On 1 July 2018, more than 5 years after the commencement of the Royal Commission into Institutional Responses to Child Sexual Abuse, the National Redress Scheme for Institutional Child Sexual Abuse (NRS) commenced.

This is the second part to our ‘Child Sexual Abuse Redress Scheme’ series. In this edition, we explore the cost components, the NRS Assessment Framework and the allocation of costs to institutions as set out in the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 and the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018.

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Costs to institutions

The NRS operates on a responsible entity pays basis. Participating institutions will receive quarterly invoices in arrears relating to their eligible applicants, including:

- redress payment amounts,
- the value of any counselling and psychological services,
- an administration charge of 7.5% of the redress payment, and
- a contribution to legal support services of up to $1,000.

In addition, institutions will need to separately fund their own costs associated with delivery of direct personal responses as well as any internal administration costs associated with participating in the NRS.

Redress payment

Eligible applicants of institutional child sexual abuse will receive a redress payment of up to $150,000 under the NRS.

Assessment framework

The amount of redress payment for a person depends on individual circumstances and the type of abuse experienced. The assessment framework shown below will be used by Independent Decision Makers to work out the redress payment that could be payable to a person.

<table>
<thead>
<tr>
<th>Kind of sexual abuse</th>
<th>A Recognition of sexual abuse</th>
<th>B Impact of sexual abuse</th>
<th>C Related non-sexual abuse</th>
<th>D Institutional vulnerability</th>
<th>E Extreme circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Penetrative abuse</td>
<td>$70,000</td>
<td>$20,000</td>
<td>$5,000</td>
<td>$5,000</td>
<td>$50,000</td>
</tr>
<tr>
<td>2. Contact abuse</td>
<td>$30,000</td>
<td>$10,000</td>
<td>$5,000</td>
<td>$5,000</td>
<td>n/a</td>
</tr>
<tr>
<td>3. Exposure abuse</td>
<td>$5,000</td>
<td>$5,000</td>
<td>$5,000</td>
<td>$5,000</td>
<td>n/a</td>
</tr>
</tbody>
</table>

All relevant sexual abuse of a person is used to determine which kind of sexual abuse (1, 2 or 3) applies.

The total amount of redress payable to a person is equal to:

A the type of abuse experienced by the applicant

plus

B if the sexual abuse of the person has had an impact on the person’s wellbeing

plus

C if the person experienced non-sexual abuse associated with the sexual abuse

plus

D if the person was institutionally vulnerable

plus

E if the sexual abuse occurred in extreme circumstances

Based on the scheme application form, we expect the impact of the sexual abuse will be considered from a personal, emotional, physical, relational and financial perspective.

Institutional vulnerability is determined based on whether the person’s living arrangements at the time increased the risk of the sexual abuse occurring. Institutional settings where applicants are likely to be considered institutionally vulnerable might include residential care facilities, children’s homes, boarding schools and children placed in foster care.

The maximum redress payment of $150,000 is payable under “extreme circumstances”. Sexual abuse of a person occurred in extreme circumstances if the abuse was penetrative and was so egregious, long-term or disabling to the person as to be particularly severe. Consideration is given to whether the person was institutionally vulnerable and whether there was related non-sexual abuse.
Abuse perpetrated by a person under the age of 18 is only in the scope of the scheme if it is penetrative (1) or contact abuse (2). This means exposure abuse (3) by a child is not within the scope of the NRS.

**Prior payments**

All relevant prior monetary payments made to the applicant by or on behalf of a responsible participating institution will be taken into account. Prior payments are adjusted for inflation (prescribed as 1.9% p.a.) and exclude legal fees and payments for medical, dental or living expenses. A relevant prior payment must be in recognition of the harm caused by the child sexual (and related non-sexual) abuse for which the institution is responsible.

**Counselling & psychological services**

Depending on where a person lives at the time of application, the counselling and psychological component may be offered as:

- a payment of up to $5,000 (in addition to the redress payment), or,
- access to counselling and psychological services provided under the NRS, within the jurisdiction where the person is living.

Access to counselling and psychological services is offered in jurisdictions that elect to deliver state-based counselling services. In this circumstance, the scheme will provide eligible applicants with a referral allowing them to access a local service.

The amount payable to a person for counselling and psychological services, or the amount payable to a jurisdiction to provide a person with counselling and psychological services, is dependent on a person’s individual circumstance. The amount of the counselling component is determined based on the kind of abuse experienced by the applicant, as shown in the table below.

<table>
<thead>
<tr>
<th>Kind of sexual abuse</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Penetrative abuse</td>
<td>$5,000</td>
</tr>
<tr>
<td>2. Contact abuse</td>
<td>$2,500</td>
</tr>
<tr>
<td>3. Exposure abuse</td>
<td>$1,250</td>
</tr>
</tbody>
</table>

The amount of counselling & psychological services is capped at $5,000, regardless of the number of responsible institutions or sets of abuse.

**Administration & legal costs**

A participating institution’s contribution to administration and legal costs is the sum of:

- an administration charge equal to 7.5% of the institution’s redress payment before any prior payments are deducted, and,
- a legal support service contribution of up to $1,000 based on the institution’s share of the total redress payment to the applicant.¹

¹ Legal support service contribution = $1000 x \( \frac{\text{Institution’s gross redress payment}}{\text{Total gross redress payment from participating institutions}} \)
Responsibility of institutions

The assessed responsibility of institutions will determine how scheme costs are shared between participating institutions. For a given set of abuse, there may be:

- a primarily responsible institution, or
- multiple equally responsible institutions.

If an individual experienced multiple sets of abuse, for each set of abuse, the Scheme Operator determines whether there is one primarily responsible institution or multiple equally responsible institutions.

Sharing of costs

The costs of redress (including payment, counselling and legal contribution) may be shared between participating institutions if:

- two or more institutions are found approximately equally responsible for a set of abuse, or,
- a person experiences multiple sets of sexual abuse.
Equal responsibility

If two or more institutions are found equally responsible for a set of abuse, the responsible institutions will generally share the redress amount equally.

For example, participating government and non-government institutions will be equally responsible for a set of abuse if the government arranged for the non-government institution to have responsibility for the day-to-day care of the child and the child was a State Ward or the government had parental responsibility for the child.

Special rules apply to abuse of cadets or child migrants from the United Kingdom and Malta.

There are provisions for participating government institutions to be the funder of last resort if they share responsibility with a defunct institution.

We note that there will potentially be a gap in coverage in circumstances where defunct institutions share responsibility with non-government institutions or where active institutions have not opted in to the NRS.

Example 1 – One set of abuse, equally responsibility

A child was a ward of the state and placed by the State government into a non-government children’s home where the child was abused. The non-government institution (NGI) and the State are equally responsible for the abuse. Based on the assessment framework the total redress amount payable is assessed to be $150,000 and the counselling component is $5,000.

State’s redress payment = $150,000 x 50% = $75,000

NGI’s redress payment = $150,000 x 50% = $75,000

State’s counselling component = $5,000 x = $2,500

NGI’s counselling component = $2,500

State’s admin & legal costs = $1,000 x 7.5% x $75,000 = $6,125

NGI’s administration & legal cost = $6,125

State’s total redress cost = $83,625

NGI’s total redress cost = $83,625

Multiple sets of abuse

If an applicant has experienced two or more sets of abuse, the Scheme Operator will assess:

• all the abuse within the scope of the scheme experienced by the applicant against the assessment framework (the maximum amount)

• separately, each set of abuse experienced by the applicant against the assessment framework (notional maximum amount for each set).

The final redress payment for each set of abuse is determined by rescaling the redress amounts determined for each set of abuse by the maximum amount. The total redress payment to an applicant cannot be more than $150,000.

Example 2 – two sets of abuse

A child was a private resident in a home run by a religious organisation and was abused (set 1). The child moved to another home run by a secular institution and was abused again (set 2). The religious institution and the secular institution are each found primarily responsible for abuse set 1 and 2 respectively. Based on the assessment framework the maximum amount payable is $150,000.

Considering each set of abuse against the assessment framework the notional maximum amount for set 1 is $150,000 and for set 2 is $50,000 ($200,000 in total).
Where to from here?

At the time of writing this update, the National Redress Scheme has operated for less than six months. A number of institutions are still in the process of formally joining the Scheme. As at 22 July 2018, the application form had been downloaded more than 4,700 times and the nominee form more than 1,200 times. We understand over 1,500 applications have been received since the Scheme commencement but only a handful have been processed.

Public sources have published an expected average redress payment of $76,000. However, the actual average redress payment will depend on the profile of Scheme participants, the application of the assessment framework by the Independent Scheme Operator as well as the level of past payments made to survivors.

The quantum of payments received by applicants compared to settlements awarded through court proceedings, coupled with the survivor scheme experience will ultimately drive the outcomes of the National Redress Scheme.

In Part 3 to this series, we will provide an update of the Scheme experience.
About Finity

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If you would like to receive future updates on Child Sexual Abuse Redress and Civil Litigation, please contact Finity on +61 2 8252 3350 or news@finity.com.au.

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