13

What to Pay in Redress and How to Pay It

> Child sex abuse redress scheme to cap payments at $150,000 and exclude some criminals (ABC News 2017)
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> Child sex abuse proposed redress scheme to cap payments at $150,000 and exclude criminals (Cunningham 2017)

13.1 Introduction

The headlines announcing Australia's NRS highlight maximum payment values. The accompanying articles tell readers that Australian governments had negotiated with religious organisations in response to the McClellan Commission's call for a redress programme paying up to AUD$200,000 (Royal Commission into Institutional Responses to Child Sexual Abuse 2015b: 22). Those negotiations would reduce that figure. As the then Minister for Social Services, Christian Porter, told a press conference,

> To maximise the ability of the Commonwealth to have the greatest amount of opting-in from states, territories, churches and charities, we consulted over the last year . . . about what was the amount to set the maximum redress payment at that would maximise the amount of opt-in . . . (ABC News 2017)[1]

In other words, states and NGOs would not agree to fund redress at the rates recommended by the McClellan Commission. The NRS's maximum of AUD$150,000 was what the offending institutions were willing to give, not what survivors were due.

Payment values are among the most widely publicised facts concerning any redress programme. But despite the public attention those figures

[1] Most survivors are only eligible through the NRS if the institution in which they experienced abuse joins the programme and undertakes to pay a substantial portion of the survivor's redress payments. For more information (Commonwealth of Australia 2018).

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receive, there is little commentary on *how* redress should value injuries. Chapter 3 argues that survivors have strong claims for full compensation. Justice requires that each receive what they are due. That requires a credible redress programme to try to fully compensate survivors, at least for some injuries. Within the scope of redress, survivors are entitled to full compensation. Programmes should not, as the NRS did, impose general discounts.

13.2 Setting Values

A fair redress programme would give survivors what they are due – full and just compensation. Full compensation requires programmes to offer payments that reflect credible estimates of the injuries' (dis)value. No exemplar redress programme offered full compensation, most paid much less. To illustrate the gap, recent Australian research on historic abuse claims found that civil litigation paid an average of AUD$138,775 (Daly and Davis 2021: 450). Supposing those court judgments are at least closer to full compensation, redress is remarkably low – average payments in Queensland Redress and Redress WA were AUD$13,500 and AUD$22,458, respectively.[2]

Apologists offer three arguments justifying the disparities between what survivors are due and what redress typically provides. For some, the relative ease of redress justifies less than full compensation. Since litigation is protracted, costly, and uncertain, if redress is relatively quick, cheap, and sure, it will offer a good bargain for survivors, even when it pays less than what they deserve (Pearson, Minty, and Portelli 2015: 41; Royal Commission into Institutional Responses to Child Sexual Abuse 2015b: 374). The idea is that survivors are compensated for getting less than what they deserve because the state makes it easier for them to get it. But that is a perverse argument. Many of the difficulties survivors experience with litigation were/are created by offending states that failed to prevent, uncover, record, and investigate abuse. To pay survivors less because the offending state did not fulfil its responsibilities risks compounding injustice.

A second argument holds that full compensation is unaffordable (Royal Commission into Institutional Responses to Child Sexual Abuse

[2] The average payment in the NRS is around AUD$85,000 (Byrne and Travers 2021).

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2015b: 248). Redress programmes are expensive and because states must allocate scarce resources, it would be unfair for survivors to insist that they receive full compensation. This argument looks good in the abstract. But in reality, it is unclear whether paying full(er) compensation to survivors would in fact be unfair to others. Survivors can rightly ask why *their* claims are judged too costly. Why they should get short shrift while states spend billions on a myriad of other things? Some of the decisions made in the exemplar cases appear questionable. Recall, from Chapter 5, how the government cut Redress WA's maximum payment from AUD$80,000 to AUD$45,000 to keep the programme within its AUD$114 million budget cap. That cut was announced in 2009, just after the government announced funding for an AUD$1.8 billion athletics stadium in Perth. Survivors nicknamed the new sports ground 'Redress Stadium' as a wry comment on how the government spent 'their' money (Moodie 2019). As another example, in 2006, the same year Canada announced IRSSA's redress programmes, it cut 1 per cent from the federal goods and services tax, which decreased the state's annual revenue by CDN$4.5 billion (Government of Canada 2006). IRSSA paid survivors around CDN$5 billion, meaning that a one-year delay in the tax cuts could have funded an almost twofold increase. It would be easy to find further examples. The larger point is that while redress programmes are expensive, the monies involved are well within the states' budgetary capacities. Of course, policymakers must exercise some budgetary control, but they cannot argue that fuller compensation is unaffordable.

A more subtle argument for partial payment concerns the purpose of redress. This argument usually begins, correctly, with the point that it is impossible to calculate a precise (dis)value for injuries like sexual abuse, wrongful removal from one's family, and loss of cultural attachment. The argument then takes a further step into what Kathy Daly calls the 'antinomy of denial and support' (Daly 2014: 176). Denying the possibility of full compensation, supporters argue that redress payments are instead measures that acknowledge and assuage the survivors' injuries (e.g. Palaszczuk, Trad, and Farmer 2018; The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care 2021: 304). Referring to the NRS, Robyn Kruk argues that redress serves 'to recognise and alleviate the impact of past institutional child sexual abuse and related abuse, not to determine and compensate for the severity of the impact of that abuse' (Kruk 2021: 92–93).

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Kruk's antinomious passage continues,

> to assess the severity of the impact of the abuse, survivors would need to provide more detailed and specific information in their applications as well as potential medical or psychological assessments. This would not be consistent with a trauma informed approach to redress. (Kruk 2021: 93)

Kruk implies that fully compensating survivors would be bad for them. But it is unclear how the paternalistic argument is supposed to work. How would a programme 'recognise' the survivors' injuries without 'detailed and specific information' about their experiences? One might think that recognising those experiences requires information about them. Moreover, the NRS's thirty-page application form asks for detailed and specific information – Kruk's argument does not justify the practice that she is defending.

Kruk is right to suggest that participating in redress can be difficult for survivors. Defective redress processes can harm survivors. But redress can be better designed. Moreover, I think survivors should get to decide what information they wish to share. Survivors may wish to incur some difficulties and risks. Therefore, if they are appropriately supported, providing survivors with the options to choose less difficult pathways to redress need not preclude providing them with options for pursuing more fulsome (and difficult) pathways.

When asked, survivors argue that fair redress payments should match their injuries (Lundy and Mahoney 2018: 273). That is, after all, normal corrective justice practice and what full compensation requires. Seetal Sunga argues that survivors tend to understand redress money as communicating an exchange value – the monetary award indicates what the injury is worth (Sunga 2002: 54). That understanding is powerful, even for those who agree that it is impossible to put a monetary value on their injuries. In 2016, the Care Leavers Australasia Network surveyed 259 Australian survivors asking: 'In regards to Redress / Compensation, what do you believe is a fair amount that Care Leavers should receive?' The resulting report offers a selection of survivors' answers, nearly all[3] of which represent a 'fair amount' as an exchange of like value – fair redress would pay back the costs imposed by injury (Care Leavers Australia Network 2016: 19). The quoted survivors all agree with the first step in the antimony – compensation is impossible. But they still argue that

[3] One answer does not address the subject of fairness, but instead speaks about the profound effects of injury.

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fairness entails full compensation. Anyone who hopes to convince survivors otherwise is paddling against a roaring current of interpretation. As one survivor, Paul Zentveld, puts it: 'we want to get paid money, big money, because we deserve it' (Quoted in, Ellingham 2021). Because survivors understand themselves as deserving full compensation for their injuries, they complain when redress undervalues their suffering (Daly 2014: 179–80). 'One of the most common grievances voiced by people who were unhappy with the outcome of a [redress] process is that the level of payment they were offered was unfair' (White 2014: 4). Reframing redress as a non-compensatory measure of acknowledgement, alleviation, healing, and reconciliation might sound like a good idea, but it will not satisfy what fairness demands.

I think policymakers can refuse the antinomy by recognising that full compensation can be a just aim even when it is impossible. Impossible things are often worth attempting. To use a mundane example, if I were to grab a pencil and ruler right now and draw a straight line, I would fail. Straight lines are a conceptual ideal beyond the capabilities of the human hand. But millions of people draw lines every day that are straight enough for their purposes. And by analogy, that is what redress programmes should aim to do. A redress programme may not discover what perfect compensation requires, but it is likely to come closer to that discovery if it at least tries. In other words, full compensation is a regulative ideal governing the value of compensation.

Because survivors are due full compensation, a programme needs to demonstrate that it has made a credible effort to appraise the disvalue of their injuries. The remainder of this section sketches how a programme might set redress values. But I will not propose any specific figures here. Appropriate values will vary from time to time and place to place and will be more credible when co-developed with survivors. Policymakers need to use effective methods to develop credible values – drawing upon data and techniques from markets, litigation, insurance, and public health. No method is perfect, but there are several techniques that can help policymakers set values for different components of injury.

In the easiest cases, there may be injuries (usually interactive and individual) that have a market value. If a survivor had something stolen from them while in care, the programme can price a replacement using existing markets. Similarly, if consequential harms require medical or dental treatment, programmes can price the market cost of necessary procedures. Analogous techniques might be used for survivors with reduced employment capacity. Using existing markets to set values, a

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programme could compensate those who earned below an average or living wage, or some other appropriate baseline. Shifting focus slightly, to value the experience of living with physical or psychological disease and/or disability, programmes might use the public health tools of Quality-Adjusted Life Years (QALYs) and the related metric of Disability-Adjusted Life Years (DALYs). These metrics combine the expected shortfall in individual life expectancy relative to the quality of each expected life year to provide an objective measure of how to value living with disease or disability (Maldonado and Moreira 2019). The literature on both DALYs and QALYs is well developed, and policymakers can refer to broadly accepted tables to calculate payment values. Finally, court precedent and insurance settlements offer aggregated statistics on average awards for many different types of injuries. These statistics reflect thousands of accumulated judgements. The use of average judicial award values would be apposite for two reasons. Not only does litigation present a public valuation of injuries, it also offers a ready procedural alternative. If redress values fall too far below what litigation can provide, survivors with potentially good tort cases will opt out of redress.[4]

Market data, life tables, and average judicial and insurance awards provide relevant information. Still, this data has limits. The cost of repairing damage is not the same as the disvalue of experiencing harm. Large-scale award databases or payment schedules can lump different injuries into homogenous categories. Jurisdictionally specific legal frameworks, contractual conventions, and award norms affect payment values exogenously. The available information is only partial and approximate. But a programme might start with that data and then innovate when necessary.

Redress programmes will confront some injuries for which no adequate data exists. When programmes need to innovate, there are three prominent approaches to assessing the disvalue of injuries (Chalfin 2015: 4). The 'contingent valuation' method surveys what people say that they would pay to reduce the probability of injury by a certain percent. For illustrative purposes, if the average respondent would pay *N* to reduce the chance of being lied to about the death of a parent by 10 per cent, then the disvalue of that injury could be = $N \times 10$, adding frequency multipliers to capture recurring injuries. A second option, 'hedonic pricing', infers the disvalue of non-market goods using market

[4] In Australia, statutory changes have made it easier to pursue non-recent cases and many survivors are now choosing litigation over redress (Kruk 2021: 172).

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observations. This method decomposes the value of a market good, such as a house, into its component parts. To illustrate, a programme might try to capture the disvalue of living in a threatening environment by looking at the relationship between house price and crime rates to estimate how much people actually pay to reduce security threats.

Both contingent and hedonic pricing assess what people would pay, or have paid, to avoid injury *ex ante*. A third method decomposes injuries into sub-components that are priced using analogous market goods and services. An example is child neglect. Some American courts approach neglect as a failure to provide information and services. Those courts define thirteen core domains of non-neglectful childcare: psychological/emotional development; education; diet; medical care; dental care; fitness; access to athletic experiences; culinary skills; faith/morality; personal finances; household services; career counselling; and learning to drive (Laurila 2013: 64). By estimating the amount of time an average parent spends on each of these activities for a child of the appropriate age, assessors can work out the cost of replacing those services with professionals. The aggregate value would then be multiplied by the number of days the child was denied different aspects of care. Although the initial calculations are complex, it would be relatively easy to create a formula or table to estimate the disvalue of neglect.

None of the techniques canvassed above provide perfect information. Contingent valuation is subject to significant epistemic concerns – not least of which is that values are set by people with no experience of the injury, a problem that merely headlines all the other problems of subjective survey responses (Tourangeau 2003: 5). Hedonic pricing requires good data on what motivates people to pay different prices and it may turn out that prices are not very sensitive to the relevant concerns. Turning to the service-replacement approach, the price of services is not the same as the cost of experiencing the injury. And the approach confronts difficult questions, including which services to include in the calculation; how to value partial provision; and how to value goods for which there are no market equivalents, such as parental love. Thinking more generally, many of the techniques estimate average disvalues, which means they offer mere proxies for the disvalue experienced by specific individuals. Moreover, my survey of different ways of estimating the disvalue of injury depends upon the possibility of aggregating the costs of component injuries. But simple aggregation will not reflect the compounding disvalue of a complex injurious experience, for example, a physical assault is made worse when no one provides medical treatment.

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Because it is impossible to estimate the disvalue of many survivor's injuries accurately, people are right to say that full compensation is impossible. Nevertheless, survivors deserve a credible explanation of the values that redress offers: hand waving and platitudes are all too common and need to stop. To that end, these techniques offer survivors (and others) methods for critiquing existing or proposed payment values. For example, using the service-replacement method Andrew Laurila suggests that a single parent's nurture between the ages of four and eighteen is worth around USD$269,501.37 (Laurila 2013: 70). That figure comfortably exceeds the highest average value paid by an exemplar programme – the IAP's CDN$91,000. And, of course, most survivors have claims for injuries other than neglect. A moment's reflection suggests that robustly priced payments would likely exceed most payments offered by the exemplar programmes.

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Having supported a robust approach to evaluating injuries, I want to consider why participants might, in fact, prefer less precise approaches. The sensitivity of an individual's injurious experience to the payment received is a matter of degree. The least sensitive approach would pay all validated applicants the same amount. For example, a Swedish programme paid all successful redress claimants SEK 250,000 (Sköld, Sandin, and Schiratzki 2020: 179). Refusing to distinguish between injurious experiences, insensitive programmes might work well when redressing collectively experienced injuries or when survivors all experienced similar structural injuries. But when survivors have complex and varied experiences, then undifferentiated payments create false equivalences. By contrast, highly responsive programmes vary monetary values in step with every injurious nuance. For example, Ireland's RIRB gave each application a score out of 100 points. That score fixed the application into one of five standards of severity, with each category corresponding to a range of €50,000 – that is, an applicant scoring between 40–54 points would be pegged in the €100,000–€150,000 range (Appendix 3.2).[5] Because each €50,000 band was defined by fewer than fifty points and the RIRB rounded payments to the nearest thousand euros, every point made a difference to the monetary outcome. That is an example of a

[5] The band for the most severe claims was larger and spanned €200,000–€300,000, however, less than 1 per cent of claims were pegged in the highest category.

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highly responsive approach. And if payments depend on every nuance of the survivor's experience, programmes will need to acquire and assess all relevant evidence. I have repeatedly noted that as programmes demand more information, they tend to be slower, less consistent, and impose higher costs upon participants.

The offsetting disadvantages posed by the extremes of very sensitive and insensitive programmes suggest that a better strategy may lie somewhere in between. A programme can distinguish between some, but not all, injurious experiences by using categories that group roughly similar injuries together. Exemplars include Queensland Redress and Redress WA (Tables 5.1 and 5.2).[6] These programmes reduced informational demands and made assessment easier by sorting claims into bands according to their severity and making identical payments to all claims in each band. This technique makes assessing the most grievous claims easier – once assessed as meeting the minimal criteria for the highest standard, they require no further work by assessors (AU Interview 9). Further, a less sensitive process may increase everyone's confidence that the claim has been correctly valued – it may be clearer how a claim fits within a broader, rather than narrower range.

> The monetary difference between these levels of payment was quite large and acted as a strong differentiator in the severity of abuse and/or neglect. Redress WA is of the view that this differentiation reduced the number of legal challenges (that is, review requests lodged by legal practitioners) to Redress WA offers. (Western Australian Department for Communities c2012: 15)

The point is practical. If payment values are only moderately sensitive to different injurious experiences, then an applicant will have less incentive to seek a review (rescoring) if they score at the bottom or in the middle of a range. That means broader ranges, with less sensitive conversion ratios, can create cost savings. Similarly, from the survivor's perspective, knowing the minimum requirements for a category could let them limit their evidence to only what is necessary to meet the relevant standard. For example, if categories are defined by the experience of different forms of abuse, but insensitive to frequency, a survivor could limit their evidence to a single event.

Similarly, programmes could redress collectively experienced injuries or structural injuries through less sensitive approaches by providing

[6] Scottish Redress has adopted a similar approach (Scottish Government 2021).

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base-level payments. The values should reflect a specific injurious experience and, importantly, be set high enough to avoid insulting survivors. Because monetary values are communicative, very low payments can be offensive (The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care 2021: 223; Death 2017: 148; Allen and Clarke Policy and Regulatory Specialists Limited 2018: 6). As one Queensland survivor said, 'The [AUD$7000] compensation offered by [Level 1] was an insult that was not worth applying for' (Quoted in, Porcino 2011: 6). Although people will differ on what they think insulting, it should be possible to select a reasonably respectful base figure.

One approach suggests that a respectable figure is one that is 'meaningful, in the sense that it would provide a means to make a tangible difference in their [survivors'] lives' (Royal Commission into Institutional Responses to Child Sexual Abuse 2015a: 151). There are different ways to understand what a 'tangible difference' might entail. From a material perspective, redress could, 'help survivors rebuild their lives' by making a noticeable difference in how they live (The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care 2021: 304–5). As a good effort, the £10,000 base payment in Scottish Redress is 36 per cent of that nation's £27,716 median average household income (Congreve and Mitchell 2021) and 6 per cent of the 2021 average Glaswegian house price of £159,0000 – just enough for a down payment (HomeCo 2021). By contrast, AUD$7,000 was 11 per cent of the Queensland's 2011 median income of AUD$63,804 (Queensland Treasury 2017) and 1.5 per cent of the 2010 median house price (AUD$460,919) in Brisbane (Clegg 2019). The reference to housing is merely illustrative. While a route to a secure home is one way redress could make a tangible difference, policymakers should co-develop adequate base values with survivors. Ideally, all eligible survivors would get a base payment. Pre-screening should eliminate clearly fraudulent or duplicate applications, but otherwise any survivor injured in care should be eligible for a base payment. No one should receive a zero award.

To conclude, programmes must explain how they appraise injuries. The processes through which policymakers derive values should be accessible, transparent, publicly justified, and include survivors. While setting values upon injurious experiences will be contentious and difficult, programmes should make credible efforts to explain and justify the values they offer. That said, there are advantages to both survivors and states if programmes are somewhat rough when calibrating payments. There are obvious trade-offs as programmes approach the regulative

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ideal of full compensation. However, good participatory programme design could work towards acceptable outcomes. Policymakers should consider providing multiple avenues for redress wherein lower payments come from roughly assessed and lower cost processes. In addition, survivors can choose more nuanced pathways to fuller compensation.

13.3 Paternalist Reservations

There are reasons to fear that survivors made vulnerable because of their care experiences will misspend their money or be exploited by the dishonest. Fear for survivors' well-being can tempt programme designers with paternalism. One advocate illustrated his concern by telling me about a survivor who had received NZD$80,000 in redress. The survivor was

> [n]ot long out of prison. Spent most of his life in prison. Institutionalised. Through all the boys' homes. Institutionalised. Got out of prison, NZD$80,000. All the guys that he knew, knew he was getting this $80,000 . . .
>
> When I finally caught up with this guy a few weeks down the track, I sat down with him, 'How's it going?'
>
> 'Yeah, no good', . . . He said, 'I haven't got any money. . .'
>
> I said, 'How much have you got left?' I think he said eight thou[sand]. I said, 'What have you got?' He had a fifty-inch television set and a pair of green Doc Martins. [I said] 'Right, what happened?'
>
> 'Oh, so and so called round and wanted to borrow $500. [Then] So and so called round [and borrowed more]. . .' He lent one guy, who was in a church that he was working with, $10,000. This fella was never ever, ever going to pay him back $10,000. He gave his brother $10,000. Now, that money's all gone, where does he go to get support? . . .
>
> Now, where is he now? He's had $80,000. He's not only back to where he was in the beginning, he's in a worse place than he was because he sees [that] 'I'm a fucking hopeless useless bastard. I got an opportunity to set up for the rest of my life and I fucked it up, so I am useless'.
>
> Fortunately, we work with him every day of the week and support him. We've kept him out of prison for eight years. He wants to go back to prison because that's all he knows.
>
> Now, that's what happens when you give these people money. (NZ Interview 1)

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The interviewee argued that lump sum payments could be harmful. Not only will survivors misuse their money, but once the misspent money is gone, they are left to regret that they have squandered an important opportunity.

As an alternative, the interviewee emphasised the importance of working with survivors to identify and meet their needs. He argued that redress should not pay survivors directly, instead, their money should be held in trust. A social worker would manage their redress money in the survivor's best interest. That professional would holistically review the survivor's circumstances – examining their health, housing, employment, and education – then allocate money according to the survivor's needs. Should any redress monies remain, the survivor would receive a nominal pension, no more than 'fifty dollars a week' (NZ Interview 1).

I generally oppose this kind of blanket paternalism. I appreciate that community workers, like the interviewee, with experience working with many disadvantaged survivors, may have a different perspective. Moreover, my opposition is coloured by my support for holistic community-level support for survivors. Chapter 12 argues that redress programmes should offer survivors the opportunity to register with agencies whose staff can help facilitate access to services. Survivors need high quality, accessible, and holistic support. This can work in different ways, illustrating one option, Magdalene survivors have cards providing augmented access to health care services. In addition, local agencies should receive ongoing funding to support survivors. To a certain extent, my opposition to paternalistic restrictions depends on the complementary provision of high-quality services. Moreover, I accept that redress programmes will need to make provisions for legally incapable survivors, like prisoners, to have their money managed by third parties. But having made those concessions, because paternalistic imposition takes away the rights of survivors to do what they want with their money, it needs robust justification. Paternalism must be the exception, not the rule.

Redress programmes 'must always respect the ultimate right of Survivors to make their own decisions' (Dion Stout and Harp 2007: 53). Because it is extremely fungible, money empowers survivors. As Chapter 3 underlines, money gives people control over the course of their life. By contrast, having a social worker or other government official control the survivors' money risks recreating the injurious structures that governed them as young people. The just treatment of survivors demands respect for them as persons:

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> Those hoping to support Survivors must then respect and protect their autonomy and independence, however and wherever they may decide to spend their [lump sum redress payments]. (Dion Stout and Harp 2007: 53).

Restricting access to monies for paternalistic reasons presumes that survivors will act against their own interests (Alliance for Forgotten Australians 2015: 12). Furthermore, it presumes that programme officials know better than survivors what those interests are. I doubt that is normally true. And making paternalism into policy entails sweeping judgements concerning the incapacity of all survivors. Survivors are diverse, with differing needs and capacities. Too often, concerns around the misuse of monies are born from anecdote, fed on prejudice, and are better addressed through robust and holistic support.

Paternalism is appropriate when people will otherwise make bad choices that lead to serious and irreversible self-imposed harms. I have never seen evidence of that resulting from a redress programme. Some survivors will make bad decisions, but others will make good ones (Graycar and Wangmann 2007: 17). In Canada, for example, there were widespread concerns that Indigenous redress recipients would not manage their redress monies well. However, the

> . . . money was generally put to very good use, with many claimants setting up educational funds, making donations to local causes and generally treating the money as special or even sacred funds that needed to be spent thoughtfully. (National Centre for Truth and Reconciliation 2020: 39)

Policymakers should make pension and/or trust facilities available as an option, but they should only be forced upon survivors when that is demonstrably necessary for that specific individual.

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Similar points apply to in-kind redress programmes. In-kind redress is a paternalistic technique that controls how survivors spend their money. Exemplars included Ireland's Caranua, Queensland's Forde Foundation, and Canada's Personal Credits. These programmes were/are paternalistic in two ways. First, they decide and limit what kinds of goods and services survivors will be able to claim, within the parameters of eligible claims set by policymakers. Second, they make judgements about what will be good for individual survivors on the basis of their applications. The latter

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process involves empowering professionals to make judgements about what is in the care leavers' best interest.

In response, survivors rightly object that they should control how their money is spent. Discussing Canada's Personal Credits programme, Robyn Green notes the frustrations expressed by survivors concerning the limits imposed by the programme (Green 2016: 104). Similarly, Tom Cronin argues that Caranua's paternalist basis made survivors 'beg for our own money – money that we are entitled to' (Quoted in, Ó Fátharta 2016). Cronin's point was echoed by one survivor who told me that she was presently 'begging' Caranua for services (IR Interview 10). Because applications for in-kind services take time and resources, they are much more cumbersome than simply letting survivors spend their money as they see fit. Inequities arise when more motivated and capable survivors apply for more money and do so more often (IR Interview 4). For that reason, Caranua imposed a €15,000 lifetime limit on each survivor. Canada's Personal Credit programme limited each survivor to CDN$3,000 and the Forde Foundation imposed a maximum of AUD$5,000 in funding over five years. Finally, the rules constraining eligible applicants are often inflexible, excluding reasonable claims that do not fit into preconceived categories. To illustrate, the Forde Foundation will pay fees for vocational or Technical and Further Education (TAFE) courses, but not for university degrees (Forde Foundation 2018). Why not? Recall, from Chapter 2, how survivors were denied education as young people because those charged with their care thought them unfit for academic pursuits. One might think that the Forde Foundation is making the same judgement.

13.4 Communicating Values

I previously noted that payment values are widely publicised, with media often highlighting maximum available sums. But because most programmes make maximum payments to very few survivors, a popular focus on those figures can encourage false assumptions (Daly 2014: 180). Redress WA observes the

> . . . propensity for applicants to assume their eligibility and make assumptions about their expected level of payment. In some instances, applicants made financial decisions on the incorrect assumption they would receive the maximum level of payment. (Western Australian Department for Communities c2012: 11)

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If few survivors receive maximum payments, publicity that focuses upon those values can be misleading. Recognising the problem, the McClellan Commission suggests emphasising the average values a programme expects to pay (Community Affairs References Committee 2018: 30). Programmes should advertise and report median payment values and encourage the media to do likewise.

Turning to individuals, communicating payment offers to survivors is an integral part of redress. Institutional representatives may need training to communicate well, and survivors may need support during the offer process (Kruk 2021: 147; IR Interview 6; NZ Interview 1). Although survivors usually benefit from good and transparent information about how their claims were assessed, many will not want to receive a letter full of confronting information for psychological and privacy reasons (AU Interview 9). For the same reasons, survivors may prefer to have their redress money discretely deposited in a bank account. Survivors should be able to choose whether or not they will receive an explanation. Either way they may need support. Some survivors will be retraumatised by confronting their injurious experiences. Other will be angry or insulted if they do not get what they expect. Lower than expected sums may suggest that staff did not like them, or thought they lied, or indeed that programme staff have cheated them (Reimer et al. 2010: 29; AU Interview 6). These concerns underpin the need for clarity regarding monetary payments. Clearly stating how programmes derived payment values can help avoid misunderstandings and accusations. When part of a claim is not redressed, survivors should be told why and what recourse they have through review processes or litigation.

Exemplar programmes adopted different strategies in communicating payment offers, with many offering apologies. The literature on apologies is large and I will touch on a couple of key points only (for an introduction see, Smith 2008b). An apology is an obvious complement to an explanation of redress that accepts responsibility for injuries. Some survivors never open apology letters and others discard them in the rubbish, but many survivors welcome them. I have met survivors who frame their apologies for display in their living rooms or who carry them folded in their wallets. In New Zealand,

> Some [survivors] thought the apology was just a standard letter sent to everyone. They felt it did not acknowledge their own personal experience and therefore did not feel genuine. For others, having an official apology vindicated them and validated their experiences while in care. They felt the apology letter was proof of what happened to them. (Ministry of Social Development 2018c: 15–16)

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Some programmes despatched generic apology letters lacking any information about the individual's claim.[7] A better approach would acknowledge the survivor's unique experience (IR Interview 1). Letters must be clearly and accessibly written. An excerpt drawn from an apology letter that I have on file offers a cautionary lesson in obfuscation. The letter was sent to a New Zealand survivor and it reads (in part):

> I am extremely sorry to hear of the physical abuse you were subjected to while placed with caregivers during your time in care. I have been advised that in two placements, failures existed in how these particular caregivers were assessed, which in one case arguably contributed to you being abused over a prolonged period of time by one of the caregivers' children.

The second sentence addresses what redress is for. And it opens by distancing the writer from the injurious acts. The offending, if there is any, pertains to failures in how MSD assessed caregivers. Even there, the author (Brendan Boyle, chief executive of MSD) does not acknowledge wrongdoing, instead he reports what someone else has told him – Boyle has 'been advised' of failures. Those abstract failures are never described and are not attributed to an agent. Moreover, Boyle is not certain of their injurious character. When he suggests that one failure 'arguably contributed' to abuse, he implies the possibility that it did not. It is not even clear which of two failures (no more is said about them) is the potential contributor.

Evasive ambiguity is 'inappropriate, insulting, and counter to the purpose of [redress]' (Allen and Clarke Policy and Regulatory Specialists Limited 2018: 7). Better statements clearly explain what redress is for. Looking for best practice, Reg Graycar and Jane Wangmann examined a small Canadian programme redressing survivors of the Grandview Training School for Girls (Graycar and Wangmann 2007). Payment decisions issued by that programme carefully explained how redress payments were calculated and who was responsible for what. Around ten pages long, those statements reproduced core elements of the survivor's testimony, so that survivors could know that they had been heard. Accessibly written and reflecting the care leavers' personal experiences, 87 per cent of survivors said these statements were 'very important' to them (Graycar and Wangmann 2007: 28).

Observers emphasise the importance of having a representative of an offending institution apologise to survivors as individuals (Philippa

[7] An exemplar copy of a generic apology issued by Redress WA is on file with the author.

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White in "Official Committee Hansard" 2009b: CA16; CDN Interview 4). Personal apologies are more expensive and time consuming than generic statements. But more personalised accounts can match the seriousness of the experience addressed (Royal Commission into Institutional Responses to Child Sexual Abuse 2015b: 10). To lend the apology weight, observers suggest that they should come from high-ranking officials, preferably leading politicians (The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care 2021: 223; Lightfoot 2015: 23).

Survivors should have the option of receiving a letter that explains what is being redressed and how the programme adjudicated their payment values. Good in itself, that clarity also enables the fair use of waivers. Waivers require survivors to release the state from future claims and agree to a final settlement of their claim(s). It is unfair to ask survivors to waive claims for which they have not been offered credible payments. Waivers should only settle claims that are redressed. The advantages of settling claims with waivers are obvious to states, but they can be good for survivors too. By legally resolving the claim, a waiver might help survivors move forward with their lives.

As an aside, the point of payment is an opportunity for the survivor to get information about the use of data held by the programme about the survivor. Chapter 8 argues that survivors should control how their information is used and archived and when (or if) it will be destroyed. Survivors would benefit if they could learn, at the end of the process, whether information from their claim aided other applicants, was used in prosecutions, or informed policy research. Survivors should also be given an opportunity to (re-)instruct the programme as to future use of that data, where and how their information should be archived, or whether it should be destroyed. Redress programmes will hold highly sensitive and private information about survivors. Survivors need to be able to control what happens to that data.

Survivors also need time to consider payment offers. For example, Canada's IAP required survivors to request a review within thirty days. Australia's NRS provides six months. Longer periods are better for survivors, allowing them time to seek advice, make a decision, request a review, or, potentially, augment their claim with further evidence. Survivors should be able to extend the offer period by notifying the programme. But should the survivor fail to respond within a reasonable period, the offer should lapse and the claim should close. Ireland's RIRB experienced difficulties with claims that they could not close because

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survivors did not respond to settlement offers. Those claims continued in limbo until the Dáil legislated to terminate them. After a reasonable period, the survivor's failure to respond should be treated as a refusal. That refusal would leave survivors able to reanimate their claim either through litigation or in a successor programme.

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Tensions between the public and private are a theme in this study. I have previously remarked that individual monetary payments can individualise and privatise experiences that are better understood as collective and systemic injuries affecting families, communities, peoples, and polities. Pushing back against those individualising tendencies, Madelaine Dion Stout and Rick Harp advocate giving Indigenous survivors the option of linking payments to a communal sweat (Dion Stout and Harp 2007: 63). Non-Indigenous survivors might also appreciate payment ceremonies. While apology letters are worthwhile, '[A] lot of applicants wanted a face-to-face apology. A standard letter, even though it came from the Premier, didn't really cut it with them' (AU Interview 8).

Policymakers should consider having ceremonies for awarding monetary payments. Participation would need to be strictly voluntary, but having community events could be valuable for those who choose to participate. Ceremonies might be tailored to the survivors' context. Some survivors might prefer an intimate approach involving only a small number of people. Others would benefit from larger events. Still others might want a response to a specific institution, such as a large orphanage or residential school. Where survivors have gone through redress as a group, that collective might host the ceremony. Again, there is value to taking a flexible approach.

However devised, formal processes communicate respect for survivors and provide opportunities to develop and affirm the meaning of payments. One could imagine survivors participating in a ceremony with politicians or senior civil servants. Some survivors might testify, but this would be voluntary and no one other than the survivor need know their payment values (which would have already been agreed). If survivors wish, the ceremony could include institutional representatives, such as church officials, offering personal apologies or statements. A formal event could link individual payments to larger practices of communal reconciliation in ways that militate against individualising tendencies. Community award ceremonies would enable senior officials to state

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publicly how monetary redress connects with the survivors' membership in their communities and in the larger polity. That is one reason the survivor advocate Sir Roger Martin argues that redress programmes should include a ceremonial recognition of the survivors as citizens (Neilson 2019). Martin argues that care leavers need to be publicly recognised both as survivors and as equal citizens.

If community events acknowledge survivors publicly, they could also help shape survivors' understanding of their redress monies in positive ways. Some survivors report that they feel their redress money, or things purchased with it, are tainted by their association with abuse or neglect (Feldthusen, Hankivsky, and Greaves 2000: 98; Dion Stout and Harp 2007: 33; The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care 2021: 94). A communal celebration could help mitigate the sense that redress money is soiled. Adding to their intrinsic value, high-profile events could encourage the development of survivor networks. Moreover, by publicly highlighting survivors' needs, such events could provide opportunities for advocacy that helps secure funding for necessary support services. Of course, payment ceremonies create additional costs and delays. And privacy concerns will deter some. But if the ceremony was optional, and attendance was cheap, it is an option worth exploring with survivors.

The potential benefits are evidenced by the value survivors find in the grand public apologies offered by senior politicians. It has become normal for premiers, prime ministers, and presidents to apologise to survivors. It has also become normal for survivor representatives to participate in those apologies. In 2008, Phil Fontaine, a survivor, and national chief of the AFN, spoke in Parliament in response to the Canadian prime minister's national apology for the residential schools. Accepting the apology, Fontaine described it as 'signif[ying] a new dawn in the relationship between us and the rest of Canada' (Fontaine 2008). Twelve years later, a survivor-focussed report confirms that apology 'had a profound effect on the Survivors in terms of feeling believed and having their personal experiences validated' (National Centre for Truth and Reconciliation 2020: 16). Larger communal ceremonies can recognise the collective and political character of the survivors' experiences of structurally injurious policy. When survivors see those apologies as components of a substantial and holistic remedial process (and not merely a self-serving publicity stunt), public apologies and monetary redress can each gain strength from one another, improving the quality of both.

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13.5 Payment Recommendations

- Survivors are due full compensation; therefore, a programme needs to demonstrate that it has made a credible effort to appraise the disvalue of injuries.
- Programmes need to use the best available methods to develop credible payment values, drawing upon data and techniques from markets, litigation, insurance, and public health. Appropriate values will vary from time to time and place to place and will be more credible when co-developed with survivors.
- If a redress programme offers a base payment, it might be set at a value sufficient to make a tangible difference in survivors' lives.
- Although survivors have a right to full compensation, programmes might consider using categories that group roughly similar injuries together and pay the same amount of money to all those assessed at a specific standard.
- Better programme design would provide multiple avenues for redress wherein lower payments are associated with roughly assessed and lower cost processes, while also enabling survivors to choose more nuanced pathways to fuller compensation.
- Programmes will need to make provisions for legally incapable survivors to apply for and obtain redress.
- Programmes should offer survivors the option of putting their redress payments into pension and/or trust facilities.
- Programmes should not use concerns for survivors' well-being to impose paternalistic restrictions on their use of redress payments.
- Holistic redress programmes should provide a range of direct support services, rather than make survivors apply for in-kind redress.
- Programmes should advertise and report median average payment values, and encourage the media to do likewise.
- Programmes should offer survivors clear explanations of what their redress is for, and how values were derived. Survivors should be able to choose whether they will receive an explanation, or not.
- Redress should be accompanied by both collective and personal apologies. These might be provided orally and/or in writing.
- Personal apologies should not be limited to generic statements. Better apologies clearly indicate who is taking responsibility for what.
- Payments should be accompanied by statements regarding what has and will happen with the survivor's information and enable survivors to direct what will happen with their information.

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- Programmes should only ask survivors to sign waivers when they have been offered credible redress payments. It is unfair to ask survivors to waive claims for which they have not been offered credible payments.
- Survivors need enough time to consider payment offers, however, their claim should lapse once that period concludes.
- Policymakers should consider developing redress ceremonies that recognise the collective and political character of injuries experienced in care.

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