The Australian Royal Commission: An Atypical Case of Redress for Institutional Abuse of Children

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Abstract

Most Australians have heard of the Royal Commission into Institutional Responses to Child Sexual Abuse, but few are aware of the Royal Commission’s place in the international response to institutional abuse. How is its scope similar to and different from that of other countries? Is its focus on sexual abuse typical or atypical? To address these questions, I present the results from my global dataset of 64 cases of redress responses (public inquiries, redress schemes, or both) in 20 jurisdictions. I show that the Royal Commission is unique in outlining a redress scheme for diverse victimisation contexts and different groups. Its focus on sexual abuse invites speculation on why this came about as a government priority and whether it is a trend worldwide. Its proposed redress scheme is built on fragile foundations, which assume that those “in care” and “not in care” can be subject to the same model of redress.


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Introduction

Most Australians have undoubtedly heard of the Royal Commission into Institutional Responses to Child Sexual Abuse (hereafter Royal Commission). Its size, scope, influence, media exposure, and web-based accessibility have all played a role in forming a public view that something is being done to address child sexual abuse. If we dig deeper, however, most Australians may not fully understand what is occurring.

One reason is that so much has happened since Prime Minister Julia Gillard announced the establishment of the Royal Commission on 11 January 2013. As of late March 2017, it has undertaken 57 case studies of institutions and topics, held over 440 days of public hearings, and published 44 research reports (with more to come). The Commissioners have participated in over 6,500 private sessions with survivors, a number that will rise to 8,500 when their work ends. There is more: a two-volume interim report, many issues and consultation papers (and public submissions to them), roundtable discussions, and speeches by the Commissioners. Even for researchers, it is an overwhelming amount of material to absorb. How we make sense of what is revealed by the Royal Commission’s “three pillars” of private sessions, public hearings, and research and policy will take some time.

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3The concept of the Royal Commission’s “three pillars” was conveyed to the ASSA Workshop by Leah Bromfield (Royal Commission Professorial Fellow) and Andrew Anderson (Manager of Research).
A second reason—and the subject of this article—is that few Australians are aware of the Royal Commission’s place in the international response to institutional abuse of children. For example, how is the scope of the Royal Commission similar to and different from that of other countries? Is its focus on sexual abuse typical or atypical?

One way the Royal Commission differs from almost all other inquiries is that it released its *Redress and Civil Litigation Report* in September 2015 more than two years in advance of the deadline for its final report in December 2017. The *Report* contains the Commission’s “concluded views on redress and civil litigation to ensure justice for survivors”. The Commissioners expedited the *Report* and 99 recommendations “to give survivors and institutions more certainty … and enable governments and institutions to implement our recommendations … as soon as possible”. This was an extraordinary achievement. However, the redress scheme was built on fragile foundations that were created by the government’s terms of reference. Unlike any other government-led redress scheme in the world, it includes different groups of institutional abuse survivors: those who were “in care” and “not in care” and in government and non-government organisations. It also includes both historical and contemporary abuse and that occurring in both “closed” settings (such as residential facilities, homes, and orphanages) and “open” community-based settings. The redress scheme is a world first, but leaves open the possibility of creating injustice.

My paper develops these points:

- The Royal Commission is an atypical case of responses to institutional abuse of children: its subject is narrow (confined to sexual abuse), but it addresses a large set of victimisation contexts and includes different groups of survivors.

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• Immediate concerns with the handling of child sexual abuse allegations by the Australian Catholic Church shaped the government’s terms of reference on sexual abuse alone.

• Care leavers and non care leavers are different groups of survivors, and these differences must be recognised to achieve equitable redress.

Key terms
These terms require definition: institutional abuse, responses to institutional abuse and redress schemes, and care leavers and non care leavers.

Institutional abuse
Institutional abuse of children is a slippery concept and has changed in meaning over time. When David Gil introduced the term in 1975, he defined it expansively as “inflicted gaps in children’s circumstances that prevent actualization of inherent potential”. He had in mind not only “abusive interactions” (acts of abuse), but also “abusive conditions”, policies, and settings with respect to children. In addition to correctional and residential care settings, these were “day care centers, schools, courts, child care agencies, and welfare departments”.  

Labelling and social reaction theories were also brought into the literature. It was not only “physical and sexual maltreatment”, but also “emotional and intellectual damage” caused by institutionalization or a child’s being labelled mentally retarded or emotionally disturbed.  

These expansive definitions of institutional abuse narrowed quickly. By the 1980s, the term referred to physical or sexual abuse or neglect (and at times, cultural and emotional

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abuse) of a child, which occurred in residential and out-of-home care, including in some cases, youth detention. This is the dominant meaning of the term today.

However, in 2000, Bernard Gallagher introduced a third meaning. By institutional he included not only out-of-home care, but also community-based organizations such as “schools, clubs for children and child minders’ homes”. Thus, institutional expanded to include open settings, while abuse contracted to sexual abuse of a child by “an adult who works with him or her” in paid or unpaid settings. Why was sexual abuse the focus? The question is often raised, particularly by those analysing care leavers’ experiences. Gallagher did not give reasons, but I infer that he wished to identify any non-familial context of contemporary abuse of children.

We need to be aware, then, of the temporal context of institutional abuse: is it historical, contemporary, or both? In 2000, the Law Commission of Canada produced the first major socio-legal analysis of historical institutional abuse of children. It defined historical institutional abuse as that taking “place many years ago”. Although imprecise, we can gauge the meaning of historical to be that which occurred in residential facilities for children that have since closed, or to a bounded period of time set by an inquiry or investigation, for which the end date is a number of years in the past. In general, if the focus of an inquiry or redress scheme is historical institutional abuse, it will be concerned with both sexual and physical abuse.

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7 Bernard Gallagher, “The Extent and Nature of Known Cases of Institutional Child Sexual Abuse,” British Journal of Social Work 30 (2000): 797. This is the first publication I have sourced that defines institutional abuse this way, but there may be other earlier ones.  
abuse (at a minimum) of children who were in out-of-home care. If historical is not in the
title, then the temporal context can be historical or contemporary or both. The Royal
Commission has a wide definition of institution to include any type of organisation, in a
closed or open setting, and abuse occurring in historical and contemporary contexts. Two
words in its title, institutional responses, reflect the political forces that brought it into
existence.

**Responses to institutional abuse and redress schemes**

Responses to and redress for institutional abuse of children utilise four justice mechanisms:
criminal justice, civil justice, public inquiries, and redress schemes. Drawing from my
research on 19 Australian and Canadian cases of institutional abuse, 14 cases had criminal
prosecutions that resulted in convictions. The five cases without convictions were redress
scheme only cases (two) or no charges were laid (three). Of the 19 cases, 16 had civil
litigation that resulted in settlements.\(^{10}\)

Redress schemes are a variant of civil justice, but they differ in several ways. As an
administrative process, they have a lower evidentiary standard than civil litigation and do not
make findings of guilt or responsibility. A redress scheme offers victims a potentially faster
and less onerous justice process. A trade-off is that money payments are often lower than
those in civil suits. At the same time, redress schemes contain elements that are not part of
civil settlements: apologies, counselling, medical and dental benefits, and memorials.

Redress schemes may be created not only for abuse (widely or narrowly defined), but
for other types of wrongs I call policy wrongs. By this term, I mean policies or practices that
were directed to particular groups of children (e.g., those with a disability or removed from

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\(^{10}\)Author, text #1, 112-13, 147. One had a significant court judgment for the plaintiff that led
to 900 settlements. All but one case was of children in out-of-home care.
families for government policies of migration and labour) or particular groups of children and adults (e.g., forced assimilation). Thus, redress schemes have been established not only for acts of abuse or conditions of care, but also for policy wrongs. Australian examples are Tasmanian Stolen Generations and South Australian Stolen Generations, which address the policy wrong of forced assimilation of Indigenous children in the two states.

**Care leavers and non care leavers**

Using a distinction made by the Deputy First Minister of Scotland, children can be abused “in care” and “not in care” settings.

Care leavers were “in care” settings, in which there was government or non-government responsibility for the care of children, in the place of a parent (or other adult). The victimisation context was a closed residential facility and foster care. As children, care leavers were made state wards or placed in care by family members.

Non care leavers were “not in care” settings. They had a parent (or other adult) who cared for them. This group is diverse because the abuse they experienced occurred in diverse community-based settings or organisations that provided educational, sporting, faith-based, or other activities for children. The victimisation context is an open setting, where children and adults can come and go freely.

Three points can be made about the care leaver/non care leaver distinction. First, there is variation within groups. For example, some care leavers may identify more as members of the Stolen Generations or former Child Migrants. Among non care leavers, abuse occurred

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11 Author, text #2; see also Author, text #1, 25.
13 Some people today may identify as care leavers, but have been in other circumstances than these.
within faith-based contexts and secular contexts such as swim clubs, scouts, and non-denominational schools.  

Second, there may be overlap between the groups with respect to experiences of abuse by faith-based personnel. In her opening remarks to Royal Commission Case Study 51, Gail Furness said that as of 31 December 2016, about 40% of those attending a private session reported sexual abuse in out-of-home care. Of this group, whom I consider care leavers, their care facility was more likely to be run by a non-government (60%) than government (40%) organisation. Thus, the composition of survivors who were abused by faith-based personnel or in faith-based settings will include care leavers and non-care leavers.

Third, Royal Commission materials on survivors’ abuse experiences and redress outcomes give some indication of context, but the care leaver/non care leaver distinction is not used. In two documents, the categories of “schools” and “educational facilities” are used, which would include care leavers within a larger population of non care leavers. Additional complications arise for children attending boarding schools, which the Scottish inquiry

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14 My appreciation to Frank Golding for clarifying these sub-groups.
16 Furness, Case Study 51 Opening, 3. Government authorities contracted with non-government organisations to run many institutions; thus, lines of responsibility are blurred.  
17 Royal Commission, *Interim Report*, Vol. II, Personal Stories (Sydney: Commonwealth of Australia, 2014) has a section on government and non-government schools, but one needs to read each story to know if it is a boarding school or not, and what type of school. Royal Commission, *Analysis of Claims of Child Sexual Abuse Made with Respect to Catholic Church Institutions* (Sydney: Commonwealth of Australia, 2017) has three context categories, one of which, “educational facility”, would include care leavers and non care leavers.
defines as being “in care” settings. However, for elite boarding schools, few graduates would today consider themselves care leavers.

The Royal Commission: an atypical case

My research team and I are creating a global dataset of responses to institutional abuse of children. By responses I mean, at a minimum, a public inquiry, redress scheme, or both. Civil litigation and criminal prosecution are responses, but to be in the dataset, a case must have a public inquiry, redress scheme, or both.

Today, 20 jurisdictions have engaged in redress responses, and my research now identifies 64 cases, 46 of which have redress schemes. By a case I do not mean a legal case, but a case study of the institution(s) and relevant historical background, the immediate factors triggering a response by authorities that “something must be done”, the response mechanisms and outcomes, and the role and participation of survivor groups in responses. Some cases are of one organisation or closed institution, and others are large, including redress by a state (or province) or country-wide. The Royal Commission is one case in the dataset.

The jurisdictions and number of cases are as follows: Åland (1), Australia (22), Austria (2), Belgium (1), Canada (15), Denmark (1), England & Wales (2), Finland (1), Germany (2), Iceland (1), Ireland (2), Jersey Islands (1), Netherlands (2), New Zealand (1), Northern Ireland (2), Norway (2), Scotland (2), Sweden (1), Switzerland (1), and the United States (2). Australia has one-third of the cases (and redress schemes), and Australia and Canada together comprise over half of cases (and redress schemes). In counting cases, Australia leads the world in redress responses to institutional abuse of children.

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19 My thanks and appreciation to Victoria Meyer, Dannielle Wade, and Mandy Porter.
20 The total includes cases analysed in Author, text #1, plus 45 new ones. The increase in Australian cases stems largely from including responses by faith-based organisations.
Although 64 is a large number of cases, it is an underestimate for these reasons:

- Norway has one national scheme and at least 30 municipal or regional redress schemes; however, the dataset count for Norway is two cases: one each for the national scheme and the Bergen municipal scheme.
- Scotland has a number of smaller council schemes that are not included in the total.
- For the Australian Anglican and Uniting Churches, each is counted as one case, but both churches have a number of redress schemes in a devolved city or regional structure.
- We know of more cases, but information is too sketchy to include them in the dataset now; and we regularly discover new cases.

Of the 64 cases, the types of responses are inquiry only (20%), redress scheme only (41%), inquiry and redress scheme (36%), and other (an inquiry and major litigation, 3%). This distribution alerts us to the fact that the number of cases with public inquiries (37) is smaller than those with redress schemes (46). If we focus only on public inquiries (or redress schemes) to gauge what is occurring, we may develop a skewed understanding of responses. Other features of the 64 cases are as follows:

- responses are led largely by government (81%) compared to non-government (19%) authorities, and all those led by non-government are of faith-based organisations;
- 27% focus on sexual abuse alone;
- 75% focus only on children who were “in care”; and
- the remainder are of children who were both in care and not in care (19%) or not in care (6%).

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21Public inquiries can be defined narrowly or expansively, which affects any count made of them. My dataset does not include smaller council or church diocesan inquiries, whereas other reviews have included these, e.g., *Betrayal of Trust*, Tables 8.1 and 8.2, 199-200.

22The 46 cases do not include two with proposed redress schemes (the Royal Commission and Northern Ireland’s Historical Institutional Abuse Inquiry).
Of the 19% (12 cases), most are led by non-government (faith-based) organisations, although three are government-led.

The Royal Commission is one of two government-led cases that include children both in care and not in care, and abuse in both government and non-government organisations. The other is the Independent Inquiry into Child Sexual Abuse (IICSA) in England and Wales (hereafter British inquiry). These two cases have the broadest remit of all 64. Indeed, the intent of the British inquiry has the broadest scope of all cases—so broad that one wonders if it can be achieved. The Royal Commission is unique in that it is the only case that has proposed a redress scheme for a wide set of contexts and different groups: abuse of those in care and not in care, in government and non-government organisations, in closed and open settings, and for historical and contemporary abuse, although the focus is on sexual abuse.

Why Sexual Abuse? Is It a Trend?

Why did the terms of reference for the Royal Commission specify sexual abuse? With no published government account, we are left to speculate the reasons.

At Prime Minister Julia Gillard’s press conference on 12 November 2012, when she announced an intention to create a Royal Commission, her imagery reflected well-known patterns in faith-based cases: “people being moved around” and “averting their eyes” to what was occurring. What led her to consider an inquiry, the immediate “impact for me” she said, was “revelations in the newspapers … which go to the question of cover-up, of other adults not doing what they should have done”. Thus, her concern was how institutions (read the
Catholic Church) were responding to allegations of sexual abuse. The matter had been building for some time, as revealed in a concluded Victorian inquiry on child protection, an on-going Victorian Parliamentary inquiry, and the announcement of a NSW inquiry on 9 November, three days before Gillard’s press conference.

If, as it seems likely, Gillard’s immediate concern was the Catholic Church, why then did the scope of the inquiry widen to include so many other contexts and types of organisations? One reason, Frank Golding suggests, was to ensure that it did not appear to be a witch hunt against the Catholic Church. Despite the immediate catalyst—cover-ups and concealment by the Catholic Church—Gillard said that a Royal Commission would also be “about children who were in state care” and in the care of non-government organisations other than the Catholic Church. In addition, it would include responses by children’s service organisations and the police. Thus, the scope of the inquiry inexplicably became wider.

When Gillard was asked about whether other types of abuse in institutional settings would be considered, she was decisive: “the focus of this is child sexual abuse. That will be the focus”. Her explanation then (and later, in January 2013) was sketchy and unconvincing. At the January press conference announcing the establishment of the Royal Commission, Gillard said:

… There’s been debate … about how broad this Royal Commission should go … whether or not [it] should direct its attention to physical mistreatment of children or

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25 Prime Minister, Transcript of a Press Conference, Canberra, 12 November 2012.
27 Golding, “Mismanaging Expectations,” 11; Golding’s detailed analysis informs my summary.
neglect in circumstances where there was no child sexual abuse. … But we’ve needed to make some decisions about what makes this process that can be manageable [sic] and can be worked through in a timeframe that gives the recommendations real meaning.28

Some have considered the reasons that sexual abuse becomes a focus in institutional abuse cases. Ronald Niezen analysed the Canadian Truth and Reconciliation Commission’s “Sharing Panels” and “Sharing Circles”, which received and recorded statements from former students of Indian Residential Schools. Although the case includes sexual, physical, and cultural abuse, the “testimony template” for former students was narrowed to sexual abuse, which became a signifier of all that was wrong.29 Shurlee Swain suggests that “inquiries which focus on child sexual abuse are able to attract the public and media attention … because of the dramatic scenario they are able to produce: of innocent children confronting the might of religious and community organizations, whose reputations are visibly shredded … They also claim community attention because not all of the victims are care-leavers”.30

For the Royal Commission, the attention to sexual abuse stems, it would seem, from the immediate political concerns by the Australian Government to address responses by the Catholic Church to allegations of sexual abuse. In turn, as we shall see, non-government-led responses (in my dataset, all these are faith-based organisations) are more likely to consider sexual abuse, not physical abuse or neglect.

Swain suggests there may be an increasing focus over time on sexual abuse in public inquiries.31 I decided to explore this question with my dataset of 64 cases. To do so, I created

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30Swain, “Why Sexual Abuse?,” 94.
three time periods: the first or early one (1979-1999, 33% of cases), second or middle (2000-2009, 25%), and third and most recent (2010 to present, 42%). The results show a U-shaped relationship. In the first and third periods, 32% and 31%, respectively, of cases focused on sexual abuse; but in the middle period, the share dipped to 13%. There is no increasing focus on sexual abuse alone when analysing inquiries and redress schemes.

I then analysed the 37 cases with public inquiries. Nine (24%) focused on sexual abuse alone. From 1979 to 2009, 17% were of sexual abuse; and 2010 to present, the share rose to 32%. The numbers are low (three cases were of sexual abuse in the earlier period and six in the later period), and the shift is not statistically significant; but there is some movement toward sexual abuse alone in the public inquiries in my dataset. I caution that findings on this question will vary, depending on which inquiries are included.

I identified other trends for the 64 cases. The share of care leaver only cases has declined: from 87% (1979 to 2009) to 59% (2010 to present). Care leaver cases are still the majority, but in the more recent period, a growing share is other cases, most of which are non-government-led (all faith-based organisations). Non-government-led cases are more likely to focus on sexual abuse alone (54%) than government-led cases (19%). Plainly, the Royal Commission is atypical for government-led cases.

**The Problem of Justice for Different Groups**

When the Royal Commission canvassed options for a redress scheme, it did not call attention to the fact that no previous redress scheme had been established that encompassed such a wide set of contexts, organisations, victim-survivors, and temporal contexts. No government-led scheme included care leavers and non care leavers. There is little hint in *Redress and*

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32 By comparison, for redress schemes, an identical share of cases (28 to 29%) focused on sexual abuse in each time period.
Civil Litigation Report that the Commissioners struggled with this problem. My aim is to clarify its implications for justice.

The Report recommends three components in a redress scheme: a direct personal response, counselling and psychological care, and a monetary payment. For simplicity, I focus on the payment. The Report reviews monetary payments in previous government schemes in Australia and one in Ireland, statutory schemes for crime victims, and three non-government schemes (Towards Healing, the Melbourne Response, and Salvation Army). All the government schemes were designed for care leavers only, and all but one (South Australian Institutions) addressed both sexual and physical abuse.

The Report recommends a matrix for an individualised assessment of abuse, which is similar to the Irish Residential Institutions Redress Board. It concludes that the matrix “achieves the appropriate balance between fair, consistent and transparent assessment (on the one hand) and recognition of the individual’s experiences and their impact (on the other hand)”. Other types of models were not considered, such a payment based on the number of years a survivor spent in an institution, or combining this type of payment with an individualised assessment of abuse.

The Commission’s matrix has a scoring system with 40% for severity of abuse, 40% for impact, and 20% for additional elements. The 20% component recognises “additional values” if sexual abuse occurred to a child in care or in a closed institution or to a child with a disability, or if physical abuse occurred in conjunction with sexual abuse. This would appear

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33 Critiques of the Irish scheme were not addressed, for example, that it was overly legalistic and time consuming, and that considerable money was spent on legal costs.
34 Royal Commission, Redress and Civil Litigation, 242.
35 Different models and “money logics” in redress schemes are Author text #1, chapter 5.
to provide an opening for care leavers, although it centres on the contexts of abuse, rather recognizing group differences in the experiences of abuse in the first instance.  

Care leavers have objected to the narrow focus on sexual abuse alone. A recurring theme is that “sexual abuse was the least of our worries” and “children were violated in every sense in an institution, and being used sexually was just one of those violations”. Appreciating care leavers’ concerns, I would frame the matter this way. Care leavers and non care leavers are different groups—too different to be subject to the same redress scheme. Perhaps consideration might have been given to two redress schemes, or to two entry streams in one redress scheme. Such an approach was advocated by Care Leavers of Australia, but appears not to have been taken up by the Royal Commission.

Today, care leavers are, on average, less well educated, more likely to be struggling on the margins of society, compared to non care leavers. This puts them at a disadvantage when telling their public victim stories, compared to more highly educated, middle class victims of faith-based sexual abuse. On this point, Swain says that care leavers’ accounts are less compelling than those of children from ‘respectable’ family homes… The lone care-leaver, accompanied only by members of support organisations, makes a poignant figure in the witness box, [but] the more compelling image is the middle-class parent telling the story of their children’s lives sacrificed to paedophile priests.

I would extend Swain’s observation by saying that the abuse of middle class children, living with a parent, may have assumed greater social importance than that of poorer children who

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36By comparison, there is an implied group difference between those with and without a disability.
38Penglase, Orphans of the Living, 145.
39Frank Golding, personal communication, 29 April 2017.
40Swain, Why Sexual Abuse?,” 94.
did not live with a parent and grew up in care. A sole focus on sexual abuse encapsulates these differences, but the problem goes deeper than this. The field of institutional abuse of children and redress is bifurcated: some researchers focus on care leavers, and others, non care leavers, notably faith-based abuse survivors. For these reasons, it can be difficult to understand and make comparisons between them. Group differences may be obvious to some people, but as far as I can see, no one has sought to demonstrate them and their implications for justice.

Why is this task important? I want to be clear and not be misunderstood. My aim is not to suggest that one group “suffered more” than the other, nor that the impact of abuse was greater for one than another. That would be foolish and divisive, and it is not my aim. Instead, my aim is to show in a systematic empirical manner that the contexts and experiences of abuse (here to problematize “abuse” as discrete acts) differed substantially. Further, and although this may be more difficult to demonstrate, survivors’ aspirations for justice and redress are likely to differ. For some, my argument may be interpreted as creating a hierarchy between the groups. This is not accurate for two reasons. First, a hierarchy already exists, to which I seek to call attention and address. Second, the aim is to identify key points of group difference that matter for justice.

The first recommendation in the Redress and Civil Litigation Report calls for a “process of redress” … that provides “equal access and equal treatment of survivors”. My concern is that applying the idea of equal treatment to different groups in a redress scheme can produce injustice. It is useful to think about the equality problem by asking, who is the

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41 It would be important to explore class differences among non care leavers, with respect to conveying a “more compelling image”.
42 Compared to non care leavers, Australian care leavers are more likely to want a care leaver’s version of a veteran’s gold card to access health, medical, and dental services.
43 Royal Commission, Redress and Civil Litigation, 4. Equal treatment for survivors was defined as “regardless of the location, operator, type, continued existence or assets of the institution in which they were abused”.

presumptive survivor of institutional abuse? Who is the person we have in mind? In asking this question, an analogy can be made to feminist research on gender equality, which asks, is the presumptive paid worker or citizen “male”? Can women only be equal to men if they accord with a “male standard”?

I speculate that without intending to do so, the Commissioners’ presumptive survivor and redress scheme applicant was a non care leaver. Despite attention to the 20% for additional elements, the scheme was not designed with care leavers’ experiences in mind. I say this for two reasons. First, is how abuse is legally framed. The redress scheme situates sexual abuse within personal injuries law, which considers the severity of specific acts of sexual abuse and their subsequent impact. However, this legal framing of specific acts is not well suited to those who were in care, for whom the conditions of daily life were structured by insecurity, the ever-present threat of sexual violence living in a sexualised environment, and cruel (and sexualised) punishment. Golding’s submission to Issues Paper 6 on redress schemes illustrates this reality, when he says:

Many of us lived in a state of constant fear that we would be the next victim [of sexual abuse], resulting in a constant state of confusion alternating between relief, survivor guilt, and heightened trepidation. These childhood fears are the most tenacious escorts through life’s journey.44

Second, “the sexual abuse” is wrested from a larger and longer story of the circumstances that brought children into care: being separated from a parent, with a consequent loss of trust, and for some, a sense of betrayal; and being considered and treated as second-class children by institutional staff and stigmatised by society.

The proposed redress scheme may reproduce the second-class status of children in care by according them a second-class status in seeking justice. Or as Golding (2016: 5) puts it, “survivors [will] be silenced, again, and many [will] nurse, again, the feeling [that] their own stories of horrific abuse are considered not worthy …, their abuse somehow inferior”. In fairness to the Commissioners, they were obliged to work within the government’s terms of reference. The die was cast in November 2012 when Julia Gillard attempted to wed her immediate political concerns with sexual abuse and cover-ups by the Australian Catholic Church with a wider project that included many other types of faith-based and secular organisations as well as care leavers. Is there a remedy? Perhaps.

The redress scheme is undergoing review by the Redress Advisory Council, and its work will be an initial step in a longer political and deliberative process. Ahead are legal, ethical, and practical questions of how a redress scheme will be implemented, that is, how it will work in practice, on the ground. Detailed operating guidelines will be required for eligibility, application, assessment, and decision-making, even with legislation in place.

During implementation, redress scheme activities will need to be examined with these questions in mind. Are differences between care leaver and non care leaver groups taken into account? Is the presumptive survivor or applicant a non care leaver? In what ways does a care leaver seem not to “measure up” to a particular standard? The 20% for additional elements may provide an opening for these conversations and for recognising differences in care leaver and non care leaver groups.

At all phases of developing and implementing the redress scheme, explicit recognition should be given to differences in care leaver and non care leaver cases. Although I have focused on the monetary payment, differences will be evident in the direct personal response, for which many care leavers will seek access to institutional records. We may also find

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differences in the desired forms of counselling and psychological care. To achieve justice, decisions need to be made with the recognition of group differences. If different groups are subject to “equal treatment” without recognising relevant differences, the likely result will be injustice.