



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.

Please Do Not Repeat Australia's Redress Mistakes!

**A Submission to the Scottish
Government: Pre-Legislative Public
Consultation on Financial Redress for
Historical Child Abuse in Care**

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 Scottish Government for giving us the opportunity to comment on your consultation regarding financial redress for historical child abuse in care. 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 the failings of the Australian Redress Scheme, you will have more success in providing redress to Scottish Care Leavers in a way that does not further damage their already fragile mental health.

Eligibility for Financial Redress Scheme

Firstly, CLAN would like to applaud numerous aspects of your proposed Redress Scheme. The Scottish governments understanding that Care Leavers are ageing or ill, and many are dying before they receive any form of redress, compensation or acknowledgement for the abuse and suffering they endured is commendable as is your willingness to allow access to financial redress and expedite payments for elderly and sick Care Leavers prior to the scheme commencing. Unfortunately, the Australian Redress Scheme has not been as forthcoming with our most vulnerable Care Leavers. Many are still waiting for an assessment more than 18 months after our scheme's commencement.

Secondly, CLAN have always advocated for an Australian Redress Scheme for **Care Leavers**. The Care Leaver experience is a unique one and we feel that children in care are placed in a particularly vulnerable position. Furthermore, the government was (and is) the legal guardian of children in care and they are the ones entrusted with the safety of these children. Children in care have on many occasions already been abused, are then separated from the only family they know and are now at the mercy of the state. This process, and the special role that governments play in state care should be enough for Care Leavers to fit into a special category with a Redress Scheme designed specifically for them. However, the National Redress Scheme in Australia is an all-encompassing scheme for anyone who was sexually abused as a child in institutional care. This of course has meant that the scheme has not been tailored to the unique needs of Care Leavers, but it has also resulted in many more applications for redress being received than of course would have if the scheme was for Care Leavers only.

Furthermore, the Australian National Redress Scheme is for sexual abuse ONLY. Whilst many Care Leavers were sexually abused, those who weren't have been excluded and re-traumatized with no options for redress or compensation for the pain, abuse and neglect they endured whilst in the care of the state. CLAN are pleased to see that the Scottish Government intends to use an all-encompassing definition of abuse and not just include sexual abuse. CLAN also believe it is of the utmost importance that the witnessing of abuse and crimes committed upon other children, and the vicarious trauma that this then inflicts upon a child is also recognised as abuse. You have the opportunity to provide some sense of justice to Care Leavers who were raised in Scotland, please

don't minimise their experience as Australia has done by excluding the overwhelming abuse they suffered that wasn't of a sexual nature.

CLAN are also glad to see that you are not excluding those with a criminal conviction, as has been done to a certain degree in the Australian redress scheme. It is our belief that many of those with criminal convictions made bad choices, some of which may be a direct result of the abuse they suffered as a child in care. Whilst there have been no exhaustive studies done, CLAN is of the belief that there is a strong correlation between being in care and spending time in prison or having some sort of criminal conviction. We are aware of some of the concerns regarding giving financial redress to those with a criminal conviction, however, it is our belief that they are as entitled to financial redress as other Care Leavers. What happens to that redress, and if other victims can access that once the Care Leaver receives it is another matter.

CLAN are also of the belief that any child migrants who suffered abuse in Scotland should be eligible for financial redress from the Scottish government. CLAN are at least grateful that the Australian National redress Scheme has allowed Child Migrants to be eligible.

Lastly, with regard to 'historical' abuse and placing an arbitrary date from which Care Leavers can apply, CLAN suggests reviewing your own legislation and policies/regulations which would allow Care Leavers to seek compensation in other ways. In Australia, many states had statute of limitations legislation which prevented abuse claims being brought or even charged after certain time periods. We recommend reviewing key dates and legislation which would allow Care leavers to seek justice and compensation in other ways that do not encounter the difficulties historical cases do.

Payment Structure, Evidence and Assessment

First and foremost, CLAN would like to emphasise the importance of those who design and administer this scheme to understand the difficulties Care Leavers can have in accessing their records, and thus any evidence for their redress application. Whilst we are unaware of the particular situation or limitations in Scotland, in Australia there were a great many Orphanages and Children's Homes who kept little to no records at the time, and many who did the records were lost or destroyed.

Many Government Departments whose responsibility it was to keep these records have claimed that the records have been lost in natural disasters like floods and fires. Without these records there is sometimes no way for a Care Leaver to 'officially' prove they were in care. Understanding this and having a belief system, and a back up plan for those who have no proof of care will go a long way to making sure that Care Leavers are not retraumatised unnecessarily. Please remember for some of them the loss of their records is another abuse, it is the only link to their childhood and any semblance of their link to family and identity.

For those organisations who may hold relevant documents but like to place a lot of unnecessary red tape around these files, CLAN wholeheartedly believes that the redress scheme **should have the power to subpoena these files**. Why should these institutions be allowed to hide behind red tape and policy to protect their own misgivings? Furthermore, we encourage you to make the process of producing documents after a subpoena an expeditious one. In Australia they have given institutions 6 weeks to reproduce documents and even after that these past providers can still request an extension. This only serves to slow the process more than is necessary.

If you intend to proceed with a two-stage application CLAN believe that for the Care Leavers sake, stage one should involve no more than a signed declaration. In both QLD and Western Australia, their redress schemes provided for multiple levels of payment and application. Many Care Leavers took up this offer as they did not feel capable of disclosing or addressing their abuse in a redress form. We believe it would be pointless from a Care Leavers perspective having a stage one process that involves going into any sort of detail regarding their abuse. For others who are ready and able to divulge the necessary details about their abuse, they can then apply for a Stage 2 payment which would of course require more information.

CLAN have encountered in the Australian National Redress Scheme an overarching feeling that Care Leavers are not automatically believed. The Australian Redress Scheme seems to take a risk aversion approach and has a deep-seated belief that Care Leavers will defraud the scheme, thus imposing unreasonable burdens upon the Care Leavers they are meant to be redressing. We hope that in conducting your Redress Scheme one of your basic principles is to **believe** the Care Leavers who are applying to the Redress Scheme. We feel it is fair to say that the establishment of this Redress Scheme is a basic acknowledgement that many bad things happened to children in care. Why then is it of the utmost importance that they must provide a certain level of proof to get a redress payment?

By nature of a redress scheme it is meant to be an acknowledgment of what has happened and is established because of the difficulties in pursuing justice and compensation through other legal mechanisms. If Care Leavers wanted to gather and supply relevant evidence, fill out arduous forms, and discuss their worst experiences with total strangers, surely they would seek out a solicitor to take a civil claim for compensation rather than do all that for significantly smaller dollar values than civil claims usually result in. We are aware of Care Leavers who have decided to forego the redress process altogether because of its difficulty.

CLAN believe the process needs to be Care Leaver informed and focused which means being flexible with their needs, something the Australian Redress scheme has not demonstrated. The Australian Redress application form is 33 pages long. It is a long arduous form to fill out and an incredibly difficult process. CLAN are currently supporting one of our members through this process who has been asked to re-submit her Statutory Declaration four times! The forms are not easy for Care Leavers to follow and the banality of missing a year or something as simple has caused this Care Leaver a huge amount of re-traumatisation as her forms have still not been accepted. Those who administer the scheme need to allow flexibility for unimportant information and actually be Care Leaver focused, not act in a way that causes more trauma to those you are meant to be assisting as the Australian scheme has done.

We believe that Care Leavers should be able to give their evidence either orally or through a written description, whatever is easier for them. Literacy levels amongst many Care Leavers are low and considering many Care Leavers were deprived of a proper education, many do not feel comfortable filling out long forms. Additionally, we believe that if the Care Leaver has given evidence to another body where it has been recorded this evidence should be allowed to be used instead of having to document it all over again. This process needs to be Care Leaver informed, not what is easiest for the Government and those who work within the redress scheme.

CLAN believe each redress application needs to be assessed on a case by case basis. Whilst the length of time in care is a very important factor, there are also other things to consider. The abuse itself, the impact of the crime, the role of the government and churches and charities and others in charge in allowing, overlooking and concealing that abuse, the separation of children from their

family (including shipping Scottish children to Australian and New Zealand) and their identity, the withholding of records, letters and contact with family. Not all factors and their impact will be dependent on the time spent in care so it all needs to be factored in and judged on each individual case.

CLAN are of the strong belief that in conducting this scheme, ensuring equality amongst Care Leavers is of great importance. That means that anyone who has received a prior payment should still be eligible for a redress payment up to what other Care Leavers are entitled to in the redress scheme. We urge the Scottish Government to avoid indexing prior payments as the Australian Government is currently doing. Effectively this has made top up redress payments inaccessible for many Australian Care Leavers due to another bureaucratic process. However, CLAN does believe that if someone has a prior payment, then priority needs to be given to those Care Leavers who have not received any monetary payment.

The purpose of a redress scheme is to acknowledge, apologise, and provide some sort of service or monetary value. Redress schemes do not provide enough money to adequately compensate someone for their actual abuse, the impact it has had, and any losses which are associated with these crimes. CLAN believe it is unfair to make Care Leavers choose which route to go down in order to obtain justice.

Making an Application

In Western Australia, there was a state wide redress scheme that ran for 4 years. Many Care Leavers missed out. Whilst 4 years seems like a long time, it really is not enough time for those who have suffered this kind of trauma to come to terms with, and prepare themselves for applying and to go through the process, and that is if they are aware of it. Many others have chosen to isolate themselves, they purposely shut off from media outlets where the redress scheme may be commonly advertised. Many Care Leavers are incarcerated and are not made aware of their entitlements when in prison. Many other Care Leavers who are isolated have chosen not to be part of a support group or have contacts with organisations who may be able to pass this information on.

This was certainly the case for many of our members who once they had found out about the WA redress scheme it was too late. Included in this was a 93 year old UK Child Migrant who was completely unaware of the Redress Scheme. Once she was made aware she attempted to make an application but was unfortunately too late. Even with advocating through CLAN and appeals to the WA State Government, this elderly Care Leaver was declined due to an arbitrary date cut off. There are also many other elderly who are living in aged care residences and who have completely withdrawn from the outside world. If those caring for them do not understand what or who Care Leavers are, or if they haven't disclosed that they are a Care Leaver, then the information is often not passed on and it doesn't reach them. **In short, CLAN firmly believe that the time period that the redress scheme should be open for should be longer than 5 years, if not indefinitely.**

With regard to practical help, as previously mentioned CLAN believe that where possible the redress scheme should assist Care Leavers to obtain records and relevant information. Whilst we cannot comment on the difficulties in obtaining records in Scotland, in Australia there can be a lot of red tape preventing Care Leavers from receiving their records. Any assistance the redress scheme can offer to obtain documents that Care Leavers otherwise cannot get would be beneficial.

CLAN also support the establishment of funded legal advice tailored to Care Leavers throughout this scheme. The legal advice should be free to access during any point throughout the application process. This may happen through Legal Aid or may involve a new body being established specifically for the purpose of this redress scheme. Whatever route is taken those working to provide legal advice should have mandatory training and be trauma informed as well as Care Leaver informed.

Next of Kin

Firstly, CLAN would like to thank you for recognising the intergenerational trauma and pain of having a family member, spouse/partner in care. Regarding next of kin, CLAN believes that they should be entitled to access some form of redress if their parent/spouse has died. Many of our members express the desire for their family to be entitled to something if they pass away in the meantime. For some it is a cause of anxiety that their family won't get anything if they haven't completed their forms in time. For many Care Leavers, the redress money is about having something to leave to their family, making sure their funerals are paid for and that any debts are paid not leaving any financial burdens behind for their loved ones to deal with. All we ask is that when processing these claims it is completed fairly and reasonably making sure all children of a Care Leaver are given the redress money equally.

CLAN wholeheartedly support these wishes and understand the nature of this desire. We do however believe, and advise that when determining how much, and when redress is paid to Care Leaver's families, that Care Leavers who are alive are given priority and that their applications are processed expediently whilst next of kin applications should be left till Care Leavers have first been processed.

Financial Contributions

CLAN strongly advocate for past providers of institutional care to contribute financially to the redress scheme. We do however discourage the Scottish Government from using the Australian model where past providers can 'opt – in' at their leisure with zero repercussions for declining. Only recently the Tasmanian Premier Will Hodgman gave notice to all organisations in Tasmania, particularly Kennerley Children's Home (Kennerley Boys Orphanage), that their funding will be reduced incrementally until they joined the National Redress Scheme. Thankfully due to the Premier's strong stance, the board of Kennerley Children's Home finally saw sense and joined the National Redress Scheme. ALL churches and charities who are Redress laggards should have their tax concessions cut if they do not financially contribute to the redress scheme.

Instead, at present, there are a large number of Care Leavers who have gone through the grueling process of filling out the application form, only to be left waiting in limbo because one of their care providers have not yet 'opted- in' to the redress scheme. Theoretically someone can be left waiting for the entire duration of the scheme after filling out ALL the paperwork because one or more of their institutions have NOT yet joined. Care Leavers are then faced with the impossible decision of withdrawing their application and reapplying, only outlining the abuse which happened at institutions which have 'opted-in'.

The fact a redress scheme can exist to remedy the injustice that Care Leavers endured, only to leave them with these unjust options has to be labelled a farce.

CLAN believe that in order to make any redress scheme fair and equitable to ALL Care Leavers, the Scottish Government will need to shoulder the burden for those institutions who don't/can't contribute and be the funder of last resort. Federal Government's also shoulder their share of blame, even if they are unwilling to acknowledge it. For example, in Australia, the Federal Government paid child endowment straight to the state government, churches and charities who ran Children's Homes and Orphanages. They paid this money without ensuring it was actually used to maintain and provide for the child in the way it was intended. The Federal Government needs to shoulder its part of the blame in its lack of oversight regarding the use of its Federal funding.

Perhaps the best way going forward is that the government makes all initial payments and the institutions are then required to pay the redress scheme back for their share of redress payments. Whilst this may not seem desirable to the Scottish government to use tax payers money, many redress schemes in the past have operated without requiring the churches and charities at fault to provide a financial contribution to the redress scheme. If the Scottish Government provides the right incentive to these past providers i.e. cut funding or tax concessions most of these providers will contribute. Unfortunately, there will always be some past providers who won't or can't. Perhaps they don't exist anymore, or for the smaller ones have little to no assets/finances to fund redress payments. In these cases the Scottish Government has to be prepared to make up the shortfall without being refunded.

Please DO NOT follow the Australian model of the National Redress Scheme allowing organisations to opt in of their own volition. It is unfair, unjust and iniquitous completely contradicting the purpose of setting up a redress scheme in the first place. If ALL Scottish Care Leavers cannot have access to a redress payment there is no point developing a Redress scheme.

Regarding other forms of reparations, the Scottish government and past providers need to work together to give Care Leavers as much access to their records, files, and information regarding their childhood as possible. This needs to be easily accessible and unredacted. It is a human right to know your identity and for some Care Leavers this is the only history or information they have regarding their childhood. Additionally, they should be assisted to trace their families if they wish and have any other records regarding their family history tracked down. Monetary support for counselling should be made available to a provider of the Care Leaver's choice, as well as case management to assist the Care Leaver with any other necessary supports, i.e. Housing and social welfare.

In terms of an apology, if the Care Leaver would like one than it should be offered. However, many Care Leavers are past this point and now want nothing to do with the churches, charities and the government. Apologies at this stage for many Care Leavers mean very little and coming through a redress scheme can seem to be forced. Many Care Leavers do however have an interest in knowing that the awful crimes committed upon them will not happen to children in the care system now or be repeated again in aged care facilities. For most Australian Care Leavers this is one of their greatest fears that they will be re-abused in aged care by the same people who ran the Children's Homes and Orphanages. If the Care Leaver chooses to receive this information it should be given to them, what their respective past providers (if still a current provider of care) are doing to prevent the same atrocities occurring again. This should also include what the government are doing to stop abuse in the child welfare system also.

Scheme Administration and Wider Reparations

Those in charge of administering the scheme and making decisions regarding the assessment of applications ALL need to be trauma informed as well as Care Leaver informed. Whilst it may be beneficial to have someone with legal expertise on your panel, if they have no idea about the effects of trauma or what the Care Leaver experience is then it is counterproductive. It must also be remembered that one of the reasons for implementing a redress scheme is because of the difficulties for Care Leavers if they wanted to pursue a civil legal claim against their past provider/abuser. Therefore, legal issues should not be the focus when determining the outcome of applications. It will be more beneficial to have individuals who have an understanding of complex trauma, the history and suffering of Care Leavers and who are coming from a human rights perspective.

It is also important that Care Leavers are given a voice in the administering of the scheme. Having a panel made up of qualified Care Leavers to serve as an advisory board throughout the whole process from application to outcome will ensure the Care Leaver voice is not forgotten as it certainly has been in the current Australian scheme.

Wider Reparations

CLAN are unaware of what services currently exist solely for Care Leavers in Scotland. Whilst we agree that wider reparations should be made available, many Care Leavers would feel uncomfortable receiving these services from the past provider or the government. Perhaps it would be better that a separate service be established which was run independently. This service would oversee administering the wider reparation services and catering to the needs of Care Leavers while sourcing the allotted funds from the government and the past providers.

For many Care Leavers having to access services in the same building as redress may prove to be triggering. The pain associated with obtaining redress should be kept separate to an ongoing service designed to assist Care Leavers with their needs. It should be established separately and perhaps be a more homely environment than Government buildings tend to be.

With regard to accessing the wider reparations, we do believe that wherever Care Leavers are concerned the elderly and ill should always be given priority access. They are on a timeline, and the information or help they could get before they die through other reparations could be life changing. They deserve to have access to this service and all the benefits it can offer before they die.

For those living outside Scotland, accessing wider reparations, depending on what it is may prove difficult, but it should be attempted. Those who have left Scotland are still in as great a need as those who reside within Scotland. Their trauma and pain is real and so is the lifelong effects it brings with it. CLAN have a current member Anne, who is a Scottish Care Leaver, as well as an Australian one. The fact that she wasn't technically sexually abused in Australia, even though she was stripped naked and degraded in front of 12 doctors, student doctors and two nuns, then punched in the face and knocked unconscious on the way to Nazareth House in Camberwell, means she is not eligible for redress in Australia. While she can access other types of support from our service, being ineligible for the Australian Redress Scheme has left her retraumatized and financially neglected by the Australian Government. She deserves the same justice, the same redress and the same access to services as any other Scottish or Australian Care Leaver. Please note CLAN have also had other members who were Scottish Care Leavers in the past, but they have unfortunately died in the

meantime. As much as is possible, CLAN urges the Scottish government to provide access to wider reparations to those living outside of Scotland.

Once the wider reparations are dealt with, CLAN strongly recommends that this service remains, and continues to provide similar support to Care Leavers under ongoing funding from the Scottish Government. Care Leavers needs will not subside because they have had a one-off redress payment. Trauma does not end due to some financial and other compensation. Care Leavers have lifelong needs and the effect of the crimes committed against them as children, and the neglect of the Government and past providers, is profound.

Conclusion

CLAN would once again like to thank the Scottish government for giving us the opportunity to comment on your consultation regarding financial redress for historical child 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 Scottish Care Leavers you will be providing redress to. You now have the opportunity to make an enormous difference in the lives of Scottish Care Leavers who were changed forever by the abuse they endured whilst in care. 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.

If at all possible we ask that we are informed and given information about the Scottish Redress Scheme when it is established, in order to disseminate this information to any Scottish Care Leavers residing in Australia that may well be within our networks. We are very much looking forward to seeing how your Redress scheme eventuates.