



APPLICATION GUIDELINES

FOR *EX GRATIA* PAYMENTS FOR FORMER RESIDENTS IN STATE CARE WHO EXPERIENCED SEXUAL ABUSE AS CHILDREN

PURSUANT TO SECTION 31 OF THE *VICTIMS OF CRIME ACT 2001*

INTRODUCTION

The Government is helping former residents in State care who experienced sexual abuse as children. The Government is giving former residents in State care the opportunity, as an alternative to legal action, to apply for some money to acknowledge their pain and suffering and to help their recovery.

The money for which former residents in State care can apply is called an "*ex gratia* payment".

Ex gratia payments are not court claims. *Ex gratia* payments are made by the Attorney-General under the *Victims of Crime Act 2001*.

They may be processed more quickly than court claims and the process of applying for the payment may be less stressful than making a compensation claim through the courts (sometimes called "common law claims").

The Attorney-General decides who may be offered an *ex gratia* payment, the amount of money the person is offered and whether there are any conditions attached to receiving the money.

Currently no closing date for applications has been set; however, the Attorney-General may announce a closing date in the future.

WHO CAN RECEIVE AN *EX GRATIA* PAYMENT?

You must be over 18 years of age.

You must have suffered sexual abuse as a child.

You must have been in State care at the time of suffering sexual abuse.



HOW YOUR APPLICATION WILL BE ASSESSED

Applications will be assessed on the evidence you provide, the Government records accessed from your time in State care (if they exist) and any relevant medical, psychological or other records. For this reason, it is important that you provide copies of any relevant documentation in your possession and that you also provide any necessary approvals in Part 7 of the Application Form, to enable those assessing the applications to gather the information. It is not intended that applications will be assessed with the same rigour as formal court claims.

The Attorney-General will be assisted by a small team of legal advisers who will consider the applications, gather the documents and make recommendations about payment.

The assessing team will:

- receive applications;
- collect the relevant governmental records;
- decide whether further investigation and interviews are required;
- form a view about eligibility and severity of harm;
- arrange further medical evidence if needed;
- make a recommendation to the Attorney-General about the amount of the payment;
- obtain the Attorney-General's decision about a payment to you;
- communicate the Attorney-General's decision to you; and
- obtain from you a signed Discharge and Release Form.

If you have previously received compensation for any sexual abuse suffered, the Attorney-General will not make an *ex gratia* payment to you.

Although there are criteria to assess who is eligible for payments, and how much money you may receive, you may also ask the Attorney-General to modify the assessment criteria or to waive them altogether if you believe that the guidelines are inappropriate for dealing with your application. The Attorney-General may decide to change the criteria based on your personal circumstances.

HOW MUCH MONEY WILL YOU RECEIVE IF YOUR APPLICATION SUCCEEDS?

If your application is successful, money will be offered according to the severity of the sexual abuse. For example, a person who establishes that they have suffered serious and lasting harm from sexual abuse whilst in State care may receive up to \$30,000. In exceptional circumstances, where extreme sexual abuse has occurred, a total of up to \$50,000 may be granted by the Attorney-General.

You will receive a one-off *ex gratia* payment covering all of the abuse you suffered in State care.

The Attorney-General will not be providing reasons for the decisions as to whether to make an award in a particular case. Awards made under Section 31 of the *Victims of Crime Act 2001*, are not reviewable. However, you are not obliged to accept an offer made to you.



The Attorney-General does not have to make an *ex gratia* payment to you, even if you suffered sexual abuse as a child when in State care.

When deciding on an *ex gratia* payment, the Attorney-General may take into consideration many things including what level of co-operation you gave to any South Australia Police investigations, and your criminal history. This is why you must allow a police check to be made on you, if you apply for an *ex gratia* payment.

HOW WILL THE DOCUMENTS IN YOUR APPLICATION BE USED?

The assessors will be assigned the task of investigating and assessing your application and making recommendations to the Attorney-General. All involved in this task will treat your personal information confidentially and will use that information only for the purpose of assessing your application for an *ex gratia* payment, or for considering any other claim that you have against the State in respect of abuse, such as a common law claim. You may wish to seek legal advice about providing the documents to us, because they may contain information that is harmful to other claims you may wish to make.

To allow for assessment of your application, your approval is required to access various Government records. You will not be provided with copies of the documents, if any, held by Government relating to your time in care, as part of the application process. The documents are subject to the South Australian Government's Information Privacy Principles Instructions, and the *Freedom of Information Act 1991*, and are likely to contain information that concerns the personal affairs of others.

Alternatively, you may seek access to your Government records by making Freedom of Information claims for that information to the various Government agencies holding the documents. This may involve expense and inconvenience to you and could delay the processing of your application, however Relationships Australia SA Post Care Services may be able to assist you in the process of seeking records under Freedom of Information.

ABOUT THE APPLICATION FORM

You may use the application form to make an application for yourself or for another person. If you are applying on behalf of another person, that other person must sign the form and the statutory declaration.

FORM 1

The space provided for each answer on the form is only a guide. If you want to add more information, simply attach more pages.

PART 1 - YOUR DETAILS

This part of the application form tells assessor who you are and how to contact you. It is important that you list the name/s that you were known by at the time the sexual abuse occurred.



PART 2 - YOUR FAMILY

The names of your family members at the time of the sexual abuse may be important in helping research your story. The assessors will not contact these people about your application without your consent.

PART 3 - YOUR TIME IN STATE CARE

You may have been in State care:

- in an institution (home);
- with a foster family;
- with a carer; or
- at an assessment unit.

You may also have lived in several locations. Please list all of the places and the times that you were in State care, including the place(s) where the sexual abuse occurred. If you have documents that show that you were in State care, you should provide them. Attached to this guideline is a list of institutions that may assist you to identify the place of case you resided.

Please note, this list of homes is not exhaustive and if the place of care you resided in is not listed, this does not mean you are not eligible.

It is also important to note that the list of homes may contain places that are not considered to have been State-run, so the fact that you stayed at one of these places does not necessarily mean that you were in State care. The list of homes may be incomplete or inaccurate. It is intended as a guide only to assist you to identify the location of a place of care. For further information, you may also visit the Commonwealth Government's Find and Connect website at www.findandconnect.gov.au/sa. This website is a useful resource which may provide you with updated and detailed information about the place/s of care in which you spent time in.

"In State care" means that you were placed under the guardianship, custody, care or control of:

- the Minister;
- a public official;
- the Children's Welfare and Public Relief Board (1927-66); or
- the Aborigines Protection Board (1934-1963).

And that came about because of:

- a court order;
- an order by the Minister;
- a decision of the Children's Welfare and Public Relief Board;
- a decision of the Aborigines Protection Board (1934-63); or
- a written agreement between your parent/guardian and the Minister.

It includes cases where you were in an institution or were with a foster-family or carer with whom the State had placed you. However, you are not considered to be in State care if you were adopted, even if your adoptive parents were formerly your foster parents.



PART 4 - DETAILS OF THE SEXUAL ABUSE

For your application to be assessed, you will need to include details of the sexual abuse you suffered while in State care.

Sexual abuse includes any act that amounts to a sexual offence, such as:

- rape;
- compelled sexual manipulation;
- indecent assault;
- any offence involving unlawful sexual intercourse or an act of gross indecency;
- incest;
- any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest; or
- any attempt to commit, or assault with intent to commit, any of the foregoing offences.

Terms used are in the Children in State Care Commission of Inquiry final report, Appendices B (page 549). Alternatively you can view the full definition in Part 1, Section 4 of the *Evidence Act 1929* and more detailed interpretations in the *Criminal Law Consolidation Act 1935*.

PART 5 - THE EFFECT OF THE ABUSE

The sexual abuse you suffered may have damaged you physically, mentally and emotionally. You may not have visited a doctor about this damage. You must therefore describe any damage you think happened as a result of the sexual abuse. If you have any medical reports, especially those that show a diagnosis, they should be submitted with your application.

The assessors may ask you to go and see a doctor or other health professional to get a medical report to assist in assessing your application. Alternatively, you may be asked to provide a report from your doctor. If you are asked for a new medical report, you may ask the assessors to pay the costs of the report. Payment will not be made for reports that are not approved in advance.

PART 6 - THE HISTORY OF THE SEXUAL ABUSE

This part of the form asks you to document what happened to you. As well as describing what occurred, you should attach any documents that support your story.

PART 7 - APPROVALS

As this is intended to be an alternative to legal proceedings, applicants are asked to sign a Deed of Discharge and Release indemnifying the State of South Australia from any past, current or future claims arising from abuse of any kind whilst in State care. This means that if you make a successful application for an *ex gratia* payment from the Attorney-General, you will not be able to make further claims, such as a common law claim. You do not have to obtain legal advice to sign a Deed of Discharge and Release, but it is recommended. If you choose to obtain legal advice on the Deed, the Victims of Crime Fund will pay up to \$750 in legal fees for this purpose.



Please note: You do not sign the Deed now. A draft is attached to the application form for your information only. If you are made an offer of payment by the Attorney-General, that offer will be accompanied by a Deed of Discharge and Release containing your details and you will be asked to sign it before any money is paid.

If you owe money to the Victims of Crime Fund, then that debt may be offset against any proposed *ex gratia* payment. You are also asked about other debts to the State because these may be relevant to whether the Attorney-General makes an offer of payment.

PART 8 - RELEVANT DOCUMENTS

You should attach copies of all of the documents that you consider to be relevant to establish that you should be awarded a payment. It is preferred if you attach copies rather than originals. If you want your documents returned, please state this on the form.

It is important that you provide as much relevant information as possible in relation to your application. You are also required to provide information that is relevant to your application even if it does not support your application.

Determining whether you were in State care and sexually abused as a child while in State care is not an easy task. For instance, some children were in the care of others, such as churches. If you were interviewed by Commissioner Mullighan as part of the Children in State Care Commission of Inquiry, you will be asked for your permission to confirm that you gave evidence before Commissioner Mullighan and came within the Terms of Reference of the Children in State Care Commission of Inquiry. If it can be confirmed that you came within the Terms of Reference of the Children in State Care Commission of Inquiry, the task of assessing your application will be quicker. If it cannot be confirmed, or you did not give evidence at the Children in State Care Commission of Inquiry, your application will be assessed on the basis of the information provided with your application, and the documents gathered by the assessors.

If you were a witness before Commissioner Mullighan, you may rely on evidence you gave to support this application, however, you still need to provide details of the sexual abuse in your application form. If you wish to rely on the transcript of your evidence to the Inquiry, you must give permission for your transcript to be accessed. You are also asked to grant permission for access to any documents that you provided to the Inquiry. If you do not want the Government to be able to access these documents, then you may have to tell your story again to the people assessing your application.

If you give the Government permission to access to these documents, then this will enable the assessors to process your application quicker. However, the information contained in these records may also be used by the Government to consider any other claim, such as a common law claim.

During the assessment of your application, you may be contacted to discuss your application.

You will have to sign to say that the information you have provided is the truth and that you have provided all relevant information in your possession. This is called a statutory declaration which should accompany your application. **It is a serious offence to not tell the truth in your application.**



ATTACHMENTS TO THE APPLICATION FORM

- A list of homes and institutions issued in 2005 by the Children in State Care Commission of Inquiry is attached for reference. **Please note**, this is not an exhaustive list;
- Statutory declaration form;
- Police history check form;
- Draft Deed of Discharge and Release Form (Please note: you do not need to fill in this form until you decide to accept any offer of payment made to you. Another copy of the Deed for signing will be sent to you if you are made an offer).

WHERE TO GET ASSISTANCE

You may approach the Post Care Support Services Relationships Australia SA, or the Commissioner for Victims' Rights for assistance in understanding the process. These support Services may be contacted as follows:

Post Care Support Services
Relationships Australia SA
191 Flinders St
ADELAIDE SA 5000
Phone: 1800 188 118
www.rasa.org.au/services/adult-health-wellbeing/post-care-support-services/

Or:

Commissioner for Victims' Rights
Level 4
45 Pirie Street
ADELAIDE SA 5000
(Postal Address: GPO Box 464 ADELAIDE SA 5001)
Phone: 08 8204 9635
Fax: 08 8207 1736
Email: voc@agd.sa.gov.au
www.voc.sa.gov.au

HOW TO LODGE YOUR APPLICATION

Once you have completed your application and copied the relevant documents, you can deliver or post your application to the Crown Solicitor. You should address your application as follows:

Children in State Care Application
Crown Solicitor
Level 9
45 Pirie Street
ADELAIDE SA 5000
(Postal Address: GPO Box 464 ADELAIDE SA 5001)

