8

Redress Policy Design and Delivery

8.1 Introduction

Nemo judex in causa sua – no one should judge their own case – is a fundamental principle of natural justice. Yet, state redress programmes involve the state judging if, and how, it will redress its own offences. A history of systemically injurious practice involving the legislature, executive, and judiciary often means that there is no authority uncompromised by complicity. That makes it difficult for states to be credible redress providers. With reference to the criteria that Chapter 3 describes, this chapter explores how flexible and survivor-focussed strategies address the resulting challenges in programme design and delivery.

8.2 Designing Redress

Programme design always involves difficult trade-offs and public officials can lack the credibility needed to make the necessary decisions. To illustrate, recall how Redress WA's payment values were reduced through unilateral cuts, which, made without survivor participation, damaged the programme's credibility and became a focal point for public criticism (Green et al. 2013: 2). That is a high-profile example of a common problem. When difficult decisions are made by civil servants or politicians, it can be hard for them to demonstrate the independence and impartiality necessary for credibility.

The exemplars demonstrate two potential design techniques to promote credibility – the use of independent policymaking bodies and the participation of survivors in the process. Ireland used independent ad hoc committees – the Compensation Advisory Committee and the Quirke Committee – to design, respectively, the RIRB and Magdalene programmes. That strategy removed some obvious sources of bias, but independence is always partial and relational. All policymakers are subject to influences and constraints. The Compensation Advisory

https://doi.org/10.1017/9781009082662.011 Published online by Cambridge University Press

Committee was strongly influenced by lawyers representing survivors, and the RIRB's legalistic character reflected their involvement. Responding to the legal capture of the RIRB, the government gave the Quirke Committee terms of reference that prohibited funding legal support for Magdalene laundry survivors. That stricture avoided one problem while creating another – it detached those survivors from robust legal support. Moreover, all design bodies are constrained by what they think the implementing agency (the government) will accept. Not all design recommendations can, or will, be accepted. Policy design bodies must work within what budget, staffing, and other resources the state will provide.

The fact that independence is always partial and constrained underscores the importance of survivor participation. Most exemplars limited survivors' involvement in programme design: only the Canadian programmes included survivor representatives in the process. Even there, it was lawyers who negotiated and oversaw IRSSA, not survivors, and most lawyers represented interests other than their survivor-clients (CA Interview 3). Future programmes should enable much more robust procedures for co-design. Jane Wangmann argues that survivor involvement in design leads to more adequate eligibility requirements, helps programmes move beyond legalistic approaches, and promotes 'creative forms of redress ... that directly respond to survivors['] needs' (Wangmann c2016: 2). In support of Wangmann's point, survivor feedback led to ameliorative changes in some exemplar cases, one example is the negotiated settlement process in Canada's IAP. But the potential for practical benefit is not the only reason for inclusion. Including survivors in programme design respects the principle, popularised by disability advocates, that there should be 'nothing about us, without us' (Charlton 1998). To exclude survivors is to treat them as objects of state action (AU Interview 15). Conversely, including survivors could help build credibility among survivor populations, with one interviewee stressing the importance of participation as 'Vital for trust. Vital for credibility' (AU Interview 13).[1] Participating survivors can serve both as programme champions and as feedback channels when problems arise.

Survivor participation in programme design involves trade-offs. Participation requires specific skills and resources and survivors who become representatives are, by virtue of those capacities and status,

[1] The comment concerned the role of Senator Andrew Murray, a survivor and member of the McClellan Commission.

unrepresentative of most survivors. And the point is not only analytic. Some survivor representatives have distinctive non-representative viewpoints. One, an Irish interviewee told me,

> . . . you will find as you go around, there are a lot of loud voices about, on behalf of survivors, who don't represent survivors really, but have been very influential in the sense that government has listened to them. So, a lot of what is in our legislation reflects what those loud voices have said. (IR Interview 4)

There was conflict between survivor representatives in Ireland, Canada, and Australia. Bearing these difficulties in mind, it seems plausible to think that survivors participating in design would tend to improve redress programmes. There are many ways for survivors to participate, but some of the best practices I know happened in Scotland. There, the InterAction Action Plan Review Group, which included survivor representatives, brought stakeholders together in an inclusive developmental process resulting in a 2018 report on redress recommendations that would frame Scottish Redress.[2]

I have stressed the importance of design independence. Equally important is the need for redress programmes to operate through independent agencies. Redress programmes perform different tasks: they support applicants; accept, research, and assess applications; issue payments; review complaints; and interpret regulations. Programmes can enjoy varying degrees of independence across these different tasks. Most exemplars were not independent from the executive with respect to most tasks because they were located within government ministries. The most independent exemplar, the RIRB, was a statutory tribunal with control of its own staff, budget, and administration. Nevertheless, most staff were seconded civil servants and its annual budget needed legislative approval. The situation in Canada was more nuanced. Originally a standalone government agency, IRSRC was subsumed by Canada's Department of Indian Affairs and Northern Development in 2008, aggravating concerns with its independence and impartiality (National Centre for Truth and Reconciliation 2020: 33) (CDN Interview 7). However, the courts and NAC provided regulatory oversight. Other ministries (Health Canada and Service Canada) contributed significantly to the programme, working alongside First Nations in providing

[2] The Scottish process is too complicated to summarise. Interested readers should refer to (Kendrick and Shaw 2015; Kendrick, McGregor, and Carmichael 2018a, 2018b, 2018c).

https://doi.org/10.1017/9781009082662.011 Published online by Cambridge University Press

programme outreach, applicant assistance, health care, and cultural support. The programme's independence benefitted from the number of agencies it involved. Governance by the representative and composite NAC (and the Oversight Committee) reinforced the checks and balances inherent to systems with multiple veto players. And the Canadian state's involvement was highly pluralistic, involving different ministries while the courts maintained a supervisory role. IRSSA's programmes did not depend upon the benevolence of a single state agency.

Both the RIRB and IRSSA were created by law. A legal basis helps ensure that the programme's operating criteria are public and accountable because survivors can appeal to the ordinary courts when they confront a problem. Several exemplars with an executive basis, including Redress WA, Ireland's Magdalene programme, and New Zealand's HCP were marked by non-transparency and unfairness. In those programmes, the lack of an independent review process diminished their credibility. A legal basis also provides a public commitment to redress and helps ensure funding sufficient to discharge those obligations. New Zealand's HCP offers a cautionary example of a programme that lacked the funds it needed to pay survivors' claims. Moreover, legislating redress provides important opportunities for legislators and executives to publicly acknowledge the state's history of offending and its obligations to survivors.

However, using law to create a programme can generate inflexibility. Redress programmes need to adapt as they develop. However, adapting the law is usually slow and costly. For example, both Canada's IAP and Irish RIRB accumulated applications from claimants who could not be contacted. These programmes could neither process those claims nor terminate them. To resolve the problem, the Irish Dáil had to legislate an amendment to the original 2002 Act that terminated those 'cold claims'. Canada's IAP needed the responsible courts, the Oversight Committee, and the responsible state agency to authorise its 'Lost Claimant Protocol'. By contrast, programmes with an executive basis can adapt more quickly, with changes authorised by ministers or public servants.

Moreover, if the principle of comity[3] obstructs judicial oversight, an executive basis can help protect survivors, the programme, and taxpayers from overly onerous judicial review (Western Australian Department for Communities c2012: 4). For the law's superiority in terms of

[3] The principle of comity requires the various branches of government to avoid interfering in the competence of each other.

accountability comes with costs. Litigating procedural reviews slows delivery and requires programmes to divert resources to judicial proceedings. Moreover, when each decision needs to be vetted for legal acceptability, programmes adopt legal habits of justification and procedure. Courts will be similarly tempted to impose judicial norms of process, evidence, and settlement. There is a resulting danger that redress becomes identified with satisfying legal obligations, a tendency apparent in Canada's IAP (National Centre for Truth and Reconciliation 2020: 31; CA Interview 4). As for survivors, some of their legal representatives will be interested in cost-building through tangential or vexatious legal challenges. Both programmes and the courts must guard against the abuse of review by those with the wrong incentives. The Canadian IAP and Irish RIRB guaranteed legal fees. And in both programmes, the courts reviewed hundreds of cases. One wonders if all those applications were for the benefit of survivors: lawyers are, after all, paid by the hour.

Courts will be asked to review individual claims and more general procedures. Procedurally, judicial review should ensure that a redress programme is generally fair and efficient and offers real benefits for survivors. But, as far as possible, courts should apply the redress programme's internal regulations and avoid imposing specifically juridical criteria or procedures. Otherwise, judicial review risks reinscribing the problems with litigation – including its retraumatising, inefficient, and protracted character – that redress programmes are created to avoid. As a 2006 Ontario decision by Justice Warren Winkler makes clear, sensible judges will avoid treading too far into the redress process (*Charles Baxter Sr. & Elijah Baxter et al.* v. *Attorney General of Canada et al.* 2006). Because redress programmes are not ersatz courts, judicial review should furnish them with a wide margin of appreciation.

Because the job of programme design does not end after a programme begins, redress programmes should schedule periodic comprehensive reviews. Design is an ongoing process shaped by practical experience. To give an example, Canada's IAP constantly amended its procedures, publishing over twenty new and supplemental directive and guidance papers between 2008 and 2016. The need to adapt is universal, every programme confronts unforeseen challenges. With that prospect in mind, programmes should be designed to be adaptive, with built-in mechanisms for reflexive development. A good example is the Irish Ombudsman's report on the Magdalene laundries programme (Office of the Ombudsman 2017). Responding to survivor complaints, the Ombudsman found that the programme did not adhere to its own

standards and enjoined the government to make necessary changes, which it did. And while the Magdalene review was an ad hoc response to complaints, it is equally possible for reviews to be scheduled as part of the programme's development. Programmes need robust yet efficient strategic review processes that are comprehensive, independent, and include survivors.

***

Programme design depends upon funding. What can be done with a budget of $20,000 per eligible survivor is very different from a budget of $100,000. Chapter 3 discusses (briefly) budgetary quantum, here I want to focus on how programmes are funded. The exemplars used a range of different funding models. I will address two points, the differences between capped and uncapped programme budgets and the use of funds provided by non-governmental religious orders.

Five exemplar programmes were publicly capped. Canada's Personal Credits, Ireland's Caranua, and Redress WA's capped budgets included administrative costs, while the Forde Foundation and Queensland Redress capped settlement funds only. In addition, during 2014–2015, New Zealand's Fast Track Process operated under a settlement cap that was not public knowledge at the time. From a public policy perspective, a capped programme has the advantage of budgetary certainty. A budget cap ensures predictability, the benefits of which are demonstrated by the profligacy in which two uncapped programmes, Ireland's RIRB and Canada's IAP, overspent their original estimates by billions of euros and dollars, respectively.

A capped programme offers some advantage to survivors in regard to assessment. Because it distributes a fixed monetary allocation, a capped programme needs only to apportion its fund among applicants. A budget cap can, therefore, help lighten the survivors' evidentiary burden. If assessors need only the information necessary to allocate each survivor a portion of the capital sum, good design can permit them to effect that allocation while minimising costs, by, for example, not asking for details about the survivors' injurious experiences. Such a capped programme may provide the same monetary payments to all eligible applicants, as in Queensland's Level 1 payments and Tasmania's redress for the Stolen Generations.[4] However, a capped programme that attempts to match

[4] Tasmania's Stolen Generations of Aboriginal Children Act (2006) created a AUD$5 million fund for the redress of wrongfully removed Indigenous persons. The money was

payment values to the severity of injury puts survivors in competition with one another and hampers the programme's ability to provide just compensation. Recall that the estimated numbers of valid applicants are usually very wrong. Uncertainty over the eligible application numbers necessarily limits any policymaker's *ex ante* confidence in a capped budget's ability to provide adequate payment values. A comparison illustrates the unfairness. Like the RIRB and IAP, Queensland Redress's Level 2 provided comprehensive redress for both injurious acts and consequential damage, yet its average payment of AUD$19,987 was much lower than the average in either comparator (€62,250 and CDN$91,478). Similarly, the NZD$25 million cap on the Fast Track Process meant the resulting payments were, on average, NZD$5,000 less.

Capped programmes ease potential pressure on the public revenue. Another design tactic with a similar outcome is to raise funds from offending NGOs, such as churches. Many religious orders are well-resourced and have an incentive to contribute when that will relieve them of potential liabilities. From a resourcing perspective, having NGOs contribute is an advantage, so long as the costs of obtaining and processing those monies do not exceed the value received. And the costs can be significant. Both Canada's IRSSA and Ireland RIRB had significant problems obtaining monies from the Catholic Church. In Canada, the Catholic Church failed to pay and then used its not-yet-delivered monetary promises as leverage in negotiations over access to its files and its participation in other aspects of Canadian reconciliation (Galloway and Fine 2016). After some legal missteps, Canada accepted only part of what was expected. In both Canada and Ireland, the Catholic Churches' failure to pay a fair share of redress created a public scandal, for the church and for the state officials who facilitated their sub-optimal contributions (The Irish Times Editorial 2003; McGarry 2020; Warick 2021). Because both IRSSA and the RIRB indemnified the religious organisations, there was good reason to complain that their release from liability was cheaply purchased. Future programmes should secure adequate contributory funding before providing NGOs with associated benefits, such as indemnity.

In sum, credible programmes are better designed by independent bodies that enable survivor participation. Moreover, a flexible programme might have a capped budget for common experience base payments, such as Queensland Level 1. But where the aim is to

divided equally among all successful applicants, with the family members of survivors eligible for lower payments. For discussion: (Winter 2009).

https://doi.org/10.1017/9781009082662.011 Published online by Cambridge University Press

compensate survivors according to severity, then budgets should be uncapped or, as Chapter 3 suggests, set by the counterfactual costs of settling the claims through litigation. As a programme's budgetary demands increase, the rationale for obtaining funding from NGOs becomes stronger. However, states should ensure that adequate funds are secured before providing religious orders and other funding organisations with associated benefits, such as indemnities.

8.3 Delivering Redress

Moving to programme delivery, tensions between the state's status as an offender and as redress provider remain a standing challenge.

> The fact that victims have to deal with the very department that is the successor to the institutions that abused them in the first place is like asking a victim of rape to seek justice from their rapist. (Smale 2019)

The analogy could be expanded. Smale is talking about New Zealand's HCP, in which MSD operated as the offender, the investigating police, the defence attorney, and judge. The resulting conflicts of interest became a focal point for criticism, with one survivor observing that the HCP was 'not looking after my best interests but rather the interests of [MSD]' (Mahy c2016: 7). Without independence from the offending agency, survivors may reasonably believe that their applications are not impartially administered. Moreover, potential applicants may fear reabuse or retraumatisation by unsympathetic officials.

But there are countervailing considerations. Because start-up organisations struggle to deliver large and complex redress programmes quickly, there are obvious benefits to leveraging the existing capacities of a government ministry (Audit and Assurance Services Branch 2015: 44). State ministries have dedicated administrative, financial, and infrastructural capacities that can support hiring and managing staff along with other administrative necessities. But those advantages come with their own difficulties, including cumbersome public service procedures (CA Interview 7). To illustrate, when application numbers for the IAP tripled the original estimate of 12,500 claimants, the Secretariat increased its staffing complement to a point that exceeded the ministry's funding allocation, leading to a protracted restructuring of the Secretariat's employment contracts through a different agency, Public Service Canada.

Because smaller, independent organisations can be more nimble, outsourcing at least some components provides some clear benefits. In Western Australia, an interviewee noted,

> we wanted to minimise the amount of government involvement because there was this, I guess, general distrust of government on the part of most applicants, that we tried to outsource as much of the contact with applicants to support groups outside government. (AU Interview 8)

Australia's approach deserves attention. Both Queensland Redress and Redress WA outsourced the taking of testimony to community agencies. There, survivors could assemble their applications in a familiar and comfortable environment. These community agencies had on-site counselling support and the capacity to address the survivors' holistic well-being needs. Outsourcing leverages the skills of NGOs without incurring the associated management and administrative costs. It can be easier for a state to contract for a service than to develop and provide it, although the exemplar cases also involve states funding NGOs to build their capacity.

When survivors worked with community NGOs to develop their applications and submitted them to a redress programme housed within a government ministry, it was clear that the state occupied the role of both offender and adjudicator. That structure patently infringes the *nemo judex in causa sua* principle. Alternatively, Canada's approach to the IAP attempted to distinguish between its representative, the SAO, and the independent Secretariat, which was responsible for contracting the independent adjudicators responsible for assessing each claim. How the state is impersonated is a policymaking question with implications throughout the redress process. If, for example, the redress programme negotiates, as the RIRB did, with survivors over the substance and value of their claim, those officials will necessarily represent an agency that opposes that of the survivor – the state. If the state is not assigned specific representation in the redress process, it may tend to subsume the whole. There may be an advantage to appointing a specific state representative that remains distinct from the redress programme.

***

Shifting attention slightly, physical infrastructure is critical to delivery. If survivors are going to give oral testimony in person, whenever possible they should be able to choose the location. Hearing rooms should be

easily accessible by public transportation and designed to make survivors feel calm and safe (Fallot and Harris 2009: 6–7). Furniture should be comfortable and the environment quiet. The facility should have private rooms where survivors can talk to a counsellor or support person. Rooms need clearly accessible exits. Survivors must 'know that the door can open and close very easily for them' so they do not feel trapped (IR Interview 9). Several interviewees stressed the need to balance comfort and formality.

> We decided that we would do it as the most dignified process that we could conjure up. Because we didn't want to be oppressive and over the top, it had to be friendly. Always had flowers . . . and had sandwiches and tea. The idea was for these people to feel that it was all about them; that was their day to come and tell us what they had on their mind. (NZ Interview 7)

Canada's Winnipeg office was designed to put Indigenous survivors at ease.

> Aboriginal themes are incorporated into the wall coverings, hardwood flooring, and numerous pieces of art placed throughout the hearing centre. Low glycaemic refreshments, including fresh baked bannock and fresh cheese and fruit, are provided from an Aboriginal supplier. (Indian Residential Schools Adjudication Secretariat 2011: 9)

Because not all survivors can access custom facilities, oral testimony must be heard where it can be given. Hotels are a common choice, as they usually have good transport infrastructure, are formal without being intimidating, and are available for short-term use. Little things matter. Michael Bay, a Canadian adjudicator, would ensure that he wore professional but colourful clothing to avoid reminding survivors of the residential schools' presiding black cassocks (Bay 2013: 3). Concern for the survivor's well-being means that programmes should avoid hearing testimony in high-stress carceral environments such as prisons or psychiatric hospitals. But the setting should not be too casual, the setting needs to reflect the importance of the event to survivors. As one survivor told me,

> I wouldn't want them [programme officials] to come in their thongs and tee shirts and their miniskirts. I want them to look official. This is serious business we're dealing with here in this country. (AU Interview 13)

Advisors should avoid taking testimony in the survivor's home. Hearing the person somewhere else means that after they testify, survivors can

leave their testimony behind and return to a (hopefully) safe home environment (NZ Interview 6).

Caranua, the Magdalene programme, the Forde Foundation, Redress WA, the CEP, and the Personal Credit process all operated without (much) face-to-face engagement, mediating their work with survivors in writing or by telephone. A remote interface can limit the psychological, logistical, and monetary costs of participation and can work well if the priority is speed and not engagement. In addition, working with survivors remotely promotes both security and equity. The security concerns are real: a google search will quickly reveal hostile language on some survivor-oriented websites – Redress WA received a number of threats (AU Interview 9).[5] In addition, mediating survivor interaction by phone helps ensure that clients cannot simply appear in an office and demand inequitable and resource-intensive attention.

Remote engagement is likely to become more common as technology develops. However, survivors may not wish to discuss their traumatic injuries with a distant and faceless operator (Reimer et al. 2010: 63–64). A Western Australian interviewee criticised the remote character of Redress WA, saying that survivors would have preferred to work in person (AU Interview 6). Moreover, it can be difficult for remote interviewers to ensure that the survivor is well-situated. A remote process makes it harder to monitor the survivor's emotional well-being. In New Zealand,

> one survivor, Loretta Ryder, said she was asked deeply personal questions by the Ministry of Social Development's claims contact centre over the phone. 'I started crying because I was on the phone while at the garage getting my car fixed and I was shamed.' (The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care 2021: 155)

Interviewers need to be able to ensure that the interview is taking place at an appropriate time and place. They also need to identify people who are under stress, and have an effective response strategy for people who are not coping. Redress WA created a 'risk register' for survivors with identified safety concerns, they would receive a follow-up call the next day (AU Interview 9). Many survivors will need immediate support, which is more difficult over the phone.

***

[5] That said, no staff were physically assaulted by a survivor in any exemplar programme.

Because Chapter 10 discusses the process of giving testimony, here I turn to the intake, storage, and retention of evidence, including testimony. The information needed varies according to eligibility criteria and assessment procedure. These operative demands must inform the programme's data infrastructure. Information may arrive as video and audio files, professional reports, public records, and personal handwritten narratives. It may also come in different languages. Survivors should be able to choose the language in which they testify, or have a competent translator assist them. The data management system needs to be capable of managing these variables efficiently, which will require testing the system using real-world information. Off-the-shelf data systems may be inadequate and exemplar programmes often required bespoke software – Canada's SADRE (Single Access to Dispute Resolution Enterprise) cost around CDN$8.4 million (Treasury Board of Canada Secretariat 2007). When programmes open to applications without systems appropriate to their data needs, technical problems will create delays and make it harder to assess applications accurately.

Because many applications will arrive incomplete and contain poor quality information, good data entry is critical.

> Rubbish in, rubbish out. And you need people, at the time you are putting the data in, to be capable of realising what is wrong with the application and to start chasing down the issues. Because people put in rubbish applications. (AU Interview 9)

Applications should be pre-screened when they are received to assess their completeness and (prima facie) eligibility. This should happen as quickly as possible. If survivors wait months or years before having an incomplete file returned to them, the quality of information may suffer along with the programme's reputation. Programmes should confirm receipt of completed applications, using that opportunity to provide further information on the steps remaining to completion. The letter should provide information about available support services and remind applicants that completing the application does not guarantee payment. The final report for Redress WA remarks that because many applications will arrive with errors, the data management system should record the original application as a photograph or scan (Western Australian Department for Communities c2012: 12). Both the original submission and the corrected data should be preserved.

Data management must be secure and private. Programmes need to access secure government records, which can be easier if the work is done

by civil servants, but programmes will also need access to the private archives of NGOs, such as churches. Any information the programme holds about survivors must be secure, but, at the same time, programmes may need to share data. Canada's IAP used an online file management system that both counsel for survivors and programme staff could access, which held client files and could be used to coordinate hearings. Information management systems will need to restrict access to those who need it. Redress WA created a special database for more sensitive claimants (including celebrities), accessible by a limited number of senior staff (AU Interview 9). Programmes should audit staff access patterns to ensure that information is not accessed inappropriately.

Because programme data can be valuable for exogenous purposes, privacy's demands do not stop when the programme closes. Historians and other researchers may hope for access, as might others: in Ireland I heard about an estranged spouse trying to uncover what a former partner had received, hoping to use their redress payment to augment their alimony. In a less personal example, Canada's TRC sought access to the IAP's rich database to support its own research. The TRC heard testimony from around 6,750 people, not all of whom were survivors (The Truth and Reconciliation Commission of Canada 2015f: 1). By comparison, the IAP validated 27,846 claims and heard testimony from many more people. Desiring access to the IAP's larger dataset, the TRC confronted the IAP's legal commitments to the survivors' privacy and the ethical challenge that survivors had a right to control how their information would be used – no survivor had authorised anyone to give their information to the TRC (Independent Assessment Process Oversight Committee 2021: 54–55; McMahon 2017: 33ff). The case went to the Supreme Court with the result that IAP records on survivors will be destroyed on 19 September 2027 unless the survivors ask to have their information archived at the National Centre for Truth and Reconciliation, hosted by the University of Manitoba. IAP applicants have now been sent letters advising them of their options.

The principle of enabling survivor's agency supports the Canadian court's decision – survivors should be able to decide whether and how their data can be used. As far as is feasible, programmes should give survivors choice over how their information will be used, who will be able to access it, who will be responsible for storing it, and if and when information will be destroyed. Survivors must know if their information might be given to third parties, such as named offenders or the police. Some will consent to having their information being put to use outside

the redress programme. Others will not. Ideally, survivors should be able to select their preferred options, for example, some might consent to having de-identified information retained, but not to having their names included in a permanent archive. Others will wish the opposite. Survivors should be informed about choices they do not have, such as when the law mandates a police referral. The demands of informed consent require a flexible range of options and it would be best if programmes have the relevant procedures in place when they begin.

***

Staff are the medium through which survivors engage with redress and the state discharges its obligations. But the fact that the state needs staff to discharge its redress obligations points to another problem with credibility. As previously mentioned, impersonality inhibits the state's accountability. Survivors never encounter the state, they only deal with its representatives. When survivors contact a redress programme, the people who answer the phone calls, emails, and letters are not offenders confronting their crimes, they are employees. The fact that state accountability is always vicarious means that state redress lacks the authenticity that comes when real people take responsibility for wrongdoing and work at a remedy.

Using government staff to deliver a redress programme blends the roles between offender and employee. Experienced staff from health, police, corrections, welfare and child protection come from fields responsible for systemically injurious care. The complicity of these professions adds to the tensions this chapter explores. I previously noted how the use of civil servants can compound concerns about impartiality and conflicts of interest. Similar points can apply to NGOs. For many survivors, the participation of religious orders is important because they committed, or were responsible for, significant injuries. But no survivor should be forced to use services, or work with staff, that they see as compromised. A survivor-focussed approach must enable a flexible range of access options. Chapter 12 returns to this discussion.

Redress programmes require staff to work with often marginalised survivors through complex and highly stressful processes. A consistent theme across the exemplar programmes was the need to get and retain high quality client-facing personnel. But even experienced staff will need training to guide vulnerable clients through new and often complicated redress programmes. This is highly demanding work. One Irish interviewee stressed the importance of employing:

> people who could talk to applicants on their own level . . . front line people really drove the process on a continuous basis . . . [T]he applicants felt they could ring . . . they could talk to somebody, you know, somebody that they felt comfortable with, they could ask the questions that maybe they thought were stupid, that they mightn't ask if they were going to get a barrister/solicitor at the end of the phone . . .
>
> [W]e would find it a regular feature that the day the applicants would of have got their settlement, they'd say, 'Will you be sure to say thank you to whoever it was they would have dealt with on the phone.' (IR Interview 3)

There are benefits of having caseworkers administer claims because that enables survivors to develop a relationship with a few staff members (IR Interview 3; NZ Interview 6). But a casework approach makes each survivor depend on an individual staff member, creating obvious human resource concerns in organisations with high levels of staff turnover.

Smaller programmes that use few relatively senior staff to investigate and assess applications tend to experience less turnover. With a small and tightly knit team, programme managers can select resilient staff and provide them with robust support. Larger programmes are forced to hire from a broader pool and, in the exemplars, tended to have more staff turnover. A redress programme's temporary character encourages staff to look for new (more secure) employment. Using contract workers aggravates the problem, but using civil servants will not solve it, if those staff fear redundancy or suboptimal redeployment when the redress programme closes (Indian and Northern Affairs Canada 2009: 11). To retain good staff, programmes need to work with them in their career development. That might include identifying future opportunities in the civil service or helping transition staff into the private sector.

A second point on staff turnover concerns the potential for psychological damage. The stress of working with survivors' testimony can be a significant contributor to staff turnover (Fabian 2014: 246; Rock c2012: 10; AU Interview 12). 'Vicarious traumatisation', 'secondary traumatic stress', or 'burnout' happens when someone suffers a stress disorder caused by engaging with the experiences of traumatised people (Chouliara, Hutchison, and Karatzias 2009: 47). Persistent exposure to distressing testimony can cause staff to exhibit symptoms that include doubting survivors' testimony, avoiding traumatising material, or becoming personally involved with survivors (Swain 2015b: 185). One study examining potential causal factors identified a personal history of trauma, high caseloads, inexperience, and a lack of effective coping mechanisms (such as supervision) as potential contributors to developing

vicarious trauma (Dunkley and Whelan 2006: 110). But anyone can be affected. 'There are only so many rapes and other real-life horror stories that you can hear about in a day or a week or a month or a year before it starts to eat at your soul' (Bay 2013: 5).

When vicarious trauma makes staff doubt survivor testimony, actively avoid difficult material, or look for other work, it poses a strategic risk. There is a growing literature on preventive techniques (Bober and Regehr 2006; Wilson 2016). Those techniques include limiting staff contact with traumatising material. This can be done in different ways. Insofar as hearing survivors' testimony is more challenging than written reports, programmes might encourage written testimony. Information management systems can reduce staff contact with traumatising material by enabling them to scan rather than retype material. Managers can limit caseload numbers or limit the number of cases each member of staff engages with per day. Other techniques offer positive support to staff well-being through yoga, fruit bowls, and therapy, alongside regular supervision and unburdening sessions. Managers should monitor staff for stress indicators and encourage psychological assessments or counselling. However, these techniques have countervailing disadvantages. If testimony is mechanically scanned unread, it will not be reviewed for errors. Survivors who are kept at arm's-length through pre-recorded testimony will forego some of the participatory value involved in telling their stories. As always, there are trade-offs. But, redress programmes have a responsibility for the well-being of their employees and meeting that responsibility is both a legal requirement and necessary for efficient programme operations.

A third and last point on staffing concerns descriptive representation. Turning first to gender, Ireland's Magdalene programme matched the gender of staff to that of the applicants. Others, like Canada's IAP, enabled survivors to select adjudicators according to their gender, with around half the applicants expressing a preference (CA Interview 7). In addition, residential school survivors could choose the gender of their counsellors and other support workers informally. Having this option is important because some applicants are put off by the prospect of working with one gender or another. George Grant testified that 'I couldn't tell them [Redress WA] everything because the staff there were mainly females and it was unpleasant stuff for them to have to read or to listen to' (Royal Commission into Institutional Responses to Child Sexual Abuse 2014d). Although Grant would have preferred to speak to a man, an Australian interviewee noted:

> . . . non-Indigenous survivors of abuse who are male generally want a female counsellor; and want a female to record their abuse account because they have had bad experiences with men. There are, of course, exceptions . . . But the Aboriginal men and women don't want to talk to the opposite sex about their abuse. To have the option of having male and female Indigenous support services available is important. (AU Interview 6)

Programmes should enable survivors to choose the gender of key programme staff.

The ethnicity of programme staff – specifically, their indigeneity – was significant in Canada, New Zealand, and Western Australia. Recall that 51 per cent of Redress WA applicants were Indigenous – in New Zealand it was over 50 per cent, while in Canada it was nearly 100 per cent. These proportions reflect the roles played by out-of-home care in the systemic repression of Indigenous peoples. Moreover, the genocidal character of Canada's residential schools made indigenising the redress process a step towards post-colonial relations (Henderson 2013: 66). Stakeholders emphasised the need for Indigenous redress staff because connecting, or reconnecting, with Indigenous cultural practices was an important (potential) element of redress (CDN Interviews 5 & 6). In Western Australia, the Indigenous Kimberley Legal Services and the ALS helped applicants overcome the 'inherent mistrust' Indigenous Australians have towards state institutions (Western Australian Department for Communities c2012: 13). Because some survivors 'don't trust white people' (Dion Stout and Harp 2007: 43), Canadian exemplars strongly encouraged Indigenous staffing. The ISCRC prioritised hiring Indigenous staff and, in addition, health and cultural support work was outsourced to Indigenous agencies (Indian Residential Schools Adjudication Secretariat 2011: 5). Survivors preferred hearings with Indigenous adjudicators (Hanson 2016: 12) while programme management recognised the need for local support to reach into marginalised communities. As one (non-Indigenous) interviewee said,

> Who are we here in Ottawa . . . to know who would be respected in the community, especially using the example of cultural support providers, you know, the cultural support people? We don't know. (CA Interview 6)

Canada's Personal Credits programme stands out as a process in which Indigenous First Nations worked with their survivor-members to identify and provide services that they would find beneficial, often in ways that helped both individuals and communities develop. However, not all

survivors felt that cultural affinity was given the same priority in the IAP and CEP (National Centre for Truth and Reconciliation 2020: 28).

Indigenous populations tend to be relatively small, meaning that there are fewer Indigenous persons available for staff positions. That relative scarcity aggravated hiring delays that created, in turn, inefficiencies and increased staff turnover (Ish and Trueman 2009; AU Interview 6). During Redress WA, the ALS reached capacity and began to turn survivors away (AU Interview 6). Second, the use of local Indigenous providers for cultural and health support in small communities can create conflicts of interest and privacy problems, with some applicants deterred by the prospect of locals learning the intimate details of their experiences (Reimer et al. 2010: 71). By providing multiple support options, programmes can alleviate that concern, enabling survivors to choose where they get help. A flexible programme should ensure that privacy concerns do not block culturally appropriate local support.

As a last point, the popularity of Indigenous staff in IRSSA may reflect a more broadly held view that programmes benefit from having staff who share experiences with survivors (Allen and Clarke Policy and Regulatory Specialists Limited 2018: 3; Feldthusen, Hankivsky, and Greaves 2000: 107). The experience of injury

> can actually provide a lot of insight into [for] someone who is providing counselling and support to someone in that situation [of applying for redress] or when training . . .; people can draw from their own lived experience . . . and that can actually add richness to what they are doing. (AU Interview 10)

I return to the importance of managing the challenges posed by survivors working in redress programmes in Chapter 12. Here, I simply note that redress programmes should publicly present an adequate number of staff members whose background and position make them credible to survivors.

8.4 Administrative Recommendations

- Redress programmes need design techniques that bridge the credibility gap. Credibility-building techniques include independent design bodies and having survivors participate in co-designing redress programmes.
- A capped budget can be effective in funding the redress of collective or structural injuries. But it is difficult to ensure that capped programmes

are adequately funded to apportion payments according to the severity of individual injuries.

- Policymakers must assess whether the advantages of external funding from religious orders (and other NGO offenders) outweigh the associated difficulties. States should secure contributory funding before providing NGOs with associated benefits, such as indemnity.
- Programmes need robust and efficient strategic review mechanisms that operate independently of both programme staff and the judiciary.
- Survivor representatives should be part of any review process.
- Programme delivery should remain, to an appreciable degree, independent of the state. To prevent the personality of the state from subsuming the redress administration, there may be an advantage to appointing a specific state representative that is distinct from the redress programme.
- The information needed by the redress programme must inform systems for data intake and database infrastructure.
- The data infrastructure needs to be ready when the programme opens to applications. The system needs to be tested with real-world information.
- Applications will be submitted with errors. The intake processes needs to identify errors promptly and correct them. However, the system should retain the originally submitted material for reference.
- Whenever possible, survivors should be able to choose where they testify. Designated hearing rooms must be easily accessible by public transportation and designed to support the survivors' well-being.
- Survivors need to give informed consent as to how the information they provide will be used. Flexible options should be made available.
- Programmes need to hire and train good staff in sufficient time to meet the administrative demands of the programme.
- Redress programmes are responsible for their employee's well-being. Meeting those responsibilities can be necessary to enable the efficient operation of the programme. Limiting the effects of vicarious stress must be a key strategic focus.
- To retain good staff, programmes need to manage the risks that job insecurity poses.
- Survivors need ongoing support throughout the programme. It is preferable for them to develop positive working relationships with staff. There are benefits to a caseworker structure.

- Programmes should consider enabling survivors to choose the gender of the staff they work with.
- Programmes should consider enabling survivors to choose the ethnicity of the staff they work with.
- Programmes should publicly present an adequate number of staff members whose background and position give them credibility with survivors.