

Clare Leaney
Chief Executive Officer
In Good Faith Foundation
30 October 2020

Joint Select Committee on Implementation of the National Redress Scheme,

Thank you for inviting In Good Faith Foundation (IGFF) to provide feedback on the National Redress Scheme. IGFF feels that the National Redress Scheme, by and large is a world leading response to institutional abuse and is helping thousands of survivors seek justice.

We do however believe that like all programs of this nature, there is room for improvement and for constructive critical feedback to help achieve better practice. We would like to highlight the following observations and what IGFF feels are appropriate suggestions to remedy issues identified and to best strengthen the operation of the National Redress Scheme.

Clare Leaney,

CEO

In Good Faith Foundation

The following represents a summary of observations of In Good Faith Foundation (IGFF) accumulated from experience providing support for survivors of abuse engaging with the National Redress Scheme.

Contents

1) Survivor Experience	3
a) Ongoing examination and review of survivors’ experience with the National Redress Scheme	3
b) Effectiveness of Redress Support Services	5
c) Impact of COVID-19 upon survivors.....	5
d) Privacy & Confidentiality	6
e) One opportunity only.....	7
2) Operation of the National Redress Scheme	8
a) Assessment Framework Matrix	8
b) Independent Decision Makers.....	10
c) Payments & Indexation	10
3) Legal advice and private law firms.....	13
a) Legal Advice	13
b) Private Law Firms.....	14
4) Participation in the Scheme	14
a) Institutions & Applicants.....	14
b) Funder of last resort provisions.....	15
5) First Interim Report Review	16
a) Early payment scheme	16
6) Appendices of Case Files (not for publication)	17
Case Study – benefits of a proposed NRS ‘Case Management Model’	17
Case Study – NRS definitions of Sexual Abuse not supported by Royal Commission understandings	19
Case Study – A “Child Safety Report” being made by NRS	20
Case Study - Problems with protected information: definition and application.....	22

1) Survivor Experience

a) Ongoing examination and review of survivors' experience with the National Redress Scheme

For many seeking information and support to engage with the National Redress Scheme, their initial phone calls are first “disclosures” of historical childhood sexual abuse, requiring expert and individualised support on demand. Our service model ensures the wrap-around care of these individuals who are seeking to engage in a redress or justice pathway and require a best match between current lifestyle impacts of trauma and tailored support to access appropriate and localised service providers. Increasingly, this demographic is also presenting with complex and associated case matters that require trauma aware and careful management such as drug and alcohol abuse impacting family relationships; mental health breakdown; unemployment, food and housing crises.

We observe that survivors coming forward for Redress information proceed to describing complex life issues that require supported access to appropriate services; there are no quick fixes. The multiplicity of complicating and co-morbid factors means that a significant amount of work is provided as advocacy; linking survivors (and often family members) to external support services specialising in Alcohol and Other Drugs support; Gambling; Family Violence; Mental Health Crisis support and intervention; Homelessness; Community Health Organisations; Aged Care and Disability services and LGBTIQ+ support and information, prior to them accessing justice and redress pathways.

Critically, IGFF works to empower survivors and put in place support structures that will enable them to “endure” the stressors in whatever redress pathway they choose to embark upon. An IGFF Caseworker advocates for and liaises in relevant support networks prior to commencing and throughout the course of a redress process to support the clients' wellbeing and psychological safety throughout engagement.

As a priority, the mental and physical health and stability of an individual must be ensured to safeguard against engaging in processes that would not be beneficial to survivors and also to guarantee that an individual has had all of their justice and redress options explained to them (sometimes multiple times) and is able to provide informed consent prior to engaging with those processes.

When providing such a comprehensive care model, IGFF focusses on collaborative advocacy ensuring the client's voice remains central to their tailored processes; empowering clients to take an active role in their recovery journey and facilitating a model of support that links a survivor to a connected community.

- The National Redress Scheme is one option amongst a broad field of redress options available to a survivor seeking monetary compensation. These other options can include victims of crime applications, out of court mediation processes, civil litigation processes and institutional complaints/response programs. Providing information on all these options, accessing people to independent legal advice, and supporting them to make an informed decision can be an extensive process that ultimately requires a detailed historical abuse case history.
- Some institutions, notably and impacting upon our clients, the Jehovah's Witnesses Watchtower Society, have refused to sign on to the National Redress Scheme or only latterly indicated that they will sign on to the Scheme. This has resulted in clients facing the arduous and lengthy process of civil litigation where an institution also continues to position themselves as separate to the comprehensive supports' we know people need. Where an institution has only latterly signed on to the Scheme and survivors have completed application forms in line with Scheme recommendations, this has left many in a 'holding pattern' and without contact from the Scheme.
- IGFF support service staff have the objectivity and long-term experience to detail a person's historical account of primary abuse experiences in a manner that suits multiple cross referral pathways. However, this requires multiple sessions with survivors over an extended period (and therapeutic support people where a survivor indicates this would help). The number of sessions will also likely increase in conjunction with other complicating factors, such as long-term mental and physical health issues, knowledge of terminology relevant to the Scheme's application form and history of engagement/dissatisfaction with other processes.

The current overall suite of programmes that support survivors of abuse, of which the Scheme is one, focuses heavily on primary survivors. In many cases, secondary survivors have suffered significant and lasting harm. Many family members of primary survivors are profoundly damaged by feelings of guilt and responsibility for failing to foresee and prevent the abuse, without access to the Scheme to help them manage the impacts. Many whistle-blowers have suffered significant recriminations from responsible institutions seeking to silence them, resulting in long-term under-employment and unemployment and significant psychological impacts. These secondary survivors have limited access to services to help them manage the impacts. IGFF considers that extending the

availability of services to these secondary survivors would improve their life outcomes and undo some of the harms of the abuse.

b) Effectiveness of Redress Support Services

In contrast to initial disclosures, survivors who previously engaged with the Royal Commission and other Inquiries may already be linked to a support service such as IGFF; greatly benefitting from professional networks established during these Government initiatives, regular network meetings and key understandings forged between specialising support services, longer-term staff and clientele's sense of belonging to a Survivors' community.

- Individuals approaching the National Redress Scheme are encouraged to seek legal advice. Where this advice indicates the strong likelihood of success through civil litigation, clients again are faced with undertaking this process without a funded support service. Strong consideration should be given to providing funding for support services to assist people who choose to pursue this option.
- Survivors also require access to expert counselling when they start to engage with the Scheme's eligibility requirements and are considering their abuse history and attempting to describe it in detail for the Application Form. We propose that expert support services such as ours should actually have funding for Counselling Brokerage to assist Survivors safely through this process.
- Offering counselling after an individual has been required to describe in detail their abuse experiences does not allow for mental health care preventative measures to be put in place and can result in mental health crises that would otherwise be avoidable
- Counselling and psychological care should be determined by a survivor's preference for practitioner and accessibility requirements. For example, many survivors in rural areas will not access their local counselling service fearing ostracisation and the often associated stigma of needing to access mental health supports. This can also be complicated by community associations between those providing and receiving care.
- The current NRS levels of counselling available to Individuals/Applicants is insufficient and fails to adequately recognise the lifelong and ongoing impacts of childhood sexual abuses (often cyclical and recurring throughout an individual's lifetime)

c) Impact of COVID-19 upon survivors

Covid-19 has demonstrated that IGFF is a resilient, flexible and versatile provider that has grown in cliental and expanded services provided during this time of uncertainty. Nationally, we continue to

provide regular phone/email/text contact with new and existing clients. We establish early liaison with their local providers and support their access to community supports via the arrangement of appointments, health, transport and contacts information. Our goal is also to lessen the isolation compounded by social distancing restrictions and improve clients' access to technology, online supports and Telehealth opportunities.

The IGFF Mutual Aid Database has continued to grow, attracting international coverage. The Mutual Aid Database connects informal community aid groups, listed on social media, with vulnerable individuals in their local community areas. The result is connecting vulnerable individuals to local community members and accessing them to necessities such as food packages and other practical aid. It is currently being used to resource the 'helpful neighbours' interactive map and in conjunction with Australia Youth Climate Coalition. This will be an ongoing resource for many in the community beyond covid-19.

- 2020 Covid impacted National Redress Scheme applications may also be initiated by individuals under financial stress/loss of job and imposed social restrictions that are exploring postponed options for compensation/redress with increased mental health/financial sustainability needs compared to years previous to 2020

d) Privacy & Confidentiality

- A younger client demographic means an increased likelihood that an alleged offender may still be active within the community. This opens the possibility for a survivor to engage with the often-lengthy process of holding an offender to account within criminal justice systems/processes. This situation most often adds years to a redress journey. IGFF has supported clients through criminal cases lasting 3 – 5 years and still ongoing.
- Additionally, a younger client demographic and increased likelihood of an offender remaining active in the community can result in Mandatory Reporting processes being activated. There is a lack of resources and key supports within the National Redress Scheme for the applicant when a Child Safety Report is triggered by their application.
- IGFF has recently been informed that this Case Manager model is not being utilised by the Scheme (during Covid-19) despite positive feedback from Applicants and Support Services. In 2020, we are observing multiple Scheme staff contact individual Applicants for differing and overlapping purposes within a fortnight's period. Where sensitive and distressing matters such as Mandatory Reporting are being commenced by NRS staff, confusing and inadequate

information from multiple Scheme phone line staff has been destabilising for these Applicants mental and physical well-being.

1. Where an application's content triggers a Mandatory Reporting process – a specialised liaison and trauma trained NRS staff member should become the single point of contact (Case Management Model) and then, sensitively contact an Applicant stating that they have the option for Support Service advocacy and support and Nominee provision - in order to proceed with the Scheme's requirement to Report.
2. Explicit, detailed and thorough information should be provided to the Applicant about what kind of document is being produced, what information it can and can't contain and what the ramifications of being Identified or De-Identified may produce.
3. Resources to support (increasingly) younger applicants to the Scheme, where the alleged Perpetrator still holds their position of institutional responsibility; are alive / active members of the Australian community should be provided by the Scheme upon triggering of the 'Child Safety Report' process in every case.
4. Analysis should be made of the explanations provided by Scheme staff about what content of an Application will trigger a Child Safety and training provided with provision of specific Scheme resources – not every Applicant will become supported by skilled Casework support staff from a support service such as this Case Study.

From the Children in Care Collective case study:

In short, our view is that it would be best practice to inform other agencies including government departments, particularly where there is a real and present danger to the safety of children in care. This would also seem to apply where the Scheme's own Mandatory reporting processes that may not have been "activated" given the previous Case Study examples?

Subsequently, when the participating institution endeavoured to make other agencies (who continue to employ this offending Foster Carer) were made aware of the situation they experienced extreme reluctance to take on any skilled or resourced considerations about the Child Safety information being shared.

e) One opportunity only

Under the current National Redress Scheme, a survivor has only one opportunity to submit an application for redress under the Scheme. Bearing in mind that many survivors have reduced

capacity as a consequence of their abuse, and some have problems with recall of the details of their abuse, IGFF considers that a mechanism whereby an application already rejected could be revisited on the basis of significant new evidence would create fairer outcomes in many cases. It might also be helpful to have decisions to reject applications reviewed by Independent Decision Makers.

2) Operation of the National Redress Scheme

- Counselling and psychological care should be determined by a survivor's preference for practitioner and accessibility requirements. For example, many survivors in rural areas will not access their local counselling service fearing ostracisation and the often-associated stigma of needing to access mental health supports. This can also be complicated by community associations between those providing and receiving care.
- The current NRS levels of counselling available to Individuals/Applicants is insufficient and fails to adequately recognise the lifelong and ongoing impacts of childhood sexual abuses (often cyclical and recurring throughout an individual's lifetime)
- Linking the number of sessions (and the monetary offer for counselling) to the assessment matrix is flawed and appears to be superficial with a cap of 22 hours
- The maximum payment available for counselling or psychological services under the National Redress Scheme payments is \$5,000. That equates to a maximum of less than 20 sessions with a psychologist under the current APS (Australian Psychology Society) rates for psychologists of \$251 inclusive of GST

a) Assessment Framework Matrix

- An individual's trauma often inhibits their ability to process information and coherently describe historical childhood abuse experiences. This can be compounded by the fact that some individuals do not yet have the language and terminology to describe their experiences of abuse (particularly amongst an older demographic or those from culturally and linguistically diverse backgrounds).
- The explicit and logical recount of abuse experiences that is required by the NRS Application form and to meet the requirements to make a determination in line with the Assessment Framework is not how a person's memory and ability to disclose such personal/painful

information “works”. Skilled support is essential to their psychological safety during the attempt to write/describe detailed abuse accounts.

- Additional complications stem from lexical idiosyncrasies between differing cultures, generations, and institutional settings. This can and often does result in significant gaps between the legalistic and complex detail required by the Scheme and the individual’s ability to outline their abuse experience using unfamiliar terminology.

	Column 1 Kind of sexual abuse of the person	Column 2 Recognition of sexual abuse	Column 3 Recognition of impact of sexual abuse	Column 4 Recognition of related non-sexual abuse	Column 5 Recognition person was institutionally vulnerable	Column 6 Recognition of extreme circumstances of sexual abuse
1	Penetrative abuse	\$70,000	\$20,000	\$5,000	\$5,000	\$50,000
2	Contact abuse	\$30,000	\$10,000	\$5,000	\$5,000	Nil
3	Exposure abuse	\$5,000	\$5,000	\$5,000	\$5,000	Nil

- As per the NRS Assessment Framework above, there is a lack of clarity about what defines Column 4: related non-sexual abuse; Column 5: a person’s institutional vulnerability; and Column 6: what defines extreme circumstances (plural)?
- The consistency with which these definitions are applied is also unclear and when these terms may be applied is also unclear
- Reduction of the Royal Commission recommended cap from \$200,000 to \$150,000 does not recognise the significant number of survivors naming abuse by multiple offenders across multiple institutions
- As a long-term support service for institutional abuse survivors (20+ years) the lifelong impacts of sexual abuse upon individuals and their significant relationships should be given far greater weighting than the NRS is affording 2018 - 2028 within current parameters of monetary / counselling / DPR ‘Offers of Recognition’

b) Independent Decision Makers

Critically, IGFF has observed inconsistencies in the definition and application of those definitions of sexual and other abuses in the decision-making processes within the Scheme. This is further compounded by unclear communications around what circumstances constitute an 'extreme circumstance' and where this may be awarded to an applicant (significantly \$50,000 and is perceived as a crucial difference between Applications reaching the \$150,000 cap). Without access to this information survivors assume that every circumstance of childhood sexual abuse in an institutional context is considered extreme, unfairly contributing to their heightened expectations and in many cases, disillusionment.

Current definitions around what defines 'contact' and 'exposure' abuse also need to be more clearly outlined so that support services and independent lawyers are able to provide more accurate information and facilitate informed decision making with clients and NRS Applicants. Additionally, this will assist support services and survivors with the level of detail required by the Scheme to meet these thresholds.

- IGFF considers that the changes should make it easier to appoint independent decision-makers, and thereby have the potential to reduce the time taken for some survivors to achieve redress.
- However, IGFF notes that the changes do not directly address the potential for the appointment of independent decision-makers with association (or perceived association) with institutions with responsibility for abuse. IGFF considers that the appointment of independent decision-makers with such associations would be inconsistent with the Scheme's clear and demonstrable freedom from any undue influence.

c) Payments & Indexation

- The Redress Scheme cap is insufficient with many individuals more inclined to consider the far greater compensatory amounts achievable through civil litigation and out of court mediation processes. This disparity between options is streamlining people into litigation options.
 - In litigation matters, we are increasingly learning of non-disparagement clauses being included in Deeds of Releases and being the subject of significant dispute at

the conclusion of a process. These non-disparagement clauses are often all inclusive of the survivors, their families, lawyers and support people

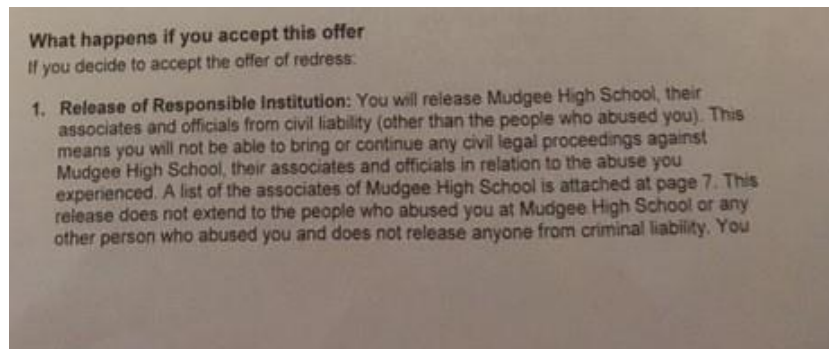
- The average monetary payment from the National Redress Scheme also leaves a significant gap when compared to settlements in the current range of \$400,000 - \$800,000 at present. Significantly, there is a greater public awareness of cases being awarded between \$1.2 – \$1.5 million in similar circumstances.
- Reduction of the Royal Commission recommended cap from \$200,000 to \$150,000 does not recognise the significant number of survivors naming abuse by multiple offenders across multiple institutions
- As a long-term support service for institutional abuse survivors (20+ years) the lifelong impacts of sexual abuse upon individuals and their significant relationships should be given far greater weighting than the NRS is affording 2018 - 2028 within current parameters of monetary / counselling / DPR 'Offers of Recognition'

When receiving a Letter of Offer, survivors often need support service and/or NRS phone line assistance to understand the legal language included in their letter and the details of what they may be agreeing to, such as:

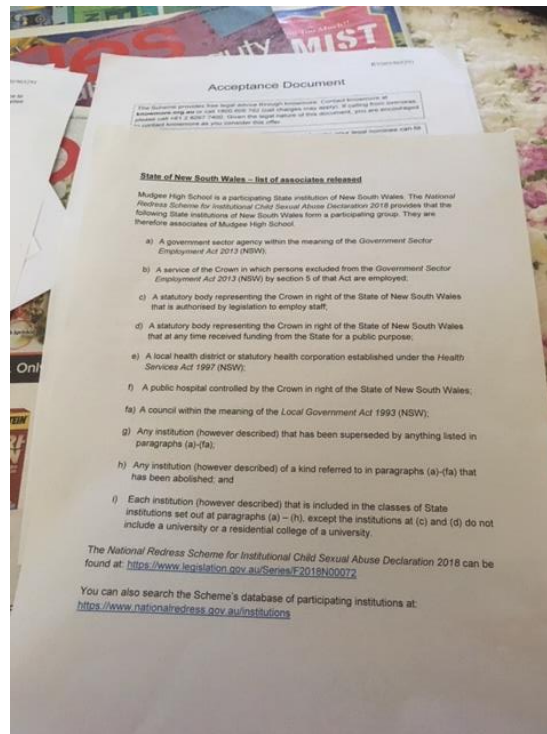
1. It is explicitly made apparent in the Letter of Offer that a Survivor is releasing the Institution via the NRS Deed of Release but could pursue the offender/s if the nominated offender/s have sufficient assets. This is not explicitly detailed at the "starting point" of Scheme information but is presented much later in their process as an added dimension to consider upon the Letter of Offer.
2. Some individuals receiving an Offer have become aware that the Deed released the Institution and they have sought information on how sue the offender/s if alive. They have not understood that this is not a process offered through the Redress Scheme and that they may need to put their Redress payment toward covering said legal fees. This information is not clear in Redress Resource materials and should be made available to individuals up front.
3. For Survivors that have been isolated from justice pathways, information, and options for many decades, this is information that needs to be clearly provided up front to avoid confusion and further distress at the end point of the application process. This is equally significant as not every applicant goes through the knowmore advice process or engages with an experienced Support Service when initially applying.
4. The lengthy Letter of Offer paperwork provided by the Scheme is generally confusing for Survivors. There are 2 letters with separate page numbers that can be jumbled up with the

anxiety of receiving this news. This paperwork has not been provided to a Nominee to assist either, often resulting in further confusion for individuals.

5. Here is an example of the Release of Responsible Institution clause but not the person/people responsible for the abuse:



6. Here is an example of information that covers all legal bases naming the related "Associates" but is extremely confusing for the Survivor who only named the High School as the responsible institution and gets this list a) to i) to also be "released". Please note, these photos were provided by the Applicant while trying to sort out and clarify the multiple pages received in the post from NRS to their IGFF nominee via email:



3) Legal advice and private law firms

a) Legal Advice

- Individuals approaching the National Redress Scheme are encouraged to seek legal advice. Where this advice indicates the strong likelihood of success through civil litigation, clients again are faced with undertaking this process without a funded support service. Strong consideration should be given to providing funding for support services to assist people who choose to pursue this option.
- Anecdotally, IGFF is aware of civil litigation and out of court settlements frequently being awarded in the vicinity of \$500,000. Much media attention was given to the precedent setting case of JCB whose compensation arrangement totalled \$1.5 million and other such significant cases. This is significantly greater than the average payout of the National Redress Scheme and a much more attractive proposition for individuals who seek greater recognition of the impacts of abuse in their lives.

b) Private Law Firms

- The proposed new protections in the recent *Technical Amendments Bill* should make it more difficult for organisations that are not complying with the Scheme to conceal that fact. The protections should also reduce the likelihood of survivors that are searching for services and assistance being misdirected to organisations that purport to provide assistance with access to the Scheme but do not actually do so.
- Similarly, the protections may also be able to reduce the practice where some Australian legal firms that have paid to come up first on web searches on Scheme terms then seek to stream survivors away from the Scheme and into their commercial practice for civil litigation or expensive NRS application processes without therapeutic support.

4) Participation in the Scheme

a) Institutions & Applicants

- The Scheme encouraged survivors to engage with its processes and submit applications from the day it became active (2nd July 2018). This has proved significantly problematic as many institutions have taken a full two years to indicate their intention to sign on to the Scheme, with some institutions still finalising their structures to enable them to 'opt-in'. The result is a significant delay in application process for those survivors who named an institution that has taken this time to "opt-in" with flow on effects to accessing Scheme funded psychological care and the DPR process. Where an institution has still not indicated its intentions to sign on, many survivors have felt no other option but to pursue civil litigation.
- This process has proved problematic as it encouraged unrealistic expectations throughout the survivor community and meant that many survivors put in applications without adequate assistance from support services, Knowmore legal or other sources.
- Historically, many non-government institutions including religious institutions have engaged in apology processes that have contributed to further distress for Survivors. Whilst a DPR can play a crucial element of the recovery journey for survivors it has, on occasion, historically also been a very traumatic part of a survivor's journey. There is significant distrust in this process particularly where current institutional responses to survivors shows little by way of observable cultural reform. IGFF is acutely aware of individuals expressing a preference to opt-out of a DPR, particularly where they are delivered by religious institutional representatives.

- Historically, negative examples include ‘apologies’ where survivors have been called by the wrong name, had to explain the role of their offender to the institutional representative, were asked about how they may have “contributed” to the abuse and experienced ridicule and inappropriate comments about their sexual orientation. This has contributed to a breakdown of trust toward such institutions and for many survivors, contributes to further isolation and exclusion from their families of origin and faith communities.
 1. Mandate that all DPRs must make use of the best practice DART model and should not be delivered by an individual who was involved in Royal Commission case studies
 2. Requiring people to check a box to receive a DPR has resulted in some clients missing out on this option. A pre-checked box with an opt-out option may be more useful rather than having them potentially denied this opportunity. Alternatively, if people could opt into a DPR at any point throughout the life of the Scheme would also overcome this barrier
- If applied carefully, IGFF considers that the changes could make it more likely that contributions are received, and that survivors will eventually receive redress.
- IGFF considers this change to be a significant improvement. IGFF supports all reasonable measures to influence non-participating institutions to sign up to the Scheme and thereby make the Scheme accessible to more survivors.

b) Funder of last resort provisions

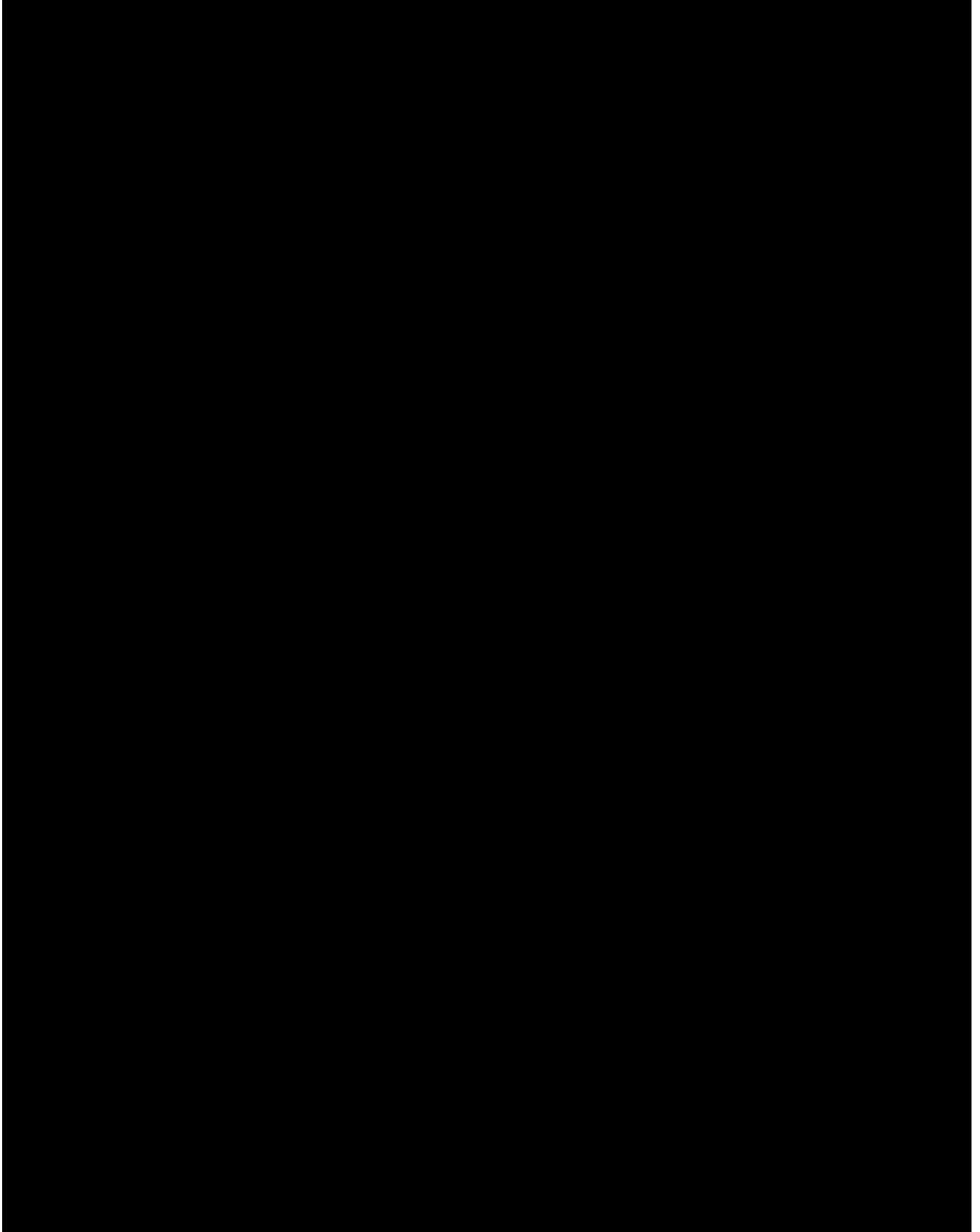
- IGFF considers that the changes produced in the recent *Technical Amendments Bill* could reduce the resistance of some funders of last resort to cooperating with the Scheme, and thereby make access to the Scheme easier for some survivors.
- However, IGFF considers it important to ensure that the amended approach does not generate any additional delays in the redress process, through ensuring that the management of this aspect of the Scheme is adequately resourced.

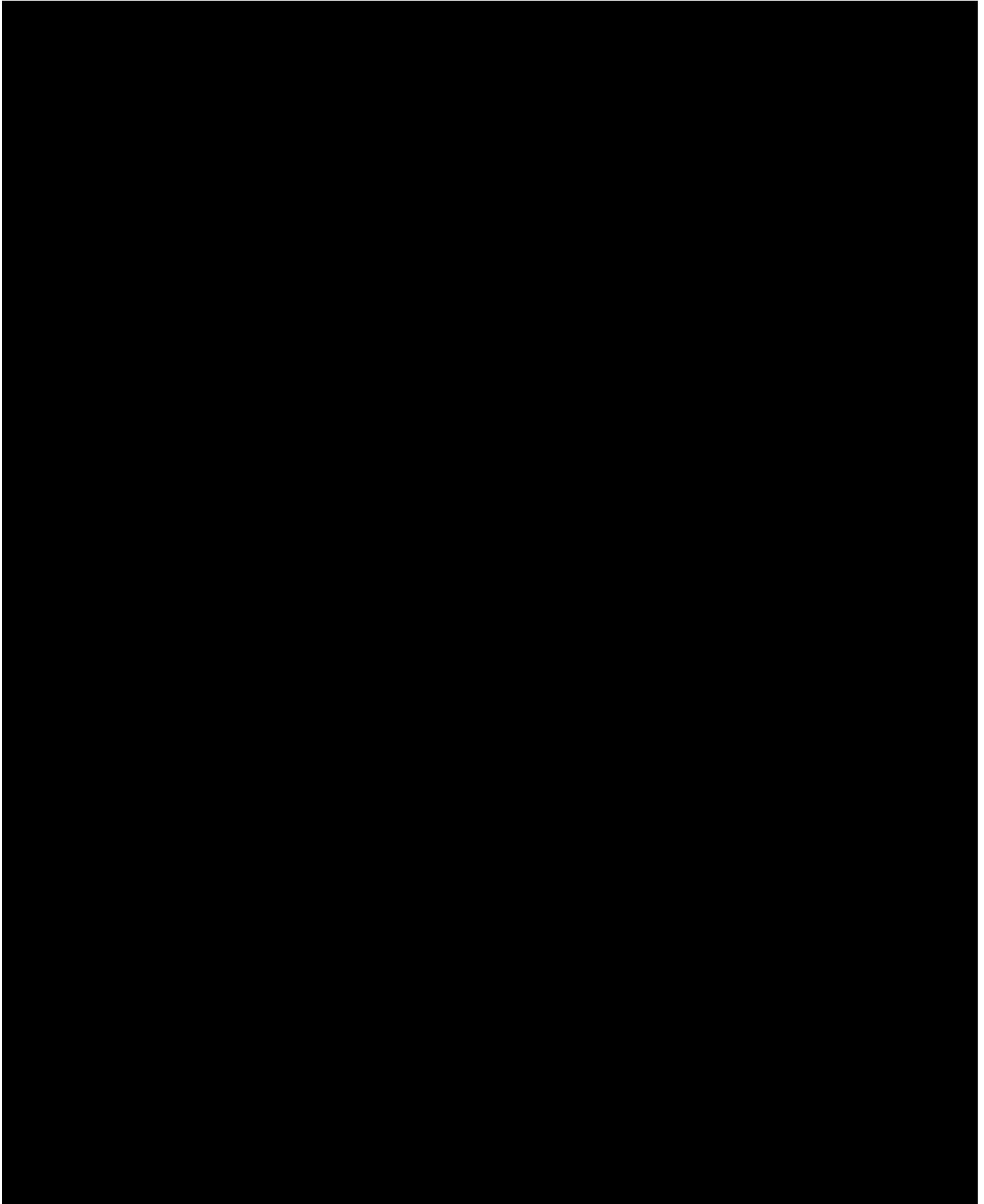
5) First Interim Report Review

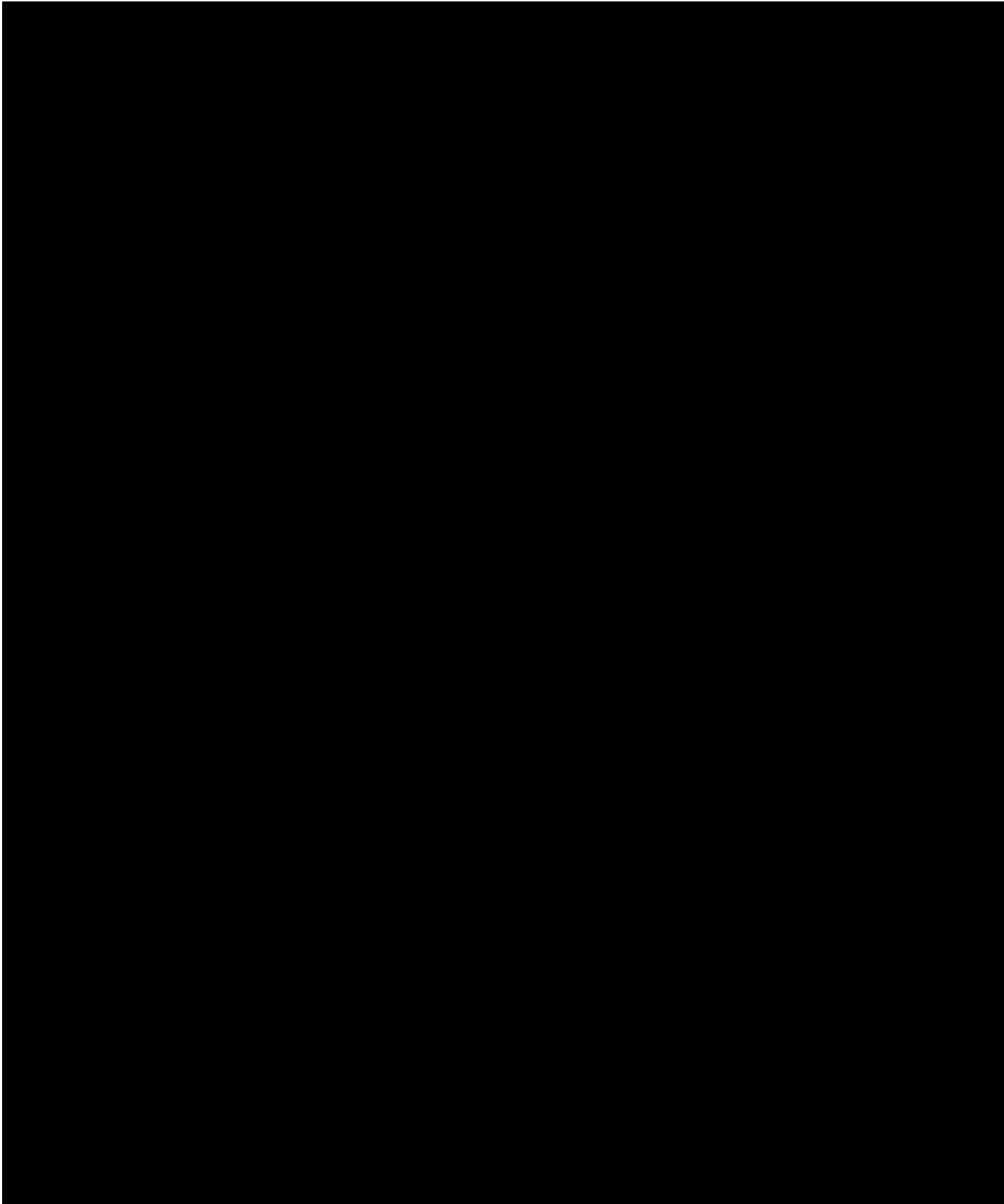
a) Early payment scheme

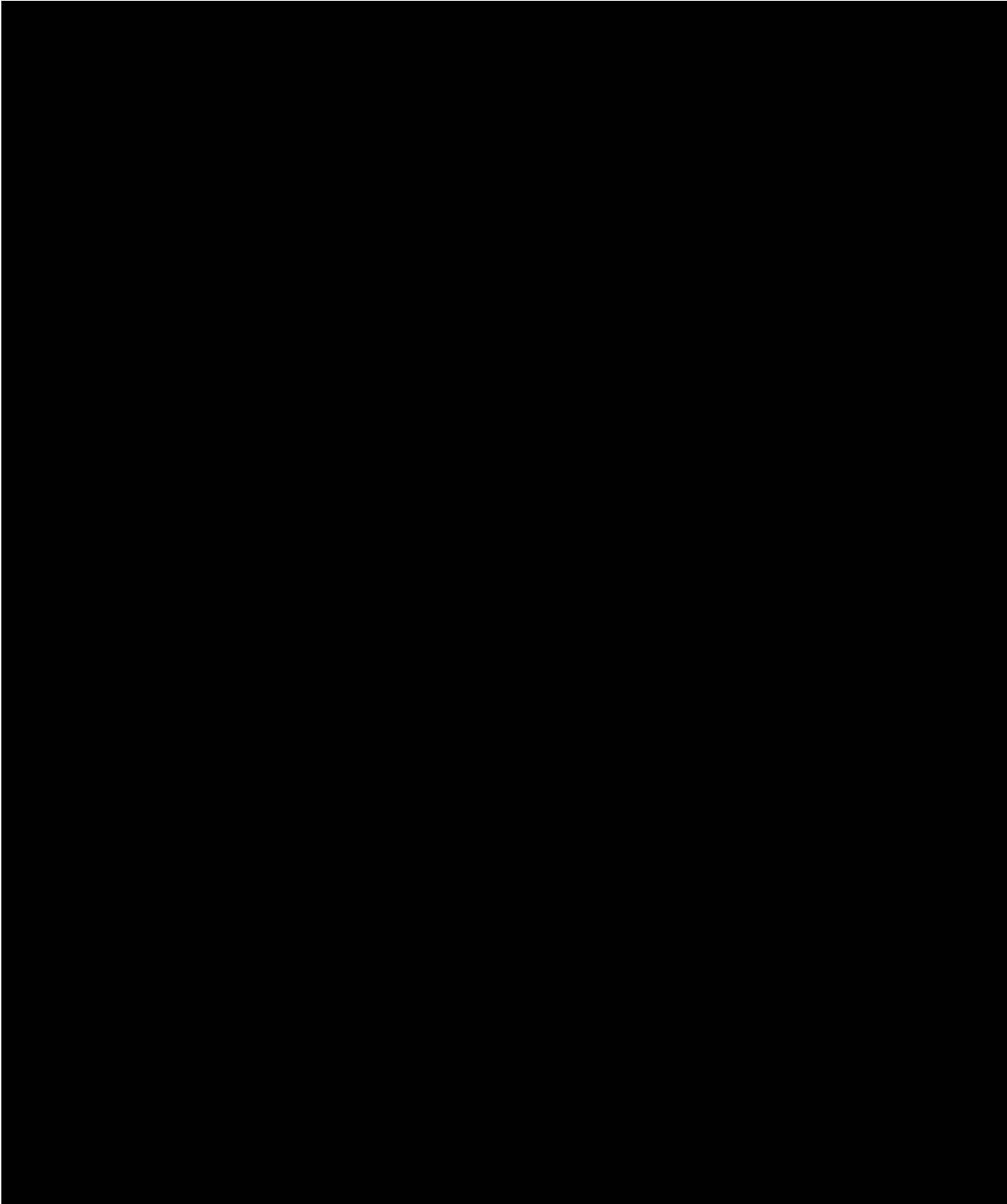
IGFF endorses the following submissions linked below:

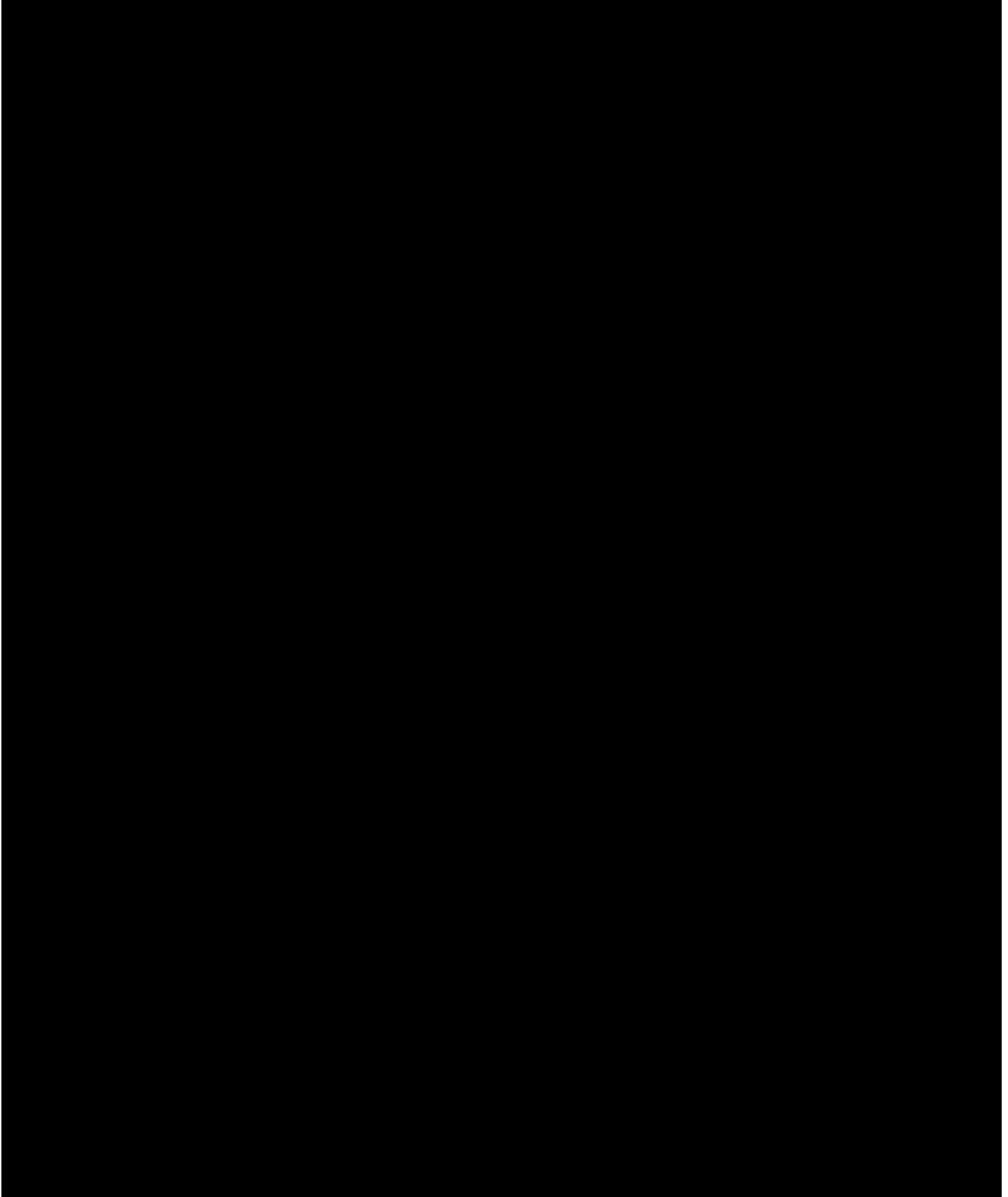
- **Knowmore:** <https://knowmore.org.au/wp-content/uploads/2020/05/knowmore-submission-Joint-Select-Committee-on-Implementation-of-the-National-Redress-Scheme-28-April-2020.pdf> – this covers some really similar areas and has some good references to the Joint Select Committee/Scheme’s own past things they’ve said (as might be expected!)
 - a. **They also made their Second Anniversary Review submission public:**
<https://knowmore.org.au/wp-content/uploads/2020/10/Submission-Second-anniversary-review-of-the-National-Redress-Scheme-30-September-2020.pdf>
- **Say Sorry/Lara Kaput and the Jehovah’s Witness survivors have made theirs public:**
<https://saysorry.org/submissions/> the most recent submission mentions IGFF, and I think Rachel provided support for the oral testimony she provided in March











Case Study - Problems with protected information: definition and application

IGFF was recently invited to speak to the Children in Care Collective (CiCC) addressing justice pathways for survivors and the development of best practice care models. This was a unique opportunity for IGFF to engage with institutional representatives currently providing services in the out-of-home sector who may also be receiving Redress claims through the Scheme and relay some of the successes of the Scheme's model.

One of the most identified reasons survivors provide for disclosing historical abuse is to ensure that others do not experience similar abuses. In addition, we know through Royal Commission Case Studies that institutions have historically moved offenders away from complaints and concealed abusive behaviours, leading to further harms within multiple communities. A way of breaking this cycle is to ensure that timely communications take place and be discussed with appropriate detail as recommended by the Royal Commission.

As part of the questions section with CiCC, IGFF was asked for understandings of best practice institutional responses to substantiated allegations of abuse through the NRS in a foster care context – and if the agency in charge of placing a child in foster care had a responsibility to inform other agencies where the Offending individual is working or had worked?

In short, our view is that it would be best practice to inform other agencies including government departments, particularly where there is a real and present danger to the safety of children in care. This would also seem to apply where the Scheme's own Mandatory reporting processes that may not have been "activated" given the previous Case Study examples?

Subsequently, when the participating institution endeavoured to make other agencies (who continue to employ this offending Foster Carer) were made aware of the situation they experienced extreme reluctance to take on any skilled or resourced considerations about the Child Safety information being shared.