



CARE LEAVERS AUSTRALASIA NETWORK

CLAN is a National, Independent, Peak Membership Body which supports, represents and advocates for people who were raised in Australian Orphanages, Children's Homes, Foster Care & Other Institutions.

**Care for New Zealand Care Leavers:
Don't make the same mistakes as
Australia!**

**Redress Submission to the Abuse in Care
Royal Commission of Inquiry New Zealand**

CLAN - Care Leavers Australasia Network is a national, independent, peak membership body which represents and advocates for those who were raised in Australia and New Zealand's Orphanages, Children's Homes, Missions and Foster Care. There were more than 500 000 children in Australia who grew up in 900 plus Orphanages, Children's Home, Missions and foster care. CLAN's main objective is to assist and support Care Leavers and their families through the wide variety of work we do including but not limited to advocacy, counselling, casework, records searching and publishing Care Leaver's stories.

CLAN would like to thank the New Zealand Abuse in Care Royal Commission of Inquiry for giving us the opportunity to comment on your consultation regarding redress schemes. CLAN would also like to take this opportunity to applaud you for investigating ALL types of abuse and as a result the inclusion of ALL Care Leavers. CLAN have been supporting and assisting New Zealand Care Leavers for many years now. Our first ever New Zealand Care Leaver member was Rhonda Jankovic in 2008 who spoke to us about the atrocities committed against her and other children in Lake Alice. Rhonda has since died and we hope that your Royal Commission will achieve some sense of justice for her and others like her.

CLAN felt it necessary to comment on your consultation as the current National Redress Scheme in Australia has failed to meet the mark and as a result is only serving to retraumatise the Care Leavers it is meant to be assisting. It is our hope that by examining and learning from the failings of the Australian Redress Scheme, you will have more success in providing a fair and equitable redress process to New Zealand Care Leavers in a way that does not further damage their already fragile mental health.

The Creation and Administration of an Independent Redress Scheme

In creating any redress scheme, the priority needs to be the mental health of the group it is targeting, in this case Care Leavers. Redress is supposed to provide a means of recognising and acknowledging the harm that has been done. If a redress scheme is causing it's own harm, it is being administered wrong. Therefore, CLAN are of the strong belief that any redress scheme the New Zealand Government establishes needs to not only provide acknowledgement and compensation/reparations, but it needs to minimise the negative impact the scheme itself has on Care Leavers to effectively remedy the wrongs of the past. No amount of compensation will ever change the way a Care Leaver feels or has been affected by others wrongdoings, however an effective redress scheme can give Care Leavers an opportunity feel a sense of recognition, acknowledgement and a semblance of justice, helping them to move forward in their lives. This needs to be the objective of ANY redress scheme.

Furthermore, the other purpose of a redress scheme is to provide an easier option than pursuing justice and compensation through civil litigation. Having a tailor-made scheme which understands the needs of those seeking redress/compensation and preventing them from having to go through the tumultuous process that civil litigation requires them to (long delays, psychiatrist assessments, attending court, being cross-examined and undermined etc) should be the best option. However, this is only true if the redress scheme is created in a way that meets its purpose and is effective.

Unfortunately, the current National Redress Scheme (NRS) in Australia is not meeting these objectives. It is creating its own harm by retraumatising Care Leavers by poor set-up, management

and defective administration. The red tape surrounding the NRS has been enormous and policy has been created on the go causing immense delays leading to the decline of Care Leavers mental and physical health, with many Care Leavers dying before they have received their outcome/payment. With proper and careful creation and management the New Zealand redress scheme does not have to repeat the mistakes of the Australian NRS.

Firstly, for a redress scheme to operate fair and equitably for all New Zealand Care Leavers it needs to be independent and on a national level. Anything less will provide disadvantage to certain groups. Obviously in creating something independent it will need to be overseen and funded at a federal government level. The government needs to be responsible in funding the Independent body as well as support services to assist Care Leavers throughout the redress process. This may also involved funding free legal advice for Care Leavers who need it. The government should then bring together ALL government agencies and church and charitable institutions to contribute to the redress scheme. Whilst the idea of the Australian NRS was good, it unfortunately allowed institutions and past providers of care to 'opt-in'. This was the biggest farce and has been the number one cause of delay and defective administration within the NRS. It has caused significant mental and physical health decline for many Care Leavers and has only served to retraumatise them. In creating an independent redress scheme, the independent body MUST ensure that ALL past providers are on board before the scheme begins. Two years after the scheme initiated in Australia, we are only now discussing sanctions for those who haven't joined. These need to be discussed and implemented before the scheme begins to prevent the same issues Australia has had. By penalising past providers, removing tax concessions and funding, most agencies/institutions become more compliant with regards to joining the redress scheme.

The redress scheme itself should ONLY be funded by these bodies but administered completely independently and be subjected to periodic review. This independent body will have full responsibility to assess applications and provide outcomes by holding institutions responsible.

In terms of how the scheme should be administered regarding options of a brief quickly resolved assessment vs extensive longer to resolve assessments, CLAN believes that the ideal redress scheme should be an optimal in between of these options. In Australia, one state based redress scheme (Western Australia) offered a system similar to this, but it left many Care leavers feeling unsatisfied. We shouldn't be offering a sub-standard service based on the fact that it will be easier and perhaps less traumatic to the Care Leaver. If the Care Leaver is choosing to go through the redress scheme than they should receive full acknowledgement and full payment in the most expeditious manner possible.

CLAN are also of the belief that a redress scheme for Care Leavers should include ANY and ALL types of abuse. **There is more than one way to harm a child.** In fact there are many ways, all of which were perpetrated upon children in care. Many of these harms were, in fact, crimes. Physical abuse, torture, psychological abuse, neglect, child slave labour, the loss of family and identity, and yes, sexual abuse. All of these heinous crimes were committed upon our most vulnerable children. Children who had no one to turn to; no one to tell. These crimes can be charged and prosecuted, and therefore SHOULD be included in a redress scheme.

CLAN have always been an advocate of redress schemes being open-ended. However, generally most governments do not see this option as being feasible. Our second preference is that redress schemes are left open for a long period of time, allowing for the majority of Care Leavers to come forward. This needs to coincide with mass information dissemination to ensure that those living in more isolated or segregated areas or as part of vulnerable groups have access to this information.

This includes disseminating information widely in Australia and other parts of the world where New Zealand Care Leavers have emigrated to.

Furthermore, we also believe that it should not be a requirement of the redress scheme that an applicant is a New Zealand citizen. Australia have instituted this ruling which is incredibly unfair to all of those Care Leavers who have left Australia in an attempt to escape their horrific memories and start a new life for themselves. It is common for many Care Leavers to leave from the place/area where they were brought up and move somewhere entirely different, whether it be a couple of suburbs away, interstate or overseas. Crimes were committed upon these Care Leavers despite where they now call home or are now a resident of.

Similarly, CLAN also believe that those who have a criminal history should be eligible for redress and shouldn't have to fill in separate forms or be treated differently as they are in Australia. Many Care Leavers have criminal histories, and for many it is a direct result of the crimes committed against them as children. Many children repeated the behaviour that was role modelled for them, and others turned to the streets and other ways of life as an escape from the Homes. Please redress these Care Leavers for the crimes committed upon them, and not hold it against them that they acted out because of these crimes.

Those who have obtained compensation from other sources should still be able to access the redress scheme. If the situation in New Zealand is in anyway similar to Australia, it was commonplace for church and charitable institutions to take advantage of legal loopholes and Care Leaver vulnerabilities. This resulted in many Care Leavers receiving measly and minute payments and signing deeds of release enabling the institutions to get away with once again abusing Care Leavers. Luckily through the redress scheme in Australia these deeds of release are no longer viable and Care Leavers may apply for redress but have any prior payments considered. CLAN are however angry and disgusted at the way in which these payments are considered. The amount itself is not just taken into account but indexation is applied and inflates these amounts greatly. Many Care Leavers have had to wait decades for a redress scheme and they are being penalised for the length of time it has taken to establish one. Moreover many Care Leavers have not had the luxury of putting these prior payments in the bank and watching them appreciate, they simply used them at the time for necessities and to just get by. Taxing these payments is cruel and once again creates more trauma for this already vulnerable group.

CLAN has also advocated for the families of those who die during the redress process to receive the redress outcome on behalf of their Care Leaver family member. CLAN would go a step further and endorse the families of dead Care Leavers being able to apply for a redress payment on behalf of their Care Leaver family member. Through CLAN's own research it has been demonstrated that there are indeed profound intergenerational effects of a childhood in care. Many Care Leavers discuss with us wanting to have something to leave their children or grandchildren and in many cases this redress payment may be the only asset they have. Whilst family members have no other access to redress in Australia, CLAN do believe that the families of Care Leavers are often overlooked and the intergenerational effects should be acknowledged and addressed. Therefore, we would also suggest if possible, offering a monetary payment as well as a range of non-monetary redress options to Care Leavers families such as counselling, healthcare and educational services/supports and perhaps social services like housing assistance.

Monetary Payments

Monetary payments should be at the forefront of the redress scheme. Whilst other forms of redress are important and necessary the monetary payment needs to be the priority. CLAN understand it can be difficult to determine how much the monetary payments should be, but the amounts need to reflect the crimes that were committed upon innocent, vulnerable children. If these crimes were compensated for in court payments can range from the hundreds of thousands into the millions. In May this year John Lawrence, a Western Australia Care Leaver was awarded 1.3 million dollars for the abuse perpetrated on him by the Christian Brothers in Clontarf and Castledare Boys Homes in the 1950's. This is the type of payment that all Care Leavers should be entitled to!

Obviously in a redress scheme the aim is not to provide the maximum level of compensation that would be given in court, however, it needs to be large enough to compensate, acknowledge and make the whole redress process worth it. For many Care Leavers undergoing the Australian NRS the feedback we have received is that the payment does not reflect the difficulty of going through the NRS or make the process 'worth it'. The maximum payment in Australia is \$150 000 and is not being given to many Care Leavers. As a result, the difficulties, red tape, delays and administrative failures have resulted in many Care Leavers turning away from the redress scheme and towards civil litigation. This defeats the entire purpose of a redress scheme which should be making it easier for Care Leavers to access an adequate amount of compensation.

In a survey CLAN conducted in 2014 of our members, we asked what they believed a 'fair' amount was, with the most popular response being between **\$100 000 and \$250 000**. From the latest feedback we have received after the commencement of the NRS CLAN believes that the majority of Care Leavers would be happier looking toward the **\$250 000** mark, if assessed at the highest level.

Another option New Zealand may want to consider is what the Scottish Government has implemented; a priority access scheme which allows those who are elderly or terminally/extremely ill to access a base payment quickly. The paperwork involved in this is very minimal and not intrusive at all. This allows these vulnerable groups to access a quick payment whilst waiting for a proper assessment in case something happens in the meantime. CLAN has utilised this scheme for one of our members and applauds the ease of use and expeditious nature of the scheme.

Types of Redress

Whilst monetary payments should be the priority it is vital that a redress scheme offers other services that can help Care Leavers feel acknowledged and have their hurt and trauma addressed.

Other possibilities for redress options that New Zealand could include in a Redress Scheme are:

- Counselling
- Apologies
- Access to records
- Healthcare services
- Funeral funds
- Reunion funds
- Other social supports eg Housing

CLAN were huge advocates of all of the above being included in the Australian NRS however we currently only have the offer of a redress monetary payment, counselling and an apology. It must also be remembered that the NRS is not a care or Care Leaver specific scheme and so many of these

other redress options wouldn't be as applicable to others who are abused as opposed to those raised in institutional care.

Civil Litigation

As CLAN are Australian based, we are not familiar with the New Zealand legislation surrounding civil litigation in cases of abuse in care. In Australia there were several factors which prevented Care Leavers from accessing compensation through civil litigation and which in the past provided leverage for institutions to offer measly settlements. This is why having a fair and equitable redress scheme was of the utmost importance, as there were also legal barriers preventing Care Leavers from seeking compensation civilly.

The main factors in Australia which may also be an issue in New Zealand were:

- Statutes of Limitations/Limitation periods on bringing child abuse/sexual abuse actions
- Having a Proper defendant. Issues with institutions being unincorporated and assets being held in various property trusts/other trusts etc.
- Vicarious vs absolute liability.
- Historical factors and Care Leavers not having uncensored access to their own files.
- Overturning Deeds of Release.

Australia has worked to amend most of these issues in many of our jurisdictions. Addressing these issues goes a long way to giving Care Leavers a choice of which pathway to take – Redress vs civil litigation. Civil litigation in general though still has many downsides due to its adversarial nature that will not change and this is why having a redress scheme is of great importance.

Conclusion

CLAN would once again like to thank the New Zealand Abuse in Care Royal Commission for giving us the opportunity to comment on your consultation regarding redress schemes for abuse in care. We hope that in giving you some insights into the inadequacies of the Australian National Redress Scheme you can make more informed decisions regarding the wellbeing and care of the New Zealand Care Leavers you will be providing redress to. You now have the opportunity to make an enormous difference in the lives of New Zealand Care Leavers who were changed forever by the abuse they endured whilst in care.

Inform Care Leavers about exactly what they can expect and how long the redress process will take, do not cause delays by conducting forensic investigations. Crimes against children in these institutions were common place and it has been well established that they occurred more often than not. Do the honourable thing and believe Care Leavers, do not investigate them. Please do not repeat Australia's Redress mistakes and retraumatise Care Leavers, the very people you are meant to be helping. By being Care Leaver and trauma informed and making decisions in the best interests of the people you are attempting to redress you will be giving Care Leavers a wonderful chance to feel justice and to be heard, for most, for the first time in their lives. Please do not disappoint them.

CLAN would happily be of assistance to both the New Zealand Abuse in Care Royal Commission and a New Zealand redress scheme if and when it eventuates. CLAN have supported many New Zealand Care Leavers who now reside in Australia and would gladly assist by disseminating your

information to many of our New Zealand members as well as providing assistance and support to complete the redress process. CLAN is also aware that there are many New Zealand Care Leavers in Australia who would welcome the opportunity to have a private session with the Abuse in Care Royal Commission if it decided to visit Australia. Please feel free to contact CLAN if we can be of assistance to the Abuse in Care Royal Commission or a New Zealand Redress Scheme in any way.