



JOINT SUBMISSION BY THE UNITING CHURCH IN WESTERN AUSTRALIA

18 August 2023

Parliamentary Inquiry into the options available to survivors of institutional child sexual abuse in Western Australia.

Thank you for the opportunity to make a submission in response to the Community Development and Justice Standing Committee's Parliamentary Inquiry into the options available to survivors of institutional child sexual abuse in Western Australia. This is a joint submission of the Uniting Church WA and Uniting WA.

Uniting Church's Response to the Royal Commission into Institutional Responses to Child Sexual Abuse

The Uniting Church in Australia (UCA) sincerely apologises to all children in our care who suffered sexual abuse, of any form, in our Church, whether it happened after our foundation in 1977 or before that, in our predecessor Churches.

We continue to make this apology at every appropriate occasion, public or private, and express our deep sorrow that we did not protect and care for children in our institutions, schools, agencies and congregations in accordance with our Christian values.

Throughout the Royal Commission into Child Sexual Abuse and before that, our commitment as an institution has always been that we will seek to make amends to survivors and to do our best to ensure that others do not suffer as they have.

Our pledge which continues beyond the Royal Commission is that we will continue to understand and apply the lessons learnt throughout this landmark National Inquiry, its Final Report and wide-ranging Recommendations, and remain open to the insights of survivors and professionals.

We have pledged to continuously seek improvement, to regularly review our policies and practices in all parts of our Church, and to ensure that they reflect the best quality of care, service and support for children. Thanks to the work of the Royal Commission the responsibility for all Australian institutions to engage their staff and members about child safety has never been clearer.

We have also pledged to ensure that these priorities are integrated into our response to survivors who seek justice through Redress or civil litigation for past abuse experienced within our former institutions and schools, agencies and congregations.

The Uniting Church in Australia (UCA)

The Uniting Church is the third largest Christian denomination in Australia and the first church to be created in and of Australia. On any Sunday around 1600 congregations worship at a Uniting Church including many congregations that worship in languages other than

English. Uniting Church congregations and faith communities are spread all across Australia, from our cities to our most isolated and outback towns.

The Uniting Church came into being on 22 June 1977, after three denominations - Congregational Union in Australia, the Methodist Church of Australasia, and the Presbyterian Church of Australia - joined together. Ecumenism remains a vital aspect in all of the Church's life and work - in local congregations, national commitments to work together with other churches, and relationships and partnerships with churches of various denominations in Asia and the Pacific.

The UCA is also the largest non-government provider of community services in Australia, achieved through its community services arm, UnitingCare Australia. This is an umbrella of more than 400 agencies, institutions, and parish missions throughout Australia. Areas of service include aged care, children, youth and family, disability, employment, emergency relief, drug and alcohol, youth homelessness and suicide, mental health and reintegration.

It is a key provider of education with many Uniting Church schools in every State throughout the Commonwealth.

A key component of the Uniting Church's justice work is seen in its efforts to bring Indigenous and non-Indigenous Australians together and to support the Indigenous community generally. Reconciliation, land rights and Indigenous leadership training are just some of the activities in which the Uniting Church is engaged.

Structure

The Uniting Church is organised not by a hierarchy, but by groups of women and men, lay and ordained, consulting together, usually making decisions by consensus, in each area of the church's life.

The Church is committed to being a series of inter-related councils — local churches, regional presbyteries, state synods, and the national Assembly. Each council has its distinct tasks, and each council recognises the limits of its responsibilities in relation to other councils. Hierarchy occurs when a group decides it knows what is best and has the power to impress that decision on others. The Uniting Church is committed to a more shared process and realises the need to keep working at it.

The powers and responsibilities of government and administration in the Uniting Church are vested in its:

- Congregations;
- Local Church Councils;
- Presbyteries;
- Synods; and
- The Assembly.

Each has its own rights, powers and responsibilities as follows:

- **Congregations:** Uniting Church congregations throughout the country are caring communities to which all people can belong. There are around 1600 congregations.

A congregation may have hundreds of members or be a tiny community of a dozen people. At least forty different languages are used in worship in the Uniting Church each week.

- **Local Church Councils:** The Church Council consists of the minister and those called to share with the minister in oversight. The Council is responsible for building up the congregation in faith and love, sustaining its members in hope, and leading them into further participation in Christ's mission in the world.
- **Presbyteries:** A presbytery is a council of the Uniting Church which has oversight of congregations, ministry and programs within a region. The Uniting Church in Australia's presbyteries have responsibility for oversight of the church's life and work in their region, especially for the settlement of ministers; establishment, amalgamation and disbanding of congregations; mission strategy; and support of congregational life. A presbytery is the council to which ministers of the word and deacons are responsible. It has the duty of caring for them and ensuring their work is carried out faithfully. Presbytery meetings include ordained ministers, lay pastors and elected lay persons from every congregation.
- **Synods:** A synod is the state council of the Uniting Church. The word 'synod' also describes the annual meeting of representatives of the state-wide Uniting Church. Six synods of the Uniting Church in Australia are responsible for overall support and resourcing of the church in their area — especially in community services, mission planning, theological education and other educational services, administration relating to ministers and to property and financial services. The elected head of each synod is the Moderator, and a General Secretary is usually appointed as the chief executive officer.
- **Assembly:** The Assembly is the national council of the Church, headed by the President of the Uniting Church, with a General Secretary as chief executive officer.

The Uniting Church in Western Australia (UCAWA)

The Uniting Church in Western Australia was formed through the *Uniting Church in Australia Act 1976 (WA)*. This Act enables the Synod of Western Australia to establish instrumentalities (notably agencies and schools), appoint boards for the good governance of these incorporated bodies, and vest property in them.

In Western Australia, the Uniting Church reflects the diversity and spread of the National Church. The Uniting Church in WA has more than 100 congregations and faith communities with around 3,000 members spread across the State. As well as their religious activities, a number of these congregations run community services including emergency relief and financial counselling services, op shops and material relief including food and clothing, etc.

Seven private schools are incorporated under the Uniting Church in Australia Act 1976 (WA), including St Stephen's School, Penrhos College, Scotch College, Methodist Ladies' College, Wesley College, Presbyterian Ladies' College and Tranby College. Between them, these schools provide educational services to nearly 10,000 children and young people, with some offering boarding/residential services to their students. In addition, Trinity Residential

College is located in Nedlands and provides residential services to tertiary students attending the University of WA.

Four agencies are incorporated under the Act – they are Juniper, Good Samaritan Industries, UnitingCare West trading as Uniting WA (Uniting WA) and Beananging Kwuurt Institute. Services provided through these agencies include aged care (including home care, retirement living and residential care), NDIS supports, employment services, school-based services, social and community participation, community and family services (including out-of-home care, specialist child and family support services and alcohol and drug services), mental health services (including PUP parenting services and PHaMS), independent living and accommodation services (including emergency relief and financial counselling, material assistance, homelessness services, reintegration services and transitional accommodation) and advocacy. Beananing Kwuurt Institute provides support services to the Aboriginal community through premises in Queens Park.

The three major Uniting Church agencies have a long history of serving the Western Australian community and they collectively touch the lives of tens of thousands of Western Australian men, women and children each year.

Uniting Care West trading as Uniting WA (Uniting WA)

Uniting WA is an Agency of the Uniting Church in Australia Synod of Western Australia incorporated under the provisions of the *Uniting Church in Australia Act 1976 (WA)*. Uniting WA delivers a range of quality community services and programs which are responsive, accessible and relevant to the needs of those groups and persons who are most vulnerable and disadvantaged.

Uniting WA operates over 35 different service across Metropolitan Perth and the Great Southern Region of WA, including out of home care (OOHC), foster care, intensive family support, parenting support, domestic violence support, child and family therapeutic services, financial wellbeing and emergency relief, homelessness services, NDIS services, mental health services, advocacy and reintegration services.

Uniting WA was created in 2006 to merge services and programs of eight community services and parish missions of the Uniting Church, including Methodist Homes for Children (MHC) later known as Mofflyn. Uniting WA holds the historical records for MHC/Mofflyn and responds to redress and civil claims against MHC/Mofflyn. Uniting WA staff work closely with the Culture of Safety Team at the Uniting Church WA to ensure consistency of approach for all Uniting Church claims.

National Redress Scheme/Civil Litigation

The Uniting Church in Australia welcomed the commitment by the Federal Government to develop a national approach to redress for survivors of institutional child sexual abuse.

In response to the National Redress Scheme, the Church established a national vehicle for dealing with redress claims from survivors of child sexual abuse called UCA Redress Ltd. The purpose of this company is to respond to and provide support for children and

vulnerable young persons who have suffered abuse at the hands of the Uniting Church, including by participation in a nationally consistent equitable redress scheme.

Prior to commencement of the National Redress Scheme, various local Synods and Church agencies had processes in place to listen and respond to survivors of past child sexual abuse and providing an interim redress payment/ex gratia payment, counselling and/or a direct personal response to those who came forward.

UCA Redress Ltd then applied to participate in the National Redress Scheme on behalf of all six Synods and completed all the necessary steps to join the Scheme by March 2019.

Model litigant principles have also been adopted across the Church, with variations on the following generally included:

- a. Act to minimise further trauma
- b. Support the survivor
- c. Seek resolution without litigation
- d. Respect circumstances and needs of survivors
- e. Ensure equal treatment
- f. Officials to have appropriate skills
- g. Provide survivor with early information
- h. Facilitate access to records
- i. Not act in an adversarial manner

These Principles and Guidelines have been formative in shaping the practice of those managing claims on behalf of the Uniting Church WA and Uniting WA.

1. The impact of the Civil Liability Legislation Amendment Act (Child Sexual Abuse Actions) Act 2018 (the Act), including:

b. *the response of government and non-government institutions to civil claims brought by survivors;*

Response of the Uniting Church in Western Australia to civil claims brought by survivors is to:

- provide a skilled, well-resourced team within the Uniting Church Synod office to manage the civil litigation claims in an efficient, sensitive and trauma-informed manner;
- contract an external legal team who are familiar with civil litigation claims and accept working within the Model Litigant Principles and using a trauma-informed approach to respond to survivors;
- research and provide any available/known records/documents of the survivor in a timely manner;
- respond to claims on a case-by-case basis, taking into account different circumstances as needed whilst ensuring consistency between claimants in similar circumstances;
- avoid litigation, preferring to settle claims using Informal Settlement Conferences wherever possible;

- participate with the other parties in joint legal/medico assessments so the survivor only has to be assessed by one doctor assigned by the Defendants in the civil litigation process;
- inform survivors that they have a right to apply to the National Redress Scheme and have their claim assessed and determined in that process.

Key challenges:

A. Importance of respecting and upholding the rights of individuals to bring claims whilst also acknowledging an institution's right and duty to test or defend claims made against it.

The Uniting Church WA has, through its agency UnitingCare West trading as Uniting WA, applied for and has been granted one permanent stay of proceedings in a civil matter brought by a former child resident of Methodist Homes for Children/Mofflyn. The State of Western Australia was a co-defendant to the claim, but the permanent stay was only granted in relation to the claim against Uniting WA.

In the judgment handed down in December 2020, his Honour District Court Judge Bowden stated "Whilst the first defendant does not have the right to a perfect defence, it has a right to a fair trial. For the trial to be fair the first defendant has to be able to run a meaningful defence. The first defendant cannot speak to Ms M and admit liability if appropriate or call her to challenge on oath the evidence of the plaintiff." His Honour concluded that "the continuation of the proceedings would be unfairly and unjustifiably oppressive because the first defendant cannot make a meaningful defence."

The decision was appealed by the plaintiff but the Appeal was dismissed by the Supreme Court of WA on the basis that the Appellant did not establish legal error on the part of the primary judge.

The Court made an order that the Appellant pay Uniting's costs, which reflects the normal course where costs follow the event. No steps have been taken by Uniting WA to commence a costs recovery from the plaintiff.

B. Collapse of the insurance market for PSA claims and its impact on non-government organisations

The Uniting Church WA and Uniting WA have been unable to secure insurance cover for physical and sexual abuse (PSA) claims since 31 October 2021. The lifting of the statute of limitations, the high cost of historical claims, and the high-risk nature of out of home care (OOHC) activities have resulted in an almost complete withdrawal of insurers from the PSA market.

The loss of insurance cover for PSA claims has impacted on organisations' ability to meet historical claims which have come to light since insurance cover ceased.

It has also impacted on non-government service providers delivering OOHC and youth homelessness services, including Uniting WA. Whilst the WA Government has provided a

short-term indemnity scheme for OOHC and youth homelessness providers holding current contracts, uncertainty remains.

Because many child sexual abuse survivors take decades to disclose, potential claims may not be known for many years to come, with the risk being borne by service providers long into the future.

c. the efficiency with which courts deal with civil claims;

The Uniting Church and its institutions have experienced delays in the court system with many of its civil claims. These delays occur at times because of:

- initial court processes involved for plaintiffs and defendants preparing writs, defence documents and other paperwork required by the court
- full court schedules
- heavy claims lists for plaintiff legal firms to manage leading to delays in progressing each plaintiff's claim
- Heavy schedules of KCs or SCs increases the delays in booking a court date for both plaintiffs and defendants

The Uniting Church supports setting up a specific court with separately appointed court officers to deal specifically with CSA cases.

2. The effectiveness of WA's support of the National Redress Scheme, including:

b. the response of Government and non-government institutions to the Scheme.

The Uniting Church WA and its institutions are participating institutions in the National Redress Scheme through UCA Redress Ltd, a company limited by guarantee set up by the Uniting Church in Australia to provide a single vehicle for the whole Church as recommended by the Royal Commission.

All Requests for Information received by the Uniting Church WA are attended to in a timely fashion and within the timeframes requested by the Scheme.

Some of the decisions made by the NRS in relation to shared or primary responsibility have been confusing and difficult to understand. Some decisions are made very quickly, and others take an extremely long time, with no communication as to the cause of delay (which could be at the request of the survivor). The lack of transparency has the effect of reducing confidence in the NRS for both survivors and institutions.

The National Redress Scheme's Direct Personal Response (apology) process follows the offer/acceptance stage. Even though many survivors elect to receive a DPR when they accept the offer from the NRS, very few DPRs have actually been requested and therefore conducted by the Uniting Church. It's disappointing that so few apologies are being requested and given under the NRS as our experience tells us that an apology is an important step in the healing process for many survivors. Feedback from survivors participating in a Direct Personal Response (apology and at times other meaningful actions -such as memorial plaques, tree plantings and/or

site visits) highlighted the relief and release they experienced of finally being listened to and believed.

Please also see the Uniting Church's response to the Scheme as outlined earlier in the Submission.

3. The resourcing and provision of services to support survivors in whichever path they take.

From 2016 and in response to requests from claimants and/or their legal representatives, the Uniting Church WA established a policy to provide funding for psychological counselling with respect to child abuse civil claims where liability for the abuse is not disputed. A number of survivors have accessed this funding and received counselling whilst their claims were progressed.

Conclusion

It is worth reflecting on the fact that the Royal Commission's recommendations were two-pronged – firstly, making civil litigation a more viable and accessible option; and secondly, acknowledging that it might not be available or possible for all survivors, the redress scheme be established. Overall, we acknowledge that neither civil processes nor the National Redress Scheme provide a perfect solution to address abuse. However, the issues were considered in detail by the Royal Commission, which concluded that the balance lay in the two-pronged approach that has ultimately been adopted.

Please contact me for further information or to clarify anything contained in this Submission at [REDACTED] or phone [REDACTED].

Yours sincerely,

[REDACTED]

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Uniting Church in Western Australia