structure we
20 require the endorsement of member YMCAs, and we are
21 proceeding towards this.
22
23 The basic premise upon which our redress approach has
24 been developed arises from one of our long-held values,
25 which is that we value equality and justice for all people,
26 and such a methodology must place the survivor at the
27 centre of our approach and in what we do. We therefore
28 support the components of redress as outlined by the Royal
29 Commission in its paper and as it applies to direct
30 personal response, access to counselling and psychological
31 care and a monetary payment, and we support the notion of a
32 government being the funder of last resort, and we support
33 a national scheme in which the Commonwealth participates
34 with institutions as the primary contributors.
35
36 We acknowledge there are challenges and that the time
37 that might be taken for a national scheme to be agreed and
38 functioning could be some time. We recognise that we
39 cannot wait for a government response and that we need to
40 build a nationally consistent YMCA approach now. This view
41 has been reinforced by the Commonwealth's response to the
42 Commission discussion papers.
43
44 Ms Whitwell will now elaborate on some of the YMCA's
45 work in building this interim approach and which aligns
46 with the principles that we believe are elaborated in the
47 Royal Commission's discussion paper.

1
2 MS WHITWELL: Thank you. Acknowledging the challenges
3 towards developing a national redress scheme, we would like
4 to say that we support the development of a national
5 scheme. However, we know that survivors need
6 understanding, support and recognition today.
7
8 As such, we've started to turn our attention towards
9 developing an approach to redress for survivors of abuse
10 within the YMCA or by a YMCA employee or volunteer. We
11 would like to note that this approach is still in
12 development and we are working through a process of seeking
13 agreement from all of our YMCAs in this regard.
14
15 As we've began to develop our approach to redress
16 we've looked to our own values and the principles
17 highlighted by the Royal Commission. Through hearing about
18 the experiences of survivors and organisations in previous
19 and existing redress schemes, we've begun to understand
20 what has helped survivors in the past and what has failed.
21
22 Participating in the private roundtables held by the
23 Commission has been invaluable in building our learning and
24 our knowledge. While not yet formalised, our intended
25 approach to redress will be supported by a number of
26 principles which I'd like to talk through now.
27
28 Firstly, we know that our approach to redress must be
29 survivor focused, and for us this means that the best
30 interests of survivors will be central to what we do, and
31 that the rights and choices of survivors in the process of
32 redress will be supported and respected. We also know that
33 we need to ensure that our approach is transparent,
34 accountable and subject to independent oversight. It is
35 important that we develop a means by which independent
36 decision making and oversight of redress can occur. We
37 know that an independent structure or mechanism that sits
38 outside of the YMCA may provide this.
39
40 Not only is this important in terms of transparency
41 and accountability, but we also know this will be important
42 for those survivors who do not wish to contact the YMCA
43 directly. We are currently exploring models of how we
44 might implement such a structural mechanism and whether
45 this might be something that we could do in a cooperative
46 arrangement with other like organisations.
47

1 We know that we need to have a nationally consistent
2 approach and, as already mentioned, as a federated
3 structure, we have many different YMCAs across the country
4 and it will be important that our approach to redress is
5 nationally consistent to ensure that our response is fair
6 and equitable to all survivors, regardless of where the
7 abuse may have occurred.
8
9 We know we need to have a trauma-informed approach to
10 what we do. For us, this means that those providing a
11 direct response to survivors and those engaged in the
12 provision of redress should, at a minimum, have a
13 foundational level of knowledge and understanding about the
14 impacts of child abuse and also be trained in
15 trauma-informed approaches.
16
17 We know that we need to ensure that redress is
18 accessible to all survivors regardless of where they live,
19 what their current circumstances are, their ability and
20 their cultural or language group. We need to provide clear
21 and easy-to-understand information about redress and the
22 process.
23
24 We believe there should be no time limitations placed
25 on accessing redress. We know it is important for
26 survivors to come forward at a time when they feel most
27 comfortable and most able and supported to do so.
28
29 We believe that applying standards of plausibility and
30 reasonableness when assessing the claims of survivors is
31 the most appropriate way of having a process that is
32 non-adversarial and supportive of survivors.
33
34 In working through the process of redress, we must do
35 everything that we can to avoid doing any further harm.
36
37 We also believe that the rights of survivors to pursue
38 civil litigation should be maintained and that survivors
39 should not be subject to confidentiality agreements.
40
41 In developing our approach to redress within the YMCA
42 we're doing so as an interim measure. We will be watching
43 closely as the discussion around the establishment of a
44 national redress scheme progresses. We support the
45 establishment of a national scheme and we would seek to be
46 part of that national scheme as required.
47

1 In terms of developing our own approach to redress, we
2 know we have some way to go, but we also know that we need
3 to do everything in our power to ensure that survivors are
4 supported today and over the long-term. As we further
5 develop our approach to redress within the YMCA, we'll
6 continue to listen to the learnings and recommendations of
7 the Royal Commission and we will listen to the voices of
8 survivors about what they need.
9
10 MS FURNESS: Thank you.
11
12 THE CHAIR: Thank you. Either of you might like to answer
13 this for me. You've just heard the Tasmanian Government
14 speak of their crime compensation scheme, for want of a
15 better expression, and you probably know they exist in
16 other places. Have you given any thought to linking up
17 with those schemes and contributing your portion of the
18 necessary moneys to those schemes as the way forward?
19
20 MS WHITWELL: I think we probably haven't progressed as
21 far down the pathway in our thinking in relation to that.
22 Just an initial concern would be that the other components
23 of redress that we know to be important for survivors - we
24 would need some clarity about how that might sit within an
25 enhanced victims of crime compensation scheme.
26
27 THE CHAIR: That's certainly true, but do you see any
28 theoretical impediments to at least exploring that as an
29 option with appropriate, as it were, add-ons to meet the
30 particular needs of survivors.
31
32 MS WHITWELL: That's certainly a possibility.
33
34 MR MELL: I think so. I think the other aspect to it
35 which the YMCA movement is keen about, though, is to ensure
36 there is a consistency in the approach across Australia,
37 but I think they're aspects that could be managed within a
38 scheme where we link with State-based schemes as well.
39
40 THE CHAIR: I gather from your submission that leaving
41 aside linking up with a State-based scheme, you're
42 certainly open to cooperation between institutions,
43 including the major ones accepting, as it were, a need to
44 provide additional funds where there is an organisation
45 that has no money or doesn't exist; is that right?
46
47 MR MELL: Very much so. Also, there's a business case to

1 do that as well, of course, in terms of whatever scheme
2 there is in place, or whatever approach, there's a cost
3 associated with it and if there is an opportunity to link
4 with other agencies, then there's an opportunity to reduce
5 our costs.
6
7 THE CHAIR: Does the YMCA carry insurance in relation to
8 these matters?
9
10 MS WHITWELL: We do have a national insurance program that
11 has been in place since 2002. Prior to that date, each
12 YMCA would have held its own insurance. As we have begun
13 to look at this issue more closely, we've come to
14 understand that many of the what we might term historical
15 matters within the YMCA - not exclusively so, but the
16 majority - may well be uninsured matters, and so we're
17 proceeding in our discussions around redress primarily on
18 that basis.
19
20 THE CHAIR: Have you discussed the issue of an appropriate
21 approach going forward with your insurers?
22
23 MR MELL: Yes, in terms of future claims that might arise
24 as a result of the present and the future, yes, and
25 especially, obviously, around coverage and premiums, and
26 the national child protection policies that we've put in
27 place are certainly supporting those discussions with
28 insurers.
29
30 THE CHAIR: But in joining in with other institutions in a
31 redress scheme or cooperating with a State-based one,
32 Commonwealth or State, does the insurer's voice have any
33 part to play in your response, or is it irrelevant?
34
35 MR MELL: Certainly not at this stage, except that the
36 insurers are supporting the work that we're doing at the
37 moment, and that's about as far as it's gone.
38
39 THE CHAIR: Yes. The only other question I wanted to ask
40 you was you heard Professor Parkinson express concern that
41 by providing redress without a total exclusion of the
42 possibility of further litigation, you might be providing
43 funds or seed funds for litigation. I gather that's not a
44 concern that the YMCA holds?
45
46 MS WHITWELL: No and I think, as your Honour articulated,
47 we've not seen any evidence that that has happened in the

1 past and that that might occur. That's not really a
2 concern.
3
4 I think we are looking at this issue and the issue of
5 redress from the point of view that if we as an
6 organisation do the right thing by survivors and have a
7 process that is just and fair, then while survivors should
8 maintain their rights to pursue civil litigation, we hope
9 that through a process of redress we might be able to
10 provide sufficient support for them to feel that they have
11 been listened to and heard and that have support going
12 forward.
13
14 MS FURNESS: Are you in a position now to impose upon your
15 independent or local YMCAs any redress scheme that would be
16 developed at your level?
17
18 MR MELL: Not "impose". Where we are at with our approach
19 to redress is that we've commenced, I guess, an engagement
20 process with the movement through discussion, and that will
21 be working towards a point where we would be putting to the
22 movement through a general meeting a national approach to
23 redress, at which time, if it is approved by the
24 membership, then it would be something that YMCAs would
25 need to be compliant with.
26
27 MS FURNESS: So they only need to comply with it if they
28 agree to through the general meeting process.
29
30 MR MELL: If the general meeting agree to it, yes.
31
32 MS FURNESS: Thank you. Thank you, your Honour.
33
34 THE CHAIR: Yes, thank you both and, again, can I, on
35 behalf of the Commissioners, express our appreciation for
36 the work which I know both of you have done to help us in
37 our deliberations on these issues. Thank you.
38
39 MR MELL: Thank you, your Honour.
40
41 MS WHITWELL: Thank you.
42
43 MS FURNESS: Your Honour, the next person to speak to
44 their submission is Mr Francis Sullivan from the Truth,
45 Justice and Healing Council.
46
47 Would you introduce yourself, Mr Sullivan?

1
2 MR SULLIVAN: Yes, Francis Sullivan, chief executive of
3 the Truth, Justice and Healing Council.
4
5 MS FURNESS: What does the Truth, Justice and Healing
6 Council do?
7
8 MR SULLIVAN: The Truth, Justice and Healing Council was
9 set up by the church leadership - that's all the Catholic
10 bishops and religious leaders - as the coordinating entity
11 for this Royal Commission.
12
13 MS FURNESS: Thank you. I invite you to speak to the
14 submission of the council.
15
16 MR SULLIVAN: Thank you, Ms Furness, and thank you,
17 Commissioners, for the invitation.
18
19 Providing redress to survivors of child sexual abuse,
20 no matter where or when it occurred, no matter who was
21 responsible, no matter the nature of the abuse, is a
22 crucial social issue we, as a nation, need to settle during
23 the course of this Royal Commission.
24
25 Bearing witness to the tragedy of institutional child
26 sexual abuse requires both recognition of the history and
27 practical steps by institutions and governments to take
28 responsibility for their failure to protect children and
29 bring perpetrators to justice.
30
31 That such abuse has occurred at all and the extent to
32 which it has occurred in the Catholic Church are facts of
33 which the whole church in Australia is ashamed. In taking
34 responsibility for this history our redress and civil
35 litigation submission is a plank of the reform agenda being
36 undertaken by the church.
37
38 Like the Commission's consultation paper, nothing in
39 our submission is set in stone. We, like so many others,
40 are here to be part of the conversation, to do what we can
41 to achieve the end result of a workable, practical scheme
42 that upholds individual dignity and helps rebuild broken
43 lives.
44
45 Our submission aims to achieve two fundamental
46 objectives. One, that all survivors of child sexual abuse
47 across Australia can receive redress based on the same

1 criteria and conditions, determined independently and
2 easily accessible, regardless of the circumstances of the
3 abuse. Two, that the survivors of child sexual abuse who
4 decide to take a claim to court are treated with compassion
5 and dignity, that their claim is not blocked by limitation
6 periods, and that there will always be an entity backed by
7 insurance or assets against which the claim may be brought.
8
9 If these objectives can be met, then an approach to
10 redress built on fairness, independence and compassion
11 should be able to achieve what many survivors and their
12 advocates have been calling for. It should address the
13 concerns identified during the Commission's process about
14 the church's redress processes, Towards Healing and the
15 Melbourne Response, and deliver redress and ongoing help
16 for survivors regardless of the circumstances of the abuse.
17
18 Our proposal largely supports what is set out in the
19 Royal Commission's consultation paper. Ours calls for a
20 single national redress scheme led by the Australian
21 Government, with the participation of State and Territory
22 governments and non-government institutions; direct
23 financial redress capped at around $150,000; financial
24 redress that takes account of the severity of the abuse and
25 the impact of the abuse; additional funding for counselling
26 and psychological care; for those survivors who wish it, a
27 meaningful and genuine apology delivered as a direct
28 personal response from the relevant church leader; an
29 application process for accessing the scheme that is as
30 clear and simple as possible; and claims determined on the
31 balance of probabilities.
32
33 Regarding civil litigation, we have constantly
34 maintained that a fair, independent and generous redress
35 scheme is a better option for survivors of child sexual
36 abuse than the adversarial litigation process. We also
37 understand, however, that despite the difficulties, some
38 individuals will wish to pursue a claim through the courts.
39 For these individuals there are two particular impediments
40 that should be addressed: limitation periods and
41 identifying an entity to sue.
42
43 We agree with the Royal Commission's suggestion of
44 reform to the limitation period and suggest it should be
45 extended to 25 years after the claimant turns 18, with a
46 further extension available at the discretion of the
47 courts.

1
2 Secondly, regarding the significant issue of
3 identifying the proper party against which to bring
4 proceedings, we suggest legislation should be introduced
5 imposing a requirement on all unincorporated associations
6 which appoint or supervise people working with children to
7 establish an incorporated entity able to be sued on behalf
8 of the institution.
9
10 It would be an entity against whom any victim of
11 alleged abuse who wished to sue could proceed. In addition
12 to these changes, the council supports the Royal
13 Commission's proposal for the introduction of a statutory
14 duty to make institutions liable for child sexual abuse
15 unless the institution can prove it took reasonable
16 precautions to prevent the abuse.
17
18 We need laws in our country which will hold all
19 institutions, large or small, accountable for the
20 protection and safety of children. Thank you.
21
22 MS FURNESS: Thank you, Mr Sullivan.
23
24 THE CHAIR: Mr Sullivan, there are a number of issues that
25 do arise. We appreciate that the council is suggesting
26 that a national scheme sponsored, if you like, by the
27 Commonwealth Government, is the solution that should be
28 adopted. What is the council's position if the
29 Commonwealth Government does not take up that challenge?
30
31 MR SULLIVAN: A number of things. It is surprising, to
32 say the least, that the Commonwealth Government initiated
33 the calling of the Royal Commission and yet the
34 Commonwealth Government so quickly has discounted itself
35 from one of the most fundamental issues we have to address.
36 You would think that any government that was setting up a
37 Royal Commission of this nature would know that a possible
38 redress scheme would be one option.
39
40 I think that conversation needs to continue, because
41 as we see it, you've had a response at a level within the
42 Commonwealth bureaucracy. It will be interesting to know
43 what the current government of the Commonwealth thinks.
44
45 Secondly, this is a social issue for Australia. We've
46 heard, as you've heard, that child sexual abuse is not
47 limited to institutional care, although these are the terms

1 of reference. We're talking about something that, as a
2 country, we're at least trying to address at one level,
3 which requires, therefore, governments, as our
4 representatives, to address this issue and to consider ways
5 in which equity and equal opportunity to redress for every
6 person who has been abused in an institution is effected
7 correctly.
8
9 At the moment, regardless of its faults, at least
10 since 1997 in the Catholic Church there's been a redress
11 scheme. You've already announced in your opening that
12 there are some institutions who have provided no redress.
13 So unfortunately, it depended on the year, your address,
14 your postcode, the institution, the willingness of the
15 governors of that institution. Surely, that is a social
16 issue that governments much address.
17
18 THE CHAIR: So, again, if the Commonwealth still walks
19 away, what does the council see as the way forward?
20
21 MR SULLIVAN: We have said quite regularly that it is our
22 policy position that the days of the church doing its own
23 investigation itself are over. We need an independent
24 process, and if it can't be established within the
25 initiative and motivation of governments, we have to get
26 creative about that.
27
28 THE CHAIR: Where do you think the creativity will lead?
29
30 MR SULLIVAN: To an independent process.
31
32 THE CHAIR: Exclusively provided to meet the needs of
33 survivors of abuse in Catholic institutions, or do you see
34 a cooperative landscape in which the institutions come
35 together?
36
37 MR SULLIVAN: Well, you know, as is our spirit in this
38 process, we are not in a position to hector anybody about a
39 set of results.
40
41 THE CHAIR: No.
42
43 MR SULLIVAN: However, firstly, we would want a scheme
44 which was independently administered so that redress can be
45 independently determined and the church components pay for
46 it.
47

1 Secondly, if that redress scheme can be available for
2 others, we would be open to the conversation, but very
3 mindful of the fact that other organisations may not want
4 to align with the Catholic Church, given our history.
5
6 THE CHAIR: You said in your oral presentation that you
7 saw the standard of proof for a redress scheme as being
8 framed in terms of the balance of probabilities.
9
10 MR SULLIVAN: Yes.
11
12 THE CHAIR: Many redress schemes in different areas, not
13 just in sexual abuse and in different parts of the world,
14 have adopted a lesser standard than the balance of
15 probabilities. Why do you think the balance of
16 probabilities is the appropriate standard?
17
18 MR SULLIVAN: We've thought long and hard about it, and
19 these are the issues that were coming up in our discussion.
20 Firstly, we were advised that, generally speaking, where
21 you do use something like the balance of plausibility, the
22 payment levels in that scheme are relatively low. It is
23 encouraging to see the thinking of the Commission that at
24 least the average payment in this scheme can be as high as
25 80,000. That's not relatively low given, particularly,
26 what you've heard from government officials about what
27 their victims of crime schemes deliver.
28
29 Secondly, you heard from Mr Gleeson yesterday about
30 the notion that a balance of probabilities is actually a
31 standard of proof where institutions are saying to the
32 individual, "We believe you; we believe that what happened
33 did happen." As opposed to saying, "We think that what
34 happened may have happened." We have been advised that it
35 is a very important point in regard to the area of sex
36 abuse that we're talking about.
37
38 Thirdly, since 1997 the two, if you like, redress
39 schemes that have been run within the church have been
40 based on the balance of probabilities and in a vast
41 majority of cases the victims' stories have been believed.
42
43 THE CHAIR: We learned yesterday that the Melbourne
44 Response - and we learnt this, indeed, when we sat in
45 Melbourne - really seeks to achieve two outcomes: one, for
46 the survivor, and the other has a disciplinary component
47 for the church official. I take it that the council

1 doesn't see the latter as being appropriate as a function
2 of a redress scheme?
3
4 MR SULLIVAN: No. Church officials being disciplined is a
5 matter for the internal workings of the church, and you've
6 heard plenty about that in the public hearings. But it
7 does take us to an important point in our submission around
8 the naming of perpetrators.
9
10 Given the history of the Catholic Church, whatever
11 redress scheme we participate in, it is very important that
12 for individuals that have been found against with regard to
13 abuse, the church is aware of who they are.
14
15 THE CHAIR: That leads me to the question I was going to
16 ask you: you would have heard me yesterday say that there
17 are occasions, at least of which I'm aware, where people
18 who very clearly were abused cannot actually identify who
19 it was that abused them.
20
21 MR SULLIVAN: Yes.
22
23 THE CHAIR: Would that be an impediment do you see, or
24 does the council see, to achieving redress?
25
26 MR SULLIVAN: No. Our experience, again - and I have to
27 say we've done a lot of talking to the people who have run
28 the redress schemes over many years, and even when you
29 heard the response when you asked it yesterday - is that it
30 is not an impediment. It doesn't require direct
31 identification of the individual. As you mentioned in your
32 example, in a boarding school, some children will be able
33 to say, "This type of thing happened in the evening. We
34 used to see somebody come in." They can't be explicit.
35 That's usually not an issue to knock off their capacity,
36 later on, for redress.
37
38 THE CHAIR: Yes. My final issue is the question of the
39 limitation period. As you know, there are a host of
40 options.
41
42 MR SULLIVAN: Yes.
43
44 THE CHAIR: Some, and indeed the Victorian Government, are
45 moving towards there being no period at all.
46
47 MR SULLIVAN: Yes.

1
2 THE CHAIR: Why is the council saying 25 years rather than
3 any other option, if you like?
4
5 MR SULLIVAN: It hasn't been a simple issue to settle on,
6 and that's partly what I'm saying, that nothing is set in
7 stone here. We've looked at it this way and it is
8 important: insurers do like limitation periods, and we
9 were looking at this as a public policy issue rather than a
10 church issue. We were trying to address what would be a
11 public policy structure, and we thought the engagement of
12 insurers in this whole exercise needs to be certain. They
13 would require limitation, unless things change, and then if
14 they change, their reinsurers may readjust, and so on.
15 That's one area of advice we've received.
16
17 Secondly, our position is not that there will be
18 strict limitation. In a sense, we're saying there's no
19 limitation. We're simply identifying a marker, and from
20 there it is over to the court to either accept the argument
21 of the defendant that there's a case strong enough to ask
22 for an extension. Generally speaking, we're pretty well
23 where the mind appeared to be of the consultation paper,
24 that at least a limitation period exercises people to begin
25 to engage with litigation, if you want to.
26
27 THE CHAIR: As I understand it, you're suggesting that the
28 foundation for any extension beyond the 25 years - and, by
29 the way, it's 25 years after majority - would cast the
30 burden upon the defendant, rather than the plaintiff?
31
32 MR SULLIVAN: Exactly.
33
34 THE CHAIR: The defendant would have to discharge an onus
35 of establishing that they would actually be prejudiced
36
37 MR SULLIVAN: Correct. And they have to choose to do that
38 in the first place.
39
40 THE CHAIR: Very well.
41
42 COMMISSIONER FITZGERALD: Just one question. I understand
43 that your submission in relation to funder of last resort
44 is not to support a position where non-government
45 institutions generally would contribute to the funding of
46 the defunct or non-existence organisations. I was
47 wondering if you could articulate your position in relation

1 to the issue of last resort?
2
3 MR SULLIVAN: Yes. The Commission would be aware that we
4 have put in a previous submission on this where we have
5 suggested that the best way, or an innovative way, of
6 dealing with this would be that all institutions that
7 participate in the redress scheme - government,
8 non-government, church, private - are insured, and that
9 there is a levy on that insurance and the levy becomes a
10 funding pool for being the fund of last resort.
11
12 COMMISSIONER FITZGERALD: Thank you.
13
14 MS FURNESS: Mr Sullivan, in your submission at
15 paragraph 24 you say that the redress scheme should be
16 complied with the mandatory reporting requirements and this
17 may require redress processes to be put on hold pending the
18 outcome of any police investigations. How do you see the
19 relationship between police investigations and redress
20 working?
21
22 MR SULLIVAN: We're really picking up the experience of
23 what has happened since 1997 with Towards Healing and other
24 matters, that when individuals in the process choose to go
25 down another pathway, like an alternative dispute
26 resolution pathway, the redress process stops. So in the
27 case of where individuals go to the police or where there's
28 an obligation on the part of officials of that institution
29 to go to the police, we would suggest that the redress
30 scheme stops until that process has had its course. At the
31 end of the day, with child sex abuse, your first port of
32 call should be the police.
33
34 MS FURNESS: There has been an issue, as you're aware, in
35 the church procedures as to the role of the person put up
36 by the church in encouraging or otherwise speaking to an
37 applicant or claimant about their rights in relation to the
38 police. In some cases, it has been seen by some claimants
39 that they have been put off going to the police by what has
40 been said in order to get some compensation. How do you
41 see that being avoided in a redress scheme?
42
43 MR SULLIVAN: In a number of reviews done by
44 Professor Parkinson of Towards Healing he made it
45 explicitly clear that reporting to the police should be
46 communicated directly to a person coming forward to the
47 church with a claim. In the Towards Healing documentation

1 by about 2010, maybe, that's explicitly put in there.
2
3 You know, it's clearly not enough to encourage
4 individuals to advise that police need to be informed. You
5 have to be explicit in the policy and you have to make sure
6 that that's followed.
7
8 To that end, we've just begun a process in the
9 Catholic Church of putting in place a new supervising
10 structure around standards for child protection and the
11 protection of vulnerable people, and that structure will
12 have a series of standards, and what we're talking about
13 now would be a standard. Those standards would be
14 independently audited and reported on.
15
16 You've got to keep moving the culture of a place like
17 a church or any organisation into the next best practice in
18 this area, and I think we openly recognise that the work in
19 progress at times simply just wasn't good enough.
20
21 MS FURNESS: Is it the case that the administrator of a
22 scheme would require the consent of the victim or
23 complainant to report the matter to the police?
24
25 MR SULLIVAN: I don't know. This is partly, I suppose,
26 the design issues that we need to discuss - smarter people
27 than me can work that one out, but I think raising the
28 issue is more important for us at this point.
29
30 MS FURNESS: Thank you. Thank you, your Honour.
31
32 THE CHAIR: Thank you, Mr Sullivan and I again thank you
33 and the council for its contributions to our work.
34
35 MR SULLIVAN: Thank you very much.
36
37 THE CHAIR: Will we take the morning adjournment?
38
39 MS FURNESS: We will, your Honour. Just before that,
40 could I indicate the program changes a bit after the
41 morning adjournment. We have a panel of four who are
42 speaking about the issue of counselling.
43
44 THE CHAIR: And that will be ready for 12 o'clock?
45
46 MS FURNESS: Yes. 12 o'clock, and that will take until
47 lunchtime.

1
2 THE CHAIR: Very well. We will adjourn.
3
4 SHORT ADJOURNMENT.
5
6 MS FURNESS: Thank you, your Honour. We have a panel this
7 afternoon.
8
9 Can I ask each of you to identify yourselves, starting
10 with you, Ms Kezelman, if I can.
11
12 DR KEZELMAN: Dr Cathy Kezelman, president of ASCA, Adults
13 Surviving Child Abuse.
14
15 MS McINTYRE: Jeannie McIntyre, from the Victorian
16 Aboriginal Child Care Agency.
17
18 DR ROUFEIL: Dr Louise Roufeil from the Australian
19 Psychological Society.
20
21 MS WILKINSON: Glenys Wilkinson, CEO of the Australian
22 Association of Social Workers.
23
24 MS FURNESS: Thank you. We just need to make sure we can
25 hear all of you.
26
27 THE CHAIR: Yes, and we can't see all of you either.
28
29 MS FURNESS: Is there anything we can do screen wise?
30
31 THE CHAIR: The screens aren't really necessary there.
32
33 MS FURNESS: We might deal with that later rather than
34 now, if that's all right.
35
36 Could I invite each of you, in turn, to say something
37 and then I think you, Dr Kezelman are coming back at the
38 end of that, is my understanding.
39
40 DR KEZELMAN: I was going to start off saying agreed
41 points for all of us.
42
43 MS FURNESS: Thank you. Please, for the benefit of our
44 reporters, speak slowly. Time won't be as big an issue.
45
46 DR KEZELMAN: Thank you. As mentioned, I'm from ASCA,
47 Adults Surviving Child Abuse. While ASCA brings not only a

1 survivor voice, an understanding that no-one can pretend
2 for all survivors, the Royal Commission has shown the power
3 and importance of people's life experience. It was
4 therefore agreed that in honouring survivors, I would
5 represent the points of consensus of the four organisations
6 on this panel.
7
8 After that, each organisational representative will
9 speak highlighting their own organisation's key points.
10 Jeannie McIntyre from the Victorian Aboriginal Child Care
11 Agency, on behalf of the Coalition of Aboriginal Services,
12 will speak first; then Glenys Wilkinson from the Australian
13 Society of Social Workers; Dr Louise Roufeil from
14 Australian Psychological Society; and I will close on
15 behalf of ASCA, leaving further time for discussion.
16
17 All panel members are committed to working together in
18 any way we can to support the work of the Commission and of
19 governments. The challenge is indeed complex, but we must
20 find solutions for real and long-lasting change to enable
21 some of Australia's most vulnerable to have their needs
22 met.
23
24 The investment in this Commission, the litany of
25 horrors, the courage of survivors must be honoured. To not
26 do so would be simply brutal.
27
28 Our starting point is that current services are
29 inadequate to meet the needs of this group and that
30 evidence from lived experience, clinical practice and
31 research is sufficiently robust to establish the basis for
32 trauma-informed, culturally attuned counselling and
33 psychological care services to be comprehensively
34 provisioned under the proposed redress scheme.
35
36 In so doing, we recognise that many survivors will
37 experience a range of physical, mental and psychosocial
38 impacts as a result of their trauma and may present in
39 diverse ways with distress, disability, relationship and
40 self-esteem issues and mental health challenges.
41
42 Whilst some people will need no or minimal counselling
43 or psychological care, others will need longer-term
44 support. The need will vary between individuals and
45 fluctuate across the lifespan, as will the variety of
46 services accessed. Options need to be broad enough to
47 cater for diverse individual and cultural needs and to

1 provide survivors with a choice about where and how to
2 access the care they need.
3
4 We believe that there should be no fixed limits on
5 services for survivors; that services should be
6 continuously available and accessible; but that a suitable
7 ongoing assessment and review process must be in place to
8 monitor.
9
10 Of critical importance are the knowledge, skills and
11 training of practitioners and services working with
12 survivors, with the risk of re-traumatisation high when
13 inadequate or when funding constraints necessitate
14 precipitous termination of a therapeutic process and
15 relationship.
16
17 Accordingly, all four organisations support a robust
18 training and accreditation process and the development of a
19 database of accredited practitioners which is well marketed
20 and accessible.
21
22 A whole-of-systems approach and a no-wrong-door policy
23 necessitates embedding trauma-informed practice across the
24 range of health, including primary health, and diverse
25 community services with which survivors come in contact.
26 As opposed to trauma-specific services, in which
27 practitioners work directly with survivors to help them
28 work through their trauma, trauma-informed services raise
29 awareness about the possibility of underlying trauma in
30 those seeking services, and by being aware of their
31 particular sensitivities and vulnerabilities, can help
32 minimise the risk of re-traumatisation.
33
34 The four organisations here all support widespread
35 trauma-informed training across systems and services under
36 the redress scheme and considerations around ease of access
37 to that scheme to minimise the risk of re-traumatisation.
38
39 In considering a service model, each organisation will
40 speak to their preferences. However, there is agreement
41 around Medicare, were it to be utilised to expand existing
42 services and potentially fund specialist services, that the
43 requirement for a diagnosis, the current restriction on
44 session numbers and the inappropriate requirement for a
45 GP gatekeeper be removed.
46
47 Thank you.

1
2 MS FURNESS: Thank you, Dr Kezelman.
3
4 MS McINTYRE: Thank you. I'll begin by acknowledging the
5 Gadigal people of the Eora Nation and pay my respects to
6 their elders, past and present, and elders here today.
7 I also pay my respects to members of the Stolen Generations
8 and also those affected by the terms of reference of this
9 Royal Commission.
10
11 I'd like to acknowledge an elder of the Victorian
12 Aboriginal community, Dr Alf Bamblett, whose funeral is
13 being held as we speak. Alf was one of my teachers. He
14 fought long and hard for justice for Aboriginal people.
15
16 I believe we need to acknowledge that institutional
17 sexual abuse against Aboriginal peoples, particularly women
18 and children, has been occurring since 1788. The
19 intergenerational effects of this and the lack of a
20 holistic healing response to addressing these traumas
21 results in continuing the cycles of removals of Aboriginal
22 children. As is well documented, Aboriginal children in
23 out-of-home care are significantly overrepresented, and
24 child protection intervention continues at disproportionate
25 levels.
26
27 The sexual abuse of Aboriginal children must be seen
28 in tandem with the cultural abuse that occurred when
29 children were removed on the basis of their Aboriginality,
30 deliberately ensuring disconnection from family, community,
31 culture and land, removing critical protective and
32 resilience features of the Aboriginal child.
33
34 For many Aboriginal survivors, the meanings of sexual
35 abuse may differ from their non-Aboriginal counterparts
36 because the abuse is not only understood as a personal
37 violation and massive breach of trust, but also often seen
38 within the context of colonisation and a larger systematic
39 effort to deny basic human rights to one's culture and all
40 that this brings with it.
41
42 We have been trying to address this phenomenon since
43 the 1970s. However, our efforts fall well short of
44 achieving change.
45
46 Until we are prepared to put the healing needs of
47 Aboriginal people into their hands and trust that they are

1 best placed to know how to meet these complex needs, there
2 is no reason to think that there will be change. We need
3 to empower Aboriginal people. Self-determination is the
4 key to effecting change.
5
6 There is a need for resourcing of culturally
7 appropriate healing services. Multiple reports have
8 identified barriers to the access of mainstream services,
9 including the lack of culturally safe services, a lack of
10 awareness of available services, racism, shame and fear.
11 The lack of resourcing for Aboriginal community controlled
12 organisations to provide trauma-informed and holistic
13 healing services, and the inaccessibility of mainstream
14 services, results in Aboriginal survivors not getting the
15 support services that are required. The best way to
16 deliver holistic healing services is to work with
17 Aboriginal communities and support services that are run by
18 Aboriginal community controlled organisations.
19
20 VACCA supports the majority of the principles raised
21 in the consultation paper. Our views may differ on how
22 these principles are enacted or implemented. The complex
23 multi-layered traumas experienced by Aboriginal survivors
24 require a broader interpretation of "counselling and
25 psychological support" to enable cultural healing programs
26 like Red Dust and the Marumali program to be funded and
27 available to survivors.
28
29 As Graham Gee explained yesterday, there is a need for
30 cultural healing that goes beyond what a culturally
31 informed non-Aboriginal counsellor can provide, beyond what
32 an Aboriginal counsellor can provide - the healing that only
33 an Aboriginal elder can provide. At the current time there
34 is no ability to purchase these services via Medicare, and
35 it is of great concern that the Commonwealth Government
36 seems to be suggesting that the current service platform is
37 sufficient. It is not.
38
39 I felt for the uncle yesterday who daily relives his
40 experience through witnessing what continues for Aboriginal
41 children in his community. I have witnessed many adult
42 survivors re-traumatised by the way the system is still
43 removing Aboriginal children at record levels and not
44 supporting the Aboriginal community to care for their own
45 in the way they did for thousands of generations prior to
46 1788.
47

1 All 28 clients VACCA has provided a service to believe
2 the current mainstream counselling has not assisted them in
3 recovering from their childhood experiences. A number have
4 turned to art and found some healing through their artwork.
5 There is an urgent need for our clients to have the options
6 for healing they identify they need - those that will
7 address their cultural as well as psychological needs.
8
9 A couple of further points on the principles outlined
10 in the discussion paper. Accreditation: while VACCA is
11 not opposed to this, Aboriginal people will need to have
12 significant input into how this will look from a cultural
13 perspective, as the trauma-informed approached used by many
14 Aboriginal elders is a lived experience approach, and not
15 from training or textbooks, and should at minimum have
16 equal value to the academic approach.
17
18 VACCA supports the establishment of a trust fund to
19 address service gaps, as we do not believe the
20 Medicare-funded services will ever be reformed to the point
21 that it will enable access to cultural healing programs so
22 critical to the healing of Aboriginal survivors.
23
24 There is not one approach or one model of Aboriginal
25 healing. Aboriginal Australia is complex and diverse.
26 Understanding and acknowledging these differences is
27 important. We need to learn from more than 60,000 years of
28 wisdom. Culture is healing, protective and provides
29 resilience and safety. It leads to identity and belonging.
30 Key elements of Aboriginal healing include spirituality,
31 the importance of kinship, elders, land and law, a
32 narrative approach highlighting the importance of
33 storytelling, a group approach, sharing with peers and
34 learning from elders and community healing.
35
36 We owe it to the survivors of institutional child
37 sexual abuse to get psychological care and counselling or
38 healing right as part of any redress scheme. Aboriginal
39 people are not inherently vulnerable. They are proud,
40 strong and resilient, as evidenced by 3,000 generations of
41 living strongly on this land. Colonisation and its legacy
42 is the primary cause of the vulnerable status of Aboriginal
43 people.
44
45 Historically, child welfare has led to devastating
46 outcomes of disconnection, loss of identity and cultural
47 genocide for Aboriginal children, families and communities.

1 Today, the all-too-familiar figures of ever-increasing
2 rates of child protection notifications, removals and
3 placement with non-Aboriginal families, over-representation
4 in juvenile and adult justice systems and the inability to
5 close the gap on structural inequities and disadvantage
6 experienced by Aboriginal communities, the impacts of
7 invasion, occupation and colonisation and the ensuing
8 policies of forced removals are still evident. Redress is
9 a vital step to addressing the wrongs committed against
10 Aboriginal peoples from first colonisation.
11
12 I thank the Commission for their continued efforts and
13 belief in the Aboriginal communities' ability to heal their
14 own. I sincerely hope your recommendations do not prove to
15 be yet another let-down to those so let down today. Thank
16 you.
17
18 DR ROUFEIL: Hello, my name is Dr Louise Roufeil and I am
19 speaking on behalf of the Australian Psychological Society,
20 the professional body for psychology in Australia.
21
22 The APS has over 21,000 members and is the largest
23 mental health profession in Australia. We're very pleased
24 to present today on behalf of psychologists, many of whom
25 work with sexual abuse survivors now and struggle to
26 provide appropriate care under the existing service system
27 constraints.
28
29 The evidence is very clear that survivors need access
30 to evidence-based, trauma-informed, non-traumatising
31 psychological care. How much treatment and at what level
32 of the health system will vary across each individual's
33 lifespan. We do not currently have sufficient treatment
34 services in place. There is an issue of survivors
35 struggling to find practitioners who have the appropriate
36 knowledge, skills and experience to work in an effective
37 and respectful manner and there are simply not enough
38 services that can provide effective clinical care.
39
40 Working with complex trauma in the context of child
41 sexual abuse and institutions is a specialised area of
42 practice. Few services have practitioners that are
43 adequately trained in this area. The APS does not believe
44 that creating a new stand-alone service is the most
45 efficient way to meet this gap. The psychological care
46 response to survivors needs to be established promptly and
47 build on and expand existing services and existing

1 expertise, otherwise survivors will not benefit from the
2 genuine bipartisan approach by government to address the
3 injustices of institutional child sexual abuse.
4 Institutions cannot let survivors down again.
5
6 The limitations of existing services in providing
7 psychological care for survivors are profound. Specialist
8 services are overburdened and cannot prioritise adult
9 survivors, despite having very experienced and excellent
10 clinicians who have the appropriate knowledge, skills and
11 experience to work with the survivors.
12
13 State-based community and mental health services have
14 limited capacity to work long-term with survivors and the
15 quality of care for survivors varies greatly.
16
17 Adult mental health services primarily work with
18 clients with acute mental health issues. Whilst some
19 survivors may at times need these services, they do not
20 generally provide access to community-based,
21 evidence-based, trauma-focused treatment for survivors.
22
23 In the private sector, there are rebates available for
24 survivors with a diagnosis of mental illness to obtain
25 10 sessions per year of psychological treatment. But many
26 survivors will not qualify for such services and, even if
27 they do, the capacity to provide evidence-based treatment
28 for complex trauma in 10 sessions is limited.
29
30 Commencing a therapeutic relationship with a survivor
31 and offering hope and then not being able to carry the
32 treatment to fruition represents a failure of the system
33 again for survivors. The treatment response is itself
34 re-traumatising. This cannot be allowed to continue.
35
36 It is also apparent that the gap fees for
37 Medicare-funded services by both medical practitioners and
38 allied health professionals represent a very real barrier
39 to care for many survivors.
40
41 Rather than a new stand-alone service delivering
42 psychological care, the APS believes that a national
43 response is required, that can offer access to
44 evidence-based, trauma-focused care for all survivors
45 regardless of where they live and appropriate to their
46 cultural background.
47

1 The institutions in question during the Royal
2 Commission have a role in providing access and
3 psychological care for survivors, but some survivors will
4 not want to accept this funding, and the funding from
5 institutions is not likely to be sufficient to meet the
6 real psychological needs of survivors.
7
8 We have the scaffolding in place to develop a
9 world-class response to survivors. Australia has the
10 experienced practitioners able to deliver effective care,
11 and a national structure through Medicare that can provide
12 the infrastructure to enable rapid implementation across
13 the country. There is a precedent for such a model with
14 the response to the bushfires in Victoria. There is also a
15 precedent for the use of Medicare to expand service
16 delivery in specialist services. Doing this will greatly
17 enhance the existing service capacity.
18
19 The APS acknowledges the challenge confronting the
20 Commission in developing a psychological care response that
21 meets the needs of survivors and government. The APS is
22 committed to working with ASCA and with the professions and
23 government to ensure that survivors get access to the
24 psychological care that they need. Thank you.
25
26 MS FURNESS: Perhaps Ms Wilkinson.
27
28 MS WILKINSON: Thank you. Your Honour and Commissioners,
29 thank you for the opportunity to be here and for the
30 opportunity for the AASW, the Australian Association of
31 Social Workers, to publicly advocate for an effective
32 redress scheme and to address the counselling and
33 psychological care needs for survivors of institutional
34 child abuse.
35
36 I would like to endorse what has already been stated
37 and, as Cathy said, she did speak on behalf of all of us
38 when she provided the opening comments around the
39 principles of care, so I'll just elaborate on some other
40 information for you.
41
42 The AASW is the professional representative body for
43 social workers and the social work profession in Australia.
44 We have in excess of 8,500 members. We are partly a
45 self-regulating profession with the responsibility to
46 promote social work, set education, practice and other
47 clinical-type standards and regulate the professional

1 conduct of social workers who choose to be members.
2
3 Social workers routinely consider the relationship
4 between biological, psychological, social, cultural and
5 spiritual factors and how they impact on a person's health,
6 wellbeing and development. We recognise the need for
7 interventions that assist people as individuals, families
8 and communities to engage in the world to their full
9 capacity and which address cultural and structural barriers
10 to full participation.
11
12 The AASW notes and agrees with the introductory
13 comments that survivors of institutional sexual abuse have
14 needs above and beyond those routinely experienced by
15 children placed in care, as considerable as those needs
16 are. The AASW commends the recommendation for the funding
17 through redress of additional, complementary specialist
18 services offering counselling and psychological support to
19 survivors of institutional sexual abuse.
20
21 We note the critical importance of highly developed
22 assessment and engagement skills to ensure that survivors'
23 needs are properly identified and addressed. These skills
24 are core aspects of professional education received by
25 social workers.
26
27 In addition, our code of ethics and practice standards
28 closely aligns with the Kezelman and Stavropoulos Trauma
29 Informed Service Framework. The social work profession is
30 deeply committed to principles of safety, trustworthiness,
31 choice, collaboration and empowerment. It is embedded in
32 principles of social justice and anti-discriminatory
33 practice and recognises the need for responsive, inclusive
34 and accountable practice based on a strong collegial
35 relationship with stakeholders.
36
37 There is considerable good work happening already in
38 the community working with people who have experienced a
39 trauma such as we're talking about today. However, the
40 current service system, as Louise has very well
41 articulated, is currently inadequate in its availability,
42 in the timeliness of its response and, at times, the
43 competency of the practitioners. This is highly
44 specialised, highly complex work.
45
46 We do endorse what has been articulated so well in
47 ASCA's submission that we need a trauma-informed service

1 system so that there can be no wrong-door approach, and
2 everybody who is entitled and requires intervention and
3 assistance by the service system is able to be received in
4 the most appropriate, seamless manner.
5
6 Service users need assurance of effective, targeted,
7 timely and highly skilled practitioners, and that's where
8 the role of professional associations such as the AASW have
9 a role to play. We set the educational standards, we
10 describe the competencies of our practitioners. We have
11 accreditation systems in place for members who work in
12 particular areas such as mental health. We have
13 contractual arrangements with Medicare and others as well
14 to assess our individual members to award an outcome, such
15 as a Medicare provider number, and then we have compliance
16 systems to monitor the individual practitioner's adherence
17 to the standards and the CBTs to maintain that provider
18 number.
19
20 We absolutely endorse that there needs to be
21 accreditation of individual practitioners to work in this
22 particular field. This is complex, highly sensitive work
23 and we cannot afford to have a system creating trauma, as
24 has been articulated in our submissions to date.
25
26 We believe the Medicare system is an excellent
27 platform on which to build this new service system or this
28 response to survivors of institutional child abuse. We
29 don't endorse the need to create a new system. We think
30 the principle of Medicare universality can be protected and
31 is not compromised if we have an extension or a
32 modification to work with a particular client group and, as
33 Louise says, there are examples of that happening with the
34 bushfires in Victoria.
35
36 There are other models, of course, through the
37 Department of Veterans' Affairs but the Medicare one is
38 well known, it is not stigmatised. We have people already
39 working in that system and we believe that it is the
40 appropriate platform from which we can build a new service
41 response.
42
43 I would also really like to endorse everything that
44 has been said so far, but I'd also like to comment on the
45 symbolism of the four agencies, four different sectors
46 here. We are committed to collaboration. We're committed
47 to a seamless service response to people who require

1 counselling and psychological care because of their
2 experiences. We will collaborate together and we are
3 collaborating together but always with the intent of
4 building a better service system. I thank you for the
5 opportunity to be here today.
6
7 MS FURNESS: Thank you, Ms Wilkinson. Dr Kezelman?
8
9 DR KEZELMAN: Thank you once for inviting ASCA, and
10 I would just like to acknowledge the work of the Commission
11 to date. It has been compassionate, it has been
12 comprehensive, it has been forensic, and I would like to
13 repeat Glenys' comments that it is great to be working
14 together as a collective group.
15
16 ASCA is a specialist organisation for adult survivors
17 of childhood trauma, obviously including institutional
18 child sexual abuse survivors. We combine a survivor
19 perspective with that of clinicians, academics and
20 researchers, authors of the nationally and internationally
21 acclaimed practice guidelines around complex trauma and
22 trauma-informed practice, and our work is grounded in
23 research. We sit on the scientific committee of the peak
24 international body, the ISSTD. So it is the research, the
25 lived experience and practice evidence which is robust, and
26 it needs to be used to inform optimal service responses and
27 must inform standards.
28
29 The bipartisan support for this Royal Commission is
30 unprecedented. The Royal Commission is a global first and
31 the world is looking to Australia to continue this
32 leadership. All governments and institutions must continue
33 their proactive engagement so that we can reach the right
34 solutions, otherwise community expectations and the health
35 and wellbeing of survivors will be further damaged.
36 Betrayal and abandonment will be replicated and
37 re-traumatisation will abound. Together we must ensure
38 that this Commission's work spearheads real and
39 long-lasting change.
40
41 The proposed system must honour the uniqueness of
42 every survivor's experience, respect diversity, culture,
43 diverse coping mechanisms, vulnerabilities and strengths.
44 Current failures do not, in the main, relate to lack of
45 awareness of existing services but, rather, to lack of
46 service affordability, accessibility, experience and
47 expertise.

1
2 To build confidence we need appropriate services which
3 are permanently available across the lifecycle, accessible,
4 flexible, and determined by informed survivor choice and
5 need. Provision of services needs to be both timely and
6 responsive.
7
8 The system needs to support both trauma-informed and
9 trauma-specific services based on a no-wrong-door
10 philosophy around which we all agree. Trauma-informed
11 services minimise not only the risk of re-traumatisation
12 but they also recognise trauma's impacts on the capacity of
13 people to seek help and to embrace choice.
14
15 Research establishes the benefits in terms of client,
16 staff and organisational wellbeing around trauma-informed
17 practice. ASCA therefore recommends the broad-based
18 implementation of that practice across all health and human
19 services, including the primary care sector as well as
20 legal and justice settings.
21
22 Trauma-specific services must be comprehensive and
23 diverse and must include the provision of resources,
24 education, phone, online and face-to-face individual and
25 group options.
26
27 Complex trauma competency, which establishes safety
28 and trust, are absolutely critical, though not particular
29 to any one system or discipline. Special services informed
30 by survivor experience and expertise, however, have a
31 unique role, as has been honoured by this Commission, and
32 this cannot be lost.
33
34 Many of this survivor group have experienced very
35 early sustained and extreme abuse and have deep-seated
36 ruptures in attachment and their very sense of self.
37 Whilst short-term treatments have established benefits for
38 adult-onset PTSD and can be helpful in some aspects, expert
39 consensus establishes that complex trauma treatment is
40 generally longer than that for other presentations, with
41 relationally based phased-treatment approaches which engage
42 the body, the mind and the emotion of proven benefit.
43
44 ASCA believes that an accreditation process is needed
45 for practitioners and services, with an accreditation body
46 to assess competency and quality assured training and a
47 central regulatory of trauma-specific and trauma-informed

1 services. ASCA also recommends ongoing assessment and
2 review which meets standards and adheres to trauma-informed
3 principles as well as practice-based evidence methodology.
4 This process needs to be realistic and not overly
5 bureaucratic or expensive or intrusive of the therapeutic
6 space.
7
8 ASCA supports investment in training and service
9 provision for a system of collaborative care in which
10 communication across and between services is enhanced. In
11 conceptualising a suitable scheme, ASCA notes the
12 substantial limitations and non-trauma informed premise of
13 current Medicare funded systems which restrict the types of
14 psychological treatments funded, their duration, as well as
15 practitioner and service profiles.
16
17 ASCA supports reform to existing Medicare programs to
18 remove the imperative for GP referral in the assessment of
19 mental health disorder. We support uncapped sessions, the
20 provision of services by accredited practitioners of any
21 discipline, no restriction to short-term modalities and
22 which include specialist services. In addition, ASCA
23 proposes a trust fund funded by institutions to enable the
24 range of additional services recommended.
25
26 Everyone here is all too aware of the moral imperative
27 for judicious action. ASCA's 2015 economic report,
28 Addressing the Cost of Unresolved Childhood Trauma and
29 Abuse in Adults in Australia - a long title - established
30 the economic imperative. ASCA recommends that Governments
31 give due consideration to the significant ongoing costs of
32 not adequately addressing the counselling and psychological
33 needs of institutional child sexual abuse survivors when
34 weighing up the potential costs of appropriately addressing
35 their complex needs through a redress program. Thank you.
36
37 THE CHAIR: Could I just start the discussion by asking
38 all of you this, but any of you can answer or all of you
39 can answer, you raise a sweep of problems, you understand
40 that, and the audience listening probably has seen that
41 sweep go past without being able to focus on each of the
42 individual problems, but, as you know, the Commission has
43 spent some time in various ways looking at these issues.
44
45 The problems that you identify, is it right to assume,
46 are problems that extend across those who have been
47 sexually abused as children irrespective of whether it was

1 in an institutional context; is that right?
2
3 DR KEZELMAN: Yes. Certainly, the problem in accessing
4 care, yes, does extend across, yes.
5
6 THE CHAIR: Yes. In fact, the problem is far larger than
7 the terms of reference that we have been given require us
8 to examine.
9
10 DR KEZELMAN: Yes.
11
12 THE CHAIR: We are talking about a broad community
13 problem.
14
15 DR KEZELMAN: Yes.
16
17 THE CHAIR: Then, to keep it at the general sweep, is it
18 right to understand what you're all saying is that in the
19 various disciplines there is, firstly, a lack of
20 appropriately trained persons to meet the need; is that
21 right?
22
23 MS McINTYRE: Definitely within the Aboriginal community.
24
25 DR KEZELMAN: Yes.
26
27 MS ROUFEIL: It is a very narrow area of practice,
28 Commissioner.
29
30 THE CHAIR: I understand that, but there is a lack of
31 appropriately trained --
32
33 MS ROUFEIL: In that narrow area, yes.
34
35 DR KEZELMAN: Yes.
36
37 THE CHAIR: And then by reason of the various steps,
38 hurdles, impediments, whatever we like to call them, in
39 accessing a trained person, there are difficulties for
40 those who need help from a professional in finding their
41 way to the right professional with the right training; is
42 that right?
43
44 DR KEZELMAN: That's right, in knowing who they might be,
45 because there's actually no means of assessment of who,
46 there's no accreditation process, so where are the minimum
47 standards and guidelines?

1
2 THE CHAIR: Where do you go?
3
4 DR KEZELMAN: Yes.
5
6 MS ROUFEIL: Where there are services and providers that
7 can provide it, the doorway into those services is very
8 narrow and entry to them is very difficult and when you can
9 get in, the capacity to fully provide treatment is limited.
10 Many psychologists in private practice could provide the
11 care, but there is very limited funding for people to
12 access that care.
13
14 THE CHAIR: That is the next issue. There is a lack of
15 funding to support those who need the care. This may be a
16 hard question to answer, but in terms of those various
17 steps, providing more trained people, providing avenues to
18 make sure those who need it get to the right people and
19 then assisting those people to pay you for the counselling
20 they have, are we talking about very large deficiencies in
21 money terms in our current system to provide the training,
22 provide the access and provide the funding for those who
23 need the access?
24
25 DR KEZELMAN: We are talking about large gaps but I would
26 like to reiterate the point that when you look at the cost
27 of not providing the right treatment, the cost is
28 absolutely enormous in terms of other expenses in health
29 and welfare systems and criminal justice systems.
30
31 THE CHAIR: Yes.
32
33 MS WILKINSON: That's one of the reasons why we would
34 articulate that the Medicare platform is a really good
35 platform to build the systems and your response because it
36 is universal and it is everywhere.
37
38 THE CHAIR: It's the starting point. The trauma-informed
39 trained people, are we talking about a lot more learning
40 for some people? What's the dimension of that issue?
41
42 DR KEZELMAN: I think that's quite substantial as well.
43 We're talking about starting with many people who are not
44 even aware of the principles, with others who probably pay
45 lip-service to it, but what again we know is when it is
46 introduced, it is of profound benefit not just for the
47 wellbeing of people seeking the service, but also to the

1 wellbeing of staff and the organisations themselves; again,
2 it is a return on investment, if you like.
3
4 THE CHAIR: Indeed. Would it require practitioners to
5 attend a course or is it something we can consider that
6 could be provided online? What are the dimensions for what
7 we're talking about?
8
9 DR KEZELMAN: No, I think it is face-to-face training
10 because it needs to be experiential. It needs to be
11 attuned to particular roles and responsibilities and it
12 needs to be embedded right through the organisation at all
13 levels, including in policies, procedures and systems.
14
15 MS ROUFEIL: It is a training approach, as Cathy said, but
16 also the opportunity for people to have training placements
17 in organisations that can deliver this. That hasn't been
18 easily obtainable for psychologists in their training, that
19 supervised placements in the specialised facilities are not
20 easily obtained because of the lack of capacity in those
21 existing services at the moment.
22
23 THE CHAIR: I assume that it is not because we exist that
24 these problems have come to the surface and are being
25 talked about; is that right? They've been talked about
26 before?
27
28 MS McINTYRE: They certainly have within the Aboriginal
29 community and numerous reports have very well articulated
30 it and good recommendations have been made, but
31 unfortunately governments have never seen fit to implement
32 the recommendations.
33
34 THE CHAIR: What about more widely than the Aboriginal
35 community, have these problems been addressed?
36
37 MS ROUFEIL: I think it is reasonable to say that it is an
38 area that has been identified of significant improvement
39 for a long time.
40
41 THE CHAIR: What do you identify as being the impediments
42 to change?
43
44 MS ROUFEIL: In the professions or in the service
45 delivery?
46
47 THE CHAIR: In both.

1
2 MS ROUFEIL: I don't think there are that many impediments
3 within the profession, at least of psychology. There is
4 the capacity for better training programs that could be
5 embedded into current training programs. We have
6 accredited training programs. It wouldn't be difficult to
7 ensure that there was greater attention in training
8 programs. That would need to be accompanied by, as I said,
9 placements in places where people can get experience.
10 Again, I emphasise what Cathy said, that it is not just
11 enough to have training, it is experience in the practice.
12
13 The impediment overwhelmingly for psychologists who
14 have the experience and the training is a service system
15 that doesn't let them deliver that in the way they've been
16 trained to deliver it.
17
18 THE CHAIR: Because?
19
20 MS ROUFEIL: Because under Medicare, 10 sessions is
21 nigh on impossible and in the public sector there isn't the
22 capacity to do this type of work easily.
23
24 MS WILKINSON: It is a really resource constrained
25 environment in which this work is happening and the option
26 to go privately through Medicare is also highly
27 constrained. One of the things that I'd really like to
28 make a comment on training as well is that, of course, we
29 need to see the person in the context of their family and
30 their community and that's another layer or another
31 dimension of the training. We want people to be able to
32 live their life to the fullest and to be able to do that
33 they need effective support and effective engagement and
34 effective relationships at multiple levels. It is not just
35 a one-on-one type interaction with a person who has
36 experienced child sexual abuse.
37
38 COMMISSIONER MILROY: I have some questions for the panel.
39 The first question I have is a general question in response
40 to the question about the adequacy of current practitioners
41 and services. Do any of the panel members want to make any
42 comments about the adequacy of services for children and
43 youth and then also the older end of the aged spectrum as
44 well in regards to trauma and trauma-informed care
45 services?
46
47 MS ROUFEIL: Access to services for children can be

1 somewhat easier than for older adults because of the more
2 immediacy of the issues. They can be prioritised by
3 specialist services somewhat easier, but it is also true
4 that the skills in working with children are very different
5 to the skills in working with adults. It is certainly an
6 area of skill development that is quite narrow and there's
7 probably not sufficient qualified people out there to work
8 in that area.
9
10 MS WILKINSON: The other comment I'll add to that is that
11 when it comes to protecting children and adolescents,
12 there's a fairly sophisticated child protection service
13 system. In some States we have management reporting and
14 there has been all sorts of training associated with that
15 for professionals. Where children who perhaps are not
16 expressing things verbally but expressing behavioural-wise,
17 there is a system that can pick them up and intervene more
18 quickly than, say, the older adult who can hide or mask or
19 avoid such painful experiences in conversations.
20
21 MS McINTYRE: I would just add that as was discussed in
22 last week's public hearing, while there are access to
23 services for Aboriginal children, they're all mainstream
24 services and whilst they make efforts to have some cultural
25 understandings, they're not meeting the cultural needs of
26 Aboriginal children, at least in Victoria.
27
28 DR KEZELMAN: When looking at the older population,
29 I think it is only now that people are recognising the real
30 issues around trauma and aging and particularly people who
31 have been sexually abused in institutions when they have to
32 be institutionalised in old age and what that can mean.
33 I'd say there is a dearth of understanding and experience
34 in that area and therefore of services.
35
36 COMMISSIONER MILROY: Although the emphasis has perhaps
37 been on the adult system, there are significant deficits at
38 either end of the age spectrum as well. This question is
39 probably more to you, Ms McIntyre. Did you want to comment
40 any more, given that we were talking yesterday about some
41 issues or aspects of cultural safety and what that means
42 both for people accessing a redress scheme but also for the
43 psychological care that's required?
44
45 MS McINTYRE: I think it is significantly important to
46 have support services available through the Aboriginal
47 community to support people in the application process,

1 understanding what's available through any redress program
2 that may be established and ensuring that basically they
3 have a bit of a case management approach that can support
4 them. Because of time, I cut out a lot of what I was going
5 to say about the client group that I have been working
6 with. They have numerous issues beyond coming forward and
7 talking to the Royal Commission and in fact our experience
8 is that starts a journey for them and one of the things
9 they are often wanting to do is actually go back and
10 revisit the institution. Part of our concern is to do that
11 without having gone through some sort of program like
12 Marumali. And there are other programs. I talk of that
13 one a lot because I'm very familiar with it. Without doing
14 that in that context, it could not be as successful as it
15 might be if they've gone through that sort of a healing
16 program.
17
18 There is a definite need to really think through the
19 support services beyond psychological and counselling needs
20 to support Aboriginal people.
21
22 COMMISSIONER MILROY: A final question which none of you
23 may be able to answer but it is a constant problem in the
24 service system, in regards to continuity of care, which can
25 often be a big issue for survivors wanting to access at
26 least the same person, are there any ideas about how that
27 could be addressed?
28
29 MS WILKINSON: It comes back to the individual
30 practitioner as much as the service system. Where the
31 individual practitioner is well remunerated or
32 well supported for this sort of work, so they're prepared
33 to stay in the service system, the relationship between the
34 individual client and the clinician, the practitioner, is
35 vital in terms of creating sustained change and healing,
36 but that individual practitioner has got to be well
37 supported.
38
39 COMMISSIONER MILROY: Do you think there are limitations
40 in the current system in allowing practitioners to be able
41 to have that continuity of care?
42
43 MS WILKINSON: Yes. The current experience is, of course,
44 that the funding for a lot of mental health services is
45 coming to an end at the end of June. People don't know if
46 they've got jobs beyond June. People are leaving their
47 jobs because we all need certainty in our income.

1
2 DR KEZELMAN: All of this is around vicarious trauma and
3 the sort of supervision and professional development and
4 supports there are in the system and when systems are
5 stretched, obviously, those supports are less available.
6
7 MS ROUFEIL: I was going to add, too, the context of
8 mental health service delivery is so overstretched at the
9 moment that we're talking about an area of mental health
10 service delivery that's very complex work, very demanding,
11 inadequate supports for practitioners working in the area
12 and a huge demand for them to provide care that presents a
13 real situation for burnout from already overburdened
14 providers.
15
16 MS McINTYRE: While there is a real issue with vicarious
17 traumatisation and for Aboriginal people working within
18 their own community often knowing many of the clients that
19 are coming forward, there is a strength in communal healing
20 and the fact that people can be of great support to each
21 other, and so where a practitioner may move on, that the
22 strength of the group continues where it is allowed to
23 actually ever start.
24
25 COMMISSIONER MURRAY: I have two questions for the panel.
26 The first is this: great trauma is experienced by family
27 members of survivors; sometimes people die and some are
28 victims of child sexual abuse. Where do you think they fit
29 into a redress system or a response system?
30
31 DR KEZELMAN: I really very strongly feel that family
32 members need very adequate support and we have a lot of
33 people coming to our service saying that they feel
34 completely alone, as alone as survivors do, that they feel
35 resources - they don't know where to go, but it is so
36 crucial that they have the capacity to understand their own
37 needs for self-care, but also to understand trauma dynamics
38 so that they can understand the reactions of the person
39 that they're trying to support; so really, trauma-informed
40 principles and their access to trauma-informed education
41 are absolutely critical.
42
43 MS ROUFEIL: Most of those people won't be eligible under
44 Medicare for psychological services under the Better Access
45 Program unless they themselves have a diagnosis.
46
47 MS WILKINSON: For any sort of healing, any re-integration

1 of the experience and a person who lives life to the
2 fullest, family support is absolutely critical and family
3 needs to understand and be on that journey as well.
4
5 COMMISSIONER MURRAY: Am I to understand from your
6 responses that you're saying a similar need is there for
7 investment that caters for that trauma?
8
9 MS ROUFEIL: Not all families will want to access that,
10 but there will be some families where it is absolutely
11 critical.
12
13 COMMISSIONER MURRAY: My second question relates to
14 intermediaries. Many victims of institutional child sexual
15 abuse turn to organisations with which they feel
16 comfortable that aren't institutionally based and I think
17 ASCA might fall into that category, if I might say so,
18 Doctor. Where does that fit within a redress scheme? Do
19 they need special support?
20
21 DR KEZELMAN: Obviously, I certainly believe so, and it
22 doesn't just apply to ASCA, it applies to the Alliance of
23 Forgotten Australians and other organisations where people
24 can identify with a group, because obviously one of the
25 core issues about having been abused is that you often feel
26 very isolated, as if you're the only person, no-one else
27 understands, so that peer identity is absolutely critical,
28 but also having an organisation that you believe
29 understands and that can be with you and walk with you on
30 the journey unconditionally, can be absolutely critical for
31 the healing process about building safety and trust and
32 feeling that you're held and contained within an
33 organisation.
34
35 COMMISSIONER MURRAY: Are you suggesting we need to make
36 remarks about those particular needs?
37
38 DR KEZELMAN: Absolutely.
39
40 MS ROUFEIL: I think that emphasises the need that one
41 option is not going to be sufficient to meet people's
42 needs. There will be people, as you say, that feel that
43 that link to a service that really understands them, or an
44 institution, if you like, like ASCA, is beneficial. There
45 will be others that find a more cultural approach, as Cathy
46 describes, is more appropriate, and for others there will
47 be a private practice approach which provides some degree

1 of anonymity which will much better meet those needs and
2 all three needs are equally valid.
3
4 DR KEZELMAN: Yes, and I don't think they're mutually
5 exclusive. People may draw from several of those different
6 places.
7
8 MS McINTYRE: To explain the significance and driving
9 principle.
10
11 DR KEZELMAN: Absolutely.
12
13 COMMISSIONER ATKINSON: My question was for Ms Wilkinson,
14 but other members of the panel may wish to comment. It is
15 in two parts. Firstly, do you think that there are enough
16 counsellors working in schools throughout Australia, and
17 secondly, do you think that counsellors who do work in
18 schools are sufficiently trained to maximise the
19 possibility of a child who is attending that school and has
20 been the victim of sexual abuse, disclosing to the
21 counsellor that sexual abuse?
22
23 MS WILKINSON: No, I don't think there's enough support
24 services in schools for children and the families of
25 children. I think school counsellors, in our experience,
26 are very overworked and also they're under a lot of
27 pressure because of the changing policy environment to move
28 to chaplains and several of our members, professional
29 social workers, have actually lost their positions because
30 of the policy shift. The chaplains may be very, very good,
31 I'm not making any comment about them at all, but I do know
32 that social workers are well trained in child development
33 and child protection and are a very effective support for
34 schools. No, there is just not enough available in the
35 service system with the speed to intervene at the level
36 that is required.
37
38 COMMISSIONER ATKINSON: The second part was do you think
39 that the training for counsellors who do work in schools is
40 sufficient for them to maximise the possibility of a child
41 who is the victim of sexual abuse disclosing to the school
42 counsellor that abuse?
43
44 MS WILKINSON: I think social workers are well prepared if
45 a child discloses and not only discloses verbally but
46 discloses through behaviour. It is a matter of knowing
47 that child so you can pick up when behaviour is changed, so

1 therefore, it is the relationships with the teachers who
2 have longer time with the child.
3
4 Yes, I think social work is a really good profession
5 to provide a response to children who have been abused or
6 there are concerns that a child has been abused or
7 neglected in some particular way.
8
9 COMMISSIONER ATKINSON: Anecdotally, can I just ask you,
10 have you heard of counsellors who work in schools where
11 children have disclosed to them that they were being
12 sexually abused?
13
14 MS WILKINSON: Yes. We have a very active group within
15 our organisation of social workers who work in schools and
16 they've developed the standards around how to intervene,
17 when to intervene, when to support, when to stand back,
18 those sorts of things.
19
20 COMMISSIONER ATKINSON: Thank you.
21
22 MS ROUFEIL: Can I add to that that one of the largest
23 proportions of our membership are psychologists who work in
24 schools. They are mandated reporters and to my knowledge
25 there are certainly plenty of examples of children
26 disclosing. Psychologists are very well trained to be
27 doing that particular role, but there is a difficulty at
28 the moment in an increasing moving away from paid
29 psychology positions in schools, so psychologists who are
30 based in the school system itself on a day-to-day basis,
31 those positions are dwindling and the difficulty in
32 ensuring consistent service provision within one school, as
33 departments move way from having a paid psychologist in the
34 school, may present difficulties in the future.
35
36 COMMISSIONER FITZGERALD: Can I deal with the issue of
37 accreditation? Can I understand a couple of things about
38 that. Is it your joint proposal that there be an
39 accreditation that would be cross-disciplinary, across
40 social workers, counsellors, psychologists and health
41 workers more generally; is that correct?
42
43 MS WILKINSON: Yes, that's right.
44
45 DR KEZELMAN: That's correct.
46
47 MS McINTYRE: And Aboriginal healers.

1
2 DR KEZELMAN: And with the input of survivors, that
3 survivor voice needs to be in there; lived experience.
4
5 COMMISSIONER FITZGERALD: The second thing then is that
6 you would be aware that there has been a great resistance
7 by governments to increase accreditation programs in many
8 areas, and you would be aware of inquiries into Australia's
9 Health Workforce and others of which I was part. What do
10 you see as the substantial barrier to the creation of a
11 cross-disciplinary accreditation process or scheme, and
12 secondly, can you give me an example of an accreditation
13 scheme that would be a like model or a like fit for that?
14
15 MS WILKINSON: That's a big question.
16
17 MS ROUFEIL: That's a big question. From the professions
18 here at the table today there is extreme goodwill to make
19 this work. Perhaps some of the difficulties that happen in
20 getting professions to align may not be the case, so that
21 obviates one of the barriers. I think at the moment there
22 is very goodwill that professions will work towards this
23 together. I think perhaps the biggest barrier may be
24 funding for an ongoing accreditation scheme to be
25 developed. At least the professions here today have agreed
26 we would work together to do that, but it would require
27 some financial support for the system to be set up and
28 maintained.
29
30 In terms of examples, the Australian Psychological
31 Society at the moment provides an accreditation process for
32 certain providers under ATAPS and under Medicare. We have
33 the pregnancy counselling Medicare item. Some of the other
34 - ATAPS child mental health service, we provide a training
35 and accreditation process. So there are systems in place
36 that could be built on these.
37
38 MS WILKINSON: That is probably the best example because
39 that is one where there are certain standards that we, as
40 the professional association, are obligated to accredit
41 members against. There is a robust application process.
42 Standards have to be met and then standards have to be
43 maintained, so it is an annual accreditation process and it
44 is around CBT and a particular type of CBT as well. And
45 then on top of that, we have an obligation around auditing
46 systems to ensure integrity so that the workers do maintain
47 their skills and knowledge and are highly competent

1 professionals. We're accountable to Medicare around that.
2
3 DR KEZELMAN: ASCA also has not so much an accreditation
4 process, but an application process with minimum guidelines
5 and standards for people on our complex trauma referral
6 database.
7
8 MS FURNESS: Given the time, I have one question, the same
9 question for each of you. There has been much talk about
10 trauma-informed care. What reviews or evaluations have
11 been done of trauma-informed care or practice to enable you
12 and us to be satisfied that it is an effective way of
13 delivering services?
14
15 DR KEZELMAN: There are certainly quite a lot of studies
16 from the States, which I'm happy to share with the
17 Commission, which do substantiate significant gains for all
18 stakeholders involved. I am quite happy to share those.
19
20 MS FURNESS: Are they recent studies?
21
22 DR KEZELMAN: Yes, they're recent studies, not so much
23 that I'm aware of in Australia, but I will certainly look
24 into that. We work quite closely with the Mental Health
25 Coordinating Council. They have done a lot of work in this
26 area.
27
28 MS FURNESS: That would be very useful, if you can provide
29 us with what you know to be available and see whether
30 there's anything more.
31
32 DR KEZELMAN: Yes, will do, and I'm sure some other people
33 may have access as well.
34
35 MS McINTYRE: As Graham Gee spoke yesterday of some
36 evidence through the Canadian Aboriginal healing programs,
37 I've got access to that evidence through some documentation
38 he's given me, which I don't have with me right now, but
39 I think from an Aboriginal perspective, yes, it is
40 trauma-informed, but it also has to be balanced with
41 culturally-informed or through a culturally responsive way
42 of delivering services.
43
44 MS FURNESS: Thank you.
45
46 MS ROUFEIL: I think it is important to differentiate
47 between trauma-informed care and trauma-focused practice

1 and Cathy is perhaps best placed to explain the difference.
2 Would you like to do that, Cathy?
3
4 DR KEZELMAN: Trauma-informed care being really designed
5 for services that don't work directly clinically with
6 people that have trauma issues, but really anywhere where a
7 human being attends who may have their own lived experience
8 of trauma and that may be affecting the way they engage
9 with services. Trauma-specific services focus on working
10 clinically with people's trauma issues.
11
12 MS FURNESS: Thank you.
13
14 MS ROUFEIL: I will reiterate what Cathy said about her
15 own guidelines and the evidence that has been done, but not
16 all survivors will have the same psychological issues, so
17 we're not just talking about - I mean post-traumatic stress
18 disorder will be one thing that some will present with, but
19 some will present with depression, with a range of anxiety
20 disorders, and there's ample evidence that we can provide
21 to you for the role of psychological treatments.
22
23 MS FURNESS: I wasn't so much concerned about the role of
24 psychological treatment, as it were. It is just that there
25 has been much discussion about this particular form of
26 treatment, practice or care. Do you have anything to add?
27
28 MS WILKINSON: I would have to seek advice from my members
29 and get back to you about that.
30
31 MS FURNESS: Thank you, your Honour.
32
33 THE CHAIR: This is a conversation that could go on for
34 some time but we don't have that time, I'm sorry. Again,
35 can I, like I've thanked others, thank all of you, because
36 you've all made very significant time available to us at
37 various stages and I hope that will continue, but thank you
38 so far. We will take lunch.
39
40 LUNCHEON ADJOURNMENT
41
42 MS FURNESS: We have two witnesses from Tuart Place who
43 will speak to their submission - Dr Philippa White and
44 Ms Jennifer Aldrick. Perhaps you could introduce yourself,
45 Dr White?
46
47 DR WHITE: I am Dr Philippa White, the director of

Tuart Place in Fremantle WA.

MS ALDRICK: I am the chairperson, Jennifer Aldrick, and I am vice chairperson of the board of Forgotten Australians and a care survivor.

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

MS ALDRICK: Yes. Good afternoon. As I said, my name's Jennifer Aldrick and I am vice chairperson of the board of Forgotten Australians Coming Together, which is the governing body of Tuart Place in Western Australia.

I am a survivor of childhood sexual abuse while in the care of the State at Parkerville Children's Home. I am also one of nine siblings separated when forced to become a ward of the State in WA. I would like to thank the Royal Commission for the opportunity to speak as an ambassador for care survivors in Western Australia.

Firstly, I would like to convey to you a message from a survivor, Maxine, who suffered horrifically as a child while in several institutions in WA. This is what Maxine wrote:

> As an ex State ward who was seriously let down by the government, I felt disillusioned by the cut to Redress WA. I have been suffering from severe depression most of my life due to the abuse I received during my time in care and I have only recently received the proper treatment.
>
> Now in my 60s and living with a progressive disability, my future looks bleak. When Redress was first mentioned, my hopes for a half-decent future looked brighter, but when Redress was cut in half, all those hopes dissolved. I felt disregarded and hopeless all over again, just like I did when I was a child in care, not because of the money but because I felt like the government didn't care, like I wasn't good enough or damaged enough to matter. The reduced Redress now leaves me with a very

1 uncertain future.
2
3 Like Maxine, there are many survivors who suffered all
4 forms of abuse while in State care in Western Australia,
5 who are still suffering the effects of their past on
6 a daily basis. I am aware, from other survivors who have
7 shared their pain with me while attending Tuart Place, how
8 damaging it was when the payment levels were almost halved
9 in 2009 after all the applications had been received. We
10 bared our souls and relived the horror night after night
11 only to feel demoralised yet again, which confirmed that
12 the abuse we suffered as children was not seen in the eyes
13 of authority as worthy of honouring the promise made.
14
15 If they were building a road they wouldn't have
16 stopped halfway through; they would have found the money to
17 honour that commitment. While in State care I was
18 subjected to physical, sexual and emotional abuse which
19 left me with deep scars. I had huge trust issues which
20 I am still working to overcome. It has affected any chance
21 of me ever having a loving relationship. It took a lot of
22 courage for me to apply to Redress. I was re-traumatised;
23 with each session I had to relive every detail of my abuse.
24 The nightmares returned and I had to start back on
25 anti-depressants in order to get through each day.
26
27 My first thought when I heard about Redress was I hope
28 that if I tell them what happened to me, maybe someone
29 might actually believe me.
30
31 In terms of recommendations, I would like to see
32 Redress WA reopened without a time limit, because, as we
33 said in our submission, we now know that some of the most
34 seriously abused people missed out on the scheme.
35
36 I would also like to see the original payment levels
37 honoured for previous applicants. What this would do would
38 be to send a message to WA care survivors that they do
39 matter and that the government takes their abuse seriously.
40
41 I would also like to see more involvement by care
42 survivors in the governance of services for
43 Forgotten Australians and former child migrants. As is my
44 experience, it is empowering for survivors to have
45 opportunities to contribute and have a say in the running
46 of their own services. Thank you for listening to me
47 today. I appreciate the opportunity to share with you my

1 views on redress and I encourage people to read the
2 Tuart Place submission.
3
4 I would now like to introduce you to Dr Philippa
5 White, the director of Tuart Place.
6
7 DR WHITE: Thank you, Jenni, and thank you, Commissioners,
8 for inviting us to speak today.
9
10 Tuart Place is the State-government funded service for
11 care survivors in WA. It's a no-wrong-door one-stop shop
12 resource service offering a range of options and services.
13 Tuart Place is participant led and five of our 10 board
14 members are care leavers. Our vice chairperson,
15 Jenni Aldrick, spoke about the importance of survivors
16 having opportunities for meaningful engagement and
17 leadership. It is no coincidence that Tuart Place was
18 founded by a care leaver and that care leavers continue to
19 lead the service.
20
21 Jenni spoke to you from the perspective of lived
22 experience. The views of other survivors are reported in
23 the Tuart Place submission. I am speaking today as
24 a clinician who has worked with Western Australian care
25 survivors for the last 10 years and who operated the
26 principal support service for the Redress WA scheme.
27
28 If I could make only one observation about what I have
29 learnt over this time, it would be that we too often
30 underestimate the extent to which survivors are affected by
31 redress and complaints processes. The potential for
32 retraumatisation and secondary harm is huge, and I don't
33 think we fully understand the implications of what we are
34 asking people to do.
35
36 During the Redress WA scheme applicants often told us
37 that detailing their childhood abuse felt as bad as the
38 abuse itself, and in the years since the scheme we've heard
39 repeatedly from people that they have never felt the same
40 since Redress WA.
41
42 As Jenni pointed out, for many people the positive
43 outcomes of Redress WA were overshadowed by the negative
44 message received by applicants when the promised payment
45 levels were reduced. Survivors taking part in other
46 complaints processes are also harmed when those systems
47 fail.

1
2 However, even when things go smoothly, these processes
3 are inherently fraught. We should not ask people to
4 participate in them without providing adequate support. It
5 is also important to offer psycho-education to survivors
6 going through these processes. It is helpful to know that
7 it is normal to feel bad when you talk in detail about your
8 childhood abuse. If people have this information, they are
9 less likely to see it as a personal weakness or think
10 they're losing their sanity.
11
12 While revisiting one's childhood abuse through adult
13 eyes may be an essential feature of therapeutic recovery,
14 documenting the details of childhood abuse and identifying
15 the negative effects of a redress process is an acute
16 stressor and survivors should not be rushed into any
17 process. The hopes of many survivors have been dashed by
18 yesterday's announcement that the Federal Government does
19 not support the idea of a national redress scheme. This
20 announcement will disappoint many and demonstrates once
21 again that large bureaucracies are not well equipped to
22 deal with people's painful emotions. Normal bureaucratic
23 events, such as long delays and disappointing decisions
24 carry with them a complex set of potentially very damaging
25 outcomes when those affected are survivors of child abuse.
26
27 The degree of hurt that will arise from yesterday's
28 announcement confirms our view that any system working with
29 survivors of childhood abuse in institutional settings
30 needs to recognise that the results of abuse are often
31 carried through life and that this group's distrust of the
32 system is easily reinforced.
33
34 It is certainly the view of Tuart Place that
35 a national redress scheme represents the gold standard and
36 would be the most desirable option. It would rectify the
37 inequities in our present situation in which the
38 availability and level of redress depends on the
39 particulars of where abuse occurred.
40
41 However, our primary message is that whatever forms of
42 redress are offered to abuse survivors, it is paramount
43 that the processes themselves inflict no further harm.
44 Tuart Place's first submission on Issues Paper 6 set out
45 guidelines for the operation of an effective complaints
46 process, and further protocols are proposed in our current
47 submission.

1
2 If there is to be no national redress scheme, there is
3 still great value in developing a set of national standards
4 and best-practice principles to inform the work of State
5 governments and institutions wanting to provide an
6 appropriate response to victims of child abuse in
7 institutional settings.
8
9 Jenni and I would like to once again thank the
10 Commission for inviting Tuart Place here today and
11 thank you for what you are trying to achieve on behalf of
12 survivors.
13
14 THE CHAIR: Thank you. Just a couple of issues, I think,
15 we would all like to hear you expand on. Your submission
16 contemplates a process which involves lawyers; is that
17 right?
18
19 DR WHITE: That's right, yes.
20
21 THE CHAIR: Some people will say to us, "Keep all the
22 lawyers out. They should all be banned from coming
23 anywhere near something like this."
24
25 DR WHITE: Yes.
26
27 THE CHAIR: What is the perspective that leads you to say
28 the lawyers should be there?
29
30 DR WHITE: I was very much of that view that you just
31 mentioned, that lawyers should not be allowed in the room
32 and I still have reservations. I think it's really
33 important that lawyers involved in mediation processes are
34 trained in non-adversarial approaches and that they are
35 sensitive to the fact that this is about so much more than
36 money for survivors.
37
38 My view has changed in response to the changing times.
39 We had a process in WA where Towards Healing had some very
40 good psychological and emotional outcomes for people, but
41 then, when the Royal Commission came along, we realised
42 that people in WA had generally received lower payments
43 than people in other States and that's possibly because
44 lawyers were involved in other States. I think that having
45 lawyers involved protects the rights of both parties and
46 that, done sensitively, it's a good idea to have them.
47

1 THE CHAIR: Secondly, you contemplate a process which has
2 a first decision with a right of review. Do you see the
3 survivor as having, if required by the institution, to
4 actually speak and relate orally their history and for
5 there to be lawyers present when that is done?
6
7 DR WHITE: Yes, absolutely.
8
9 THE CHAIR: And that is a lawyer from the institution,
10 too?
11
12 DR WHITE: Yes, for both parties.
13
14 THE CHAIR: And able to ask questions?
15
16 DR WHITE: With limitations, yes. By the time the parties
17 meet in the room, there should be basic agreement on the
18 facts presented and on the likely outcome of that meeting.
19 I don't think that it is appropriate to have lawyers for
20 the institution firing difficult questions at survivors.
21
22 THE CHAIR: What do we do if the institution says, through
23 its alleged abuser, "This didn't happen"?
24
25 DR WHITE: That conversation would take place before there
26 is any face-to-face meeting. I mean this is the kind of
27 problem that is confronted all the time. Where there are
28 abusers who have considerable form then it's more likely to
29 be accepted, but if we're talking about someone who has
30 never been named before and they are dead it's more
31 difficult to establish that, but that should all be sorted
32 out before there's any face-to-face meeting.
33
34 THE CHAIR: And the review process that you contemplate,
35 would that be a review by someone looking at papers or,
36 again, would you see the survivor having to orally present
37 to the review decision-maker?
38
39 DR WHITE: I think that that could be variable. I would
40 only propose a review process if the outcome of the first
41 instance was unsatisfactory, so it's an avenue of appeal,
42 basically. There's an opportunity for the institution to
43 respond in a direct and pastoral way and I see the
44 financial offer as a significant component of the pastoral
45 response; it is a concrete symbol of the apology.
46
47 THE CHAIR: In your submission - and I appreciate real

1 thought has been given to this - the suggestion is that if
2 there has been a previous payment under a redress scheme,
3 that should be disregarded altogether. Now, some
4 institutions and some governments might say that's not
5 really fair; that it should be looked at as a total package
6 and a previous payment may be a part-payment.
7
8 DR WHITE: Yes. The views reported in our submission are
9 the results of a survey and of a focus group, and when we
10 asked that question, "Should previous payments be taken
11 into account?", there was a resounding no, that they should
12 not.
13
14 We then had a discussion about it and people could
15 recognise that not all care survivors might feel the same,
16 that if they hadn't received a payment before, that they
17 might feel it was unfair, but I think that people feel so
18 damaged by their experiences, some by the redress scheme,
19 the money is never enough and that there is a sense of,
20 well, if there is a new process starting up, it should be
21 a clean slate. I can also see the other side of the
22 argument.
23
24 THE CHAIR: Yes. I am sure you understand the
25 Commissioners are all deeply appreciative of the problems
26 and issues that survivors face, but is it understood by
27 your members that a redress scheme could never provide the
28 equivalent of common law damages?
29
30 DR WHITE: Absolutely, yes, people recognise that.
31
32 THE CHAIR: One of the risks, of course, in the redress
33 scheme, is that it will never be enough?
34
35 DR WHITE: Yes.
36
37 THE CHAIR: In a genuine sense, never be enough to meet
38 some people's needs.
39
40 DR WHITE: Absolutely, and healing starts on the inside.
41 No-one out there can heal people and people abused in
42 domestic settings may never get an apology or any financial
43 offer. It is great when those things line up and work
44 well, but it is not essential and it's not the starting
45 point for recovery, for sure.
46
47 MS FURNESS: Just one matter, if I can, Dr White. You

1 also say in your statement that there is a need for
2 independent financial counselling, and that's independent
3 of Centrelink.
4
5 DR WHITE: Yes.
6
7 MS FURNESS: What are the thoughts behind that?
8
9 DR WHITE: Do you have any comments on Centrelink, Jenni?
10
11 MS ALDRICK: Not really, sorry.
12
13 DR WHITE: We have heard time and time again from people
14 over the years that people don't trust Centrelink and they
15 are fearful of Centrelink cutting payments and they
16 wouldn't want to use a financial counselling service
17 offered by Centrelink, because even though I understand it
18 is separate and confidential, there is a lack of trust that
19 there is actual independence.
20
21 MS FURNESS: Thank you.
22
23 COMMISSIONER MURRAY: I have just one question. Dr White,
24 it is a characteristic of many survivors of institutional
25 abuse that they lack trust in authority and in institutions
26 and therefore they seek support services in which they feel
27 comfortable and that they belong. Generally speaking,
28 those exist outside the system, as it were.
29
30 DR WHITE: Yes.
31
32 COMMISSIONER MURRAY: You have said that you thought
33 support services should be funded by past providers.
34
35 DR WHITE: Yes.
36
37 COMMISSIONER MURRAY: What are your thoughts with respect
38 to a formal inclusion in a redress system for providers of
39 that sort?
40
41 DR WHITE: The formal inclusion of funding by past
42 providers, do you mean?
43
44 COMMISSIONER MURRAY: The fact is that organisations like
45 yours - and there are many others, quite a few others -
46 exist outside a formal structure of State and Commonwealth
47 provider services. How do you think they should fit into

1 a redress system?
2
3 DR WHITE: I would imagine that they should be funded
4 through a redress scheme if they are carrying out work
5 connected to that scheme and that support services of
6 varying kinds are all part of providing redress.
7
8 COMMISSIONER MURRAY: Have you thought through how that
9 should be done?
10
11 DR WHITE: I haven't given it any thought, no.
12
13 COMMISSIONER MURRAY: If you choose to, you can advise us
14 of your thoughts on that matter.
15
16 DR WHITE: Yes, I will do, Commissioner Murray, thank you.
17
18 MS FURNESS: Thank you, your Honour.
19
20 THE CHAIR: Thank you both for your time and efforts in
21 seeking to help the Commission resolve our very large
22 problems. Thank you indeed.
23
24 DR WHITE: Thank you very much.
25
26 MS ALDRICK: Thank you.
27
28 MS FURNESS: Your Honour, next the Royal Commission will
29 hear from those representing the Anglican Church. Perhaps
30 if I can ask you to introduce yourself first, Ms Hywood?
31
32 MS HYWOOD: My name is Anne Hywood. I am the general
33 secretary of the General Synod of the Anglican Church of
34 Australia.
35
36 MR BLAKE: My name is Garth Blake and I am chair of the
37 Royal Commission Working Group and the Professional
38 Standards Commission for the Anglican Church of Australia.
39
40 MS FURNESS: Can I invite you to speak to your submission?
41
42 MS HYWOOD: Thank you. Good afternoon, Commissioners. On
43 behalf of the Anglican Church of Australia, we welcome the
44 opportunity to speak to our submission, which was prepared
45 by the General Synod's Royal Commission Working Group.
46
47 The submission you have received was developed through

1 careful consultation with all 23 dioceses and many agencies
2 of the Anglican Church of Australia, which all share
3 a commitment to providing a timely, holistic and
4 compassionate response to survivors of abuse.
5
6 In 2004 the General Synod, as the national
7 representative body of the church, formally apologised to
8 all who had suffered abuse by clergy and church workers in
9 the Australian church. It acknowledged the devastating
10 impact of abuse on individuals and communities perpetrated
11 by people in positions of trust.
12
13 That year the General Synod adopted processes to
14 prevent abuse in Anglican Churches, to ensure that they are
15 safe places for children and other vulnerable people.
16 These processes, over that period of time, have continued
17 to be reviewed and updated.
18
19 Since that time many of the dioceses and agencies of
20 the Anglican Church have put their own redress schemes into
21 place to provide an appropriate response to survivors of
22 abuse.
23
24 These schemes have offered pastoral support,
25 counselling and practical assistance, including monetary
26 payments, to those who have been abused. Our submission
27 addresses each of the 23 questions raised in the
28 consultation paper and we don't intend to cover each of
29 those points, but would like to take this opportunity to
30 expand upon the key principles that have guided our
31 responses.
32
33 We support the elements of redress as proposed in the
34 consultation paper. A redress scheme should include
35 a direct response by the institution, access to counselling
36 and pastoral care and monetary payments. The redress
37 schemes already in place in the Anglican Church have
38 a particular emphasis on pastoral engagement with survivors
39 of abuse. We support a holistic model which provides an
40 opportunity for survivors' views to be acknowledged and
41 honoured. It is important that church leaders hear and
42 respond to their stories.
43
44 In our experience, a survivor often welcomes the
45 opportunity to meet with a church leader, to receive an
46 apology, an assurance that the perpetrator has been dealt
47 with and that steps have been put in place to assure them

1 that similar abuse won't happen again.
2
3 For many their faith in God and spiritual life has
4 been shattered by their experience and they are also
5 seeking spiritual guidance and assistance.
6
7 We have found that this personal connection can be an
8 important part of the healing process. However, we are
9 also aware that some survivors feel unable to engage with
10 the institution at which they were abused and we understand
11 and respect that. Therefore, we do support the principle
12 that a survivor of abuse should have the right to choose
13 if, how and when they engage with the institution and, most
14 importantly, that participation in any redress process
15 should cause them no further harm or distress. For this
16 reason, we do support the development of an independent
17 alternative to institution-run redress schemes.
18
19 In our submission we have not been prescriptive about
20 how such a scheme should be structured. We have suggested
21 an effective model might be an integrated redress scheme
22 that offers choice, allowing survivors to connect with
23 a centralised scheme that is independent of the institution
24 or allowing them to connect directly with an accredited
25 institution, being one which has demonstrated that it
26 satisfies the criteria set by the centralised scheme. This
27 is only one option. We know there is more work to be done
28 and we look forward to making a positive contribution in
29 response to the Commission's further deliberations and
30 final recommendations.
31
32 In our submission we have chosen to focus on
33 identifying the principles that we believe must underpin
34 any effective redress scheme whatever its structures and
35 I'm going to expand upon some of those principles.
36
37 To start, it must be consistent. It must provide
38 consistent outcomes for survivors, irrespective of which
39 institution is involved or where the abuse occurred.
40 Survivors must be treated in the same manner where their
41 abuse and impact is similar.
42
43 The severity of abuse and its impact are the principal
44 relevant factors in determining a monetary payment. To
45 ensure consistency, all institutions participating in
46 whatever form of redress scheme is adopted must agree to
47 how the combination of these factors contributes to the

1 calculation of the monetary payment.
2
3 It must be efficiently managed. It should provide
4 a timely response to survivors and not divert resources
5 from their support into administration. The establishment
6 of an expensive bureaucracy is not a desirable outcome.
7
8 It must be accessible and easy to navigate. As we've
9 heard, coming to terms with past abuse and speaking openly
10 about it is challenging for survivors and dealing with
11 institutions is daunting. The survivor must be supported
12 and guided through the process. Personal contact must be
13 empathetic and demonstrate an understanding of the
14 survivor's needs.
15
16 It must provide the opportunity for a direct personal
17 response by the institution. We have already acknowledged
18 that this is not always sought, but it should always be
19 offered. Institutions should meet with survivors when
20 requested to do so. For the Anglican Church, this is
21 a fundamental aspect of our response to survivors of abuse.
22
23 A redress scheme must provide counselling and
24 psychological care. Most importantly, this care must be
25 provided by appropriately trained and accredited
26 counsellors. In regard to funding, independent actuarial
27 advice could assist in determining an institution's funding
28 responsibility for ongoing care on a case-by-case basis.
29
30 A redress scheme must be sustainable and viable.
31 While many institutions are currently responding to abuse
32 that happened decades ago, we should anticipate that
33 reports will continue to come forward. We should be
34 encouraged that much has been put in place to ensure the
35 safety of children over recent years, particularly our work
36 in the Anglican Church. However, as we know, it can take
37 some people more than 25 years to report the abuse that
38 happened to them as a child. Institutions will continue to
39 face redress commitments into the future. If the payments
40 are set too high, these future commitments may not be able
41 to be met and the ongoing viability of some institutions,
42 which currently provide valuable services to the community,
43 will be jeopardised.
44
45 In our submission we have said that we cannot yet
46 express a view upon what the average and maximum monetary
47 payment should be, but will support and contribute to the

1 further work required in this area. In regards to funding
2 any redress scheme, the Anglican Church acknowledges its
3 responsibility to fund redress for survivors who are found
4 to have suffered abuse in its care.
5
6 Importantly, a redress scheme must have clear
7 eligibility criteria. It must be clear who is and who
8 isn't eligible to participate in a redress scheme. There
9 should be clear criteria for assessing the connection
10 between the abuse suffered by the survivor and the
11 institution. The Anglican Church acknowledges its
12 responsibility to respond to abuse by its clergy, church
13 workers and volunteers, which occurs in the course of their
14 official responsibilities.
15
16 The consultation paper suggests a broader catch-all,
17 which needs clarification. It would be unreasonable for
18 the church to be held responsible for abuse perpetrated by
19 individuals in a capacity unrelated to their role or
20 activities in the church or for any abuse which happens on
21 church property by a person with no official connection to
22 the church.
23
24 The problem with this ambiguous criteria is that it is
25 likely to give rise to arguments over whether an abused
26 person is eligible or not, which will cause them further
27 damage and distress.
28
29 MS FURNESS: Can I just perhaps remind you, if I can, we
30 have passed the 10 minutes.
31
32 MS HYWOOD: I am sorry, okay. There are only two final
33 matters. It should be clear on the standard of proof to be
34 applied. A redress scheme must have the capacity to
35 resolve matters before it, even when not all information is
36 available or can be verified. In cases where the
37 perpetrator has died or cannot be identified, we support
38 the determination of whether redress is appropriate on the
39 basis that it is plausible that the abuse took place.
40
41 Finally, I will just jump to another principle we
42 think is important, that the redress scheme should provide
43 resolution for the survivor. The consultation paper asks
44 directly if deeds of release should be required. Deeds of
45 release bring a finality to the process for both the
46 survivor and the institution and we support them being
47 signed when agreement is reached. However, should new

1 information come to light, which would have resulted in a
2 different outcome under the redress scheme if known,
3 a previously signed deed of release should not prohibit
4 a further response.
5
6 MS FURNESS: Thank you, Ms Hywood.
7
8 THE CHAIR: There are a couple of matters that I would
9 like to raise with you. Firstly, in terms of the
10 structural issue which is identified as issue 1, a national
11 scheme, and so on, am I right in thinking that you are not
12 thinking in terms of a Commonwealth-provided and managed
13 scheme but, rather, State-based schemes?
14
15 MR BLAKE: Commissioner, I don't think we have any
16 particular preference. We recognise legal and maybe
17 political difficulties with a Commonwealth scheme. We are
18 after an outcome that will lead to consistent outcomes, be
19 it Commonwealth, a State-based scheme or an institutional
20 with State-based assistance.
21
22 THE CHAIR: I take it, then, from that answer, that the
23 Anglican Church is able to contemplate a scheme where it
24 joins with government in contributing to and ensuring an
25 effective scheme, but also in working with other
26 institutions separate from government to again achieve
27 a consistent approach through, as it were, a voluntary
28 scheme?
29
30 MR BLAKE: Correct.
31
32 THE CHAIR: That is said without any inhibition at all,
33 I assume, is it? There is no difficulty whatever might be
34 the institutions who seek to come together?
35
36 MR BLAKE: No difficulty at all.
37
38 THE CHAIR: All right. Secondly, on the standard of
39 proof, I confess that I myself hadn't thought in terms that
40 you have expressed. If the abuser is dead, plausibility,
41 but if alive, balance of probabilities. Now, as you know,
42 there is a big difference between those two standards of
43 proof. It might be thought that there is an advantage
44 thereby given to someone whose abuser happens to be dead as
45 against someone whose abuser is alive. Do you think that
46 that would be seen as fair by everyone?
47

1 MR BLAKE: We think it is fair and it is appropriate. We
2 ought not to put survivors through a punishing process
3 where there is no contrary evidence - for example, the
4 abuser is dead or is not connected with the institution or
5 can't be identified - and that's the current process,
6 plausibility, which is used for Anglican schemes, but where
7 the perpetrator is alive - and sometimes they do deny the
8 abuse has happened - fairness requires that that be tested
9 through a disciplinary process, and that's the current
10 model that is used at the moment, that redress will wait
11 until the disciplinary process is complete.
12
13 THE CHAIR: Can you help me, what is the disciplinary
14 process that is undertaken?
15
16 MR BLAKE: The question of the fitness of the member of
17 the clergy or church worker to hold office would be
18 determined and as part of the question of determining
19 fitness, the particular allegations - did the abuse happen
20 or not - would be determined.
21
22 THE CHAIR: And at the moment the church, if it is in
23 favour of the abuse having happened, then determines the
24 entitlement to redress; is that the way it operates?
25
26 MR BLAKE: Yes, there would be then no issue in terms of
27 the survivor further proving that the abuse happened; that
28 would be an accepted outcome.
29
30 THE CHAIR: Does this process mean that the abuser has to
31 give evidence and be cross-examined and so on?
32
33 MR BLAKE: If it is contested that would normally be the
34 case, yes.
35
36 MS HYWOOD: It is often the case that when a person makes
37 a complaint, they have the opportunity to make a statement
38 and discuss that statement with an independent
39 investigator. It isn't necessarily an adversarial
40 cross-examination; the investigator would provide advice on
41 the validity of the statement.
42
43 THE CHAIR: Without there being, as it were,
44 a head-to-head contest.
45
46 MR BLAKE: I don't think you can give a categorical answer
47 to that. In our tribunals, if there is a fully-fledged

1 contest on the facts, it may end up involving some
2 cross-examination, but I think those who hear these matters
3 are sensitive to the potential impact on the survivor.
4
5 THE CHAIR: That's the issue that lies behind that, of
6 course, isn't it, when you are approaching a redress
7 payment as opposed to a court. There is a risk that you
8 will deny people who might be entitled because they just
9 don't want to go through that process.
10
11 MR BLAKE: That is true, but there needs to be fairness,
12 and it would be demonstrably unfair if plausibility applied
13 to every case, including where the abuse was denied,
14 because the reputation of the alleged abuser could be
15 irreparably damaged in circumstances where the allegation
16 was never tested; so it is difficult, we do accept that.
17
18 THE CHAIR: I can understand - because it is often said -
19 that a deed of release brings finality, but what is the
20 advantage to either party in finality in capacity to bring
21 a common law claim being a condition of achieving a redress
22 payment?
23
24 MR BLAKE: We think the advantage, at least from the
25 church, is that they know that in the absence of
26 extraordinary circumstances their commitments will have
27 been finalised. As we see it, the counselling components
28 for the future would have been dealt with through
29 a payment, and any monetary payment would have been already
30 paid; so that's helpful to the church.
31
32 I think to have any sort of payment to always be seen
33 as provisional is not going to be helpful for the survivor
34 either, and that's why we accept, in circumstances where
35 a further injury has come to light that wasn't known at the
36 time, then of course it should be capable of being reopened
37 in those circumstances, but where there's full disclosure
38 and the survivor is happy to come to an arrangement, it
39 should be final.
40
41 THE CHAIR: What about the circumstance that it becomes
42 apparent subsequently, from documents that might become
43 available which may not have been available to the
44 survivor, that, in fact, the church knew and did nothing
45 about responding to the conduct of the abuser and thus,
46 a common law claim clearly emerges from documentary
47 material that wasn't previously available? Would you

1 contemplate then that the deed would be set aside?
2
3 MR BLAKE: We would like to think that the circumstances
4 in which a deed could be set aside would be broad. Now, in
5 terms of whether it would always encompass circumstances
6 like that, that would be a matter that we would further
7 investigate, but we're not seeking to close the door
8 irrevocably in circumstances like that.
9
10 THE CHAIR: It might be hard to find a formula of words
11 that meets that objective.
12
13 MR BLAKE: It might be, I agree.
14
15 THE CHAIR: The other issue that I wanted to take up is
16 the duty of care issue, which is a difficult one. You know
17 that in England the Supreme Court has moved down a path
18 which imposes liability on institutions in particular
19 circumstances, irrespective of whether the institution was
20 itself negligent. Do you have any knowledge of how that is
21 working out in practice in England?
22
23 MS HYWOOD: I don't.
24
25 MR BLAKE: Your Honour would be aware of the 2013 decision
26 involving the Catholic Welfare Society. There has been
27 a more recent one of Woodlands in 2013 involving
28 non-delegable duty. In the case in the New South Wales
29 Court of Appeal recently, Day, the High Court refused
30 special leave, and it would have given the High Court an
31 opportunity to look at dual vicarious liability. It seems
32 at the moment that the High Court in Australia is --
33
34 THE CHAIR: There is no doubt about that, but I was
35 wondering whether you had any knowledge of how it has
36 worked out in England where the change in the common law
37 has occurred?
38
39 MR BLAKE: I am not particularly aware, no.
40
41 THE CHAIR: No. And as far as the reversing of the onus
42 of proof is concerned, you may not have been here, but it's
43 clear that there are a number of institutions which accept
44 that that is probably a fairly good idea because of the
45 discipline it would impose on the institution, but the
46 Anglican Church doesn't see it as a good idea; is that
47 right?

1
2 MR BLAKE: We see some difficulties in terms of coherence
3 in the law to reverse the onus for this particular issue
4 and in other circumstances where there were torts it would
5 not be reversed. I mean, I guess it could be done, but we
6 find it hard to see that these sorts of injuries would be
7 dealt with differently by the law.
8
9 THE CHAIR: Of course, that changing of the onus of proof
10 goes part way down the Supreme Court English path. They
11 didn't have any trouble with it being seen as a response to
12 the particular circumstances of a child entrusted to an
13 institution's care. Do you think the church should see it
14 as a special case, as it were?
15
16 MR BLAKE: If there was prospective, a church would have
17 an opportunity to put its house in order and there may not
18 be such extraordinary difficulties with it. If it was
19 retrospective, it would be very difficult.
20
21 THE CHAIR: There's no doubt about that, but
22 prospectively, would the church not see an advantage, that
23 it would impose a greater rigour than might otherwise
24 exist?
25
26 MR BLAKE: We would like to think we don't need the law to
27 ensure we have greater rigour.
28
29 THE CHAIR: That's the hope of all the Commissioners, too,
30 but human nature being what it is, the law is, of course,
31 commonly used to impose rigour on the behaviour of people
32 in society and institutions.
33
34 MR BLAKE: We have been responding now since 2004 in a
35 system where there hasn't been law and we've been trying to
36 achieve best practice. I can't see that commitment
37 changing whether there is a change in the law or not.
38
39 THE CHAIR: No, but you appreciate the church, your
40 church, is but part of a matrix of institutions which may
41 not all have quite responded in 2004 in the way that your
42 church has. Do you think we can stand aside from
43 appropriate policies across the range of institutions that
44 care for children?
45
46 MR BLAKE: I think our particular response to the
47 consultation paper was directed to how we saw it affecting

1 our church. We didn't really look more broadly.
2
3 MS FURNESS: I note the time, your Honour. I have no
4 questions.
5
6 THE CHAIR: She is telling me to stop asking questions.
7
8 MS FURNESS: Politely.
9
10 THE CHAIR: Thank you both very much and can you thank
11 those behind you, who I know have been involved in
12 assisting with the preparation of the submission. The
13 Commission both thanks you and looks forward to continuing
14 discussions about various issues with the church.
15 Thank you.
16
17 MS HYWOOD: Thank you for your time.
18
19 MS FURNESS: Your Honour and Commissioners, we will next
20 hear from the Child Migrants Trust. Dr Margaret Humphreys,
21 you are the international director of the trust; is that
22 right?
23
24 DR HUMPHREYS: Yes, I am.
25
26 MS FURNESS: Mr Thwaites, you are the assistant director?
27
28 MR THWAITES: That's right.
29
30 MS FURNESS: Can I invite you to speak to your submission?
31
32 DR HUMPHREYS: Yes, of course. I have prepared just,
33 I think, probably about eight minutes introduction to our
34 submission which deals with some of the issues that we have
35 included in the written submission.
36
37 MS FURNESS: You should be assured that all of the written
38 submissions have been read by the Commissioners.
39
40 DR HUMPHREYS: Thank you. I thought today that I would
41 focus on the Federal Government's responsibility to former
42 child migrants, so I intend to underline the
43 Federal Government's specific and special responsibilities
44 towards former child migrants in support of the arguments
45 for a national redress scheme.
46
47 Just a small piece of history about child migration -

1 it's very short. Child migration was government policy
2 both for Britain and Australia. It was known as the
3 Commonwealth Child Migration Schemes. The children, some
4 as young as four years of age, it seems, were part of
5 Australia's post-war defence, under the populate or perish
6 policy, to boost Australia's population and deter any
7 foreign invasion. It's hard for us to get our heads around
8 that now, but I feel it is important to make that point.
9
10 The former Immigration Minister, Arthur Calwell,
11 requested 50,000 children from the United Kingdom during
12 the first three post-war years.
13
14 Former child migrant circumstances are quite different
15 from other groups. First, on their arrival in Australia,
16 their legal guardian was the Federal Government. Although
17 delegated to the States and in turn subcontracted to
18 various institutions, former child migrants remained the
19 responsibility of the Federal Government that had
20 authorised, in a sense, their removal to this country.
21
22 Individual assessment and approval for the migration
23 of each child was carried out through Australia House in
24 London. Continuing responsibility was acknowledged by
25 payment of subsidies for each child until their
26 15th birthday.
27
28 That is the clear historical case. Post-war child
29 migration was a Federal initiative. Obviously,
30 four-year-old children didn't decide to come to Australia
31 themselves. The intentions apparently seemed good at the
32 time, but for the majority of child migrants the road to
33 hell was paved with good intentions.
34
35 In relation to former child migrants, post-apology
36 issues of redress and restitution, for the most part,
37 remain the responsibility of Commonwealth governments. We
38 cannot stand by, it seems to me, at this important stage
39 and see governments fail to accept their responsibility to
40 Britain's child migrants, former child migrants and their
41 families.
42
43 Administrations change and policies dating from
44 70 years ago seem hard to understand within a more humane
45 society today, but there are compelling arguments for the
46 Federal Government to accept responsibility for child
47 migration and all its devastating consequences for those

1 children, now adults.
2
3 Yet, child migrants live every day with the painful
4 consequences of past failures of government in its duty of
5 care to protect young, vulnerable children; in this
6 particular case, another country's children. There was
7 a monumental failure to keep them safe. This was
8 acknowledged in both the apology of the Australian
9 Government in 2009, followed by the detailed apology
10 delivered by Gordon Brown in 2010.
11
12 Most former child migrants, or those I've spoken to
13 and my colleague as well, would say the Federal Government
14 failed to protect them, to carry out their responsibilities
15 as an effective guardian. They have paid a heavy price for
16 this neglect all their lives.
17
18 There was a failure to make provision for the children
19 to be granted citizenship. Indeed, many former child
20 migrants were here 50 years before learning they were not
21 citizens.
22
23 The national apology in 2009 was a key milestone in
24 this country's history of taking responsibility for
25 children in care and acknowledging the terrible long-term
26 impact of systemic failures to protect children from abuse.
27
28 Australia, like the United Kingdom, has since taken
29 positive steps to improve the lives of former child
30 migrants by funding, for example, the Child Migrants Trust
31 specialist service and cultural initiatives to ensure
32 a better public understanding of their experience of child
33 migration, but more needs to be done.
34
35 Globally, there is a growing movement to address
36 issues of historical abuse, a welcome acknowledgment that
37 nations must face their past rather than continue
38 a damaging pattern of denial and avoidance of
39 responsibility.
40
41 Other countries, such as Canada and Ireland, have seen
42 their national apology as an important starting point in
43 delivering truth and justice to its most vulnerable
44 citizens. Sadly, decades of denial have compounded the
45 original harm and need to be factored in to any redress
46 claim.
47

1 We must begin to get to grips with some new concepts:
2 for example, secondary abuse. We need more recognition of
3 secondary abuse. In everyday speech we acknowledge that
4 insult can add to injury.
5
6 Previous redress initiatives by governments and
7 institutions have produced a patchwork response, which many
8 child migrants have experienced as discriminatory and
9 unfair. It is one of the strongest arguments for
10 a national redress scheme.
11
12 Similarly, if redress provision is constructed like an
13 obstacle course, with complex processes, then we should not
14 expect positive results. We certainly shouldn't expect
15 a sense of healing or justice to emerge from complex
16 processes.
17
18 There is a clear need to act quickly for
19 child migrants and to avoid leaving them with a legacy of
20 bitterness and betrayal which will be inherited by their
21 children. Time is not on the side of child migrants.
22 We need to clear the roadblocks to justice a little more
23 quickly.
24
25 When I first came to Australia and worked with former
26 child migrants back in 1988, I raised with both the
27 Australian and British governments the disclosure by many
28 child migrants of childhood abuse. I have done this yearly
29 since, every year.
30
31 The immediate response from various organisations was
32 to argue that this was the standards of the day. My
33 response at that time, in 1988, was to ask, "When was it
34 lawful to assault children?"
35
36 Your Honour, we have moved a considerable way forward
37 since then in our understanding of childhood sexual abuse,
38 in all its many forms and its consequences, which are
39 lifelong. Your consultation paper is asking all of us to
40 determine the standards of today.
41
42 MS FURNESS: Thank you very much. Your timing was
43 impeccable, Dr Humphreys.
44
45 THE CHAIR: Thank you, Dr Humphreys. Thank you for coming
46 on a long journey, which I know you have made many times,
47 to be here today.

1
2 There is only one issue that I want to take up with
3 you and that is this question which you may not be able to
4 help us with, but you know that the law in England has
5 changed in relation to the liability of the institution for
6 the abuse of the child. Do you know anything about whether
7 or not that has led to more people suing institutions in
8 England?
9
10 DR HUMPHREYS: I don't really know the answer to that.
11 There is a whole complex argument at the moment about
12 historical abuse in England, as there is here. I can't
13 answer that.
14
15 THE CHAIR: Yes.
16
17 MR THWAITES: It is an issue of vicarious liability
18 I think you are talking about.
19
20 THE CHAIR: Yes, but you can't help in knowing what the
21 English - no. We have set in train some approaches to try
22 to find out, but it is obviously a significant issue. And
23 that's the second thing, I think you are about to have an
24 English inquiry into these issues; is that right?
25
26 DR HUMPHREYS: That's right, yes, it has been very
27 complicated. They have appointed a judge in the UK to look
28 at historical abuse in children's homes and elsewhere in
29 the UK.
30
31 THE CHAIR: Is that the New Zealand judge?
32
33 DR HUMPHREYS: Yes, it is.
34
35 THE CHAIR: Thank you.
36
37 COMMISSIONER FITZGERALD: You have now been working on
38 seeking not only a national apology, which you achieved,
39 but also national redress, for some time. You are now
40 faced again with our consultation paper, which proposes, as
41 one of the options, a national redress scheme. Given your
42 intimate knowledge of the Commonwealth Government and its
43 response to your requests, what do you think is the single
44 greatest barrier that has prevented a national scheme being
45 established to provide redress for members of your
46 community that have been abused?
47

1 DR HUMPHREYS: Of course, denial is a great thing, isn't
2 it, and the journey of child migration for the last, you
3 know, 30 years has been one of denial, and particularly at
4 a government level. We are moving, I hope, out of denial.
5 I have laid out, really, the case in relation to child
6 migrants and the responsibilities of the Federal Government
7 in relation to child migrants. I am really not sure what
8 the barrier is, unless it is one of economics and
9 precedence.
10
11 COMMISSIONER FITZGERALD: Thank you.
12
13 COMMISSIONER MURRAY: I have a question to you, please,
14 Dr Humphreys. Central to your work has been the link
15 between family restoration, access to records, therapy,
16 counselling, that sort of thing, and through the senate
17 and through your own efforts, both the Commonwealth and the
18 British Governments have made some redress efforts by
19 funding reconnection to family and that has been important.
20
21 DR HUMPHREYS: Yes.
22
23 COMMISSIONER MURRAY: There is a whole category of people
24 who have been subject to child sexual abuse in institutions
25 which are larger than child migrants but which have similar
26 family restoration needs, and I would name them as
27 including child migrants, the Stolen Generations, wards of
28 State generally, and those in foster care - very frequently
29 they come from a fractured, more difficult family
30 environment.
31
32 With your background and experience, how should the
33 Royal Commission consider formally including that body of
34 concern for some quite large populations in our redress
35 proposals?
36
37 DR HUMPHREYS: I think what we all want is recovery for
38 people, isn't it? We want recovery. What does recovery
39 come from? Identity, belonging, knowing who you belong to.
40 They are very important strands in recovery. Specialist
41 services for people who have been separated from family and
42 been in care or in foster care, or whatever, requires
43 specialist skills, independent services for both the child,
44 now an adult, and the family, and the extended family.
45 I think the work of the Trust over 30 years really
46 demonstrates that families can actually meet and
47 re-establish or establish relationships and belonging for

1 the first time. With child migrants, it's after 50 years,
2 it's often, with mothers and sometimes fathers, who were
3 told their children were dead, and yet the outcomes - and
4 hence, the family restoration fund from the
5 British Government, which was about how can we help
6 positively? What are the practical initiatives that are
7 required to bring about family reunions that have meaning?
8 Well, it's not meeting just once; you need to build on
9 that.
10
11 What are the key components? Skilled, qualified
12 workers, to work with all parts of the family, not just one
13 part, all parts of the family, wherever they are; wherever
14 they are. Distance must not be the problem if we want good
15 outcomes and recovery.
16
17 COMMISSIONER MURRAY: And would you consider that
18 attention - and I might describe it under our
19 "Related Matters" terms of reference - as falling into what
20 we would describe as the institutional response stream or
21 what we would describe as the therapy stream of redress?
22
23 DR HUMPHREYS: I think it's both.
24
25 MR THWAITES: I think probably the most significant issue
26 about it is that if there was to be any funded support
27 family reunion work for other groups, that it needs to be
28 provided, as Margaret said, within professional services,
29 to ensure it is not wasted, to ensure that it is targeted
30 and that people are able to take the greatest opportunities
31 available to them.
32
33 DR HUMPHREYS: I'm not sure, does that answer the question
34 where it falls, because it probably falls into both
35 categories, actually.
36
37 COMMISSIONER MURRAY: I could engage you for a long time
38 but no, I will leave it at that.
39
40 MS FURNESS: Thank you, your Honour. I have no further
41 questions.
42
43 THE CHAIR: Thank you both for coming and again,
44 Dr Humphreys, for travelling so far, and thank you for the
45 contributions you have made to the Commission's work.
46 Thank you.
47

1 DR HUMPHREYS: Thank you.
2
3 MS FURNESS: Your Honour, the next organisation is the
4 Alliance for Forgotten Australians. I am sorry, I am told
5 there has been an amendment to my list. Perhaps if we
6 could have the Insurance Council of Australia first.
7
8 THE CHAIR: I'm sure Ms Carroll won't mind.
9
10 MS FURNESS: Mr Whelan, you are the chief executive
11 officer of the Insurance Council of Australia?
12
13 MR WHELAN: That's correct.
14
15 MS FURNESS: I invite you to speak to your submission.
16
17 MR WHELAN: Thank you. I would like to read a brief
18 opening statement before going to questions. Your Honours
19 and Commissioners, thank you for the opportunity to appear
20 here today at this public hearing to speak to the
21 submission of the Insurance Council of Australia.
22
23 The Insurance Council of Australia is the
24 representative body of the general insurance industry in
25 Australia. We represent insurers that underwrite liability
26 insurance. We also represent reinsurers. Some of the
27 Insurance Council's member companies offer liability
28 insurance to institutions that may cover the risk of child
29 sexual abuse.
30
31 In preparing the Insurance Council 's submission in
32 response to the consultation paper of February 2015, the
33 ICA Secretariat consulted with members of our civil
34 liability committee. The ICA acknowledges the terrible and
35 long-lasting effects of child sexual abuse and the
36 suffering of survivors. We acknowledge the need for
37 meaningful reforms, the benefits of the establishment of
38 a redress scheme and the fact that the needs of survivors
39 will be best supported by cooperation between a multitude
40 of public and private sector organisations.
41
42 The submission of the Insurance Council explains the
43 role of liability insurance for institutions and the
44 potential impact that proposed reforms may have on the
45 availability and affordability of this line of insurance.
46
47 As with other lines of insurance, our message is the

1 same: the best protection against risk is strong and
2 consistent management and mitigation. Strong risk
3 management and mitigation can support the affordability of
4 general insurance and when tragic events do occur that
5 cause damage, insurance assists individuals and
6 organisations and communities to recover.
7
8 The Insurance Council and the general insurance
9 industry support any reforms that will, as far as is
10 possible, reduce the risk of child sexual abuse and we
11 accept that this is not an easy task. However, as noted,
12 there is a direct correlation between affordable and
13 available insurance and strong risk management.
14
15 Much public awareness and knowledge has been gained of
16 the historical extent and circumstances of sexual abuse of
17 children in institutions, due to the work of the
18 Royal Commission and the courage of individuals and
19 organisations to share their stories. It is a reasonable
20 expectation that all organisations responsible for the care
21 of children will utilise this knowledge and take all
22 responsible steps to ensure that such abuse does not occur
23 again in the future.
24
25 While liability insurance for institutions cannot
26 realistically be a perfect solution for damage caused by
27 child sexual abuse, it can provide a source of compensation
28 for a survivor who makes a successful claim against an
29 institution. Institutions, families and communities also
30 benefit when a source of compensation is available for
31 a survivor of such abuse.
32
33 We therefore strongly caution against any reforms that
34 may adversely impact the cost of liability insurance for
35 the risk of institutional child sexual abuse. The
36 consultation paper considers expansion of civil liability
37 settings - that is, the removal or extension of statutory
38 limitation periods and the more onerous duties on
39 institutions that are responsible for the care of children.
40 If governments expand civil liability settings
41 retrospectively, this could adversely impact insurers'
42 capital positions. If governments expand civil liability
43 settings prospectively, this will adversely affect the
44 affordability and availability of liability cover for child
45 sexual abuse. As we have outlined, due to the nature of
46 risk, this insurance is typically only available as an
47 optional cover at higher premium.

1
2 Rather than adjusting the nature of the duty of
3 institutions by statutory amendment, the responsibility of
4 institutions to protect children in their care should be
5 supported by mandatory risk management requirements, so
6 that the risk of child sexual abuse is reduced. Thank you,
7 your Honours and Commissioners, I am very happy to take
8 questions.
9
10 THE CHAIR: Mr Whelan, I am going to travel ground that
11 we've travelled before, but everyone should, I think,
12 understand your perspective on the issue.
13
14 The common law and the rules that establish liability,
15 be they common law or statute, have been used for all time
16 as a means of imposing discipline upon the behaviour of
17 individuals and institutions in the community; I think
18 that's accepted, isn't it?
19
20 MR WHELAN: Mmm-hmm.
21
22 THE CHAIR: The underwriting then of insurance to insure
23 the individual or the institution is a way of endeavouring
24 to provide financial stability in the community when there
25 is a transgression of the duty that the institution or
26 individual owes; is that correct?
27
28 MR WHELAN: Yes.
29
30 THE CHAIR: For the insurance industry that really becomes
31 a question of the dollars, "What do you want?" And you
32 then say, "How much will it cost?"
33
34 MR WHELAN: Yes.
35
36 THE CHAIR: And although, if you change the rules,
37 obviously, there may be a change in the premium structure,
38 it's a community question as to whether or not that is
39 a good thing having regard to the change which you may get
40 in institutional or individual behaviour.
41
42 MR WHELAN: Yes.
43
44 THE CHAIR: Now, looking forward, as I think you point
45 out, it is just a question of what is the cost of providing
46 the insurance which the institutions may need in the
47 context in which we are talking.

1
2 MR WHELAN: Yes.
3
4 THE CHAIR: I don't think there is any suggestion that the
5 insurance industry would entirely walk away from the
6 sector, is there?
7
8 MR WHELAN: Yes, that's right.
9
10 THE CHAIR: Can you tell me, then, in light of that, do
11 you know of the experience in England since the
12 Supreme Court changed some of the rules?
13
14 MR WHELAN: Regrettably, no, judge. We have begun some
15 inquiries there, but it may be early days in terms of the
16 implications for insurance. This will take some time to
17 flow through to actual cases, and so on, so I don't have
18 anything specific, but we would be happy to seek any
19 further information that would assist you.
20
21 THE CHAIR: It might be useful. You would perhaps be able
22 to gather evidence of where insurers have been alerted to
23 a claim that might be about to emerge in the courts.
24
25 MR WHELAN: Mmm-hmm.
26
27 THE CHAIR: If that could be gathered it would be of real
28 assistance to us, but we appreciate that subsequent
29 decisions may take more time to come through.
30
31 MR WHELAN: Yes, certainly.
32
33 THE CHAIR: The second issue is the statute of
34 limitations. You know that the Victorian Government has
35 moved to remove that limitation and that will have
36 a retrospective effect. If Victoria go down that path,
37 what consequences does that have for the insurance industry
38 which, of course, seeks to provide insurance across
39 Australia?
40
41 MR WHELAN: It will have variable effects on different
42 insurers depending on their exposure. As you know, not all
43 policies necessarily cover child molestation or sexual
44 molestation as part of their standard policy and, if they
45 did, in many cases, they were as an adjunct to the standard
46 policy, so it will vary by individual insurers, but we
47 would all take note of those decisions by the Victorian

1 courts and will need to adjust our thinking going forward.
2
3 The concern of the industry generally is not so much
4 about prospective changes. The industry can adjust to most
5 of those sorts of things over time with a better assessment
6 and recalibration of risk and is, therefore, able to assess
7 what the appropriate risk premium should be and how best to
8 manage that risk premium and those claims as they go
9 forward. It's the retrospective situation, where the
10 assumptions that policies were built on and premiums were
11 struck and capital was allocated, and so on, are what
12 drives how the insurers manage their business and if they
13 are changed on the insurer - such as the statute of
14 limitations or the duty of care and so on - that has
15 a demonstrable effect on their position, because they have
16 to rethink about their position in terms of their capital
17 and their provisioning for those sorts of claims, because
18 they weren't taken into account in their original premiums.
19 Therefore, adequate premiums were not collected to take
20 care of that risk.
21
22 It is the imposition I think of retrospective changes
23 that concern the industry the most. Prospective, I think
24 we're able to engage and discuss about how that will affect
25 the insurance industry going forward; it's the
26 retrospectivity that concerns us.
27
28 THE CHAIR: If Victoria do move in the way that they have
29 done, how would the industry respond in terms of
30 restructuring the liabilities of insurers? Would it be
31 a question of raising more premiums going forward to pick
32 up what you haven't funded in the past? Is that how it
33 operates?
34
35 MR WHELAN: Essentially, it will flow not only to the
36 direct insurer but also to the reinsurers as well on how
37 their calculate their costs to the insurer. Ultimately,
38 there has to be an adjustment going forward to compensate
39 for claims that weren't adequately funded. Over time you
40 might expect some premium increases to adjust to that,
41 depending on what the claims come out like.
42
43 THE CHAIR: Would that be spread across all forms of
44 insurance, that premium increase, or would it be confined
45 to the insurance that meets the particular liability
46 created by the removal of the statute of limitations?
47

1 MR WHELAN: It would really be a decision by individual
2 insurers, because that's a commercial decision, but most
3 typically, it's done within the class of business.
4
5 THE CHAIR: Within the class of business, so that
6 institutions caring for children might carry a greater
7 burden going forward?
8
9 MR WHELAN: Yes. They represent a considerably greater
10 risk profile than institutions that don't have a care of
11 children under their responsibilities.
12
13 THE CHAIR: I am sure you accept that some people may see
14 that as an appropriate social outcome - that is, that
15 through the insurance industry, the institutions should
16 carry that burden going forward?
17
18 MR WHELAN: Yes. The only caveat I would add to that is
19 that there is a concern about the cost and affordability of
20 insurance going forward and the accessibility of that
21 insurance. Any concern I would have would be about whether
22 those costs start to make certain institutions unable to
23 take out that sort of insurance, the costs associated with
24 those specific requirements around child abuse or sexual
25 molestation within the policy, and that accessibility for
26 some institutions to be able to take that cover out and
27 also whether the insurance companies going forward will
28 continue to have an appetite to underwrite that risk.
29
30 THE CHAIR: They are questions which we presently can't
31 answer, aren't they?
32
33 MR WHELAN: Yes, that's right, they are concerns, because
34 the flow-on effects are undetermined.
35
36 THE CHAIR: But we cannot determine them before they
37 happen?
38
39 MR WHELAN: No.
40
41 THE CHAIR: Someone has to make a decision that reflects
42 the social outcome and then we'll have to review,
43 I suppose, or the industry would have to review as it goes
44 forward.
45
46 MR WHELAN: That's right.
47

1 MS FURNESS: I have no questions, your Honour.
2
3 COMMISSIONER FITZGERALD: I have just one. The Insurance
4 Council has now come out to support the establishment of
5 a redress scheme. Although I note in the submission,
6 that's about the extent of your submission in relation to
7 that. We have had discussions before, but I just want to
8 understand, what would be any or one of the most
9 significant caveats that you put around the support of
10 a redress scheme?
11
12 MR WHELAN: We have thought long and hard about this. It
13 is really how any redress scheme as designed - and we're
14 yet to see the full detail of how that might look -
15 interacts with current law and current liability settings
16 and what does that mean in terms of our responsibilities to
17 the institutions or the insured that we have current
18 policies with.
19
20 How those two elements interact is the concern that we
21 would like to see more detail about, how the
22 Royal Commission recommends that be developed.
23
24 COMMISSIONER FITZGERALD: If I can just ask this specific
25 question, for example, at the moment, does the Insurance
26 Council of Australia have a position in relation to the
27 eligibility or the establishment of a claim pursuant to
28 a redress scheme, or are these matters that you see as
29 being part of the ongoing consultation?
30
31 MR WHELAN: I do see them as part of the ongoing
32 consultation. Again, who is involved in the scheme and the
33 terms under which they are involved in the scheme and their
34 ability to bring a live claim against an institution which
35 an insurer may or may not have to respond to, depending on
36 the terms of its policy, is something that we need to
37 understand pretty fundamentally.
38
39 COMMISSIONER FITZGERALD: Thank you.
40
41 COMMISSIONER MURRAY: I have a question to you, please,
42 Mr Whelan. I thought your remarks about the dangers of
43 retrospectivity were well expressed, but I want a little
44 better understanding of the reality of those dangers. If
45 we look at Victoria, it would seem to me that historical
46 cases of abuse, where they can be allocated to a specific
47 perpetrator over perhaps hundreds of victims - and you

1 would be aware there are those cases.
2
3 MR WHELAN: Yes.
4
5 COMMISSIONER MURRAY: And there was knowledge within the
6 church, for instance, that that had occurred, the insurer
7 would not be liable for those, would they?
8
9 MR WHELAN: No, under the duty of disclosure in the
10 contracts, no.
11
12 COMMISSIONER MURRAY: So the fact that many are suspected
13 but not necessarily proven to have been known to the
14 institutions involved may, in fact, reduce your risk; is
15 that right?
16
17 MR WHELAN: It may do, yes.
18
19 MS FURNESS: Thank you, your Honour.
20
21 THE CHAIR: The reality is that unless you can establish
22 that fact, there is little chance of succeeding in a common
23 law claim under the existing liability rules, in any event.
24
25 MR WHELAN: Yes, it's complex, yes.
26
27 COMMISSIONER MURRAY: But a prudent insurer would
28 certainly look at that option for an out, wouldn't he or
29 she?
30
31 MR WHELAN: We would most definitely be prudent.
32
33 THE CHAIR: We will discuss that further. Thank you,
34 Mr Whelan, and thank you for your contributions throughout;
35 they are most appreciated.
36
37 MR WHELAN: You are very welcome.
38
39 MS FURNESS: Your Honour, now we come to the Alliance for
40 Forgotten Australians. Ms Carroll, you are the chair of
41 the Alliance?
42
43 MS CARROLL: Yes, I am.
44
45 MS FURNESS: Can I invite you to speak to your submission?
46
47 MS CARROLL: Thank you. I am a Forgotten Australian,

1 a survivor of the out-of-home care system of the last
2 century. I spent all but a few months of my first 15 years
3 in care. I now work alongside other survivors and others
4 committed to advocate for the needs of the many who still
5 suffer enormously today from this childhood. All benefit
6 from AFA's interests in the issues and its expertise from
7 the lived experience of its members and its participation
8 in multiple government inquiries.
9
10 I am privileged to be asked to be here today and
11 recognise the huge responsibility to the many thousands of
12 Forgotten Australians who have not had this opportunity.
13
14 AFA's response to the questions posed in this
15 consultation are based on the following three principles:
16 Forgotten Australians must not be overlooked any longer.
17 They must be seen and understood, with their history
18 recognised and the circumstances of their childhoods and
19 the impacts understood. Action must be swift and decisive,
20 to demonstrate this recognition and support for
21 Forgotten Australians to live the best possible life in
22 their remaining years. Survivors of all forms of
23 institutional abuse must be supported, not only those who
24 experienced sexual abuse.
25
26 The impact of institutional abuse on children,
27 regardless of whether there was an overlay of other forms
28 of abuse, which add immeasurably to their vulnerability,
29 are now well documented. We need to go no further than the
30 2004 senate report and the thousands of private sessions,
31 stories, that the Commissioners have listened to. Even
32 without the devastating and compounding overlay of sexual,
33 physical and emotional abuse, the facts remain that
34 children brought up in institutional care suffered loss of
35 family, loss of identity, faced issues of esteem and other
36 dimensions of harm, such as diminished trust, shame, guilt
37 and humiliation, and that's not mentioning matters of lack
38 of education and life opportunities.
39
40 I note the directive, as stated in the terms of
41 reference, does enable the Commission to go beyond the
42 scope of separating out childhood sexual abuse from other
43 forms of abuse as an eligibility requirement of redress.
44 A redress scheme must take account of all the institutional
45 experiences of hundreds of thousands of children brought up
46 in this form of out-of-home care in the 20th Century.
47

1 Compounding these matters remains the issue of access
2 to records. Accessibility and transparency of records
3 access remains, at best, patchy across Australia. Some
4 States do it better than others, but we are still
5 struggling to get a consistent and transparent response
6 from all the jurisdictions. To roadblock record access
7 perpetuates system abuse.
8
9 Redress for Forgotten Australians must actively
10 involve the institution in whose care the abuses occurred,
11 including government, church and non-government
12 organisations, and this involvement must occur to a degree
13 that provides a financial incentive to prevent further
14 abuse.
15
16 Existing specialist support services for Forgotten
17 Australians must be resourced on a long-term basis to
18 maintain the trust they have earned from people who have
19 repeatedly been let down. State and Territory governments
20 must be held publicly accountable for the failures of their
21 role in institutional care. The national apology notes the
22 failure of governments and their proxies.
23
24 The consultation paper suggests that redress should
25 consist of three elements - a meaningful apology from the
26 institution, if the survivor wishes; lifetime access to
27 therapeutic counselling; a monetary payment that recognises
28 the wrong the survivor has suffered.
29
30 The elements recognise the importance of a range of
31 redress responses. However, they fail to consider other
32 supports that need to be provided alongside the counselling
33 and psychological care, such as priority access to medical
34 and dental assistance. Page 9 of the executive summary
35 asserts that elements of appropriate redress appear to be
36 direct personal response, therapeutic counselling and
37 monetary payments. However, the detailed discussion of
38 this issue in the body of the consultation paper does, in
39 fact, note the international support through the UN of the
40 inclusion of legal and social services as part of a robust
41 set of principles and guidelines for remedies for people
42 affected by violations of their human rights. It notes
43 that the principles for remedy for victims of violation of
44 human rights, including rehabilitation, should include
45 medical and psychological care as well as legal and social
46 services.
47

1 All advocacy and support groups note with great regret
2 and dismay the Australian Government's essentially negative
3 and almost dismissive response to the establishment of
4 a national redress scheme, which was raised in the
5 consultation paper.
6
7 Just as the national apologies were bipartisan, we now
8 call on both sides of the national parliament to make
9 a national redress scheme a bipartisan matter. Thank you.
10
11 MS FURNESS: Thank you, Ms Carroll.
12
13 THE CHAIR: Thank you. Can I just raise a couple of
14 issues with you. Firstly, in your submission, which deals
15 precisely with each of the questions - and we are grateful
16 for that - you seek a recommendation that any person who
17 was resident in an institution and reports suffering as
18 a result should receive at least $10,000. I'm not clear as
19 to what you contemplate being within the word "suffering"
20 can you help me there?
21
22 MS CARROLL: Well, many Forgotten Australians have told us
23 of all forms of suffering in institutions. Being separated
24 from family is a huge suffering. It is huge. Or a lack of
25 education. People suffer today from medical issues that
26 happened because they were forced into labour - child
27 labour - before their bones were cemented. So lots of
28 people have lots of different issues, and I think just
29 being locked up in an institution is an abuse.
30
31 THE CHAIR: How many people do you think might qualify for
32 that $10,000? You know we've attempted to estimate how
33 many might be eligible for redress if they were sexually
34 abused, but what should we think of as the number that
35 might fit into an expanded category?
36
37 MS CARROLL: It was the senate inquiry that said 500,000
38 children experienced some form of out-of-home care, so -
39 not everyone would be still alive, of course, but the
40 numbers would be big, yes.
41
42 THE CHAIR: Yes. Hundreds of thousands.
43
44 MS CARROLL: But given that some of the States have had
45 a redress scheme, which paid probably more than the $10,000
46 that we're talking of as a minimum, those people probably
47 would not be eligible for this scheme.

1
2 THE CHAIR: They would be outside, yes.
3
4 MS CARROLL: It would be States like New South Wales and
5 Victoria, that have done very little.
6
7 THE CHAIR: Yes, and I noticed that your submission
8 accepts that prior payments should be brought into account
9 in any redress scheme?
10
11 MS CARROLL: Absolutely, yes.
12
13 THE CHAIR: You have heard today, at least - and no doubt
14 many times before - of the value that is said to be there
15 for a survivor if they sign a deed of release if they are
16 given a redress payment, and it is said to be finality.
17 I know your submission says there should not be a release.
18
19 MS CARROLL: Yes.
20
21 THE CHAIR: What do you say to those who suggest that the
22 survivor benefits from finality?
23
24 MS CARROLL: I think the church or the charity may benefit
25 from the deed of release, but I don't know that it brings
26 any sort of closure to a Forgotten Australian. I think it
27 is again, you know, "We will pay you if you do this."
28 I don't think it is in the benefit of the Forgotten
29 Australian at all. And most people wouldn't want to go to
30 court.
31
32 THE CHAIR: That was going to be my next question. There
33 is a concern that is raised that, in fact, the redress
34 payment might become the seed money for a common law claim.
35 What is your response to that, if any?
36
37 MS CARROLL: Well, I think if someone wants to use that
38 money to go to court, so be it, but I doubt that - and
39 people have said today that it is not about the money, and
40 in some cases, it is not about the money, but it is the
41 only thing that churches and charities and governments
42 particularly can do to say sorry. I mean, they have said
43 sorry, but nothing has changed in the lives of most
44 Forgotten Australians - they are still living below the
45 poverty line; they have still got drug and alcohol issues;
46 they have still got all the issues they had before the
47 Prime Minister stood up and said "Sorry".

1
2 THE CHAIR: My final issue is just the question of the
3 standard of proof. You request that we recommend
4 plausibility as the test. Just to take a significant leap
5 up the scale to balance of probabilities, do you think
6 there would be many outcomes that would be different if
7 balance of probabilities was adopted as opposed to
8 plausibility?
9
10 MS CARROLL: I don't know. I don't know. I would have to
11 really think about that.
12
13 THE CHAIR: I'm not suggesting that that is where we will
14 land.
15
16 MS CARROLL: No.
17
18 THE CHAIR: But I just wondered what your thinking, having
19 spoken to many people, would be.
20
21 MS CARROLL: Most of the people that I speak to - maybe
22 I am naive - I believe most of what they say, so I don't
23 think that would make a difference. But for some - I know
24 people who have been knocked back because they couldn't
25 remember the outline of the building that they were housed
26 in, and they got knocked back for a compensation pay-out
27 because they couldn't describe where the bathroom was or
28 where the bedroom was. So, yes, possibly some people could
29 be confused, and some people are in their 80s and beyond.
30 It is a long time ago, and as a child, things looked very
31 different to what they do today. So it could make
32 a difference, yes.
33
34 THE CHAIR: You have heard, perhaps, that some of the
35 decision-makers have told us that very few people fail to
36 recover under schemes which have a balance of probabilities
37 test.
38
39 MS CARROLL: Yes.
40
41 THE CHAIR: Yes, thank you.
42
43 MS FURNESS: Just in terms of the example you gave,
44 Ms Carroll, were those people seeking redress through
45 a scheme that has happened in the past?
46
47 MS CARROLL: No, they went directly to the church.

1
2 MS FURNESS: I see, thank you.
3
4 COMMISSIONER FITZGERALD: Could I just ask for a point of
5 clarification. His Honour took you to your recommendation
6 number 10, which is a guaranteed minimum payment of $10,000
7 to all survivors who can establish they were resident in an
8 institution. I want to be clear: when you use the term
9 "resident in an institution", does that encompass those who
10 were in foster care within familial or other environments,
11 or do you draw a distinction between those who spent some
12 time in a residential service, a group home of some
13 description, when you make that recommendation?
14
15 MS CARROLL: No, it includes foster care as well, yes.
16
17 COMMISSIONER FITZGERALD: And in terms of the 500,000 that
18 you referred to in the senate report, that figure, have you
19 been able to do any work further or do you know of any work
20 further that has been undertaken in relation to the number
21 of people that were directly affected and are still alive,
22 yourselves?
23
24 MS CARROLL: Sorry, I don't --
25
26 COMMISSIONER FITZGERALD: Sorry, in our consultation
27 paper, we have made a number of assumptions about the
28 number of people affected.
29
30 MS CARROLL: Yes.
31
32 COMMISSIONER FITZGERALD: You have referred to the figure
33 of 500,000 and you have identified that that came from the
34 senate report. I was wondering whether you are aware of
35 any further work which gives a better estimate than either
36 ours or the senate's.
37
38 MS CARROLL: The only think I can say is that one of the
39 organisations in Victoria said that on their books alone,
40 they had over 100,000 people. So it's quite a conservative
41 number, the 500,000, when you think of a little State like
42 Victoria having over 100,000 just in the group - it was
43 a Catholic institution, Catholic homes.
44
45 COMMISSIONER FITZGERALD: Okay, thank you.
46
47 MS FURNESS: Thank you, your Honour.

THE CHAIR: Thank you, Ms Carroll. Thank you, again, for all of your work on our behalf.

MS FURNESS: Your Honour, representatives of the Northcott Disability Services are next.

Ms Stubbs, you are the chief executive officer of Northcott Disability Services?

MS STUBBS: I am.

MS FURNESS: And, Ms Smith, you are the business development and partnerships coordinator of the service?

MS SMITH: Yes, I am.

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

MS STUBBS: I would like to start by thanking the Commission for the opportunity to speak. We are speaking on behalf of Northcott, not on behalf of people with disability and not on behalf of all disability service providers. However, we think that our experience over 85 years of providing disability services across New South Wales, first as the Crippled Children's Society, gives us some level of insight into the sorts of issues for people with disabilities who experience child sexual abuse and which we don't believe have been adequately addressed in the Commission's paper on reparation and redress.

Northcott itself used to provide schools, orthopaedic hospitals; it used to provide residential homes. We no longer do any of those things for children, but we certainly did that for a large part of our history.

We don't, at this stage, have any allegations of child sexual abuse against Northcott, which is not to say we don't believe it ever happened in any of those institutions, but we have no particular instances.

We have in place in our current organisation, which is much more community based, but still provides services to some 13,000 children and families and people with disabilities across New South Wales and the ACT, and largely provides services to young people under the age of

1 25 - so we still have a lot of experience with providing
2 services to young people - we have very, very strong and
3 coherent policies and programs in place to deal with
4 reports of sexual abuse, protection of children. We have
5 worked very closely with the Ombudsman in New South Wales
6 and are very happy with the reporting of sexual abuse
7 processes that we work with with the Ombudsman.
8
9 However, we think there are some major issues in terms
10 of reparation and redress that aren't addressed by the
11 Commission's paper because of, particularly, the needs of
12 people with disabilities. Hilary prepared the paper, so
13 I'm going to let her talk about them.
14
15 MS SMITH: Thank you, Kerry, and thank you, Commissioners,
16 for hearing us today.
17
18 When we read the consultation paper, what we were most
19 struck by was the fact that there was a very strong focus
20 on the fact that a redress scheme, by design, needed to be
21 a scheme that plugged existing gaps, so rather than create
22 a whole new parallel scheme to existing supports, such as
23 Medicare, for example, a redress scheme would work with
24 what we already have and then augment that to the extent
25 that it was needed.
26
27 That's the right approach, I think, and that's our
28 organisation's position, but what was missing was any
29 recognition of the fact that those gaps can be a gulf for
30 a person with disability compared to a person who doesn't
31 have the same particular physical requirements,
32 communication requirements and other additional support
33 needs that a person with disability may have.
34
35 We know that people with disability are highly more
36 vulnerable to all forms of abuse, as children and as
37 adults, than people without disability, and we've given
38 a number of references to that fact in our submission.
39
40 Factors such as communication can play a part where
41 a person may never have been able to tell a perpetrator,
42 "I don't want you to do that to me", or may never have been
43 able to tell a protective adult, "This happened to me and
44 it was wrong", or may still not be able to say, "Something
45 happened to me years ago and I want to be able to seek
46 redress."
47

1 There are physical complications for some people with
2 disability who may have been vulnerable to abuse because
3 they simply could not flee a perpetrator or who may have
4 been more vulnerable to abuse because they have specific
5 needs with regards to intimate personal care which another
6 person doesn't have regarding assistance with toileting,
7 showering and physical contact by another person with
8 intimate parts of their body.
9
10 What we felt was that there needed to be greater
11 recognition within any redress scheme design, and in any
12 consideration of the existing parameters around civil
13 litigation and what changes may need to be made there,
14 there needed to be much greater consideration of access
15 issues for people with disability - all forms of
16 disability, I suppose, too. So I have spoken about
17 communication barriers, I've spoken about physical
18 disability, but there are many other experiences that
19 people with a whole range of disabilities have, which may
20 make the existing scheme difficult to access.
21
22 I think the other point that I would make is that the
23 existing Medicare framework, for example, is already
24 providing a range of services to all Australians, which is
25 great, it should. But for a person with disability, it may
26 already be inadequate, and I think there is a risk in
27 suggesting that the redress scheme could piggyback on, for
28 example, the Better Access to Mental Health Care or the
29 Chronic Disease Management Plans that exist currently.
30 They may already be inadequate for a number of the people
31 we support. I know lots of families that I have worked
32 with in my five years at Northcott have exhausted those
33 resources annually really quickly because there are so many
34 other things that they need to procure, I suppose, in order
35 to achieve a good life. They can be things like
36 a behaviour support plan, things like mental health care,
37 things like the prescription of a wheelchair, mealtime
38 swallowing assessments - a whole range of things that keep
39 a person physically safe and well to a certain degree, but
40 if you have already absorbed your 12 or 15 sessions that
41 you are eligible for in a year, that means that you may not
42 have the opportunity to touch on any of your psychological
43 care needs that may arise from a past experience of trauma.
44
45 The other point I would make on that is that many
46 people with disability need longer to have a meaningful
47 conversation with somebody. So if an example were that

1 someone was to seek six sessions of counselling, I may be
2 able to get six one-hour sessions of counselling and have
3 a certain amount of conversation in that time. Some of the
4 people that we support are non-verbal and need a lot of
5 time to be able to use alternative means of communication
6 to get that same amount of content out. It wouldn't be
7 fair to say, "Okay, everyone gets six hours", on that
8 basis, because some people who we support, for example,
9 need to type their messages into a device such as an iPad,
10 but if you have, in addition to being non-verbal, a range
11 of physical mobility challenges, shall we say, it might
12 take you quite some time to even type that message out,
13 then have it read by the person who you are communicating
14 with, then interpret their response to what you have said,
15 and then turn around and start typing your next sentence.
16 It is a real process, and it requires quite a lot of skill
17 on the part of the communication partner to be able to
18 engage in a really meaningful conversation with the person
19 who they are talking to.
20
21 Within our organisation, many people are really
22 skilled in having those day-to-day conversations with
23 a person with disability, because it's part of what we're
24 used to doing. We support a really diverse range of people
25 and some of those people use really diverse ranges of
26 communication.
27
28 It's not our job, on a day-to-day basis, though, to
29 have therapeutic conversations with regards to previous
30 child sexual abuse as an organisation, and many of our
31 staff would not be skilled to do that. So what a redress
32 scheme needs to be able to provide is people who can bring
33 that therapeutic, clinical expertise to that particular
34 area and combine it with an ability to communicate with
35 people in a whole range of different manners.
36
37 There is one other point that I would like to make on
38 that front. Northcott has invested in a number of the
39 people who we support in creating what we call a Person
40 Centred Client Champions program. So these are people
41 again with a whole range of disabilities and from a range
42 of backgrounds and a range of ages and cultural backgrounds
43 as well, and different parts of New South Wales - we have
44 regional and metro - who have all been through quite
45 a detailed development program in terms of their
46 presentation skills, public speaking skills, facilitation
47 skills, mentoring skills.

1
2 One of their roles is to work with service providers,
3 with other people with disabilities, with other members of
4 the community to discuss issues like how you implement the
5 human rights of a person with disability, how you
6 communicate with a person with disability, how you set
7 a plan with a person with disability to help them achieve
8 a good life and identify what a good life looks like for
9 them.
10
11 We would recommend, respectfully, that the Commission
12 took some time to meet with our champions or with champions
13 from another similar program to learn about access from the
14 perspective of a person with lived experience of
15 disability. It's not something that Kerry or I are
16 qualified to talk to today. Certainly we can express our
17 experience as a provider, but a person with disability,
18 whether or not they are a survivor, could provide
19 particularly useful evidence to the Commission regarding
20 what else ought to be considered in designing a redress
21 scheme so that it was able to meet the needs of all
22 survivors, when we recognise that people with disability
23 are likely to be a large cohort within the broader group of
24 survivors.
25
26 MS FURNESS: Thank you, Ms Smith.
27
28 THE CHAIR: Can I just raise a couple of issues.
29 Thank you for your perspective, which is a little different
30 to many of those that we have heard from, but I'm not sure
31 that I really understand what the consequences are.
32
33 Am I right in thinking that you are identifying that
34 we may not have written enough about the way in which
35 a disabled person might engage with a redress scheme?
36
37 MS SMITH: Certainly in our submission we mentioned
38 a number of concerns, and one is, really, that we couldn't
39 really see people with disability in the consultation
40 paper.
41
42 The reason we believe that people with disability need
43 to have their specific needs addressed in this paper, or at
44 least in the scheme design, is - there are a number of
45 factors. One is that the existing system, we don't think,
46 will do enough to support a person who needs longer or who
47 needs different support in order to be able to access the

1 scheme and get full use of the scheme. Another, though, is
2 the fact - and we mention in the paper; I haven't spoken to
3 it yet this afternoon - that many survivors with disability
4 may not identify as such, and there needs to be work done
5 around helping those people to identify and then make an
6 informed choice about whether or not they want to seek
7 redress. I don't think it's appropriate that we just
8 assume that only those people who know that something
9 applies to them pursue it.
10
11 THE CHAIR: I infer from what you have just said that you
12 do understand that there is a difference between
13 a discussion paper looking at the concept and then the
14 ultimate design?
15
16 MS SMITH: Yes, absolutely.
17
18 MS STUBBS: Which is why we are making the suggestions.
19
20 THE CHAIR: Do I understand you to accept that bringing
21 these matters to our attention is important, but you also
22 accept that they are details that would have to be worked
23 out in the detailed design of any scheme that might be
24 adopted?
25
26 MS SMITH: Certainly, yes. And we did mention in our
27 paper as well that we would hope to see that there was peak
28 representation involved in the scheme design, specifically
29 so that there is expert subject matter knowledge,
30 I suppose, able to inform that design process.
31
32 THE CHAIR: Speaking for the Commissioners, we wouldn't
33 have any doubt between us that that is right.
34
35 MS SMITH: Sure.
36
37 THE CHAIR: Secondly, you speak of the monetary payment
38 and the institutional factor. Can I say, that was
39 deliberately drafted to be vague so that we could hear from
40 people like yourselves about what particular factors there
41 might be that relate to the particular institution.
42
43 Do I understand correctly that what you are saying is
44 that that space needs to be filled, for disabled people,
45 perhaps, by the fact that they were particularly trusting
46 in an institution that provided for them with their
47 disability?

1
2 MS STUBBS: Not necessarily particularly trusting, it is
3 just that, in terms of the monetary space, people with
4 disability are almost always, if they have been in an
5 institution, below the poverty line already. So some of
6 the complications of working out what the monetary factor
7 might be in redress for people with disability may be even
8 more difficult, particularly if they are not aware that
9 they have been abused or you haven't been able to establish
10 abuse.
11
12 What we are suggesting is that that doesn't seem to
13 have appeared in the principles of the paper, and we
14 understand that the design of the scheme would look at
15 that. What we're asking for is more involvement of
16 appropriate people in the design of the scheme.
17
18 THE CHAIR: I am not sure I understand what you are
19 saying. When I look at your written document, what you
20 have focused on is what we called "institutional factor",
21 which is a component - I think it is 20 per cent,
22 possibly - of a suggested grid, but the numbers could vary.
23 That is the component that I thought you were focusing on.
24
25 MS SMITH: That's true. We did make comment in the
26 submission where we said we just thought it wasn't clear
27 how that would apply to a person with disability. The
28 consultation paper to us suggested that the thinking around
29 "institutional factor" was some institutions existed to
30 remove children from prior harm - so, you know, a foster
31 care group home may be an example where a child had been
32 removed from their parents due to a perception or reality
33 of existing harm within the family environment, and that
34 that prior abuse had made the child more vulnerable to
35 further abuse once they entered the institution.
36
37 Children with disability are a different cohort, in
38 the sense that they were more vulnerable to abuse by dint
39 of their disability, rather than by dint of any prior
40 experience of abuse. I suppose that's the point, more,
41 that we were trying to make. So it may not be that a child
42 with disability had been previously abused before entering
43 an institution, it was really just the norm of the day that
44 kids went and stayed in hospital schools, for example.
45
46 With that in mind, I think, it's on the one hand
47 important not to characterise those children as survivors

1 and their parents as having been all part of, you know, the
2 context that preceded their entry to an institution, and
3 equally, I think, the point that we make in the
4 consultation paper was that there needs to be some more
5 holistic or more sophisticated assessment, I suppose, than
6 just saying, "Okay, you were in this type of institution,
7 therefore, you get 15 out of 20", or "You were in this
8 type, so you don't get an institutional factor score."
9
10 MS STUBBS: And they may still be in an institution.
11
12 THE CHAIR: Are we talking about the institutional factor
13 component?
14
15 MS STUBBS: Yes.
16
17 MS SMITH: Yes.
18
19 THE CHAIR: Otherwise, you are accepting the other
20 elements that have been suggested as fulfilling the
21 obligations of the matrix?
22
23 MS SMITH: So the other factors were the severity and
24 the - I can't remember the terminology that was used for
25 the other component.
26
27 I think broadly, yes, we were accepting of the
28 concept, but the point that we made again was that a quite
29 sophisticated assessment needs to be brought in the case of
30 people with disability, particularly because we know
31 there's a higher risk of mis-assessing and quite often
32 underestimating the impact that something can have on
33 a person if they are not well enough able to articulate --
34
35 THE CHAIR: So I'm trying to work out, are you saying
36 that, again, care needs to be taken with the assessment
37 process, so when you design your scheme the assessment
38 process needs to be mindful of the particular circumstances
39 of disabled people; or are you saying that any matrix that
40 you design should be different for disabled people? Do you
41 understand?
42
43 MS SMITH: No, we're not trying to propose a different
44 matrix for people with disability. I think what we're
45 trying to propose is a matrix that captures the experience
46 of all survivors but that is sufficiently sensitive to the
47 different experiences of different survivors, of which

1 people with disability are a large cohort.
2
3 THE CHAIR: So again we're back at scheme design elements;
4 is that where we are?
5
6 MS SMITH: Yes.
7
8 COMMISSIONER FITZGERALD: What you have raised is
9 a fundamental difference between the general out-of-home
10 care population group and those children with disabilities
11 who were taken into residential care within the disability
12 sector. And am I right that you are saying to us we need
13 to be particularly attentive that there is, in fact, a very
14 different philosophical understanding of that care, from
15 the general foster care population.
16
17 MS STUBBS: Yes, I think that is true as well.
18
19 COMMISSIONER FITZGERALD: And that would have been
20 identified, as you've indicated, by many parents who
21 voluntarily placed their children into disability care in
22 the expectation that that would provide a better and safer
23 environment for their children in that care placement?
24
25 MS STUBBS: Yes, and they were encouraged to do so by both
26 the medical profession and the State and believed they were
27 doing the right thing for their children.
28
29 COMMISSIONER FITZGERALD: So, therefore, in the design and
30 the way in which the scheme is implemented, those who are
31 implementing it need to be attentive to those differences.
32
33 MS STUBBS: Yes.
34
35 COMMISSIONER FITZGERALD: I think that is a point that you
36 have raised. Can I raise a second point - and you are the
37 only group that has done so - the National Disability
38 Insurance Scheme. You have a paragraph in the document
39 about that. Can I just understand this: you are
40 cautioning against the view that the NDIS will, in fact,
41 resolve some of these issues in terms of better service
42 delivery; is that correct?
43
44 MS STUBBS: Absolutely, because the National Disability
45 Insurance Scheme is designed to give people with
46 disability - to take them to what they need as
47 a reasonable adjustment to live a normal life. That should

1 not mean that they are denied access to the other
2 mainstream services in the same way as anyone else.
3
4 So it is not a compensation for not being able to
5 access the mainstream services, it is to get them to the
6 stage where they can.
7
8 Those mainstream services need to be accessible to
9 people with a disability in exactly the same way, with the
10 extra help that they need, as they are accessible to
11 everyone else.
12
13 So, for example, mental health services need to be
14 able to deal with someone with a disability, as they need
15 to be able to deal with someone without a disability.
16 Similarly for Medicare, similarly for the other services.
17
18 MS SMITH: That's a central tenet of the National
19 Disability Agreement and the UN Convention on the Rights of
20 Persons with Disability, that it is not the responsibility
21 of the specialist disability system to look after people
22 with disability in a bubble over here; it is the
23 responsibility of the specialist system to get those people
24 to a point where the rest of society then accepts them and
25 has all of the structures in place to be able to do that
26 fully.
27
28 COMMISSIONER FITZGERALD: So if I can just take
29 a practical illustration of that, assuming a person has
30 been sexually abused whilst in care and required particular
31 trauma-informed care or particular therapeutic services, is
32 it your view that that is likely to be provided under the
33 NDIS or would one look to the mainstream services for that
34 sort of service?
35
36 MS STUBBS: Mainstream services, it should be provided by.
37 It won't be provided by NDIS. They are not in the business
38 of providing those sorts of services.
39
40 THE CHAIR: Can I take you to a different issue. It is
41 the last page of your submission where you talk about
42 vicarious liability and you say that institutions should
43 not be held vicariously liable. What is your view about
44 reversing the onus of proof so that an institution would
45 have to satisfy the court that it had done all that it
46 could reasonably do?
47

1 MS STUBBS: This submission was developed with our board's
2 involvement in it as well. I think, in general - I don't
3 think we have a position prospectively about vicarious
4 liability. I am probably taking a personal view. I am
5 quite happy with vicarious liability prospectively.
6 Retrospectively may be a different issue.
7
8 THE CHAIR: All right. Thank you.
9
10 MS FURNESS: Thank you, your Honour. That completes
11 today's evidence.
12
13 THE CHAIR: Thank you both for your help. You have raised
14 for us a very important issue but one which few others have
15 raised. So thank you.
16
17 MS STUBBS: That's what we noted, thank you.
18
19 THE CHAIR: Then it is 10 o'clock in the morning, is it?
20
21 MS FURNESS: It is, your Honour.
22
23 THE CHAIR: Very well. We will adjourn until 10.
24
25 AT 4PM THE COMMISSION WAS ADJOURNED TO
26 FRIDAY, 27 MARCH 2015 AT 10AM
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