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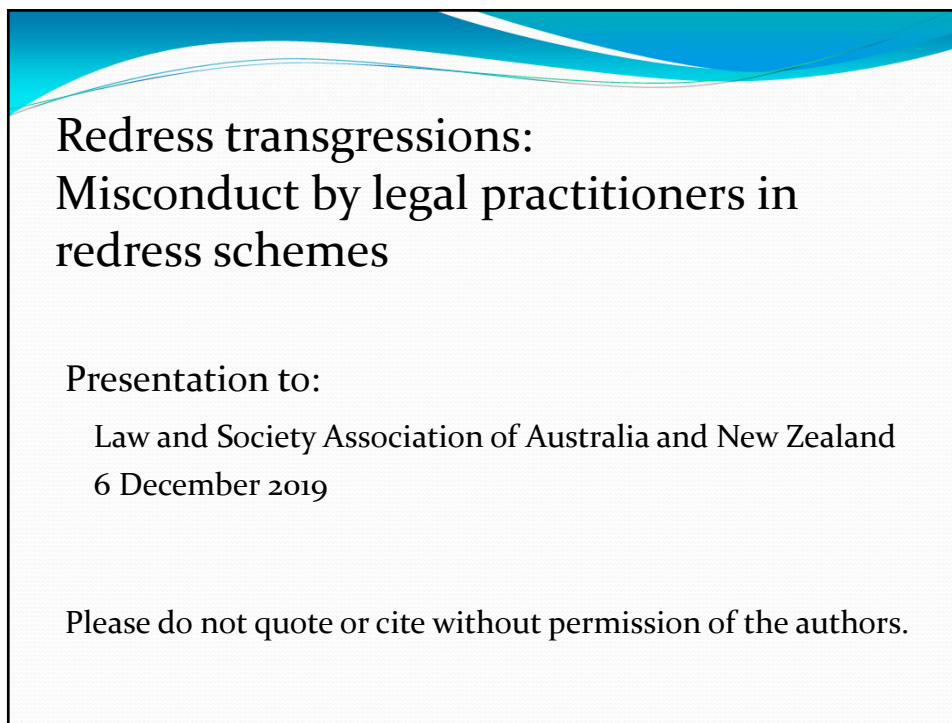


Redress transgressions:
Misconduct by legal practitioners
in redress schemes

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Overview

This paper examines:

1. The good that lawyers can do for redress
2. The harm that lawyers can cause in redress
3. Potential safeguards against bad legal actors

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(1) The good that lawyers can do

Lawyers can support and advance survivors' justice interests as:

- transformation agents (Felstiner, Abel, and Surat, 1980-81)
- policy drivers
- advisors

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Comparing schemes

| | Maximum payment (AUD) | Average payment (AUD) | Claimants | Treatment of legal costs |
|------------------|-----------------------|-----------------------|--------------------|--|
| Ireland (RIRB) | \$441,000 | \$91,508 | 15,579 (validated) | paid by scheme |
| Canada (IRS-IAP) | \$430,000 | \$96,802 | 31,186 (validated) | 15% of claim paid by scheme + up to 15% paid by claimant |
| Australia (NRS) | \$150,000 | \$80,466 | 60,000 (eligible) | free legal service |

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- ## (2) The harm that lawyers can cause
- Redress honeypot can raise ‘the spectre of inadequate representation’ (*Fontaine v Canada (Attorney-General)* 2015 BCSC 717)
 - Misconduct by legal practitioners
 - overcharging
 - inappropriate solicitation and disclosure
 - unfair loans
 - application manipulation

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(3) Potential safeguards

- Increase in regulation of the legal profession
 - Clear practice standards
 - Professional oversight, including a complaints mechanism
- Reduce legalism
 - Simplify redress procedures
 - Increase scheme transparency

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Implications

- Entry of private lawyers into Australia's national redress scheme may result in the exploitation of survivors
- Australia can learn lessons from the Irish and Canadian experiences
- Steps to deter and detect bad legal actors include:
 - Improve the regulation of the legal profession
 - Reform the scheme to reduce complexity

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