



**The Coalition of Aboriginal Services' (the
Coalition) Submission to the Royal
Commission into Institutional Responses to
Child Sexual Abuse –
Consultation Paper:
Redress and Civil Litigation**

9 March 2015

Introduction

The Coalition of Aboriginal Services (hereafter referred to as the 'Coalition') was established to firstly bring together Aboriginal organisations and services working with those who may be impacted by the work of the Royal Commission Into Institutional Responses to Child Sexual Abuse (hereafter referred to as the 'Royal Commission') and secondly to provide leadership within the Victorian Aboriginal community in relation to this work. The Coalition has representation from a number of state wide and peak Aboriginal agencies and funding bodies, including:

- Victorian Aboriginal Child Care Agency (VACCA)
- Link-Up Victoria (LUV)
- Victorian Aboriginal Health Service (VAHS)
- Victorian Aboriginal Legal Service (VALS)
- Victorian Aboriginal Community Controlled Health Organisation (VACCHO)
- Victorian Aboriginal Community Services Association Limited (VACSAL)
- Connecting Home Limited (COHO)
- Aboriginal Family Violence Prevention and Legal Service (FVPLS Victoria)
- Victorian Aboriginal Education Association Incorporated (VAEAI)
- Aboriginal Community Elders Service (ACES)
- Secretariat of Aboriginal and Islander Child Care (SNAICC)

The Coalition is supported in this work by three government agencies: Department of Social Services, Department of Prime Minister and Cabinet and Department of Justice – Koori Justice Unit. The Coalition is also supported by KnowMore Legal Services set up to specifically advise on issues related to the Royal Commission.

The Coalition meets bi monthly to progress activities identified to enable a comprehensive response to the Royal Commission. This includes community education and information opportunities and discussion about the issues the Royal Commission is raising for survivors. As can be seen by the range of agencies, the Coalition has expertise across a number of areas including legal, health and wellbeing, education, Stolen Generations and child and family welfare.

The Coalition hosted a forum on Thursday 19 February to discuss the issues contained in the 'Consultation Paper: Redress and Civil Litigation' released by the Royal Commission on 31 January 2015. The forum was attended by a number of survivors of childhood sexual abuse, many of whom have already told their stories to the Royal Commission or have registered to tell their stories. The Coalition organisations represented on the day included; VACCA, LUV, VAHS, VACCHO, VACSAL, VALS, FVPLS Victoria and also in attendance were representatives of the Department of Justice – Koori Justice Unit, Department of Prime Minister and Cabinet and the Royal Commission's Community Engagement Team.

A decision to focus primarily on the Redress elements of the 300 page Consultation Paper was made given the extremely short timelines required for responses,. The forum was facilitated by Graham Gee, an Aboriginal psychologist who specialises in trauma and recovery. In the introductory session participants were shown a video presentation of the Public Hearing on Redress by Justice Peter McLellan , followed by a series of working groups (Yarning Circles) that each addressed separate

elements of redress. Relevant information was provided on each aspect of redress, in addition to the use of targeted questions to assist gathering participants' views (see attachment one).

After the forum, a summary of themes was uploaded on the Coalition website to allow those who attended and those who were unable to attend to provide further feedback. These views and ideas have been incorporated into this submission.

As well as the views and ideas expressed at the forum, it is important to note that VACCA and VALS also attended each of the Royal Commission's roundtables held around redress and civil litigation, as well as providing a submission to both Issues Paper 5 on Civil Litigation and Issues Paper 6 on Redress Schemes. In addition, FVPLS Victoria and VALS provided submissions on Issues Paper 7 on Statutory Victims of Crime Compensation Schemes.

The Coalition welcomes this opportunity to provide input to the Royal Commission around the important issues of redress and civil litigation. However the extremely short timeline to read, consult and respond to the Consultation Paper has been challenging. It is vital that our response is based on genuine community consultation to ensure our recommendations reflect the views of the Aboriginal community. Providing a strong voice for the survivors of institutional child sexual abuse is not only respectful but essential given they are the stakeholders affected by the final recommendations. Furthermore it should be acknowledged that individual members of the Coalition may, from time to time, have different views, according to their specific clients and service delivery.

We do however appreciate that the timelines are put in place to ensure a final report with recommendations to government is produced by mid-2015. Having clear timelines is important, for survivors that have waited for too long to see redress and effective and efficient civil litigation processes. The Royal Commission is no doubt aware that the Aboriginal community has already seen a number of Inquiries and Royal Commissions that make effective recommendations that never get implemented by government and there is concern that this Royal Commission may be just one more in a long line of failed efforts to provide survivors with the justice they deserve.

Today the numbers of Aboriginal children removed from their families and placed in out of home care is alarming and the clear connection between people removed under past policies and their children, grandchildren and now great grandchildren being removed clearly demonstrates the system is sadly failing the Aboriginal community. As of June 2014 there were 14,991 Aboriginal children in out of home care. This figure represents almost 35% of all children in care despite Aboriginal children making up only 4% of Australia's population aged under 18 years (Report on Government Services, Productivity Commission, 2014). The intergenerational trauma suffered by so many in this community requires a culturally responsive healing approach in order to break this ongoing cycle. Our sincere hope is that the Royal Commission will make clear recommendations with regard for the need for culturally safe and effective healing approaches for Aboriginal survivors, their families and communities to not only assist in the recovery of the individual survivor, but of the community resulting in breaking the cycle and seeing a reduction in the over representation of Aboriginal children in out of home care over the next generation.

Given the tight timelines and our focus on privileging the voice of the survivors, we chose to focus our discussion with community, and subsequently this submission, on the following areas:

Institutions Response, Counselling and Psychological Care and Monetary Payment. We have also included discussion around structural and process Issues. Each of these four areas are discussed in detail below.

Yarning Circle One – Institutions Response

At minimum all institutions should offer:

- Apology
- Opportunity to meet with senior representative
- Assurances of steps taken to protect against future abuse

Questions for participants:

1. Would you want to re engage with the institution in any way, and if so what would be important to you in doing this?
2. Would your answer be different if the institution was an Aboriginal one?

Forum discussion

In response to whether or not survivors would wish to reengage with the institution, the majority of participants in attendance replied 'no' expressing that this experience could potentially do more harm than good and only serve to further exacerbate existing trauma. However, a smaller number of participants did say they might like to reengage with the institution in an effort to bring closure and utilise the experience as an opportunity to reconnect with family and fellow survivors. Additionally, that the institutional response, if agreed to by the survivor, must be meaningful in that it accepts responsibility for the wrongs committed against children whilst in their 'care', regardless of the passage of time, for throughout Australian history survivors have heard too often "that wasn't me/ my fault." In regards to the actual physical location of the redress response and apology, participants agreed that it should be somewhere the survivors felt comfortable, safe and supported. Whilst some were interested in reengaging, overall it was stated that this be an option of which at any time survivors could choose to discontinue.

In addition to discussing the option of reengaging with the institution, members of the forum put forward recommendations on ensuring the required steps are taken to protect against future abuse. The recommendations are as follows:

- more Aboriginal and Torres Strait Islander social workers to ensure children are safe and heard ensuring Aboriginal and Torres Strait Islander children in care maintain connection with family and community
- systems cultural change
- provision of information on system change
- working with children checks

- staff and carers to undergo appropriate training
- staff and carers to have an understanding of Aboriginal and Torres Strait Islander culture
- Aboriginal organisations to advocate on behalf of community(s) and further support for these advocates

In relation to the question “Would your answer be different if the institution was an Aboriginal one?” the majority of participants in attendance answered ‘no.’ However, some participants expressed that they felt if the institution was managed by an Aboriginal body that this would mean a ‘greater betrayal’.

Yarning Circle Two – Counselling and Psychological Care

Principles:

- Available throughout a survivors life when the person feels they need it
- Flexibility and choice
- No fixed limits/timeframes
- People who understand about trauma.
- Available to family members

Questions for participants:

1. Have you had counselling in the past?
2. Did you find it helpful/healing?
3. What worked for you?
4. What didn’t work for you?
5. What is important to you in getting healing?
6. What programs and ideas do you have about what would assist your healing?

Forum Discussion

In discussing redress in the form of counselling, participants expressed a strong need for ongoing access to services. Participants reported that timeframes and a limited amount of sessions simply do not meet the realistic community need for counselling and healing support. There was a strong desire for existing services providing positive impact in the community to be further supported in order for their services to continue and expand their reach. In addition, participants identified the importance of having culturally aware counsellors and workers who understand the needs and experiences of the Aboriginal and Torres Strait Islander community(s). There was broad agreement that individual preference needs to be considered as not all survivors will want mainstream counselling, and not all survivors will opt for healing programs with a strong Aboriginal and Torres Strait Islander focus. However, overall, participants expressed the importance of holistic healing and for the process to be empowering, not just for the individual but also for family and community. Such holistic approaches to healing have proven to be increasingly successful in engaging with the Aboriginal and Torres Strait Islander community(s) and meeting growing needs. Some examples

highlighted by participants included, but were not limited to, programs facilitated by services such as Link-Up Victoria and the Victorian Aboriginal Health Service. Programs with specific focus on Men's and Women's and On Country healing were underlined as integral. There was a strong view that cultural healing programs contribute to individual healing and wellbeing and in turn contributes to the overall wellbeing of family and community. Participants felt that it was important not only to focus on counselling that targeted distress and trauma (i.e., symptoms management and reduction), but equally important to have strength based programs that focussed on improving self-worth and cultural wellbeing and identity. This is particularly important because Aboriginal survivors from institutions may experience two layers of trauma - interpersonal trauma such as sexual abuse combined with loss of connection to culture and heritage. Cultural activities and cultural camps can greatly assist in enhancing self-esteem and strengthening identity.

Participants also expressed the need for healing groups that were not gender specific, as facilitating respectful and open discussion between family members has also proven to be of significant benefit.

The matter of confidentiality between workers and community was also raised and that at times this may impact on the decision to go with particular services. One recommendation put forth as a potential solution was that small community organisations needed to commit to a duty of care, namely the matter of confidentiality. This provision may also act to re-establish and strengthen trust between community and service providers. In regards to prior experiences with counselling services, participants expressed the case management could be improved and that clients be better informed on the contents of their files. Participants also reported that the turnover of staff affects the client's experience, and they highlighted the need for better consistency with regards to information.

The need for specialist services such as sexual abuse counselling was also highlighted as vital to healing, and that counsellors needed to be better culturally and trauma informed. In discussing previous counselling experience, participants gave mention to poor experiences being due to counsellors not being properly equipped with both culturally and trauma specific training.

Participants suggested that it needed to be a matter of personal choice whether their children and or family members attend their counselling sessions. In some cases they felt that joint counselling with family members helped the younger generations to further understand the position of their Elders.

Yarning Circle Three - Monetary Payment

“A monetary payment is a tangible means of recognising a wrong that a person has suffered.”

Determined by:

- Severity of the Abuse
- Impact of Abuse
- Distinctive Institutional factors – Stolen Generation – Cultural Abuse

“The monetary payment is not intended to be fully compensatory and they will not equate to common law damages.”

We want to explore:

- Do you agree that the Monetary amount should consider: Severity, Impact and Institutional factors?
- Which amount do you support?
 - A maximum of \$100,000 (average \$50,000)
 - A maximum of \$150,000 (average \$65,000)
 - A maximum of \$200,000 (average \$80,000)
- Should there be an option for instalments rather than a lump sum payment?
- How should past payments be considered?

The Coalition believes, as is noted in chapter 14 of the Bringing Them Home (BTH) report that no compensation measures can fully compensate for the effects of the atrocities that have occurred. Nevertheless some acknowledgment and form of compensation would assist people to feel that their pain and suffering has been recognised. That, in itself, assists in the ongoing healing process. Further, it is important to reiterate the Coalition’s support for the recommendations made in chapter 14 of the BTH report in relation to redress for members of the Stolen Generations. It is the Coalition’s belief that the BTH report is integral to developing a successful redress scheme that supports the needs of the Aboriginal community(s) and the members of the Stolen Generations. Although by and large Australian Governments have failed in the implementation of those recommendations, the Coalition considers that the same principles and procedures can be used to inform this current consideration and that they are a vital part of the work of this Royal Commission.

There was discussion among forum participants that the financial options presented did not go far enough in providing justice for the harm committed to victims of institutional child sexual abuse.

Of the three financial options presented in the consultation paper, participants’ preference was for the highest figure of \$80,000 average payment with a maximum of \$200,000.

Coalition agencies respect this view; however we are concerned about avoiding further disillusionment and disappointment and hope that whatever figure is determined to be the one recommended to government, that government will commit to funding it.

It is important that any panel or establishment set up to determine monetary payments have Aboriginal people represented when there is consideration of an Aboriginal applicant.

It is also important that receipt of a financial award under any such redress scheme does not prevent victims/survivors from also accessing the Victims of Crime Assistance Tribunal or damages through civil litigation. This would ensure victims/survivors are not disadvantaged by the introduction of a redress scheme and would also reinforce the seriousness with which the community and legal sector view child sexual abuse and the devastating, long-term impact it has on victims/survivors.

Distinctive institutional factors

We believe for Aboriginal children removed from their families and communities, placed in institutions where they were forced to reject their identity and their culture, left them extremely vulnerable to institutional sexual abuse.

At a minimum participants felt very strongly that being part of the Stolen Generations and suffering from cultural abuse must be taken into account when calculating payments under the Distinctive Institutional factors. Further there was a view that for Aboriginal survivors there should be a separate calculation altogether, in recognition of the fact that cultural abuse is distinctive to Aboriginal people and has contributed significantly to their vulnerability. Again, the Coalition believes that the recommendations put forth in chapter 14 of the BTH report further supports the participants' position on redress and that it is crucial that these recommendations be addressed by the current Royal Commission when devising redress for survivors of institutional child sexual abuse.

We believe that cultural abuse should be considered as a distinct from and equal to other forms of abuse, such as sexual, physical and emotional abuse.

Yarning Circle Four – Structural and Process Issues

The forum posed some questions regarding structural and process issues and redress.

How should the Redress Scheme be set up and run?

- By the Institution?
- By the State?
- A National Scheme?
- What is important to you in the process of a redress scheme?
- What supports do you think should be in place while going through redress?
- Should there be a cut-off date?
- How best should any future redress scheme be advertised – how do we get the word out to the mob?

Overall, there was a clear view that a National Scheme was preferable to either the State or Institution establishing the scheme. However, participants also thought that it was critical for both the State and Institutions to take responsibility and contribute to the National Scheme. Discussion ensued about the potential length of time it may take to establish the National Scheme and the group felt that perhaps there could be two schemes, the state as an interim scheme until the National scheme could be established. The primary reasons for a National Scheme were ease of access for those who had been abused in more than one state, the need to ensure the processes were as easy as possible for survivors to access and to ensure redress provided was equitable and did not differ depending on the institution or state involved.

Participants highlighted the importance of having access to emotional, legal and financial support throughout their redress journey. It was recognised that no matter how uncomplicated and “easy” the application process was, the likelihood of experiencing some level of trauma was high and there was an absolute need to ensure culturally sensitive supports were in place to assist applicants throughout the process. Further that these supports include informing the Aboriginal and Torres Strait Islander community on how to apply redress policy and procedure to their own individual circumstances, that such information be provided to survivors as the policy is rolled out, and not after, allowing sufficient time and preparation to submit.

The scheme should also contain provisions for the payment of legal costs in the event that applicants require legal representation to access the scheme. This could be done in a similar way to the provisions within the VOCAT system.

The issue of records and the protection of records was raised as a serious cause for concern by a number of forum participants. There have been a number of records “lost or destroyed” and there was a very strong view that there must be systems in place to protect people’s files and the information held on client files are kept safe and not damaged or destroyed. The forum called for the establishment of a watchdog on databases of institutions. Moreover, participants asserted a greater scope for acceptance of documentation is needed. Such scope that collectively, may seek to support a particular fact (e.g. in the absence of a birth certificate or birth registration, other documentary evidence can be looked at to prove an individual’s existence); further, that there should be consideration for oral evidence and recordings of oral history and the cultural importance this has for Aboriginal people.

It was identified that wellbeing opportunities in the form of cultural days and camps should be available to people during this time as opportunities to reconnect with spirit, land and culture greatly assists people in keeping their spirit alive. It was acknowledged that these opportunities also need to be made for those workers supporting applicants as the energy that surrounds this issue is very heavy and can lead to burn out.

Participants thought that there should be no cut-off date and that redress should be available to people no matter how long they took to make their application. This should not be a time limited scheme. Also, there must be a range of community engagement strategies employed to raise community awareness and ensure all those who fall within scope are aware of the scheme and are supported to make an application under the scheme.

A couple of other issues were highlighted during this discussion:

- Monetary payment: It should be at the discretion of the applicant as to whether they receive a lump sum payment or payment by instalments.
- Free culturally sensitive financial counselling should be available to ensure each recipient makes an informed decision that is right for them.
- Where instalments are chosen by the recipient, should they pass away, their next of kin should receive subsequent instalments.
- There was concern raised about any potential impact on Centrelink benefits of monetary payments and a clear view that these payments should in no way impact on a person's Centrelink benefit.

Conclusion

In compiling this submission it is critical to note that there have already been several recommendations in numerous Inquiries that have highlighted the need for redress and effective and efficient civil litigation. It is now 20 years since the announcement of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their families and the subsequent Bringing Them Home Report, and 24 years since the report of the Royal Commission into Aboriginal Deaths in Custody. Both reports, and many others, have recommended redress and civil litigation - recommendations that still have not been implemented at the national level.

Despite these reports and their recommendations, and Prime Minister Kevin Rudd's, long awaited apology to the Stolen Generations which included the words "must never happen again" Aboriginal children are being removed and placed away from their families and communities in numbers estimated to be far greater than the numbers at the height of the Stolen Generations period. Since the national apology to the Stolen Generations the number of Aboriginal children placed in out of home care has increased by 65% (AIHW, 2009; Productivity Commission, 2015). The children being placed today are the descendants of survivors of institutional child sexual and other abuses, and the trans generational trauma suffered now by these families and communities over generations is not being addressed and the services provided are missing the mark as far as healing and significantly changing the trajectory of the generations yet to come. The state removes children they consider are unsafe within their families, but when does the state assess and reflect on itself and the fact that

it is those children it had for the majority of their childhood in their care that are now having their children removed and so the cycle continues.

Survivors have waited too long time to see a functioning redress scheme, it is important that this process does not become another list of important recommendations not acted on by government. Survivors deserve better. If a redress scheme is to provide a sense of justice the Royal Commission's recommendations must be fully implemented and must be based on fairness, justice and restoration.

Artwork "Journey to Healing" by
Emma Bamblett, Wemba Wemba



tell your story

Heal the past
safeguard the future

CONSULTATION ON REDRESS AND CIVIL LITIGATION

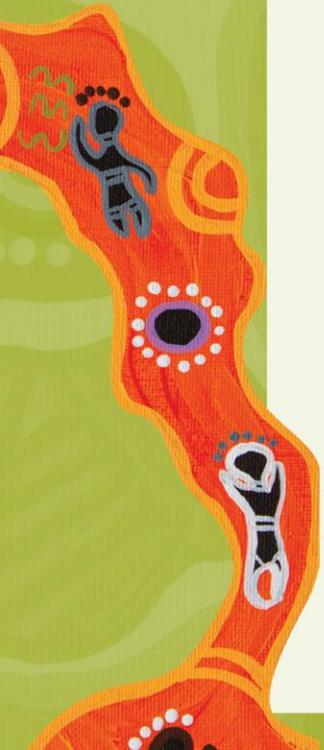


Produced by the Coalition of Aboriginal Services Responding to the Royal Commission Into Institutional Responses to Child Sexual Abuse.

What is Redress?

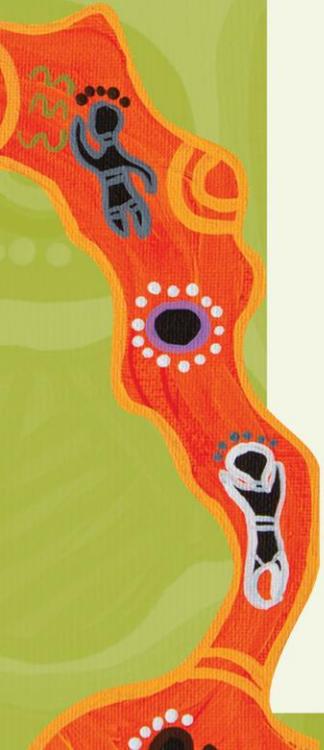
Three elements:

- Direct response by the institution IF THE SURVIVOR wishes to engage with that institution.
- Access to counselling and psychological care
- Monetary payment



Justice Peter McClellan

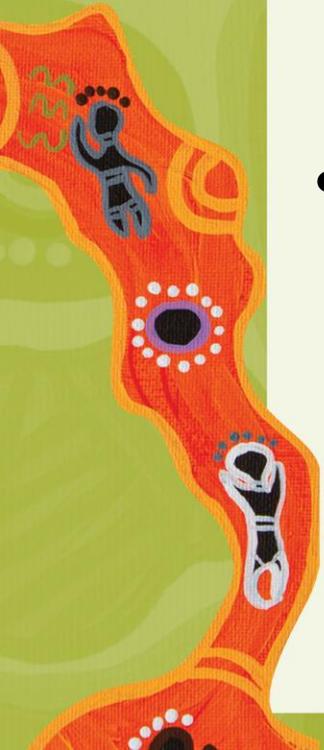
[Redress Public Hearing](#)



Re-engagement with the institution

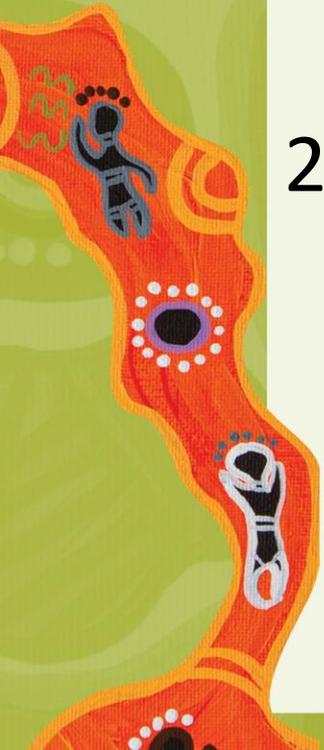
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Yarning Circle One

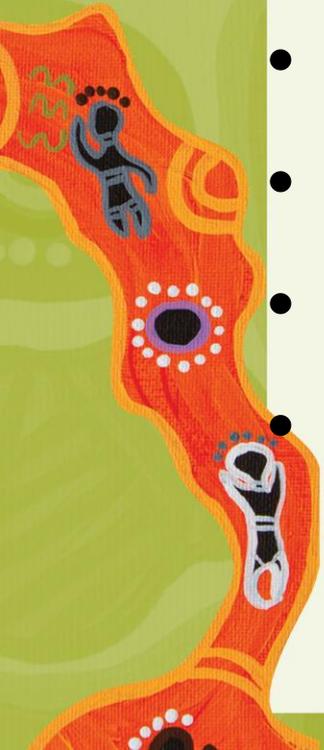
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Counselling and Psychological care

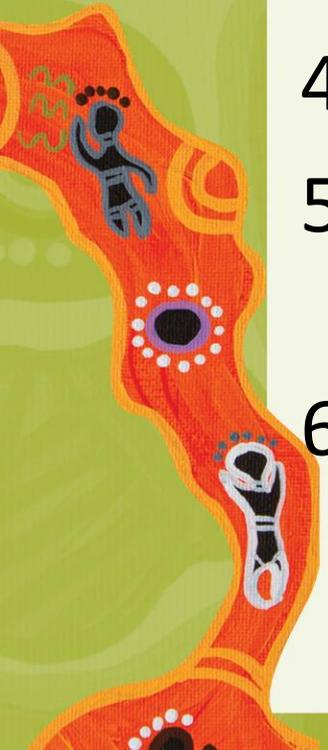
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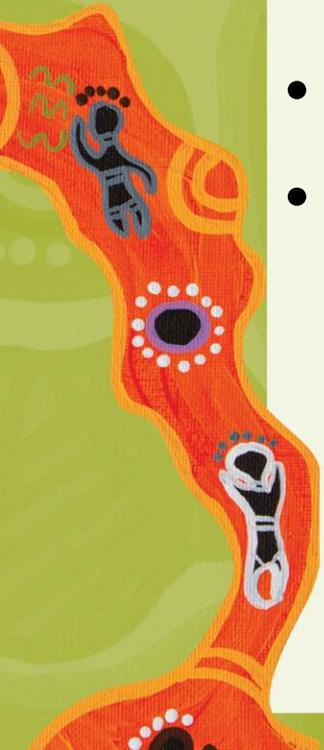
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Yarning Circle Three

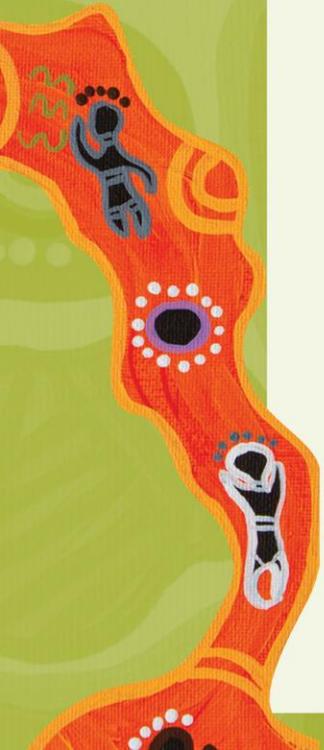
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Structures for redress?

Should the Royal Commission recommend Redress Schemes be set up and run by the

- Institutional
- State
- National



Yarning Circle Four

- What is important to you in the process of a redress scheme?
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