

# Righting the Wrongs of the Past

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## Abstract

Governments are taking steps to make amends for historical practices which are now recognised to have caused significant harm to those involved. These steps can be seen in royal commissions, parliamentary hearings and inquiries into issues such as governmental policies relating to First Nation Australians and the abuse of children in care.

As governments make apologies for these historical injustices, they have also sought to provide justice to those harmed by these practices or failings in the form of redress or reparation schemes. These schemes acknowledge wrongs that have occurred in the past and provide affected individuals with financial payments, recognition, acknowledgement, trauma-informed counselling and other support services, as well as avenues for a direct apology from responsible institutions.

This paper will provide an overview of the various redress and reparation schemes around Australia. It will explore how actuarial work in these schemes differs from typical accident compensation schemes and outline the various unique factors for consideration.

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# 1. Introduction

## 1.1. Background

In recent decades across much of the Western world, survivors of abuse in care and many Indigenous communities who suffered forcible removals have come forward to recount their harrowing experiences. These voices, combined with efforts from advocacy groups and human rights organisations, in addition to media investigations, have exposed the systemic nature of these historical abuses. What were once acceptable policies and practices have now been recognised as human rights violations, causing significant harm to those involved.

Governments around the world, and in particular Australia, are taking steps to make amends for these historical abuses in the form of royal commissions, parliamentary hearings and inquiries into issues such as governmental policies relating to First Nations peoples and the abuse of children in care.

As governments make apologies for these historical injustices, they have also sought to provide justice to those harmed by these practices or failings in the form of redress or reparation schemes. And alongside financial payments, governments are providing trauma-informed counselling and other support services, as well as avenues for a direct apology from responsible institutions.

## 1.2. Purpose of this paper

This paper will provide an overview of the various redress and reparation schemes around Australia. It will explore the role redress schemes play in our community, the challenges faced by governments in its design and delivery, and how actuarial skills can be applied in this area.

## 1.3. Support available

If anything in this report has affected or distressed you, you can access a range of free support services, including:

- 1800RESPECT offers confidential counselling and support, 24/7.  
Phone: 1800 737 732 | Website: [1800respect.org.au](https://1800respect.org.au)
- Lifeline offers 24-hour crisis support and suicide prevention services.  
Phone: 13 11 14 | Website: [lifeline.org.au](https://lifeline.org.au)
- 13Yarn offers 24/7 culturally safe crisis support for Aboriginal and Torres Strait Islander people.  
Phone: 13 92 76 | Website: [13yarn.org.au](https://13yarn.org.au)
- Mensline offers free confidential counselling and support for men.  
Phone: 1300 78 99 78 | Website: [mensline.org.au](https://mensline.org.au)
- Kids Helpline offers counselling for children and young people aged 5–25 years.  
Phone: 1800 55 1800 | Website: [kidshelpline.com.au](https://kidshelpline.com.au)
- Beyond Blue offers confidential counselling and support, 24/7.  
Phone: 1300 224 636 | Website: [beyondblue.org.au](https://beyondblue.org.au)

## 2. The Need for Redress

### 2.1. Government action

In recent years, governments around the world have been taking steps to make amends for historical practices which are now recognised to have caused significant harm to those involved. In Australia, these can be seen in the various royal commissions, parliamentary hearings and inquiries into issues such as governmental policies relating to First Nation Australians and the abuse of children in care.

A consistent theme from these inquiries is the importance of redress in providing steps towards recognition and healing for those impacted. Redress schemes acknowledge wrongs that have occurred in the past and provide affected individuals with financial payments, recognition, acknowledgement, counselling and support. They also form a way for institutions and governments to act on their apologies and attempt to compensate for what has happened.

In response to the recommendations from these inquiries, Commonwealth, State and Territory governments have subsequently established a range of redress and reparation schemes. These schemes are generally open for application for a specified period of time and provide financial payment, counselling and direct personal response, such as an apology and recognition from responsible institutions. In Section 3, we provide a short summary of the various redress schemes in Australia.

### 2.2. Transitional justice

The elements of redress and reparation schemes closely align to the United Nations approach to transitional justice. Transitional justice, as defined by UNSC S/2004/616, states that it:

*..comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.*

Whilst transitional justice is principally in the contexts of post-conflict and post-authoritarian societies, it forms a framework for societies to address the legacy of gross violation of human rights, which includes the historical abuses in relation to the treatment of First Nations Australians and children in care.

### 2.3. Why redress?

In Australia, people are entitled to seek damages for personal injuries through civil litigation if the injuries are caused by deliberate or negligent actions of another. Damages can be sought for both physical and psychological injuries caused.

However, civil litigation is an adversarial process which can be challenging and retraumatising. It has a high burden of proof, requiring survivors to give evidence on matters that occurred many decades ago, be subject to cross-examination and needing to prove the injuries suffered are the direct result of the abuse. In addition, the survivor will need to prove the institution was legally responsible for the abuse. There are also high legal costs associated with civil litigation.

In the past, there were additional legal hurdles in terms of time limits which applied. But as a direct result of the Royal Commission into Institutional Responses to Child Sexual Abuse, state governments have enacted legislative reform to remove limitation periods for child sexual abuse claims.

Redress schemes provide an alternate pathway to justice for survivors. The evidentiary threshold for redress, on reasonable likelihood, is lower compared to civil litigation. The redress process is intended to be trauma-informed, with financial payment for the acknowledgement of harm, counselling to support the healing process and a direct personal response with the responsible institution for acknowledgement and apology. Redress is intended to be accessible to all, with a simple application process, taking care to minimise retraumatisation as much as possible and with support from advocacy groups and community legal centres if need be. However, due to the lower standard of proof, the monetary payment from redress is likely to be lower than that achieved through civil litigation.

### 3. Redress Schemes in Australia

#### 3.1. Redress and reparation schemes in Australia

The following table shows the various redress and reparations schemes in Australia, established by either the Commonwealth or State governments, including schemes currently in operation and those which have concluded<sup>1</sup>.

**Table – Redress Schemes in Australia**

Scheme	State	Inquiry	Eligibility	Duration	Monetary Payment	Counselling	Restorative Engagement
<b>For Abuse of Children in Care</b>							
<b>National Redress Scheme (NRS)</b>	Administered by the Commonwealth; with all states opted in	Royal Commission into Institutional Responses to Child Sexual Abuse (2013 to 2017)	Experienced sexual abuse while under 18 years of age The abuse occurred before 1 July 2018 An institution was responsible for bringing the applicant into contact with the perpetrator Born before 30 June 2010 An Australian citizen or a permanent resident at time of application	10 years  Commenced 1 July 2018	Up to \$150,000 (with average payment of around \$88,000)	Yes	Yes
<b>South Australia ex-gratia Scheme</b>	South Australia	Children in State Care Commission of Inquiry: Allegations of Sexual Abuse and Death From Criminal Conduct (the Mullighan Report) (2004 to 2008)	For survivors of child sexual abuse in state care, with ex-gratia payments under Section 31 of the Victims of Crime Act 2001 (SA)	2009 to when the SA Government joined the NRS (1 February 2019)	Up to \$50,000	No	No

<sup>1</sup> Whilst this table is intended to contain all redress and reparation schemes in Australia (both past and present), there may be gaps in our knowledge and research. We have also only included schemes with redress or reparation components and have not included any class action settlements.

Scheme	State	Inquiry	Eligibility	Duration	Monetary Payment	Counselling	Restorative Engagement
Redress WA	Western Australia	Bringing Them Home (1997) Forgotten Australians (2004) Protecting Vulnerable Children (2005) Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (2002)	For children abused in State care in a residential setting before 1 March 2006, covering physical, sexual, emotional, psychological abuse or neglect.	2008 to 2011 Originally, applications open from 1 May 2008 to 30 April 2009. Subsequently extended to 30 October 2009.	Originally from \$10,000 to \$80,000. But maximum amount was reduced to \$45,000 in July 2009.	No	No
Queensland ex-gratia Scheme	Queensland	Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Report) (1998 to 1999)	Open to persons who experienced abuse or neglect in detention or in licensed government or non-government children's institutions covered by the Forde inquiry.	2007 to 2010 Applications from 1 October 2007 to 30 September 2008	From \$7,000 to \$40,000	No	No
Tasmanian Abuse in Care ex-gratia Scheme	Tasmania	Review of Claims of Abuse from Adults in State Care as Children by the Tasmanian Ombudsman (2004)	Open to persons who experienced sexual, physical or emotional abuse while in State care, including foster care.	Operated for 10 years over four separate rounds from 2003 to 2013.	Up to \$60,000 for first three rounds. Up to \$35,000 for Round 4.	No	No
<b>For the Stolen Generations</b>							
Victorian Stolen Generations Reparations Package	Victoria	Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1995 to 1997)	Aboriginal and/or Torres Strait Islander person Removed by a government or non-government agency before 31 December 1976, while under the age of 18 years First removed in Victoria Separated from family for a period of time that resulted in the experience of loss of family, community, Culture, identity and language	5 years  Commenced 31 March 2022	\$100,000	Yes	Yes



Scheme	State	Inquiry	Eligibility	Duration	Monetary Payment	Counselling	Restorative Engagement
<b>Territories Stolen Generations Redress Scheme</b>	NT and ACT	Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1995 to 1997)	The Territories Stolen Generations Redress Scheme provides support to Stolen Generations survivors who were removed from their families or communities in the NT before 1 July 1978 or ACT before 11 May 1989 or Jervis Bay Territory	Applications from 1 March 2022 to 28 February 2026	Up to \$75,000	Healing assistance payment of \$7,000	Yes
<b>NSW Stolen Generations Reparations Scheme</b>	NSW	Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1995 to 1997)	To living Stolen Generations survivors who were removed by, committed to, or otherwise came into the care of the New South Wales Aborigines Protection or Welfare Boards under the Aborigines Protection Act 1909, up until the Act was repealed on 2 June 1969.	Applications from 1 July 2017 to 30 June 2023	\$75,000	No	Yes
<b>South Australia Stolen Generations Reparations Scheme</b>	South Australia	Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1995 to 1997) Inquiry into the Stolen Generations Reparation Tribunal Bill 2010 (2011)	Aboriginal people removed from their families in South Australia before 31 December 1975, and those who were initially removed from the Northern Territory but who were then moved to South Australia by welfare authorities.	Applications from 31 March 2016 to 31 March 2017	Initial payment of \$20,000 in 2018, with additional payment of \$10,000 in 2019 due to unspent funds	No	No
<b>Tasmanian Stolen Generations of Aboriginal Children Act 2006</b>	Tasmania	Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1995 to 1997)	The <i>Stolen Generations of Aboriginal Children Act 2006</i> established a \$5m fund to enable the Tasmanian Government to make ex-gratia payments to members of the stolen generations. The Act also enabled children of deceased members of the stolen generations to apply for payment.	Applications from 15 January 2007 to 15 July 2007	\$58,333.33 for eligible members of the stolen generations and \$4,000 or \$5,000 for eligible children of deceased members of the stolen generations.	No	No

Scheme	State	Inquiry	Eligibility	Duration	Monetary Payment	Counselling	Restorative Engagement
<b>For Stolen Wages</b>							
<b>Stolen Wages Reparation Scheme WA</b>	Western Australia	Human Rights and Equal Opportunity Commission: Inquiry Into Stolen Wages (August 2006) Stolen Wages Taskforce (2007)	Aboriginal people born prior to 1958 who are deemed to have potentially experienced direct government control over their income during their residency at Native Welfare settlements in Western Australia.	Applications from 6 March 2012 to 30 November 2012	Up to \$2,000	No	No
<b>Stolen Wages and Savings Reparations Scheme, Queensland</b>	Queensland This scheme was previously the Indigenous Wages and Savings Reparations process (introduced in 2002).	Human Rights and Equal Opportunity Commission: Inquiry Into Stolen Wages (August 2006) Queensland Stolen Wages Reparations Taskforce Report: Reconciling Past Injustice (March 2016)	Aboriginal and Torres Strait Islander Queenslanders whose wages or savings were controlled under former government policies, born on or before 31 December 1959 and alive on 9 May 2002.	3 years Applications from 18 December 2015 to 16 December 2016	Payment of \$9,200 if born before 1952 or \$4,600 if born between 1 January 1952 and 31 December 1959.	No	Yes
<b>For Workplace Sexual Harassment, Discrimination and/or Abuse</b>							
<b>Victoria Police Restorative Engagement and Redress Scheme</b>	Victoria	Victorian Equal Opportunity and Human Rights Commission - Independent Review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police (2014 to 2019)	Current or former Victoria Police employee who experienced workplace sex discrimination and/or sexual harassment before 12 December 2019 whilst at work or at a location connected to a Victoria Police workplace, perpetrated by a person who was a Victoria Police employee at the time.	Not publicly available  Commenced 1 July 2020	Up to \$45,000	Yes	Yes
<b>Defence Abuse Reparation Scheme</b>	Commonwealth	Review of allegations of sexual and other abuse in Defence, conducted by DLA Piper (2011 to 2013)	Open to current and former members of the Australian Defence Force (ADF) who experienced abuse by another ADF member on or before 30 June 2014.	Applications from 1 December 2016 to 30 June 2022	Up to \$50,000	Yes, through referral to Open Arms – Veterans & Families Counselling	Yes

Scheme	State	Inquiry	Eligibility	Duration	Monetary Payment	Counselling	Restorative Engagement
<b>Other</b>							
<b>Fiskville Redress Scheme</b>	Victoria	Inquiry into CFA Training College at Fiskville by the Environment, Natural Resources and Regional Development Committee (2014 to 2016)	For people who had prolonged exposure to toxic substances at the former Fiskville Training College site between 1971 and 2015, who worked and trained at the site, long term site residents, people who lived at properties neighbouring the site (up to a 7km radius), and people who attended or worked at the Fiskville State School.	Not publicly available  Commenced 5 September 2022	Up to \$45,000	Yes	Yes

### 3.2. Redress schemes announced but not yet implemented

In addition to the schemes tabulated above, there have been redress schemes announced by government which have not yet been implemented:

- For Victorian women who had their children forcibly removed under historic adoption practices<sup>2</sup> (Victoria, announced March 2022)
- For Victorian children who experienced physical, psychological and emotional abuse or neglect while placed in institutional care between 1928 and 1990<sup>3</sup> (Victoria, announced October 2022)
- For current and former employees and volunteers who had experienced discrimination, sexual harassment, bullying and victimisation at Ambulance Victoria<sup>4</sup> (Victoria, announced in July 2023)

### 3.3. Redress schemes sought by various advocacy groups

There are also calls for redress for the following groups:

- Stolen Generations redress schemes for states which have not yet implemented one (WA and Queensland)<sup>5</sup>
- For Western Australian women who had their children forcibly removed under historic adoption practices, from the ongoing Inquiry into past forced adoptive policies and practices<sup>6</sup>
- For mistreated Victorian mental health patients,<sup>7</sup> from the independent review<sup>8</sup> of compulsory treatment and decision-making laws in the Mental Health and Wellbeing Act 2022 in Victoria
- For people who experienced abuse and neglect in the aged care system<sup>9</sup>

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<sup>2</sup> <https://www.premier.vic.gov.au/healing-harm-forced-adoption>

<sup>3</sup> <https://www.premier.vic.gov.au/past-care-leavers-we-hear-you>

<sup>4</sup> [https://www.premier.vic.gov.au/sites/default/files/2023-07/230705-Improving-Workplace-Safety-And-Rebuilding-AV%E2%80%99s-Culture.pdf?utm\\_source=miragenews&utm\\_medium=miragenews&utm\\_campaign=news](https://www.premier.vic.gov.au/sites/default/files/2023-07/230705-Improving-Workplace-Safety-And-Rebuilding-AV%E2%80%99s-Culture.pdf?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news)

<sup>5</sup> <https://nit.com.au/15-03-2022/2778/calls-grow-for-qld-wa-to-follow-rest-of-nation-on-stolen-generations-redress>

<sup>6</sup> [https://parliament.wa.gov.au/Parliament/commit.nsf/\(EvidenceOnly\)/B033B4B8EA32B0204825895E0019ED60?opendocument&type=sub](https://parliament.wa.gov.au/Parliament/commit.nsf/(EvidenceOnly)/B033B4B8EA32B0204825895E0019ED60?opendocument&type=sub)

<sup>7</sup> <https://www.abc.net.au/news/2023-06-13/mental-health-mistreatment-calls-for-redress-apology/102468454>

<sup>8</sup> <https://engage.vic.gov.au/independent-review-of-compulsory-treatment-and-decision-making-laws>

<sup>9</sup> <https://opus.lib.uts.edu.au/bitstream/10453/166673/2/Dementia%20Reparations%20Executive%20Summary%20FINAL%20UTS.pdf>

### 3.4. Class actions against historical abuses

We also make mention of the various class actions<sup>10</sup> won or in progress against the government for historic abuses below:

#### Class actions settled

- NSW child migrants who were abused at Fairbridge Farm School, settled by the NSW government in 2015 for \$24m<sup>11</sup> with around 270 members<sup>12</sup>.
- Queensland Aboriginal and Torres Strait Islander people whose wages were stolen, as the Protection Acts at that time required wages to be paid to the protector or superintendent. This was settled by the Queensland government in 2019 for \$190m<sup>13</sup> with around 12,500 members<sup>14</sup>.
- Descendants of the Stolen Generations in the NT for the trauma caused by the process of forced removals during the Stolen Generations, settled by the Commonwealth government in April 2023 for \$50.45m with around 1,200 members<sup>15</sup>.

#### Class actions in progress

- NT stolen wages class action for Aboriginal and Torres Strait Islander people who worked in the Northern Territory whose wages were withheld or not paid as a result of wage control legislation in effect from 1933 to 1971 (Shine Lawyers)<sup>16</sup>
- Western Australia stolen wages class action for Indigenous Australians who worked in Western Australia whose wages were withheld or not paid as a result of wage control legislation in effect from the late 1800s until the 1970s (Shine Lawyers)<sup>17</sup>

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<sup>10</sup> We note class actions are commonly known as collective redress proceedings in Europe as it allows a group of individuals who have similar claims against a defendant to bring their case to court as a single, consolidated lawsuit.

<sup>11</sup> <https://www.abc.net.au/news/2015-06-29/fairbridge-farm-school-child-migrants-paid-24-million/6580104>

<sup>12</sup> <https://www.abc.net.au/news/2016-06-07/fairbridge-survivors-finally-receive-cash-payout/7487054>

<sup>13</sup> <https://www.abc.net.au/news/2019-07-09/hans-pearson-class-action-settled-qld-government/11292886>

<sup>14</sup> <https://www.stolenwages.com.au/>

<sup>15</sup> <https://www.abc.net.au/news/2023-04-17/nt-stolen-generations-class-action-receives-final-approval/102230772>

<sup>16</sup> <https://www.shine.com.au/service/class-actions/northern-territory-stolen-wages-class-action>

<sup>17</sup> <https://www.shine.com.au/service/class-actions/stolen-wages-class-action>

## 4. The Role for Actuaries in Redress Schemes

The design and delivery of redress schemes presents a number of challenges for policymakers and scheme administrators, such as:

- Understanding the demand for the scheme in light of incomplete historical records and the long period of time that has elapsed since the events took place.
- Understanding the financial implications of scheme parameters and balancing the scheme design against the funding envelope.
- Timing of demand and utilisation of services to help inform operational design.
- As the scheme commences, collecting and interpreting operational and financial information for planning and accounting purposes.

We observe these challenges are similar to those faced by injury and disability schemes and consider actuaries to be well placed to provide insight and advice into these elements.

### 4.1. Costing

In the design phase of a redress scheme, policymakers need to balance the recommendations put forward from the inquiries (which have had input from advocacy groups and submissions from impacted individuals) on how a redress scheme should operate in terms of eligibility, duration, payment amounts and support services against the economics of the scheme. Actuaries can play an important role in providing estimation of costs for the scheme, with scenario testing based on varying parameters to provide insight and understanding of the uncertainty in ultimate costs.

Initial cost estimates are highly uncertain due to the lack of historical data available to estimate the exposed population and an uncertainty in the propensity to apply due to complex circumstances and trauma experienced by the impacted individuals. Participation is also affected by eligibility requirements, societal attitudes, media coverage and the operations of the scheme. Actuaries are well versed in organising and extracting insights from multiple data sources, benchmarking experience and adjusting for comparability and analysing population data for specific demographics.

Scenario testing and sensitivity analysis can provide decision-makers with greater clarity on the financial implications of adopting particular parameters of the scheme against the funding required to support these schemes.

### 4.2. Reserving

Once the scheme has been enacted, governments will need to consider the treatment of the scheme in their financial statements. Often, a relevant accounting standard to consider is AASB 137 Provisions, Contingent Liabilities and Contingent Assets, and in particular, the following paragraphs:

14     *A provision shall be recognised when:*

- a) an entity has a present obligation (legal or constructive) as a result of a past event;*
- b) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and*
- c) a reliable estimate can be made of the amount of the obligation.*

*If these conditions are not met, no provision shall be recognised.*

26     *In the extremely rare case where no reliable estimate can be made, a liability exists that cannot be recognised. That liability is disclosed as a contingent liability.*

We caveat our discussion here to note we are not accountants, but in our experience, the interpretation of AASB 137 in the context of redress schemes is such that from the commencement of a redress scheme, a present obligation (benefits under the redress scheme) is created as a result of a past event (historical abuses which have already occurred). Actuarial advice may then be sought to by the government to understand whether a reliable estimate can be made of the obligation, and if so, to quantify the estimate which will then be disclosed as a provision on the financial statement. If it cannot be reliably estimated, then it will be disclosed as a contingent liability.

We note actuaries often provide advice in areas where significant uncertainties in ultimate costs exists, such as in asbestos liability valuations, which are exacerbated by the extremely long reporting delay between exposure to claim notification. It will be a matter for the relevant governments to consider whether liabilities associated with redress schemes can be reliably estimated, but we note that estimates of latent claims (such as asbestos, silicosis and industrial deafness) can be calculated and put on balance sheets despite the significant uncertainties.

### **4.3. Monitoring of experience**

As redress schemes commence operations, it is important to understand the profile of participants, assessment outcomes, average payment sizes and utilisation of support services and restorative engagement processes. This will assist the scheme administrators to manage resources and workflow, provide insights into the operations in the scheme, understand applicant experience and compare this to the funding envelope provided.

Actuaries are able to provide support in this area, giving advice on data capture to assist in the monitoring and helping to identify particular trends in experience and possible implications for expected costs for the scheme.

## **5. Learnings From Our Work With Redress Schemes**

### **5.1. Learnings related to the care needed in approaching work in this area**

#### **5.1.1. Trauma-informed and culturally appropriate processes**

In our experience, the redress schemes we have worked with take great care to design communication and processes with applicants in a manner which is trauma-informed and culturally appropriate. In many cases, applicants will have been through a highly traumatic experience, which is the cause of their seeking redress. Simply going through the application process can cause them to relive this trauma which can dissuade many people from applying.

One example has been the removal of the requirement for a witnessed statutory declaration as part of the application process for the National Redress Scheme since September 2021. This required proof of identity documents which was onerous and disproportionately impacted those living in regional and remote communities or currently homeless, those with literacy difficulties and those who may not have birth certificates.

Redress schemes recognise that the application process may be traumatic and most schemes offer counselling and other support services during the application process to help support applicants. There may also be additional considerations to ensure counselling is culturally appropriate, including Aboriginal and Torres Strait Islander healing approaches.

An important pillar in the design of redress schemes is the direct personal response or restorative engagement process. This allows the applicant to have their personal account heard, the impact and ongoing effects acknowledged and an apology from the institution for the harm experienced. This provides the applicant with acknowledgement, validation and an understanding from the institution on the changes they have put in place to stop the abuse from happening in the future.

#### **5.1.2. Scheme specific language**

As is common for many fields of actuarial practice, there are specific terms adopted by each of the schemes. For example, the schemes may refer to applicants, or participants, or survivors, or victims. They may refer to a “scheme” or a “package” or a “fund.” It is important to ensure that the language used in any actuarial reports and communications matches the tone and words adopted by the scheme, and that the language is culturally appropriate. We have found it important to have a conversation up front to agree what the important terms are for the scheme and how they would like communications to be managed.

#### **5.1.3. Confidentiality and privacy**

Given the sensitive nature of the traumas suffered by redress participants, it is critical that their information be kept very confidential and that their privacy is protected. Access to data should be strictly limited to only those individuals undertaking the analysis. When requesting data, it is also important to agree what the protocols will be for collecting that data and how data security will be maintained.

It is important to collect as little personal information as possible when providing actuarial advice to redress schemes. Personal identifiers such as name, date of birth, detailed location should be removed as should detailed descriptions that may be able to be used to re-identify the person. We recommend only collecting information on year of birth if analysis is required of experience by age cohorts. Similarly, it may be important to collect information on Aboriginal or Torres Strait Islander identification, but this should be discussed and carefully agreed with the scheme as to the purpose of collecting that information.

Ideally, any data matching required to prepare the data should be carried out by those who are administering the scheme. Otherwise, unique record identifiers should be used to avoid matching records by names or dates of birth.



## **5.2. Learnings related to inter-dependencies between redress and civil claims**

### **5.2.1. Interactions between different pathways to justice and support**

Often there may be a number of different pathways for impacted individuals to seek justice and support. These include:

- through a redress scheme if one or more exists for the particular harm suffered
- through civil litigation or criminal prosecution
- through victims of crime compensation schemes
- through social services, including Disability Support Pension or Medicare
- through non-government organisations and victim advocacy groups

It is important to understand the various pathways available to impacted individuals and how these pathways may interact with or offset one another.

For example, under the National Redress Scheme, relevant prior payments may be deducted from the amount of the redress payment. Relevant prior payments include prior redress, ex-gratia or out of court settlement payments. In addition, applicants who accept an offer of redress are required to release the responsible institution from liability for the sexual abuse (and related non-sexual abuse) for which redress is being provided.

We understand that many participants seeking redress are using legal advice to assist them in determining the most appropriate pathway, which can result in changes in patterns and behaviours over time. We would expect to see some substitution effect, with increasing redress claims possibly leading to fewer civil claims. This could be expected due to the lower burden of proof in the redress scheme and the relative ease of application. However, we have actually observed an increase in civil claims over time, potentially as participants are able to receive higher amounts of financial payment and also due to improved access to civil litigation with the removal of statute of limitations on child sexual abuse cases. It could also be that following the Royal Commission into Institutional Child Sexual Abuse, there has been a shift in societal attitude with more openness to disclose past abuse and that the existence of the redress scheme itself is encouraging more people to come forward in total to seek redress.

### **5.2.2. Data sharing - useful but fraught**

In many instances, there will be data in different jurisdictions from similar schemes, or data in different insurance pools which may be relevant to assist with the parameterisation of key assumptions.

For example, when considering the potential number of applications to the National Redress Scheme for a particular state in Australia, it can be helpful to consider:

- The national trends in applications;
- The trends in other states which could be considered to have comparable experience and history;
- The trends in civil claims for child abuse. Applicants may choose between two pathways: either to pursue a civil claim (with higher evidentiary requirements and a more complex process, but with higher settlement amounts on average compared with redress) or a redress claim. This can lead to offsetting trends in claims, with increases in one pathway resulting in reductions in the other. Conversely, increased activity in one pathway can indicate a higher awareness of the ability to access redress, resulting in overall increases in both pathways, rather than offsetting trends. Understanding these features of applicant behaviour can be important in interpreting trends and projecting ultimate outcomes.

Due to confidentiality and privacy, it can be difficult to navigate the permissions for sharing data between different jurisdictions or different insurers. In our experience, the requests for data sharing take a long time to be considered and approved and often multiple parties are involved in the approval process.

## 5.3. Learnings related to modelling

### 5.3.1. Fledgling data

Unlike well-established accident compensation schemes with standard data collection, data for redress schemes can require a significant amount of time for discussion, understanding and reconciliation to ensure the data received for analysis is fit for purpose.

Often when redress schemes commence, the administration systems for collecting participant information and records of payments and benefits provided have to be set up relatively quickly. It is our experience that governments are keen to launch schemes as soon as possible and that systems develop over time as the schemes are already underway.

One of the common results is that the administration systems are often not ideally suited for purpose, with data stored across a number of different sources which may not reconcile well between each other or require manual inputs which are susceptible to errors. For example, participants may be asked to fill in a form which outlines key information about their particular circumstances. The information may then be assessed, with separate systems used to record the outcome of assessments and payments respectively.

When approaching the request for data, it is valuable to spend time explaining:

- the intended use for each data item;
- the requirement for data matching between systems, and whether the identifying information can be provided to the client, or matched by the in-house team;
- the need to reconcile data between systems to understand whether records are missing;
- any limitations on the quality of the advice which will arise if data issues cannot be resolved.

We have found that an iterative approach can work well, whereby the client provides an initial data set, which is then reviewed for accuracy and any gaps. Subsequently, a further data request explains any short falls in the initial data set, using the approach above. There may be a need for a number of rounds of data requests before a final data set is obtained which is suitable for analysis.

This process can take time. For actuaries used to providing advice within established insurance and financial services organisations, this iterative approach may be new.

### 5.3.2. Various approaches to estimating the number of scheme applications

Often one of the key exercises the actuary is asked to perform is to estimate the ultimate number of scheme applications. For such estimations, it is often helpful to use a number of different approaches, assessing the strengths and weaknesses of each approach, before selecting a final central estimate number.

A common starting point in accident compensation schemes is an exposure-based approach. In a redress scheme context, this is often difficult due to lack of historical data. For example, in the National Redress Scheme, an exposure-based approach would consider the number of children in institutional care multiplied by a rate of sexual abuse. However, historical data for the number of children in institutional care in the various care settings is often patchy and incomplete. There is also no reliable or comprehensive statistic on the incidence and prevalence of child sexual abuse in institutional settings in Australia. Although we do note the Royal Commission into Institutional Responses to Child Sexual Abuse has provided some detailed statistics and there have been various recent studies in this area, such as the AIHW Child Protection Australia 2020-21<sup>18</sup> study and the Australian Child Maltreatment Study (April 2023)<sup>19</sup>. Therefore, an exposure-based approach

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<sup>18</sup> <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/summary>

<sup>19</sup> [https://www.mja.com.au/system/files/2023-03/MJA2\\_v218\\_is6\\_Iss2Press\\_Text.pdf](https://www.mja.com.au/system/files/2023-03/MJA2_v218_is6_Iss2Press_Text.pdf)

may require a high level of judgement due to gaps in historical data and information on the prevalence of abuse.

Another possible approach is to consider available information from similar redress schemes which have been set up in other jurisdictions (including overseas). For example, in the initial costing report for the National Redress Scheme<sup>20</sup>, three Australian redress schemes were considered – Redress WA, the Queensland ex gratia scheme and the Tasmanian Abuse in Care ex gratia scheme. Adjustments were then applied to ensure comparability with the design of the then proposed National Redress scheme (for coverage, duration and population differences).

When exposure-type methods are used, consideration will need to be given to:

- mortality for the exposed population. It is important to consider the time elapsed between the trauma occurring and the access to redress. In many cases, this can be several decades, which makes it important to consider the mortality experience. For populations who have suffered significant trauma, it is likely that they will have suffered higher than average population mortality and hence it may be necessary to consider loadings on top of standard actuarial life tables.
- not every impacted individual will apply for redress. This may be due to the length of time since the trauma, guilt and shame, lack of support or difficulties in accessing the redress scheme resulting individuals who are eligible but do not pursue redress.

Data for analysis may also arise from survey information which may provide samples of population groups who have been subject to the particular harm or trauma which is the subject of the redress scheme. For example, for redress schemes due to sexual harassment and discrimination in the workplace, information such as the Australian Human Rights Commission's report, *Time for respect: Fifth national survey on sexual harassment in Australian workplaces*<sup>21</sup>, may be a helpful resource. There may also be information from early application processes where populations are surveyed as to whether they would participate in a redress scheme before one is established.

When survey information is used, it is important to consider:

- the sample size of survey information. If the sample size is small, it may be necessary to illustrate a wider range of sensitivity analysis to adjust for the sample error.
- the applicability of the survey to the particular harm or trauma under consideration and whether any adjustments should be made to align them more closely. For example, a survey about workplace sexual harassment may have a higher response rate than indicated for survivors of sexual assault in the workplace.

### **5.3.3. Benchmarking overseas**

We have found that many Commonwealth countries are also exploring similar redress schemes for past wrongs. There can be initial research papers prepared to assist governments in considering these schemes. Benchmarking experience to other jurisdictions requires a careful consideration of the similarities and differences between the jurisdictions involved. Important considerations included:

- Cultural similarities or differences, including religious, social and temporal aspects.

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<sup>20</sup> National Redress Scheme Participant and Cost Estimates, July 2015 - <https://www.royalcommission.gov.au/system/files/2021-01/carc-national-redress-scheme-participant-and-cost-estimates-report.pdf>

<sup>21</sup> <https://humanrights.gov.au/time-for-respect-2022>

- Population differences, including Aboriginal and Torres Strait islander representation, mix by age and sex and generational differences.
- Availability of other supports for applicants, including any past access to redress.
- Timeframes for application and the complexity and rules for the standard of proof.

#### **5.3.4. Judgement calls**

In our work in estimating costs for redress schemes, we are cognisant of the scarce data available and the often unpredictable nature of applicant behaviour. Owing to the speed with which some redress schemes open for applications, there may be aspects of the scheme which have not yet been finalised which adds to the uncertainty in the estimates. These information gaps result in the selection of assumptions which require significant judgement.

Therefore, it is important to road test these assumptions with scheme administrators who may have access to those with lived experience through advocacy groups to assist in sense-checking key judgements.

It is also important to carry out uncertainty and scenario testing to illustrate the range of potential outcomes. Often this range will be large and hence having clarity about the types of outcomes which would result in numbers at the high and low ends is helpful.

#### **5.3.5. Uncertainty and scenario testing**

Traditionally, actuaries provide scenario testing in Actuarial Valuation Reports which explore relatively standard scenarios, such as +/- 1% inflation and discounting, 10% changes in average claim size and 10% changes in IBNR claim numbers. For redress schemes, it is important to dive deeper into the key reasons for uncertainty and explore the behaviours which impact them.

The following examples illustrate some uncertainties observed in redress schemes:

- A slowdown in applications during COVID lockdown periods. These periods need to be examined and potentially excluded from assumption setting due to their atypical nature. Scenarios to explore potential catchups in applications should also be illustrated.
- An initial rush in applications following commencement which then tapers off over time. Scenarios which illustrate the difference between average application rates and the most recent application rate should be shown. Comparison of estimates against exposure methods provide an additional point of comparison and can be helpful. Similarly, applications may spike just before the scheme closes, so different scenarios to illustrate possible outcomes is also helpful.
- A change in the characteristics of applicants over the duration of the scheme. For example, in the National Redress Scheme, it is likely those who applied at the commencement of the scheme had readied their application information early on and may have also previously applied to prior schemes, which are then offset against the payments under the NRS. Over time, the proportion of applicants who have previous payments reduces. As these prior payments are deducted from current payments, this will result in an increase in average payments. Scenarios which either assume this trend to continue, or to stabilise may be illustrated. In addition, the activities of advocacy groups for specific cohorts of applicants may also impact on the types of applicants over time.
- Changing patterns of support utilisation. For example, take-up rates of counselling may differ over time according to counsellor availability and the needs of individual participants. Restorative engagement may take time to be arranged for individual participants, and hence may have a slower initial timing and requests for restorative engagement may increase over time as positive experiences of this are conveyed to other applicants.

## **5.4. Learnings related to the political nature of the schemes**

### **5.4.1. Societal change over time**

Often the very reason that a redress scheme comes into existence is due to the change in societal norms over time. Things that once were deemed socially acceptable or even socially desirable can, with the passage of time, be no longer deemed appropriate. With hindsight, and often through inquiries and royal commissions, it is determined that individuals who suffered as a result of past societal norms should be acknowledged and provided monetary payments, counselling and apologies to recognise the harms they suffered and aid in the healing process.

For example, societal norms around pregnancy and motherhood outside of wedlock have changed significantly in the last 50 years. In the 1970s and prior, women who fell pregnant outside of wedlock were treated with shame and strongly encouraged to give up their babies. Often this was facilitated through the church and these babies were forcibly adopted out to childless married couples. From the 1970s onwards, Australian society (and Western societies in general) began to take a different view of single motherhood, providing social services and support to such mothers so that it was possible for them to keep their babies.

In addition to giving rise to redress schemes, societal change is important to consider when using statistics or surveys from historical periods. There may be underreporting of particular traumas or harms or circumstances which may have been socially unacceptable in past generations. Care must be taken when extrapolating such information into today's experience.

### **5.4.2. Scheme evolution**

The terms of reference for inquiries into past wrongs have often included exploration on how governments can address the impact of the past wrong and provide justice for the survivors through redress or reparation. Redress or reparation schemes are subsequently established in response to these discussions, with the design of the redress schemes following closely to the recommendations from these inquiries. For example, the National Redress Scheme was established in response to the recommendations set out by the Royal Commission into Institutional Responses to Child Sexual Abuse.

There is often a period of time between the announcement of the scheme and its establishment, as the government works to plan and design the scheme. Due to the historical nature of the past wrongs and recognition that potential applicants may be elderly or have ill-health, there are often discretionary or interim payments which may be made. These interim payments are of a lower amount, processed in a faster manner to accommodate exceptional circumstances. Should the applicant survive to the commencement of the redress scheme and make an application into the scheme, the interim payment is deducted from the full monetary payment.

Once the redress scheme is established and open for applications, there can be an initial rush of applications in the early months. This may be due to survivors and advocacy groups who have waited many years for the redress scheme making applications early on. The processing of applications may be slower in the beginning, as the scheme administrators work through the processes, particularly in collecting historical data pertaining to the individual and in the assessment of the severity of the trauma. There may be peaks and troughs in the assessment experience as processes are updated and refined. There may also be processing delays if the number of applications received is higher than expected.

For some redress schemes, interim reviews are legislated to ensure the original objectives of the redress schemes are met and that the experiences of survivors who have gone through the scheme are heard. As a result of these interim review, recommendations for improvements are often made which may change the eligibility, access or payment sizes in the scheme.

Redress schemes in Australia are time-limited. This results in a typical application pattern where there is an influx of applications at the commencement of the scheme, followed by a lower flattened level for a period of time until nearing the end of a scheme, where there may be a final rush of applications.

Even as the scheme ends, there may be media attention and calls for scheme extension. For example, the NSW Stolen Generations Reparations Scheme was originally closing applications by 30 June 2022. This was subsequently extended to 30 June 2023 due to concern that eligible Stolen Generations survivors may be excluded due to disruptions by the ability of support services and community legal centres to assist potential applicants during the COVID-19 pandemic and disruptions in community awareness activities to promote the scheme.

As redress schemes are the government's response to community concerns regarding historical abuses, it is inevitable that these schemes may be subject to further evolution as the community response develops.

### **5.4.3. Funding envelopes**

One of the key considerations in the establishment and ongoing management of redress schemes is that they are often subject to funding limitations. In some cases, schemes are funded annually from government budget allocations. In other cases, there may be a multi-year funding "envelope" agreed at the establishment of the scheme. Further complexities arise when there is more than one funder for the scheme, such as the National Redress Scheme which is funded by the states and participating institutions.

The amount available to fund schemes is an important factor which influences scheme design. Often at the commencement, policymakers will have an idea about the types of redress they wish to offer as part of the scheme, and they may ask an actuary to estimate the ultimate cost. If the actuaries' estimate emerges higher or lower than expected, this may feed into changes to the original intended supports being designed in the scheme. The result can be that a number of iterations are required to arrive at a design which fits the funding envelope. Or it can result in a further request for budget allocation, or a return of unused budget allocation.

As schemes progress, it is common for actuaries to be asked to update initial costing estimates. This can of course result in changes compared to initial estimates, which can also result in further budget allocations. However, in some situations it can result in changes to scheme supports, including rationing the numbers of participants who will receive supports in any one year and spreading support payments into future budget years.

This occurred under the Redress WA<sup>22</sup> scheme (from 2008 to 2011) where at inception, the scheme provided a maximum payment of \$80,000 but was subsequently reduced to \$45,000 after a much higher than expected number of applications inundated the scheme. This caused a great sense of injustice and re-traumatisation for the actual and potential applicants involved.

When providing advice in such circumstances, it is important for the actuary to be aware of the potential political pressures facing the scheme administrative staff and policy advisors. There can be pressure on actuaries to change assumptions or advice so that estimates fall within certain funding envelopes. There may also be pressure to delay full recognition of adverse trends, and to modify scenario analysis or descriptions to downplay the likelihood of adverse scenarios.

Balancing this, it is important to recognise that these estimates are often highly uncertain, meaning that the actuary should try to provide a balanced view of the potential range of outcomes, taking into account stakeholder feedback as appropriate.

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<sup>22</sup> <https://www.childabuseroyalcommission.gov.au/sites/default/files/STAT.0243.001.0246.pdf>

## 6. Looking Forward

Actuaries are well placed to provide advice in redress schemes. From costings at the design stage to annual provision calculations for financial statements, actuaries can help the scheme administrators to provide insights on the profile of applicants, understand the uncertainties and monitor scheme experience to ensure the financial sustainability of these important schemes.

Actuarial involvement in this area is evidence of the rapid evolution of the actuarial field. Our analytical toolkit equips us well to play key roles in these social schemes where there are uncertain cashflows. Looking beyond the redress landscape, there are other adjacent areas of work which value the analytical rigour that actuaries can bring to societal issues (such as the distribution of funds to members in large class action lawsuits and treaty and reparations similar to those in the Waitangi settlement in New Zealand).