Theme 3: Responses to abuse (Redress and Civil Litigation Report)

This theme at a glance

In response to the 84 recommendations in the Redress and Civil Litigation Report, the Australian Government established the National Redress Scheme for Institutional Child Sexual Abuse (the National Redress Scheme). The National Redress Scheme started on 1 July 2018 and will continue for 10 years.

The Australian Government is also addressing the recommendations within the Redress and Civil Litigation Report that relate to civil litigation matters (court proceedings that are not criminal in nature).

These measures are covered in the following chapter.

Key national achievements

- **May 2016**: Attorney-General issued guidance to agencies not to contest a claim of child sexual abuse brought against the Australian Government on the basis that the claim was filed out of time. This gives people more time to take a case against an Australian Government institution to court.

- **November 2016**: The Department of Veterans’ Affairs changed its policy relating to evidence for claims of abuse in the Australian Defence Force (ADF). This makes it easier for victims of abuse to establish that abuse occurred.

- **July 2017**: The Department of Veteran’s Affairs changed its policy to make sure that any person with one day’s continuous fulltime service in the ADF can receive treatment for mental health conditions.

- **December 2017**: The Department of Veterans’ Affairs reviewed its policy relating to evidence for claims of abuse in the ADF. The claims were made by survivors for medical conditions resulting from abuse. There was an increase in the number of claims that were accepted. These rose from 50 per cent to 62 per cent.

- **July 2018**: The Australian Government launched the National Redress Scheme.

- **October 2018**: The Prime Minister delivered the National Apology to Victims and Survivors of Institutional Child Sexual Abuse.
Case study: The National Apology

The Australian Government made a National Apology to Victims and Survivors of Institutional Child Sexual Abuse (the National Apology) on 22 October 2018. This was in response to the Final Report of the Royal Commission.

The purpose of the National Apology was to formally recognise, and apologise for, the appalling abuse of children in institutions and the profound and ongoing effects this abuse has had on their lives.

The Australian Government wanted to make sure that the National Apology focussed on the needs of survivors. They established an independent group of people called the National Apology Reference Group (the Reference Group). The Reference Group helped the Australian Government understand:

- what form the apology should take
- how they should deliver the apology
- what the apology should say.
The Reference Group included a broad range of survivors, their families and supporters, as well as Members of Parliament, from across Australia. The diverse members of the group were able to represent a wide range of views. A secretariat in the Attorney-General’s Department supported the Reference Group with their work.

During May to July 2018, the Reference Group consulted with people around the country. This process included a consultation form that people could fill out either online or on paper and face-to-face sessions.

The Reference Group held 58 face-to-face consultation sessions across all Australian states and territories, except in the Northern Territory where telephone consultations were offered instead. Over 390 survivors, support people and their families attended the face-to-face consultation sessions. The Reference Group also received over 360 online and paper consultation forms and emailed feedback.

On Monday, 22 October 2018, the Prime Minister delivered the National Apology in the Australian Parliament House. The apology was offered to all victims and survivors of institutional child sexual abuse, their families, supporters and all those affected by abuse. It aimed to raise awareness in the community about the lifelong impacts of child sexual abuse and help protect children now and into the future. Over 1,000 people attended the National Apology in Canberra, with many more taking part at events in their local communities.
An excerpt of the National Apology is shown below.

National Apology to Victims and Survivors of Institutional Child Sexual Abuse

Today the Australian Government and this Parliament, on behalf of all Australians, unreservedly apologises to the victims and survivors of institutional child sexual abuse.

For too many years our eyes and hearts were closed to the truths we were told by children.

For too many years governments and institutions refused to acknowledge the darkness that lay within our community.

Today, we reckon with our past and commit to protect children now and into the future.

Today, we apologise for the pain, suffering and trauma inflicted upon victims and survivors as children, and for its profound and ongoing impact.

For many, the National Apology marked an important step in helping people with their recovery. It recognised the long-term impact this abuse has had on their lives and helped to educate others on these impacts.

The National Apology gave us all the opportunity to pause and reflect on the role that the government, Parliament and community should play in protecting children from abuse.

The Prime Minister encouraged state and territory governments to host their own events to view the National Apology. This allowed people who could not attend the event in Canberra the opportunity to engage with the National Apology. All states and territories, except Western Australia, held local viewing events. Western Australia had already apologised to victims and survivors of institutional child sexual abuse in June.

Details of the state and territory events were listed on the National Apology website. Places holding viewing events were also provided with memorabilia to give to those attending, if requested.

The Attorney-General, the Hon Christian Porter MP, wrote to his counterparts in the states and territories. He asked that victims and survivors in prisons and other correctional facilities be allowed to:

- take part in the consultation process
- watch the broadcast of the National Apology.
Limitation periods

The Royal Commission made a number of recommendations about statutory limitation periods. A limitation period is the period of time a person has to file an application for a legal proceeding.

The Royal Commission found that, due to the impact of trauma, some survivors of child sexual abuse may take years or decades to come forward about their abuse. Limitation periods were often a barrier to survivors taking legal action.

In its private sessions, the Royal Commission heard that many survivors had received legal advice against starting a case because the limitation period had expired. The Commission heard that some advice provided to survivors suggested that there is a risk that some cases won’t be able to be heard in court. This may be because some institutions or perpetrators might not be willing to agree to extend the timeframe, or the court might not allow an application to be heard.

Relevant recommendations:

From the Redress and Civil Litigation Report: 85 to 88 and 96 to 99

State and territory governments are responsible for the legislation that sets limitation periods. States and territories have taken steps to amend their legislation to remove limitation periods in relation to historical child sexual abuse claims.

Changes to the Australian Government’s handling of historic child sexual abuse claims

On 4 May 2016, the former Attorney-General, the Hon George Brandis QC, issued the Legal Services Direction – Time-barred child abuse claims (the Direction).

Under the Direction, Australian Government agencies cannot:

- contest a claim in relation to historical child sexual abuse because it has been filed out of time
- object to an application to extend the time to file a claim.

In March 2016, the Office of Legal Services Coordination issued Guidance Note 13 (since reissued in June 2018) to make sure that Australian Government agencies responding to civil claims involving institutional child sexual abuse use a consistent approach.

The Guidance Note is on the Office of Legal Services Coordination website on the Attorney-General’s Department’s website at www.ag.gov.au/olsc
The National Redress Scheme for Institutional Child Sexual Abuse

The Royal Commission recommended establishing the National Redress Scheme for Institutional Child Sexual Abuse (the National Redress Scheme). The Australian Government launched the National Redress Scheme on 1 July 2018. It will support people who experienced institutional child sexual abuse. It will run for 10 years.

Relevant recommendations:

From the Redress and Civil Litigation Report: 1 to 84.

The National Redress Scheme is trauma-informed, acknowledges that many children were sexually abused in Australian institutions and recognises the harm caused by this abuse. The Royal Commission estimated that up to 60,000 survivors may access the National Redress Scheme.

The Australian Government designed the National Redress Scheme with:

- state and territory governments
- non-government institutions
- an independent advisory council, including people who experienced institutional child sexual abuse, and their supporters.

The states and territories will continue to work with the Australian Government for the life of the National Redress Scheme.

The National Redress Scheme helps people who have experienced institutional child sexual abuse to access:

- counselling and psychological care services
- a direct personal response to a survivor from the institution where abuse took place
- a payment.

States need to pass legislation to allow institutions to participate in the National Redress Scheme. As at 30 November 2018, New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia have enacted this legislation. The Australian Capital Territory and the Northern Territory do not need to pass legislation in order for the National Redress Scheme to operate in the territories.

Institutions have until 30 June 2020 to join the National Redress Scheme. Only after an institution joins can applications about that institution be assessed.
Commonwealth Government institutions and government institutions in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, Tasmania and Victoria are all participating in the National Redress Scheme. Government institutions in South Australia and Western Australia are expected to join in early 2019.

As of 6 December 2018, 11 non-government institutions are participating in the National Redress Scheme:

- the YMCA
- Korowal School
- the United Protestant Association of New South Wales
- Scouts Australia
- Scouts New South Wales
- Scouts South Australia
- Scouts Victoria
- Scouts Western Australia
- the Salvation Army
- Global Interaction
- Anglican Church – first small group of Anglican institutions.

See www.nationalredress.gov.au/institutions/joined-scheme for a full list of participating institutions.

The Australian Government will continue to engage with government and non-government institutions to support them to take part in the National Redress Scheme. Work will continue on any implementation and policy issues to make sure the National Redress Scheme operates as effectively as possible.

More information about the National Redress Scheme will be available in the National Redress Scheme’s Annual Report, which will be tabled in Parliament soon after 30 June 2019.
Compensation for individuals who experienced sexual or physical abuse in the Australian Defence Force

The Department of Veterans’ Affairs provides services, support and compensation to people who experienced sexual or physical abuse in the ADF, including child sexual abuse.

Relevant recommendations:

From the *Final Report*: 9.3 and 9.8

From the *Redress and Civil Litigation Report*: 2 and 21

In November 2016, the Department of Veterans’ Affairs changed its policy relating to the evidence needed for claims of abuse in the ADF. The change was designed to make it easier for survivors to establish that abuse had occurred. For people under 18, a credible statutory declaration will be accepted as evidence that the abuse took place.

In December 2017, the Department of Veterans’ Affairs reviewed the policy and found there has been an increase in the number of successful claims. These have risen from 50 per cent to 62 per cent since the policy was introduced.

*Acceptance rate of abuse claims since new evidentiary policy*
The Department of Veterans’ Affairs continues to review its policies for abuse claims. And to look at ways the claims process can be improved.

The Department of Veterans’ Affairs has a dedicated team to manage claims relating to sexual or physical abuse. This team has had training from Phoenix Australia Centre for Post-traumatic Mental Health and was formed to deal sensitively with cases involving abuse. People making a claim who have experienced abuse can have a social worker as the single point of contact to help them with the claims process.

To apply for compensation and to find out more, you can call 1800 555 254, or fill out an online claim form on the Department’s website www.dva.gov.au

Extra support services that the Department of Veterans’ Affairs provides

Since 2017, the Department of Veterans’ Affairs has provided mental health treatment for any person with one day’s continuous fulltime service in the ADF. This means that veterans do not need to establish that a mental health condition is related to service in order to receive treatment for the condition.

In 2018, this measure was also extended to cover reservists with disaster relief or border protection services, or who were involved in a serious training accident. These veterans are now eligible for free treatment for all mental health conditions.

Veterans may also access support from Open Arms – Veterans and Families Counselling Service on 1800 011 046, 24 hours a day, seven days a week.