



# Submission to the Joint Select Committee on Implementation of the National Redress Scheme

28 April 2020

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# About knowmore

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## Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our mission is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). knowmore was established by and operates as a program of Community Legal Centres Australia, with funding from the Australian Government, represented by the Attorney-General's Department. knowmore also receives some funding from the Financial Counselling Foundation.

From 1 July 2018, Community Legal Centres Australia has been funded to operate knowmore to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme.

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane and Perth. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

## Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 31 March 2020, knowmore has received 29,888 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 6,107 clients. More than a quarter (26%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. More than a quarter (27%) of clients are also classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

# knowmore's submission

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In this submission we share our experiences and the experiences of our clients with the National Redress Scheme (NRS) over the past 22 months. We reiterate our strong support for the recommendations of the former Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the former JSC) to be implemented as a matter of priority, and highlight key areas of concern that require urgent action. We also recommend improvements to the NRS to ensure that it delivers three essential elements — equal access to justice for all survivors of institutional child sexual abuse, equal and fair treatment of survivors throughout the redress process, and survivor-focused and trauma-informed redress.

## Overview

knowmore continues to support an independent national redress scheme for survivors of institutional child sexual abuse, and we have assisted many survivors to apply for redress under the NRS. Between 1 July 2018 and 31 March 2020, knowmore has assisted 1,028 clients to lodge applications to the NRS. This includes 329 applications lodged for Aboriginal and/or Torres Strait Islander clients. Over this same time, 291 clients have received offers of redress.<sup>1</sup> Altogether, knowmore clients have received offers totalling more than \$19.8 million, with an average offer value of \$72,000.<sup>2</sup>

For many of our clients who have received an offer of redress, the outcome has been life-changing. For these clients, the NRS has provided them an opportunity to seek justice and redress for the harm they experienced as children, and has enabled them to finally start their journey towards healing.

However, the current design and implementation of the NRS hinders its ability to deliver the essential elements of redress identified by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) — equal access to justice for all survivors of institutional child sexual abuse, equal and fair treatment of survivors throughout the redress process, and survivor-focused and trauma-informed redress.<sup>3</sup> As we stated at the recent public hearing of the Joint Select Committee on Implementation of the NRS (the Committee):

*The reality is that we have a scheme that's fundamentally different to what the Royal Commission envisaged and recommended. Those departures in the design and implementation of the Scheme continue to have an adverse impact upon survivors. Many of*

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1 This number includes clients who were assisted by knowmore during the NRS application process as well as clients who were not.

2 This average figure takes into account reductions for relevant prior payments.

3 The Royal Commission identified that “equal access to redress for survivors and equal treatment of survivors in redress processes” was regarded by many survivors and survivor advocacy and support groups as “essential elements if a redress scheme is to deliver justice”, and recommended that redress should be survivor-focused. See Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, 2015, p. 4 and Recommendations 1 and 4, <[www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final\\_report\\_-\\_redress\\_and\\_civil\\_litigation.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf)>.

*those issues were identified by the former Joint Select Committee and addressed in its recommendations. We support those recommendations and we strongly support their implementation as a matter of priority.*<sup>4</sup>

Through our experiences with the NRS over the past 22 months, knowmore has identified a number of key areas of concern that require urgent action. While some of these areas of concern go to systemic problems with the NRS that were addressed by the former JSC, we seek to highlight important developments since the former JSC released its report in April 2019.

The key areas of concern are:

1. The ongoing failure of institutions to join the NRS, which requires urgent action from the Commonwealth and state and territory governments.
2. Excessive assessment timeframes.
3. Unfairness and inconsistency in the assessment of applications.
4. Shortcomings in communication from the NRS.
5. The need for improved cultural safety and support for Aboriginal and/or Torres Strait Islander survivors.
6. The lack of transparency and accountability in the NRS's operations and decision-making.
7. That certain classes of survivors continue to be excluded from redress.
8. That the counselling and psychological care component of the NRS is not sufficiently survivor-focused or trauma-informed and does not reflect the principles of availability, accessibility, acceptability and high quality.
9. The lack of specialist financial counselling services for applicants, which puts many redress payments at risk.
10. The exploitative practices of some law firms and 'survivor advocacy' firms.
11. The lack of protection of a survivor's personal information once it is disclosed to the institution during a redress application.
12. Requirements regarding statutory declarations that are problematic for survivors trying to access the NRS in the current environment.

knowmore acknowledges the efforts of the Department of Social Services (the Department) and Services Australia to continue to improve the operation of the NRS, and the collaborative relationships we have developed with NRS staff. However, our view is that until these issues are addressed and the recommendations of the former JSC are implemented, survivors of institutional child sexual abuse will not be able to access justice and redress in the manner that was envisaged by the Royal Commission. The NRS will also continue to fall short of delivering redress in accordance with its own general principles.<sup>5</sup>

## The failure of institutions to join the NRS

The ongoing failure of many institutions to join the NRS, or to indicate their intention do so, is quite obviously having significant adverse impacts on many survivors seeking redress. We note recent advice

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4 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Monday 6 April 2020*, Evidence of Mr W Strange, p. 32, [parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2Fb09efaf9-cb03-48ac-a10a-c85599257bd3%2F0001%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2Fb09efaf9-cb03-48ac-a10a-c85599257bd3%2F0001%22).

5 We refer to the general principles guiding actions of officers under the Scheme in section 10 of the *National Redress Scheme for Institutional Child Abuse Act 2018* (Cth).

from the Department that there are currently 534 applications (relating to 295 institutions) on hold because one or more of the named institutions has not joined the NRS.<sup>6</sup> Noting that many more survivors are waiting to see if their institution joins the NRS before even submitting an application, this is 534 survivors who are being prevented from accessing redress because institutions are failing to take responsibility. knowmore specifically has more than 60 clients affected by institutions that have not joined, including 26 clients whose applications are on hold for this reason. A number of these clients are priority clients, reflecting our ageing client group and the relatively high prevalence of life-limiting illnesses among clients. Sadly, four of knowmore's clients have already passed away while their application was on hold, including one client who passed away in December 2019, having waited for more than nine months in relation to an institution that has still not joined the NRS.

The lack of transparency around where many institutions stand with respect to joining the NRS is particularly problematic. As the Department's statistics indicate, the 48 institutions named on the NRS website as not having joined the Scheme represent only a fraction of the problem,<sup>7</sup> and this is reflected among the survivors knowmore has assisted. Between knowmore's current clients and other survivors knowmore has had contact with since the NRS commenced, more than 30 institutions that have not joined the Scheme have been identified as relevant institutions — 14 of these institutions are named on the NRS's website, and 18 are not. This lack of transparency can be detrimental to survivors, in that they are prevented from making informed decisions about what avenues to pursue for redress or compensation — knowing that an institution will never join the NRS, for example, enables survivors to evaluate their remaining options and pursue alternatives. This is particularly important for elderly survivors and those with serious health conditions who do not have the luxury of time. The lack of transparency is also incredibly frustrating and distressing for survivors, who often cannot understand why their institution is not listed on the NRS website and can feel as though the institution is regarded as a lower priority by the NRS. The case study on the following page highlights the struggle for survivors waiting for an institution to join the NRS.<sup>8</sup>

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6 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Thursday, 19 March 2020*, Evidence of Ms S Cartwright, Department of Social Service pp. 51 and 52, <[parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2F0234ad4c-ab44-430c-ac71-882139d0aff7%2F0000%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2F0234ad4c-ab44-430c-ac71-882139d0aff7%2F0000%22)>.

7 NRS website, 'Institutions that have not yet joined the scheme', last updated 2 March 2020, <[www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined](http://www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined)>.

8 For further background see Associated Press, 'Prince's Trust sorry for Australian child abuse at farm schools', *The West Australian*, 12 July 2017, <[thewest.com.au/news/australia/princes-trust-sorry-for-australian-child-abuse-at-farm-schools-ng-b88535514z](http://thewest.com.au/news/australia/princes-trust-sorry-for-australian-child-abuse-at-farm-schools-ng-b88535514z)>.

#### A client whose application has been on hold for over 12 months

knowmore submitted the client's application to the NRS in March 2019. The client has significant health issues that make their application a priority.

The NRS advised knowmore in April 2019 that one of the named institutions — the Fairbridge Society, now The Prince's Trust, which represents half of the claim — had not signed up to the NRS and that the client's application would be put on hold.

Over the last 12 months, the client has made many of their own attempts to put pressure on the institution to join, including writing letters to the CEO of The Prince's Trust and the Prince of Wales, as President of the Trust. The General Counsel of The Prince's Trust replied to let the client know that the NRS would be discussed at the next meeting of the Trustees, but the client has heard nothing further. The institution has still not joined the NRS.

Although the Fairbridge Society is included in the list of non-participating institutions on the NRS website, The Prince's Trust is not. The client is very frustrated by this, as they feel that if The Prince's Trust is not listed, there is no way for public pressure to compel The Prince's Trust to participate. The client has raised this issue with the NRS in a letter and in multiple phone calls with NRS staff, requesting that The Prince's Trust be named on the NRS website. knowmore has made the same request of the NRS, but to no avail.

The client's communications with the NRS have been frustrating and disappointing for the client. They feel that the NRS is non-responsive to their concerns and is doing nothing proactive in relation to the institution's participation.

We note some suggestions that institutions that are only now being named in redress applications should perhaps be afforded more leniency in terms of how quickly they should be expected to join the NRS.<sup>9</sup> We do not share this view. The Royal Commission reviewed allegations of sexual abuse in more than 4,000 institutions.<sup>10</sup> Although the overwhelming majority of these institutions were not specifically named by the Royal Commission, it cannot be a surprise to these institutions that they are now being named in redress applications (or are likely to be named in future applications). As we noted at the hearing:

*The Scheme has been operating for over 20 months now, and all of these institutions in this position knew the Scheme was coming for a long time prior to it starting. They've now had years, in effect, to get their house in order and to join.*<sup>11</sup>

In our view, institutions have had more than enough time to opt in to the NRS and it is simply unacceptable that many still have not done so.

#### Funder of last resort provisions

In some cases, the failure of an institution to join the NRS has been compounded by the limited operation of the NRS's funder of last resort provisions. These provisions allow the relevant government to act as the funder of last resort for institutions that are now defunct, if the government is determined to be equally responsible with the defunct institution for a person's abuse.<sup>12</sup> To date, funders of last resort have only

9 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Thursday, 19 March 2020*, Comments from Senator R Siewert, pp. 29–30.

10 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Preface and Executive Summary*, 2017, p. 8, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_preface\\_and\\_executive\\_summary.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_preface_and_executive_summary.pdf)>.

11 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Monday, 6 April 2020*, Evidence of Mr W Strange, p. 38.

12 Section 29(2)(i), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).



been declared for seven defunct institutions.<sup>13</sup> As highlighted in the case study below, this has meant that survivors with applications on hold who likely could be assisted by the funder of last resort provisions have continued to face long delays in accessing redress.

**An elderly Aboriginal client whose application has been on hold since November 2018**

knowmore submitted an NRS application for an elderly Aboriginal client almost 18 months ago, in November 2018.

One of the named institutions — Bomaderry Aboriginal Children’s Home in New South Wales, which was opened in 1908 by the United Aborigines Mission for children under the age of 10 who were forcibly removed from their families — has still not joined the NRS and appears to be a defunct institution.

The best path forward now appears to be to have Bomaderry declared a defunct institution and seek to have the State of New South Wales made the funder of last resort, which would allow our client’s application to progress.

However, the NRS has indicated this is unlikely to happen before 30 June 2020, potentially leaving the client to wait many more months for a decision.

We expect other problems with the funder of last resort provisions to become more apparent after 30 June 2020, given that many survivors affected by the failure of institutions to join the NRS are unlikely to be assisted by the provisions. This is because, as knowmore has noted previously, the provisions have been framed in an extremely narrow way that is contrary to the recommendations of the Royal Commission.<sup>14</sup> Specifically, the Royal Commission recommended that:

*The Australian Government and state and territory governments should provide ‘funder of last resort’ funding for the redress scheme or schemes so that the governments will meet any shortfall in funding for the scheme or schemes.*<sup>15</sup>

Instead, the provisions that have been adopted are based on the concept of ‘equal responsibility’, which was not referred to by the Royal Commission. Our experience over the last 22 months has reaffirmed our original position that the narrow scope of these provisions is highly problematic:

*Having regard to some of the cases we have seen, we are concerned that this change may operate to exclude some survivors where the participating Government had some role in their placement in an institution, but seeks to establish to the Operator that these acts did not amount to “equal responsibility” on its part for the abuse of the person.*<sup>16</sup>

13 Four in Queensland (Beemar Yumba Maud Phillips Memorial Children’s Shelter, Beulah Homes, OPAL Joyce Wilding Home and OPAL House), two in South Australia (Emergency Foster Care Incorporated and Kurbingai Hostel) and one in Tasmania (Glenara Children’s Home, formerly the Northern Tasmanian Home for Boys) — schedule 1, National Redress Scheme for Institutional Child Sexual Abuse (Funders of Last Resort) Declaration 2019 (Cth).

14 knowmore, *Submission to the Senate Committee for Community Affairs: The Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Related Bill*, 2018, pp. 37–38, <[www.aph.gov.au/DocumentStore.ashx?id=574a64fa-f8e3-4c6c-b34b-6e3275c631a3&subId=563413](http://www.aph.gov.au/DocumentStore.ashx?id=574a64fa-f8e3-4c6c-b34b-6e3275c631a3&subId=563413)>.

15 Royal Commission, *Redress and Civil Litigation Report*, Recommendation 36, p. 34.

16 knowmore, *Submission to the Senate Committee for Community Affairs: The National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and Related Bill*, 2018, p. 8, <[www.aph.gov.au/DocumentStore.ashx?id=0a62ea8a-d83f-42ad-a5b2-eb9597a536c4&subId=566605](http://www.aph.gov.au/DocumentStore.ashx?id=0a62ea8a-d83f-42ad-a5b2-eb9597a536c4&subId=566605)>.



The Royal Commission emphasised that the purpose of funder of last resort arrangement was to ensure “justice for victims”.<sup>17</sup> By continuing to deprive them of access to redress, the current provisions will fail to deliver this for many survivors affected by the non-participation of institutions.

### Recommendations for improvement

knowmore’s view is that much stronger action needs to be taken to ensure the participation of institutions that are yet to join the NRS, consistent with Recommendations 2 and 3 of the former JSC.<sup>18</sup> As we noted at the hearing, we strongly support financial consequences to compel institutions to join the NRS, particularly reviewing the appropriateness of government funding for these institutions, and suspending their tax concessions and charitable status.<sup>19</sup> Consistent with this, we commend the Victorian Government for recently issuing a strong statement regarding institutions that have not yet joined the NRS and flagging the potential loss of state government funding for these institutions.<sup>20</sup> Our view is that many institutions will simply not recognise their responsibilities without such measures.

knowmore also recommends that the NRS provides greater transparency about the status of institutions that have not joined the Scheme. We note that the Department holds information of this nature, identifying whether an institution is onboarding or has declined to join the NRS, for example,<sup>21</sup> and we suggest that this information should be made publicly available on the NRS website. For those institutions that are currently in the process of joining, it would show that they are committed to the NRS and actively working to give survivors access to redress. For those institutions that have confirmed they will not join the NRS, it would ensure affected survivors could make informed decisions about what avenues to pursue for redress or compensation.

Finally, we reiterate our previous calls for the funder of last resort provisions in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) (the NRS Act) to be revised for consistency with the Royal Commission’s recommendation.<sup>22</sup> Specifically, the Commonwealth and state and territory governments should act as funders of last resort in instances where:

- the institution no longer exists and it was not part of a larger group of institutions or there is no successor institution; or
- the institution still exists but has no assets from which to fund redress,<sup>23</sup>

and the concept of ‘equal responsibility’ should not apply.

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17 Royal Commission, *Redress and Civil Litigation Report*, pp. 338–339.

18 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, Parliament of Australia, Canberra, 2019, p. 132, <[www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Royal\\_Commission\\_into\\_Institutional\\_Responses\\_to\\_Child\\_Sexual\\_Abuse/RoyalCommissionChildAbuse/~/\\_media/Committees/royalcommission\\_childabuse\\_ctte/report.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Royal_Commission_into_Institutional_Responses_to_Child_Sexual_Abuse/RoyalCommissionChildAbuse/~/_media/Committees/royalcommission_childabuse_ctte/report.pdf)>.

19 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Monday, 6 April 2020*, Evidence of Mr W Strange, p. 38. See also knowmore, *Submission to the Joint Select Committee: Inquiry into the Implementation of the Redress Related Recommendations of the Royal Commission*, 2018, p. 12, <[www.aph.gov.au/DocumentStore.ashx?id=fb63cd88-4da9-412c-896f-450c82bf0d8a&subId=659185](http://www.aph.gov.au/DocumentStore.ashx?id=fb63cd88-4da9-412c-896f-450c82bf0d8a&subId=659185)>.

20 Attorney-General Jill Hennessy, *Media Release: Organisations on Notice to Join National Redress Scheme*, 19 April 2020, <[www.premier.vic.gov.au/organisations-on-notice-to-join-national-redress-scheme/](http://www.premier.vic.gov.au/organisations-on-notice-to-join-national-redress-scheme/)>.

21 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Thursday, 19 March 2020*, Reference to SQ2000079, pp. 54–55.

22 knowmore, *Submission to the Senate Committee for Community Affairs: The Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Related Bill*, p. 39.

23 See related discussion in Royal Commission, *Redress and Civil Litigation Report*, pp. 337–338.

While the first of these issues would be addressed with the implementation of Recommendation 4 from the former JSC,<sup>24</sup> we remain of the view that more is required to ensure justice for survivors. As we noted in our submission on the original redress bill,<sup>25</sup> we do not think that the costs to governments of being funder of last resort under these arrangements would be as high as initially estimated by the Royal Commission<sup>26</sup> and, in any event, the Royal Commission considered these costs to be “a fair and reasonable amount to expect governments to pay given their social, regulatory and guardianship responsibilities”.<sup>27</sup>

## Excessive assessment timeframes

Lengthy delays in receiving a decision from the NRS is a significant and ongoing problem for many of our clients. Some clients with applications currently in progress have been waiting for more than 18 months for an assessment. In some cases, survivors would likely need not have waited many months longer to resolve a civil claim and potentially receive a substantially higher pay out from the institution. Particularly distressing are the experiences of at least 13 of our clients who have died before receiving a decision on their application. This includes one priority client, discussed below, who received a posthumous offer earlier this year, having been waiting for a decision for 16 months. Put simply, for many the NRS is not the quick process that survivors were promised.<sup>28</sup>

### A posthumous offer of redress for a client whose application took 16 months to assess

The client came to knowmore in August 2018. They were flagged as a very high priority, given they were over 80 years of age and had a serious chronic health condition.

knowmore lodged the client’s application with the NRS in November 2018. The two responsible institutions — a state government and a religious institution — were both participating in the Scheme at this time.

Despite this, and despite some applications lodged at a similar time in relation to the same institutions having already seen results, no offer was received for our client until March 2020 — nearly 16 months since their application was lodged and, tragically, only some days after they had passed away.

Understandably, the slowness of the NRS is a significant source of distress, anxiety and frustration for our clients (and undoubtedly other applicants). In our experience, clients’ distress over delays is heightened by the lack of certainty about how long it will take for them to receive a decision from the NRS. As noted on page 11, there are no published benchmarks or performance measures for the NRS, the NRS publishes no information about average or indicative processing times, and knowmore is only able to provide clients with very broad estimates when attempting to provide information to them about their redress options.

24 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, p. 134.

25 knowmore, *Submission to the Senate Committee for Community Affairs: The Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Related Bill*, p. 38.

26 The Royal Commission estimated that if the Commonwealth Government and all state and territory governments agreed to be funders of last resort under the model it proposed, the cost of last resort funding would be \$613 million (*Redress and Civil Litigation Report*, p. 341).

27 Royal Commission, *Redress and Civil Litigation Report*, p. 341.

28 The Explanatory Memorandum to the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (Cth) stated that “the need to respond quickly to survivor needs is a key feature of the Scheme” and that the legislative provisions concerning eligibility “[confer] a benefit on a survivor to receive redress quickly rather than having to engage in... lengthy civil litigation processes” (p. 21).

Clients' distress is also exacerbated by what they perceive as inconsistencies and unfairness in how applications are processed by the NRS. Specifically, many survivors talk to each other, and they become particularly frustrated when they learn that another survivor has been notified of a decision before them, especially when they had submitted their application first.

knowmore understands that some applications are complex and will take longer to assess than others. We note, for example, advice from the Department that more than 70 per cent of applications name more than one institution.<sup>29, 30</sup> In some cases, however, the delays faced by our clients have seemed completely disproportionate to their circumstances. The case study below highlights one such example.

#### A client with a straightforward application waiting for a decision since August 2018

The client submitted their application to the NRS in August 2018. Relatively speaking, the application is very straightforward — there is one set of abuse, one perpetrator and one responsible institution (a state government institution), which was participating in the NRS from the outset. There are no relevant prior payments to consider.

Over the last 20 months, the client called the NRS at least fortnightly for updates. knowmore also called the NRS on a number of occasions to try to get answers about why there was such a delay and how long it would be until the application progressed to an Independent Decision Maker. The case coordinator and their supervisor provided the same standard update each time: "We apologise for the delay, we are doing everything we can, the application is progressing, we have prioritised it, we cannot provide you with a timeline."

The client has only recently received an offer, 20 months since the application was submitted.

As in the above case, the reasons for significant delays in the processing of applications by the NRS are not always clear to us. Notwithstanding this, we consider that the following factors may be contributing to long assessment timeframes:

- Insufficient resourcing of the NRS, particularly in terms of case coordinators. While we have noticed some improvements in assessment timeframes since the introduction of the case management model, we note that staff turnover can lead to several case coordinators managing an application over time, and this sometimes appears to lead to delays.
- Institutions failing to provide information requested by the NRS in a timely manner. Under the NRS Act, institutions have up to eight weeks to respond to a request for records from the NRS (four weeks for priority applications).<sup>31</sup> We remain uncertain about how this process is working in practice and the extent to which institutions are complying with these timeframes.<sup>32</sup> In many cases, we consider these timeframes to be unnecessarily generous in the first instance — for example, locating records for a

29 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Wednesday, 26 February 2020*, Evidence of Ms E Hefren-Webb, Department of Social Services, p. 2, [<parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2F4ae93fc0-90a1-4cd4-8b87-9f34450abb82%2F0000%22>](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2F4ae93fc0-90a1-4cd4-8b87-9f34450abb82%2F0000%22>).

30 To date, only 30 per cent of the 1,417 applications knowmore has assisted clients with (including applications currently in progress) have named more than one institution.

31 Section 25(5), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

32 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Proof Committee Hansard — Thursday, 28 February 2019*, Evidence of Mr W Strange, p. 4, [<parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommjnt%2Faf6bd26d-696a-44fd-b677-84fe7d204bba%2F0000%22>](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommjnt%2Faf6bd26d-696a-44fd-b677-84fe7d204bba%2F0000%22>).

survivor who has previously brought a redress claim against the institution should rarely take longer than two weeks, as we noted when we appeared before the former JSC.<sup>33</sup>

- A lack of transparency with respect to assessment timeframes, particularly in terms of there being no external benchmarks or performance measures and no public reporting of actual processing times. It is difficult for the NRS to be held accountable for its assessment timeframes in the absence of such metrics, and it also makes it impossible for the NRS to demonstrate any positive changes over time.

### Recommendations for improvement

The above comments suggest a number of avenues for improving the NRS's assessment timeframes. Relevant particularly to our comments about transparency and accountability, we note that the Ministers' Redress Scheme Governance Board recently agreed on a set of performance measures for three priority areas — survivor experience, the health of the Scheme, and equity of access — to be reported every six months from October 2020.<sup>34</sup> We strongly support this, and reiterate our previous calls for the NRS to publish regular (preferably monthly) data on processing times for both priority and non-priority applications.<sup>35</sup> As we explained to the former JSC:

*...it would be very helpful... to have those timeframes published by the department. Our client group have waited a long time for justice. Many of them are patient — and they've had to be — but if they are given a timeframe that this is how long the average claim takes, people are accepting of that.*<sup>36</sup>

As part of this, we recommend that the NRS publish more information about the specific stages that an application goes through from the time it is submitted to the time it is finalised (see detailed discussion on page 16), with average timeframes provided for each stage. Although actual timeframes will vary depending on factors such as the complexity of an application, giving survivors more clarity and certainty about the process and managing expectations about timeframes can help to reduce the distress, anxiety and frustration they experience.

Finally, we recommend that the NRS ensure all applicants receive regular updates about the status of their application. This is discussed in more detail on page 16, in the context of improving communication from the NRS. Again, keeping applicants informed and giving them more certainty about the progress of their application can help to reduce the stress and anxiety caused by the process. As we noted at the hearing, this is particularly important for survivors in the current environment.<sup>37</sup>

### Unfairness and inconsistency in the assessment of applications

knowmore is concerned about unfairness and inconsistency in the assessment of some NRS applications, particularly in terms of what is and is not being regarded as sexual abuse and the assessment of relevant prior payments.

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33 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Proof Committee Hansard* — Thursday, 28 February 2019, Evidence of Mr W Strange, p. 4.

34 Department of Social Services, *Ministers Redress Scheme Governance Board Communique*, 30 March 2020, <[www.dss.gov.au/about-the-department/news/61646](http://www.dss.gov.au/about-the-department/news/61646)>.

35 knowmore, *Re: Answers to Questions on Notice, Public Hearing of the Committee, Thursday 28 February 2019*, Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, Canberra, 2019, <[www.aph.gov.au/DocumentStore.ashx?id=306b0c22-62ed-47b3-91e6-920195599879](http://www.aph.gov.au/DocumentStore.ashx?id=306b0c22-62ed-47b3-91e6-920195599879)>.

36 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Proof Committee Hansard* — Thursday, 28 February 2019, Evidence of Mr W Strange, p. 4.

37 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard* — Monday, 6 April 2020, Evidence of Ms A Swain, p. 36.

A number of our clients have received determinations from the NRS that are either inconsistent with the approach and findings of the Royal Commission, or inconsistent with previous NRS determinations in comparable matters. We are concerned by the lack of adequate written reasons given for these determinations, and have also been unable to establish whether the NRS has a quality assurance or quality control framework to ensure consistency and fairness in decision-making.

### The NRS's limited approach to the definition of sexual abuse

knowmore is concerned that the NRS's approach to what does and does not constitute sexual abuse is inconsistent with the Royal Commission's approach in some important instances. Some of knowmore's clients who gave evidence to the Royal Commission, and whose experiences were recognised by the Royal Commission as constituting institutional child sexual abuse, have had their claims for redress rejected because the IDM considered the abuse they experienced to be non-sexual in nature.

This has had significant adverse impacts on the mental health and wellbeing of survivors, some of whom have been re-traumatised by the NRS's decision not to recognise their experiences as sexual abuse. Some of these survivors were encouraged by their positive experiences with the Royal Commission to make an application to the NRS, and in our view, had a legitimate expectation that they would be eligible for redress under the Scheme.

knowmore is particularly concerned that child sexual abuse perpetrated by medical and health professionals is not being adequately recognised by the NRS. The Royal Commission identified healthcare as an environment that encouraged or facilitated offending, stating that in some cases "specialist expertise, as in the case of medical practitioners... enabled perpetrators to disguise sexual abuse".<sup>38</sup> The Royal Commission recognised sexual abuse perpetrated by medical and health professionals in a number of different contexts, including in residential institutions, hospitals and community health settings.

In our view, the NRS's limited approach to the definition of sexual abuse in these matters is not survivor-focused and is inconsistent with the approach and findings of the Royal Commission, including in relation to current understanding of the causes, nature and impact of child sexual abuse. Medical and health professionals who abuse their position of trust to sexually abuse children in their care should be held to account, and the NRS should provide equal access to justice and redress for survivors of such abuse.

#### A client whose experiences of child sexual abuse by a medical professional were not recognised by the NRS

As a child, the client was subjected to frequent internal examinations involving digital penetration carried out by a GP during their time in a historical residential institution. There was no medical necessity to justify these internal examinations, which were carried out forcibly and without the client's consent.

Prior to making their redress application, the client had given evidence to the Royal Commission at a private hearing and their experiences were recognised as institutional child sexual abuse by the Royal Commission.

Despite this, those same experiences were found not to constitute sexual abuse by the Independent Decision Maker, and the client's application for redress was rejected. The client was distressed by this outcome and that the child sexual abuse they experienced was not recognised by the NRS.

38 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 2, Nature and Cause*, 2017, p. 12, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_2\\_nature\\_and\\_cause.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_2_nature_and_cause.pdf)>.

knowmore is also concerned that other forms of child sexual abuse are not being recognised by the NRS, despite being recognised by the Royal Commission. For example, we have seen cases in which abuse involving voyeurism have not been recognised as sexual abuse by IDMs. This is concerning as the statutory definition of sexual abuse adopted by the NRS closely mirrors the definition adopted by the Royal Commission, which expressly referred to voyeurism as sexually abusive behaviour.<sup>39</sup> We have also seen similar inconsistencies in the approach to other forms of related non-contact abuse, including emotional abuse.

#### A client whose experiences of related emotional abuse were not recognised by the NRS

As a child, the client experienced sexual abuse accompanied by emotional abuse in an institutional setting. Despite clearly articulating this in their application and providing examples of the emotional abuse they were subjected to by the perpetrator, the client received an offer from the NRS that did not include related non-sexual abuse. This determination was contrary to the NRS's legislative framework and comparable matters in which the NRS had accepted emotional abuse as related non-sexual abuse.

Following a formal internal review, the NRS changed its position and recognised the related non-sexual abuse. While this was ultimately a positive outcome, we are concerned by the lack of fairness and consistency in the original decision, the lack of reasons explaining the differences in the two outcomes, and that the onus was on the survivor to seek a review to rectify this apparent error in decision-making.

#### The assessment of relevant prior payments

knowmore is concerned that prior payments that some survivors have received for non-sexual abuse are being unfairly and inappropriately deducted as relevant prior payments by the NRS. Further, there is a lack of transparency and consistency in the way in which relevant prior payments are being assessed by IDMs.

This has particularly had a disproportionate and concerning impact for members of the Stolen Generations. Some survivors who are members of the Stolen Generations have received prior payments either under specific state-based redress schemes, or through civil litigation. Often these prior payments were for being forcibly removed from their families and communities, and for the physical, emotional and cultural abuse they experienced in the institutions in which they were placed. We have had a number of cases where a significant proportion of the client's prior payment was deducted from their NRS offer, despite the client either not disclosing or only partially disclosing the sexual abuse they experienced, or the sexual abuse having only briefly been taken into account, as part of the previous process. We have also noted considerable inconsistencies in the way that these prior payments have been assessed, and a lack of adequate reasons for particular determinations. As a result, it has been difficult to determine whether the unfairness and inconsistency in these decisions is the result of the NRS's policy framework, or a lack of understanding about the purpose and nature of these prior payments among IDMs.

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<sup>39</sup> We note the Royal Commission's definition of child sexual abuse had two components. The first was the recognition that child sexual abuse is "any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards". The second was a non-exhaustive list of acts that could constitute sexually abusive behaviour. The definition of sexual abuse in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) directly replicates the first component. While the definition in the Act does not include examples of sexually abusive behaviour, the Explanatory Memorandum to the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (Cth) does not suggest that the parliament intended for the NRS to depart from the Royal Commission's approach to the meaning of sexual abuse.



**An Aboriginal client and member of the Stolen Generations whose relevant prior payment was unfairly assessed**

The client had previously received a prior payment from the NSW Government in civil proceedings relating to their experiences as a member of the Stolen Generations. In support of the client's NRS application, knowmore made submissions that the prior payment should not be considered relevant in its entirety.

The client received an offer from the NRS whereby half of the amount they received from the civil claim was deducted. Although knowmore's argument appeared to have been accepted in part by the NRS, the client was not provided with written reasons explaining how this amount was determined. Further, it was unclear whether the NRS had deducted the client's legal fees or if they had been included as part of the relevant prior payment.

knowmore sought further information about the assessment of the relevant prior payment, but was told that this could not be released. This decision appeared to be inconsistent with other decisions involving similar prior payments.

**An elderly Aboriginal client and member of the Stolen Generations whose relevant prior payment was unfairly assessed, following substantial and unexplained delays**

An elderly Aboriginal client had received a prior payment from the NSW Government in civil proceedings in recognition of being forcibly removed from her family and her resulting mistreatment in a residential home. In support of the client's NRS application, knowmore made submissions that the prior payment should be disregarded in its entirety as the client had not disclosed any sexual abuse to her lawyers as part of the prior process, due to the shame of disclosing those details to male lawyers.

The client received an offer of a nil payment from the NRS after the prior payment she had received was deducted in full. The client was not provided with adequate reasons explaining how this amount was determined.

This outcome is manifestly unfair, and demonstrates the significant inconsistencies in determinations involving relevant prior payments. We also note that the NRS took approximately 16 months to process the client's application, despite all institutions having already joined the NRS at the time of application.

The NRS's current approach to the assessment of relevant prior payments not only adversely impacts a survivor's ability to receive just and adequate redress for the sexual abuse they experienced, but also fails to effectively hold institutions to account.

**Recommendations for improvement**

Unfairness and inconsistency in the assessment of applications is one of the most significant concerns knowmore has with the operation of the NRS. We make the following recommendations for improvement and urge that they be considered and implemented as a matter of priority:

- The NRS's policy framework, and legislative framework if necessary, should be amended to ensure that the definition of sexual abuse is formulated and applied consistent with the Royal Commission's approach, and also with current understanding of the causes, nature and impact of institutional child sexual abuse. If the NRS's approach to the definition of sexual abuse is intended to depart from the approach adopted by the Royal Commission, the Australian Government should publicly clarify the intended departures and the reasons for these.



- The NRS's legislative and policy framework should also be amended to ensure that any prior payments, or components of prior payments, for non-sexual abuse are not considered as relevant prior payments for the purposes of determining a redress application. Special consideration should be given to the disproportionate and concerning impact that the current approach has had on members of the Stolen Generations and to ensuring that this is rectified. In this context, knowmore also notes and supports the implementation of Recommendation 5 from the former JSC, relating to revisiting the practice of indexing prior payments.<sup>40</sup>
- The NRS should develop a comprehensive quality assurance and quality control framework to improve consistency and fairness in decision-making.

We also support the full implementation of Recommendations 11 and 13 from the former JSC, which relate to publicly clarifying how applications for redress are considered, the grounds on which determinations are made, and how key terms in the assessment framework are interpreted (see also our recommendations on page 23 relating to written reasons for determinations and the internal review process).<sup>41</sup>

## Shortcomings in communication from the NRS

The experience of both knowmore staff and our clients is that there are some shortcomings in the NRS's communication. The most prominent of these is what some clients feel is inadequate information from the NRS about the progress of their application. First, there is a lack of proactive communication from the NRS about the status of applications. Clients (or knowmore staff) are left to contact the NRS directly for updates, which not only creates more stress for clients, but is also likely to be creating more work for NRS staff. Second, updates that the NRS does give about the status of an application tend to be vague and of little practical help to survivors. For example, both our clients and our staff are frequently told that an application is "progressing" or that it will be assessed "soon", but this provides no sense of how far the application has progressed or how much longer a decision can be expected to take. This is extremely frustrating and demoralising for survivors. When combined with the general lack of information provided by the NRS about the timeframes relevant to the assessment process, these problems can lead survivors to feel that their application has simply disappeared into a bureaucratic black hole.

Another issue that has been highlighted in our work with clients over the last 22 months is that the communication of redress offers is frequently very distressing to survivors.<sup>42</sup> The wording of the letter of offer from the NRS has particularly upset and angered a number of our clients. They perceive the letter — particularly the information about the six-month timeframe to accept the offer and the advice that a person may request a review but may receive a less favourable outcome — as threatening and as presenting an ultimatum. For example, one of our clients noted that they saw the letter as the NRS saying, "Take what we've offered or you'll get nothing". It distressed the client so much that that would not even discuss the possibility of a review with their lawyer — they just kept saying that there is no way they would ever ask for one. More generally, the offer letter is very legalistic, and difficult for many survivors to understand without assistance.<sup>43</sup> While we acknowledge the need for certain information to be properly communicated to survivors as part of the redress offer, this must be balanced against the need for a process that is trauma-informed and survivor-focused and that does not cause additional harm and

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40 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, p. 134.

41 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, p. 142.

42 We note that some concerns about the nature of the offer process have also been raised by other stakeholders, including Ngarra Jarra Noun, the Redress Support Service at the Victorian Aboriginal Child Care Agency (Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Thursday, 19 March 2020*, Evidence of Ms H Rind, VACCA, p. 17). See also some concerns about offers as they relate to the counselling and psychological care component of the NRS (page 26).

43 As noted on page 30, we have found that many of our clients have comparatively low literacy levels.

distress. We understand from the Department that it will be considering changes relevant to the communication of offers in the near future, and that knowmore will be consulted as part of this.

### Recommendations for improvement

We consider that there are a number of steps the NRS should take to help address the issues identified above. Specifically:

- To ensure survivors feel more informed about the progress of their applications, we recommend that the NRS:
  - Clearly identify the specific stages that an application goes through from the time it is submitted to the time it is finalised (that is, when either a payment is made to the applicant, or the application is not approved). We note that the standard “flowchart” the Department outlined during its appearance at the Committee’s hearing in Canberra is a suitable model for this.<sup>44</sup> This information should be made available on the NRS website, and communicated to each applicant in a written letter sent to acknowledge receipt of the application.
  - Establish a process to ensure that all applicants receive regular updates about the status of their application (at a reasonable frequency consistent with the wishes of the applicant, acknowledging that some applicants may wish to receive less regular updates than others). One option for this would be an online portal that applicants could access to see the progress of their application according to the specific stages identified above. While we appreciate this would take some effort to implement initially, we consider that it would offer a particularly efficient method of providing updates to applicants in the long term.
  - Ensure that any update given to an applicant about the status of their application is expressed in concrete terms, with reference to the specific stages identified above.
- To avoid causing additional harm to survivors during the offer process, we recommend that the NRS, in revising how it communicates offers to applicants, ensure that all aspects of the revised process are trauma-informed and survivor-focused, consistent with the guiding principles for offering redress set out in section 10 of the NRS Act. knowmore looks forward to the opportunity to contribute to the Department’s work in this area.

## The need for improved cultural safety and support for Aboriginal and/or Torres Strait Islander survivors

### The Royal Commission’s findings and recommendations relating to the provision of redress for Aboriginal and/or Torres Strait Islander survivors

Aboriginal and/or Torres Strait Islander children are uniquely vulnerable to institutional child sexual abuse. According to the Royal Commission:

*Aboriginal and Torres Strait Islander children are significantly over-represented in some high-risk institutional contexts due to a range of historical, social and economic factors, including colonisation.*<sup>45</sup>

The Royal Commission reported that 14.3 per cent of all survivors who attended a private session identified as Aboriginal and/or Torres Strait Islander peoples, despite accounting for approximately 3 per cent of the Australian population. However, the Royal Commission was of the view that there were likely to have been

<sup>44</sup> Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Wednesday, 26 February 2020*, Evidence of Ms S Cartwright, Department of Social Services, p. 10.

<sup>45</sup> Royal Commission, *Final Report: Volume 2, Nature and Cause*, p. 17. The Royal Commission concluded that Aboriginal and/or Torres Strait Islander children continue to be significantly over-represented in high-risk institutions such as residential and contemporary out-of-home care and youth detention environments.

many more survivors who did not come forward, due to barriers faced in disclosing abuse such as fear, shame, a lack of cultural safety, language barriers, and/or systemic racism and discrimination.<sup>46</sup> knowmore's experience also reflects the disproportionately high rates of institutional child sexual abuse among Aboriginal and/or Torres Strait Islander peoples, who account for 26 per cent of our current clients.

The Royal Commission found that "child sexual abuse can have a profound and lasting effect on a person's life".<sup>47</sup> This is particularly true for many Aboriginal and/or Torres Strait Islander survivors who "...have faced a heavier burden of cumulative harm".<sup>48</sup> The ripple effects of this cumulative harm continue to have collective and intergenerational impacts, "perpetuating cycles of disadvantage and trauma".<sup>49</sup>

In making recommendations for the redress scheme, the Royal Commission acknowledged the unique circumstances and needs of Aboriginal and/or Torres Strait Islander survivors, emphasising the importance of cultural awareness and safety in the redress scheme's design and operations. The Royal Commission recommended four general principles for redress, including that:

*All redress should be offered, assessed and provided having appropriate regard to what is known about the nature and impact of child sexual abuse, and institutional child sexual abuse in particular, and to the cultural needs of survivors. All of those involved in redress, particularly those who might interact with survivors or make decisions affecting survivors, should have a proper understanding of these issues and any necessary training.*<sup>50</sup>

This and other relevant principles have been incorporated into the NRS's legislative framework as general principles guiding the actions of officers under the Scheme.<sup>51</sup>

In addition, the Royal Commission specifically recommended that the scheme Operator develop a communication strategy for engaging with Aboriginal and/or Torres Strait Islander communities,<sup>52</sup> and also that the direct personal response and counselling and psychological care components of redress be delivered in a culturally sensitive and appropriate manner.<sup>53</sup>

### **Key problems faced by Aboriginal and/or Torres Strait Islander survivors engaging with the NRS**

knowmore's Aboriginal Engagement Team and some of our Aboriginal and/or Torres Strait Islander clients have raised concerns about the NRS's ability to provide cultural safety and support for Aboriginal and/or Torres Strait Islander survivors who engage with the Scheme. They have also raised concerns relating to the level of cultural awareness and sensitivity among some NRS staff.

This is due, in part, to limited Aboriginal and/or Torres Strait Islander representation among NRS staff, particularly in key roles. For example, the NRS does not have a specialist Aboriginal engagement team and the majority of our clients do not have access to an Aboriginal and/or Torres Strait Islander case

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46 Royal Commission, *Final Report: Volume 2, Nature and Cause*, pp. 89–90. See also Royal Commission, *Final Report: Volume 4, Identifying and Disclosing Child Sexual Abuse*, 2017, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_4\\_identifying\\_and\\_disclosing\\_child\\_sexual\\_abuse.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_4_identifying_and_disclosing_child_sexual_abuse.pdf)>.

47 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 3, Impacts*, 2017, p. 23, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_3\\_impacts.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_3_impacts.pdf)>.

48 Royal Commission, *Final Report: Volume 3, Impacts*, pp. 9 and 30.

49 Royal Commission, *Final Report: Volume 3, Impacts*, p. 12.

50 Royal Commission, *Redress and Civil Litigation Report*, Recommendation 4, p. 10.

51 Section 10, *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth). Other relevant principles that have also been incorporated in section 10 of the Act include that redress be survivor-focused and that redress be assessed, offered and provided with appropriate regard to the needs of particularly vulnerable survivors, and in a manner that, as far as possible, avoids further harm or trauma.

52 Royal Commission, *Redress and Civil Litigation Report*, Recommendation 50, p. 39.

53 Royal Commission, *Redress and Civil Litigation Report*, Recommendations 5 and 14, pp. 12 and 19.

coordinator. knowmore is also concerned about the lack of IDMs who identify as Aboriginal and/or Torres Strait Islander peoples.<sup>54</sup>

knowmore is also concerned that cultural considerations and the unique experiences of Aboriginal and/or Torres Strait Islander survivors are not being adequately or consistently taken into account by IDMs, resulting in unjust outcomes for survivors. For example, there has been an inconsistent and unfair approach to the assessment of relevant prior payments for members of the Stolen Generations,<sup>55</sup> as noted above. Furthermore, due to limitations in the design and implementation of the Assessment Framework, the redress offers received by some of our Aboriginal and/or Torres Strait Islander clients have failed to adequately take into account the cumulative harm they experienced and to recognise the profound and ongoing impact of this harm on their lives.<sup>56</sup>

**An older Aboriginal client whose redress outcome was affected by the considerable barriers he faced in disclosing child sexual abuse and the unfair deduction of a prior payment**

One of knowmore's clients, an older Aboriginal man, experienced significant emotional, cultural, physical and sexual abuse in an institution. He has used drugs and alcohol to help him cope with his past.

As a proud Aboriginal man with a complex history of trauma, he was deeply ashamed to talk about his experiences and was unable to articulate in his NRS application the extent and nature of the sexual abuse he experienced. This ultimately impacted his ability to obtain adequate and appropriate redress.

His redress offer was also significantly reduced due to the deduction and indexing of a prior payment he received under the Tasmanian Abuse in State Care Ex Gratia Scheme for abuse he experienced in care. This prior payment was for physical and emotional abuse only, as it was not until he subsequently told his story to the Royal Commission that he felt comfortable enough to disclose the sexual abuse he had experienced in care. In knowmore's view, this prior payment should not have been taken into account in determining his entitlement to redress for institutional child sexual abuse.

**Recommendations for improvement**

In knowmore's view, the NRS should improve its capacity to ensure that Aboriginal and/or Torres Strait Islander survivors can engage with the Scheme in a manner that is culturally safe and appropriate. Furthermore, the NRS should ensure that redress is assessed, offered and provided with adequate regard to what is known about the nature and impact of institutional child sexual abuse for Aboriginal and/or Torres Strait Islander survivors, and the cultural needs of those survivors. Consistent with this, knowmore recommends that the NRS:

- Increase the representation of Aboriginal and/or Torres Strait Islander peoples among NRS staff and increase staff awareness of Aboriginal and/or Torres Strait Islander culture. Specifically:
  - Aboriginal and/or Torres Strait Islander peoples should be appropriately represented among NRS staff, in particular among IDMs and case coordinators. Where possible, these staff should represent diverse Indigenous communities, cultures and lived experiences, including Aboriginal women and Aboriginal people with disability.

<sup>54</sup> See the list of IDMs appointed to date (<[www.nationalredress.gov.au/applying/what-happens-next/independent-decision-makers](http://www.nationalredress.gov.au/applying/what-happens-next/independent-decision-makers)>).

<sup>55</sup> See further discussion of this issue on pages 13 and 14.

<sup>56</sup> knowmore, *Submission to the Joint Select Committee: Inquiry into the Implementation of the Redress Related Recommendations of the Royal Commission*, pp. 5–7.

- All NRS staff should receive comprehensive cultural awareness training. knowmore welcomes the recent collaboration between the NRS and knowmore's Aboriginal Engagement Team to deliver cultural awareness training to NRS staff. We recommend similar training be provided to all staff on a recurring basis.
- All NRS staff who interact with survivors or make decisions that affect them should have an appropriate understanding of the causes, nature and impact of institutional child sexual abuse for Aboriginal and/or Torres Strait Islander survivors, as well as the impact of collective and intergenerational trauma.
- Ensure that the NRS is culturally safe and that survivors have access to cultural support. Specifically:
  - All communication between NRS staff and Aboriginal and/or Torres Strait Islander survivors should be culturally safe and appropriate, and delivered in a trauma-informed manner. Special care should be taken to ensure that redress outcomes are delivered in a manner that, as far as possible, avoids causing further harm and trauma to Aboriginal and/or Torres Strait Islander survivors, many of whom have experienced a persistent lack of social justice throughout their lives.
  - If an Aboriginal and/or Torres Strait Islander survivor appoints a nominee, all communication should be with the nominee directly or with the nominee present (as appropriate).
  - Aboriginal and/or Torres Strait Islander survivors should have access to information in their own languages, and information should be communicated in a manner they can understand.
  - All Aboriginal and/or Torres Strait Islander survivors should have access to specialist and community-based redress support services that can provide cultural support. We note that there is currently limited access to these services in a number of jurisdictions, including Tasmania and the Northern Territory.
- Ensure that decisions are made in accordance with the Scheme's general principles and with adequate consideration of the nature and impact of child sexual abuse for Aboriginal and/or Torres Strait Islander survivors. In accordance with the Royal Commission's recommendations and the NRS's legislative framework, all redress applications should be assessed, offered and provided with appropriate regard to what is known about the nature and impact of child sexual abuse for Aboriginal and/or Torres Strait Islander survivors, their cultural needs, and the needs of particularly vulnerable survivors.<sup>57</sup>
- Regularly publish data detailing the number of applications made by Aboriginal and/or Torres Strait Islander survivors, the time taken to assess their applications, and the outcomes of their applications.
- Consistent with Recommendation 50 of the Royal Commission's *Redress and Civil Litigation Report*, adopt a communication strategy for engaging with Aboriginal and/or Torres Strait Islander communities. This strategy should be developed in partnership with those communities, and should be published and reviewed on a regular basis.

## The lack of transparency and accountability

The Royal Commission emphasised the need for transparency in redress processes:

*Redress scheme processes, and the way in which the scheme is administered, must be sensitive, transparent and survivor centred so that they minimise any risk of re-traumatisation and maximise the benefit of redress.*<sup>58</sup>

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<sup>57</sup> See section 10 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) and Recommendation 4 of the Royal Commission's *Redress and Civil Litigation Report*.

<sup>58</sup> Royal Commission, *Redress and Civil Litigation Report*, p. 269.

However, knowmore's experience reflects that transparency and accountability in both the NRS's operations and decision-making need to be improved, in order to provide survivor-focused redress.

### NRS operations

Our key concerns relate to the transparency of the assessment process, and the availability and accuracy of key data.

#### The assessment process

knowmore continues to be concerned about the lack of transparency of the assessment process. As noted above on page 15, there is a lack of information about the specific stages that an application goes through from the time it is submitted to the time it is finalised, and survivors find it difficult to obtain regular and meaningful updates about the status of their application. Further, as noted by the former JSC, there is a lack of information about the grounds on which determinations are made.

As we submitted to the former JSC, transparency is vital for ensuring that survivors have confidence in the NRS.<sup>59</sup> The NRS provides an important mechanism for many survivors to access justice, but survivors are likely to be deterred from engaging with the Scheme if they are not able to understand or trust its processes. A lack of information and transparency can also perpetuate the power imbalance experienced by survivors when engaging with institutions.

#### The availability and accuracy of key data

There are considerable gaps in the NRS's published data. Currently, the data published by the NRS is limited to quantitative information about the number of applications at various stages of processing, and the monetary value of offers made.<sup>60</sup> In knowmore's view, the NRS's published data prioritises output over outcomes and disproportionately focuses on the monetary component of redress. The NRS's published data only provides survivors with limited meaningful information that may help them to better understand the NRS's processes or to inform their decision about whether to apply for redress.

For example, as identified by the former JSC, there is a lack of publicly available data detailing the average processing times from time of application to time of decision. As discussed on page 11, this information is critical to managing the expectations of survivors and minimising the stress and trauma they experience in applying for redress.

Further, there is a lack of publicly available disaggregated data detailing the number of applications and outcomes according to the applicant's state or territory, gender, age group, Aboriginal and/or Torres Strait Islander status, other culturally and linguistically diverse background, disability, or priority status. This information is critically important to evaluating whether the NRS is fulfilling the Royal Commission's recommendation to provide equal access and equal treatment for all survivors. The lack of applicant information also compromises the ability of funded redress support services to develop targeted community engagement strategies.

The NRS also does not publish data relating to two of the three aspects of redress, namely counselling and psychological care and direct personal responses. The NRS was designed to provide survivors with access to three distinct and equally important components of redress, yet the lack of publicly available information about these components makes it difficult to evaluate their implementation and the extent to which they meet the expectations and needs of survivors.

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59 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, p. 110, citing comments from knowmore's Executive Officer Warren Strange at the hearing on 28 February 2019.

60 See for example the most recently published monthly data on the NRS website as at 31 January 2020: <[www.nationalredress.gov.au/about/updates/976](http://www.nationalredress.gov.au/about/updates/976)>.

Finally, as noted above on page 5, the NRS only publishes limited data about the decisions of institutions named in applications to join (or importantly, not to join) the Scheme.

### **Transparent and accountable decisions**

knowmore's key concerns about the lack of transparency and accountability in the NRS's decision-making relate to the provision of natural justice, the provision of adequate written reasons for determinations, and the internal review process.

#### **The provision of natural justice**

Current processes of the NRS do not reflect that natural justice is provided to some applicants in the assessment process. As part of the assessment process, the NRS may take into account information that was not provided by the applicant including, for example, the applicant's institutional records. knowmore is concerned that survivors are not told what information has been relied upon by the IDM to reach a determination, and are not afforded an opportunity to comment on this information. This is particularly concerning in cases where third party information has been relied upon in a way that adversely impacts the outcome for the survivor. As detailed below, we are also concerned about the lack of natural justice in the internal review process.

#### **Statutory obligation to provide written reasons for determinations**

In knowmore's experience, IDMs are failing to provide adequate reasons for their determinations in some instances, leaving those survivors without a clear understanding of how a decision on their application was reached. This has significant implications for a person's ability to exercise their right to seek a review or revocation of the determination.

Section 34(1)(b) of the NRS Act requires the Scheme to provide survivors with written reasons for the determination.<sup>61</sup> However, for many of knowmore's clients, the written reasons they have received are brief and vague, and in some cases, only a few short paragraphs. Survivors have a right to know the reasons for an administrative decision that affects their lives. The lack of reasons may also give rise to the perception that the NRS is discouraging survivors from seeking a review, therefore favouring the interests of the Scheme and/or the responsible institution over the survivor.

#### **The internal review process**

In knowmore's view, significant improvements are required to improve the transparency and fairness of the internal review process. We are concerned that there is a lack of information about how the internal review process works and what information is taken into account by the relevant IDM conducting the review.

knowmore has assisted a number of clients to seek a review, in matters where we have concerns about the reasonableness and/or consistency of the initial decision. In doing so, we have generally provided a submission to the NRS in support of the request to seek a review, highlighting the reasons we believe the decision was affected by error. Providing this information is critical to the claimant being able to effectively exercise their right to seek a review. However, we have been unable to obtain confirmation from the NRS as to whether these submissions have and will be taken into account by IDMs as part of the review process. While we recognise the limited nature of the review process, including the requirement in section 75(3) of the Act that the person undertaking the review may not have regard to new information, we submit that such submissions should not be considered as 'new information' where they do not raise new claims or factual circumstances, but focus instead on issues relating to statutory interpretation, principles of administrative law, or relevant findings of the Royal Commission.

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<sup>61</sup> We note that a similar obligation exists in relation to a review determination under section 77 of the NRS Act.



In addition, as highlighted by the former JSC, survivors who choose to seek a review of their determination risk having their monetary payments reduced. This effectively acts as a deterrent and has been the cause of considerable distress for many of our clients considering exercising their right to seek a review.

### Recommendations for improvement

To improve the transparency of the NRS and its accountability to survivors, knowmore makes the following recommendations for improvement:

- Recommendation 11 of the former JSC should be implemented as a matter of priority. This recommendation calls on the Australian Government to clearly communicate, to the maximum extent allowed, how applications for redress are considered and the grounds on which determinations are made.<sup>62</sup> knowmore welcomes the Australian Government's commitment to implementing this recommendation.<sup>63</sup>
- Recommendation 25 of the former JSC should also be implemented as a matter of priority. This recommendation calls on the Australian Government to publish the average processing timeframes for applications and other key data. To ensure that this recommendation is fully implemented, knowmore is of the view that monthly data published by the NRS should include:
  - The average processing timeframes for all applications, measured from the date of application to the date the person was notified of their determination. This should include the average time taken for institutions and other third parties to respond to requests for information from the NRS.
  - The number of priority cases and the average processing timeframes in these cases.
  - Disaggregated information about applications and outcomes according to the applicant's state or territory, gender, age group, Aboriginal and/or Torres Strait Islander status, other culturally and linguistically diverse background, and disability.
  - Information about institutions named in applications, including the general nature of services they provide/previously provided (for example, whether they are a religious institution or a youth detention facility), and their participation/non-participation status.
  - Broad information about the application of the Assessment Framework — for example, of the redress payments accepted, the percentage that involved a component recognising related non-sexual abuse, institutional vulnerability and/or extreme circumstances of sexual abuse.
  - The number of offers made and accepted, including the average redress payment made, the number of survivors who sought access to the counselling and psychological care component and/or the direct personal response component, and broad information pertaining to the delivery of these components.
  - Accurate information about the number of reviews and revocations requested, the average processing timeframes and outcomes in these matters.
- The NRS should ensure that IDMs comply with their obligation to provide natural justice, particularly in affording applicants the opportunity to comment on information that may adversely affect their claim.

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62 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, Recommendation 11, p. 142.

63 Australian Government, *Australian Government Response to the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse Report: Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, Australian Government, Canberra, 2020, pp. 8–9, <[www.aph.gov.au/DocumentStore.ashx?id=529534d0-9103-459e-a2aa-34eb049c3c41](http://www.aph.gov.au/DocumentStore.ashx?id=529534d0-9103-459e-a2aa-34eb049c3c41)>.

The provision of natural justice to the survivor should be considered in any quality control/quality assurance framework, as well as part of the internal review process.

- The NRS should ensure that IDMs, in complying with their legislative obligation to provide written reasons for their determinations, to the maximum extent possible, explain in more detail how a decision was reached and what information was taken into account and/or not taken into account to reach that decision. The provision of adequate written reasons should be considered in any quality control/quality assurance framework, as well as part of the internal review process.
- The NRS should ensure that survivors have access to more meaningful information about how the internal review process works and what information is taken into account by the relevant IDM conducting the review. Clarification about the use of ‘submission’ material of the type noted above (as opposed to further evidence) is needed.
- Recommendation 27 of the former JSC should be implemented as a matter of priority. This recommendation calls for legislative amendment to ensure that a review does not result in an applicant receiving a lower redress amount than their original offer. knowmore also supports the full implementation of the other recommendations of the former JSC relating to internal reviews, specifically Recommendations 26 and 28.

## The exclusion of certain classes of survivors from redress

The NRS’s legislative framework excludes, or establishes special rules limiting the entitlement to redress for, certain classes of survivors, including survivors in prison and/or with serious criminal convictions and survivors who are not citizens or permanent residents of Australia. knowmore continues to strongly oppose the general exclusions of any survivors from access to redress, and we refer the Committee to our previous submissions on this issue.<sup>64</sup>

We also note that these issues were considered in detail by the former JSC, and we continue to support the full implementation of Recommendations 7 and 8 of the former JSC. In the below discussion we seek to highlight issues and developments in this area since the former JSC released its report in April 2019.

### Survivors with serious criminal convictions

The NRS’s legislative framework excludes survivors who have been sentenced to imprisonment for five years or longer from applying for redress unless the Operator makes a determination that the person’s application would not bring the Scheme into disrepute or adversely affect public confidence in the Scheme.<sup>65</sup> Section 63 provides for special assessment procedures in these cases, which require consultation with the relevant state or territory Attorney-General.

We remain concerned that survivors who are subject to this special assessment procedure are not afforded adequate procedural fairness, including an opportunity to comment on adverse information provided by the relevant Attorney-General. We also remain concerned that the legislation does not establish any right of review in relation to decisions made under the special assessment procedures.

knowmore has assisted a number of survivors with serious criminal convictions to make an application under the special assessment procedures. A common experience in these matters is that the relevant offences were committed many years ago, with the sentence having been completed and often with the survivor having undertaken considerable rehabilitation. Some of knowmore’s clients in this situation feel that under the special assessment procedure they are being further punished for these past offences.

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<sup>64</sup> knowmore, *Submission to the Senate Committee for Community Affairs: Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Related Bill*, pp. 8–20. See also knowmore, *Submission to the Joint Select Committee: Inquiry into the Implementation of the Redress Related Recommendations of the Royal Commission*, pp. 7–8.

<sup>65</sup> Section 63(5), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

In knowmore's experience, there have also been significant delays in many of these matters. In some cases, this was exacerbated by delay on the part of the relevant Attorney-General to respond to the request for information from the NRS in a timely manner. For example, in a matter involving one of our clients, the relevant Attorney-General took approximately five months to respond.

Excessive and unreasonable delays can have significant impacts on a survivor's mental health, particularly where they are not provided with sufficient information about the reasons for the delay and are not given regular updates on the progress of their applications. Further, as a result of these delays we have received very few outcomes to date in these matters, and have been unable to adequately determine whether the provisions will be applied in a manner that is fair and consistent across the states and territories.

### Recommendations for improvement

knowmore strongly supports the implementation of the former JSC's recommendations relating to eligibility for redress, including Recommendation 8:

*The Committee recommends that Commonwealth, state and territory governments agree to and implement amendments that would allow all survivors who are currently in gaol or who have been sentenced to imprisonment for five years or longer to apply for and receive redress, unless:*

- *the Operator decides in relation to a particular survivor that providing redress would bring the scheme into disrepute or adversely affect public confidence in the scheme; and*
- *this decision of the Operator is based on publicly available guidelines that set a high threshold for bringing the scheme into disrepute or adversely affecting public confidence in the scheme.*

We understand that in responding to the former JSC's report, the Australian Government noted this recommendation and committed to consulting with state and territory governments through the legislated second anniversary of the Scheme. In our view, the issue of eligibility for redress should be prioritised as part of the legislated second anniversary review.

As part of the proposed consultation process, further consideration should also be given to amending the NRS's legislative framework to provide a right of review for survivors who are found not to be eligible to apply for redress. Ultimately, these are administrative decisions that have significant implications for a survivor's ability to access justice, and should be subject to review. To ensure transparency and accountability, the Australian Government should publish information about its consultation process, including the outcomes of that process.

knowmore is also of the view that the NRS should consider publishing further information for survivors in prison and/or those with serious criminal convictions about the relevant assessment processes, and ensure that survivors who are subject to these processes receive meaningful and regular updates from the NRS about the progress of their applications.

Finally, we recommend that the NRS ensure that natural justice is afforded at all stages of assessing a survivor's eligibility for redress.

## A counselling and psychological care component that is not sufficiently survivor-focused or trauma-informed

knowmore has discussed in detail its concerns about the counselling and psychological care component of the NRS in a number of previous submissions.<sup>66</sup> Our position on these remains unchanged, and we will not repeat all of our concerns here. However, our experiences with clients over the last 22 months have reinforced a number of key concerns, and highlighted the adverse impacts for survivors that have resulted from the NRS's significant departures from the Royal Commission's recommendations regarding counselling and psychological care. We note in particular the problems survivors continue to face in obtaining care that is survivor-focused and trauma-informed and that reflects the Royal Commission's key principles of availability, accessibility, acceptability and high quality.<sup>67</sup>

In terms of availability, the services available to survivors continue to be insufficient. In particular, the current model — whereby survivors in South Australia and Western Australia (and overseas) receive lump sum payments of up to \$5,000 and survivors in other jurisdictions receive access to funded services — fails to ensure that counselling and psychological care is available throughout a survivor's life as recommended by the Royal Commission.<sup>68</sup> As we noted in our submission to the former JSC,<sup>69</sup> the lump sum payments provided to survivors in South Australia and Western Australia, which are often even less than the maximum \$5,000, are simply not enough to ensure survivors have access to adequate psychological support throughout their lives where that is necessary.<sup>70</sup> In the other jurisdictions, the minimum requirement for funded counselling services is 20 hours.<sup>71</sup> While survivors in Queensland, New South Wales and the ACT are now able to access more counselling sessions where required,<sup>72</sup> the situation in Tasmania, Northern Territory and Victoria is less certain. Any continued limit on the number of counselling and psychological care sessions a survivor can access under the NRS in these jurisdictions is contrary to the

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66 knowmore, *Submission to the Senate Committee for Community Affairs: The Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Related Bill*, pp. 35–36; knowmore, *Submission to the Senate Committee for Community Affairs: The National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and Related Bill*, pp. 5–7; knowmore, *Submission to the Joint Select Committee: Inquiry into the Implementation of the Redress Related Recommendations of the Royal Commission*, pp. 13–14.

67 The Royal Commission referred to these four principles throughout its report on advocacy, support and therapeutic treatment services. They are drawn from the International Covenant on Economic, Social and Cultural Rights, which was ratified by Australia in 1975 and enshrines the right to the highest attainable health (Royal Commission, *Final Report: Volume 9, Advocacy, Support and Therapeutic Treatment Services*, 2017, p. 69, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_9\\_advocacy\\_support\\_and\\_therapeutic\\_treatment\\_services.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_9_advocacy_support_and_therapeutic_treatment_services.pdf)>).

68 Royal Commission, *Redress and Civil Litigation Report*, Recommendation 9, p. 196.

69 knowmore, *Submission to the Joint Select Committee: Inquiry into the Implementation of the Redress Related Recommendations of the Royal Commission*, p. 14.

70 Our other previous comments on this issue should also be noted. In particular, “...while it is acknowledged that some survivors manage money well, it has been knowmore’s experience that many clients have had little opportunity to learn good financial management skills in life. Asking people to make a ‘good’ decision and utilise a lump sum to pay for ongoing counselling, given all of the barriers to such engagement that the Royal Commission identified in Volume 9 of its final report, is setting many people up to fail.” (*Submission to the Senate Committee for Community Affairs: The National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and Related Bill*, p. 7.)

71 Department of Social Services, *National Redress Guide*, section 5.2, <[guides.dss.gov.au/national-redress-guide/5/2](http://guides.dss.gov.au/national-redress-guide/5/2)>.

72 See Queensland NRS website, ‘What are my options for counselling and psychological care?’, <[www.qld.gov.au/community/getting-support-health-social-issue/support-victims-abuse/national-redress-scheme/counselling-and-psychological-care/for-redress-recipients/what-are-my-options-for-counselling-and-psychological-care](http://www.qld.gov.au/community/getting-support-health-social-issue/support-victims-abuse/national-redress-scheme/counselling-and-psychological-care/for-redress-recipients/what-are-my-options-for-counselling-and-psychological-care)>; NSW Victims Services website, ‘Counselling and psychological care’, <[www.victimsservices.justice.nsw.gov.au/Pages/vss/vs\\_redress/vs\\_redress-counselling.aspx](http://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs_redress/vs_redress-counselling.aspx)>; Victim Support ACT, *Counselling and psychological support — Information for website*, <[www.justice.act.gov.au/sites/default/files/2019-09/Fact\\_Sheet\\_-\\_Redress\\_Scheme\\_-\\_Web\\_page\\_info\\_sheet\\_-\\_Counseling\\_and\\_Psychological\\_Support.pdf](http://www.justice.act.gov.au/sites/default/files/2019-09/Fact_Sheet_-_Redress_Scheme_-_Web_page_info_sheet_-_Counseling_and_Psychological_Support.pdf)>.

Royal Commission's recommendations and represents a continued failure to help survivors access sufficient support to deal with the ongoing impacts of their childhood sexual abuse.

Concerns about availability particularly impact survivors in regional, rural and remote communities. Our staff have noted the striking drop-off in trauma-informed counselling, mental health and psychology service delivery for survivors of child sexual abuse as one moves away from the capital cities. This is particularly so in Western Australia and South Australia. What services are available, such as funded sexual assault counselling services, may require a co-payment from survivors seeking redress through the NRS as these services are mainly funded for current rather than historical cases of sexual abuse. More generally, scarce services are more expensive. For survivors in regional, rural and remote communities, therefore, the expense of getting to counselling can be prohibitive. This is not only true in terms of money, but also time — for some survivors in these communities, a one hour counselling session requires a six hour round trip. These problems disproportionately affect Aboriginal and/or Torres Strait Islander survivors who, as discussed below, face other difficulties in accessing appropriate counselling and psychological care.

In terms of accessibility, we have found that the complexity of the counselling and psychological care component of the NRS makes it very difficult for survivors to navigate. Given the varying arrangements across jurisdictions, it is often a challenge for knowmore to confidently explain to clients the different counselling options that are available to them and how this will work in practice, and we expect it must be even more challenging for our clients and other survivors to understand. These difficulties especially reflect a lack of national coordination and standardised information to clearly explain to survivors what counselling and psychological support is available in their particular circumstances, and how they can access it.

Our experience is that some NRS staff making offers of redress also have a limited understanding of the arrangements across Australia. The inability to get a clear indication from the NRS at the time of offer about what the counselling and psychological care component of the Scheme involves and what survivors can expect from it has been distressing for some of our clients. The challenges survivors face in navigating the system also reflect the fact that some survivors will have been abused in multiple jurisdictions, and will therefore be eligible for direct personal responses through the processes in each of these jurisdictions but will reside in one jurisdiction and therefore be eligible for counselling and psychological care under that jurisdiction's specific arrangements. On this point, it remains unclear how the counselling and psychological care component of the Scheme operates when a survivor moves interstate, which our client group is known to do quite frequently.<sup>73</sup> The following case study illustrates some of our concerns about the accessibility of counselling and psychological care under the NRS, as well as some of our concerns about the acceptability and quality of services as discussed further below.

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<sup>73</sup> knowmore, *Submission to the Senate Committee for Community Affairs: The National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and Related Bill*, p. 6.

#### Difficulties accessing counselling and psychological care for a client in Tasmania

A knowmore lawyer and social worker took part in an offer call from the NRS to a client in Tasmania. After the offer was read out, the client specifically asked about the counselling and psychological care component and how they could access this. The NRS case coordinator and the clinical support worker, who initially did not even know where in Australia the client was living, did not know what the process for accessing counselling was in Tasmania. The only information about counselling that was given to the client during the call was the information on the NRS's website.

On a later occasion, knowmore's social worker contacted the Tasmanian Department of Justice, which is the contact point for survivors in Tasmania accessing post-offer counselling (and seeking direct personal responses in relation to Tasmanian Government institutions). The client had already accessed the main free sexual assault counselling service in their area over a number of years, and did not wish to engage further with this service. Our social worker called the Department with a view to identifying other potential counsellors or psychologists in the client's area who are on the Tasmanian 'register' to be able to provide post-offer counselling. Our worker felt that it was important for them to find out what other options the client had to avoid the client having to call the Department and be told that the only option was the service that had already closed the client's file, as this would obviously have been distressing for the client.

Our social worker was not given any details of practitioners by the Departmental officer they spoke to, and was instead told to encourage the client to call the Department themselves so the Department could help them find a suitable practitioner. Our worker was concerned about this, as the Departmental officer said that they would be able to help the client find other practitioners who are not on the list, through their own contacts. The officer also said that most counsellors and psychologists these days are well trauma-informed, which we know is just not always the case.

In terms of acceptability, there are two key ongoing problems with the counselling and psychological care services accessible to survivors through the NRS. First, and as we raised with the former JSC,<sup>74</sup> survivors in some jurisdictions lack choice and flexibility about who they receive counselling from. In Queensland, for example, survivors can only continue to see their existing practitioner if they are registered on the Trauma Support Directory.<sup>75</sup> Likewise, most survivors in Tasmania have limited choice about who they receive counselling from. In other jurisdictions, there is somewhat wider scope for survivors to continue to work with an existing counsellor, but this is not straightforward and not necessarily guaranteed. The ACT, for example, advises survivors that if they have a counsellor they would like to continue to work with, "Victim Support will contact the counsellor and assess whether payments can be arranged for future counselling sessions".<sup>76</sup> Similarly, Victoria advises survivors to contact RESTORE (a counselling service for Victorian residents who have accepted an NRS offer) to discuss continuing their current counselling arrangements,<sup>77</sup> noting that "RESTORE... has some capacity to provide financial support for people to continue to see an existing private counsellor".<sup>78</sup>

Where a survivor has a well-established therapeutic relationship with a practitioner, that relationship should be recognised and utilised. Not to do so is contrary to the Royal Commission's recommendations,<sup>79</sup> and obviously problematic for some survivors' healing given the importance of trust to therapeutic

<sup>74</sup> knowmore, *Submission to the Joint Select Committee: Inquiry into the Implementation of the Redress Related Recommendations of the Royal Commission*, p. 14.

<sup>75</sup> Queensland NRS website, 'What are my options for counselling and psychological care?'.

<sup>76</sup> Victim Support ACT, *Counselling and psychological support — Information for website*.

<sup>77</sup> RESTORE website, <[restore.casa.org.au/](http://restore.casa.org.au/)>.

<sup>78</sup> Department of Health and Human Services (Victoria) website, 'National Redress Scheme', <[services.dhhs.vic.gov.au/national-redress-scheme](http://services.dhhs.vic.gov.au/national-redress-scheme)>.

<sup>79</sup> Royal Commission, *Redress and Civil Litigation Report*, Recommendation 9, p. 196 and Recommendation 11, p. 17.



relationships. More generally, the lack of control survivors have over this aspect of their counselling and psychological care shows a fundamental disregard for two of the core principles of trauma-informed practice — choice and empowerment.

Second, there is a lack of appropriate services and tailored treatment options for Aboriginal and/or Torres Strait Islander survivors. We note in particular that very few Aboriginal and/or Torres Strait Islander practitioners are included in the Trauma Support Directory. This is particularly problematic for the significant number of Aboriginal and/or Torres Strait Islander survivors in Queensland — 33 per cent of knowmore’s Queensland clients — given their inability to access counselling and psychological support under the NRS from practitioners who are not registered on the Directory as noted above. Across Australia, there is also a lack of acknowledgement of, and funding for, cultural healing modalities for Aboriginal and/or Torres Strait Islander survivors. This includes healing circles, family work, community-focused healing and connection to culture. This is a continuing gap, noting the Royal Commission’s recommendation to all Australian governments to “fund Aboriginal and Torres Strait Islander healing approaches as an ongoing, integral part of... responses for victims and survivors of child sexual abuse”.<sup>80</sup>

In terms of quality, we are concerned that the lack of oversight, regulation and quality control of the counselling and psychological care component of the NRS means that survivors are not always receiving high quality services. Noting that best practice in the psychological treatment of complex trauma requires appropriately trained professionals, we have concerns that some practitioners do not have the qualifications, skills and experience to provide appropriate and effective support to survivors of institutional child sexual abuse. We note, for example, that inclusion on the Trauma Support Directory is via a self-assessment and registration process, and there is no requirement for practitioners to meet any particular standards beyond basic eligibility criteria.<sup>81</sup> In the absence of mechanisms to ensure that the treatment being delivered to survivors is appropriate and effective, there is an ongoing risk that survivors accessing counselling and psychological care under the NRS are receiving services that are ineffective at best, and counterproductive at worst.

Given the significant departures from the Royal Commission’s well-founded recommendations in this area, it is not surprising that some survivors have been left with a counselling and psychological care component of the NRS that may be inadequate to best meet their needs. Significantly, it is at odds with the Royal Commission’s vision for treatment services that “are underpinned by the principles of trauma-informed practice and an understanding of institutional child sexual abuse; and by the principles of... availability, accessibility, acceptability and high quality”.<sup>82</sup> It is also failing to deliver fairness, equality and justice to survivors, as a result of inconsistencies across jurisdictions and the failure to ensure appropriate services are available to all survivors, particularly Aboriginal and/or Torres Strait Islander survivors and other survivors in regional, rural and remote communities. In short, the counselling and psychological care component of the NRS is far from the trauma-informed and survivor-focused model intended by the Royal Commission.

### Recommendations for improvement

The serious deficiencies in the counselling and psychological care component of the NRS were clearly identified by the former JSC.<sup>83</sup> It is disappointing, then, that no steps have been taken to improve this aspect of the NRS more than 12 months on, given the clear path to a trauma-informed and survivor-

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80 Royal Commission, *Final Report: Volume 9, Advocacy, Support and Therapeutic Treatment Services*, Recommendation 9.2, p. 172.

81 Refer to the Trauma Support Directory website, ‘Becoming a provider on the Trauma Support Directory’, <[www.traumasupport.com.au/For-Practitioners](http://www.traumasupport.com.au/For-Practitioners)>.

82 Royal Commission, *Final Report: Volume 9, Advocacy, Support and Therapeutic Treatment Services*, p. 165.

83 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, pp. 78–87 and 144–148.



focused model laid out in the initial recommendations of the Royal Commission and in Recommendations 17 to 19 of the former JSC.<sup>84</sup>

We note the Australian Government's intention to consult with the states and territories and consider these recommendations of the former JSC in the second anniversary review of the NRS.<sup>85</sup> While we support all recommendations of the former JSC being implemented as a priority, we consider that these recommendations warrant particularly urgent attention given the significant and fundamental flaws in how counselling and psychological care is currently being delivered to survivors under the NRS. As part of this, we further recommend:

- A formal review of the counselling and psychological care component of the Scheme. This should include consumer feedback from survivors, and a review of the functionality and utility of the Trauma Support Directory.
- Addressing the healing and therapeutic needs of Aboriginal and/or Torres Strait Islander survivors as a priority.
- The development of a set of clear practice standards for service providers and practitioners. These standards should:
  - Be developed with input from survivors.
  - Outline the qualifications, experience and training (including ongoing professional development) required of practitioners with respect to working with survivors of institutional child sexual abuse, trauma-informed practice, and cultural safety.
  - Outline requirements for ongoing professional supervision.

Service providers and practitioners should be regularly audited to ensure that they are meeting the practice standards.

- The development of a framework to enable the quality of services delivered under the counselling and psychological care component of the NRS to be properly assessed over time. This should include an ongoing mechanism for receiving consumer feedback, and regular public reporting on findings as to the effectiveness of services.

Given the practical difficulties for survivors in navigating this component of the NRS and accessing services under it, we welcome the Australian Government's commitment to providing "consolidated information" on the NRS website about what counselling and psychological care services are available to eligible survivors in each jurisdiction.<sup>86</sup> We encourage the states and territories to support this.

## The lack of specialist financial counselling services

As the Committee is aware, knowmore currently has four financial counselling roles funded through a grant from the Financial Counselling Foundation. This funding is for a two year period only. Our financial counsellors work alongside lawyers, social workers and counsellors, and Aboriginal and Torres Strait Islander engagement advisors to provide trauma-informed, client-centred and culturally safe support to clients.

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<sup>84</sup> Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, pp. 78–87 and 145–148.

<sup>85</sup> Australian Government, *Australian Government Response to the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse Report: Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, pp. 8–9.

<sup>86</sup> Australian Government, *Australian Government Response to the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse Report: Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, pp. 8–9.

knowmore's commitment to including financial counsellors as part of its multidisciplinary service model reflects the Royal Commission's recommendation that survivors offered redress payments should have access to free financial counselling.<sup>87</sup> Outside of knowmore, the response to this recommendation has been for the NRS to simply refer people to the National Debt Helpline.<sup>88</sup> As we reiterated at the hearing, this has a number of significant limitations.<sup>89</sup> In particular, the available financial counselling services in some jurisdictions are auspiced by religious institutions including The Salvation Army and Anglicare. These services are therefore unacceptable to many survivors. Further, knowmore and others have noted in the past the significant waiting times for financial counselling services.<sup>90</sup> We expect this situation will only worsen given concerns that "the true financial tsunami" resulting from the COVID-19 pandemic will hit in five to six months' time.<sup>91</sup> knowmore's financial counselling services therefore continue to address an important gap for survivors applying for redress through the NRS, notwithstanding that the services we can provide in this field are limited.

Our experience over the last 22 months has further emphasised the unique needs and circumstances of this survivor group in seeking and managing offers of redress. In particular, we have found that:

- Many in the client group have comparatively low levels of education, very low incomes (including many clients receiving Centrelink payments) and lower than average levels of financial literacy. Many clients also have comparatively low literacy and numeracy skills, often reflecting their experiences as children in institutions who were denied a proper education. Some clients, for example, have needed assistance with even relatively basic tasks such as opening a new bank account.
- Many clients have debt and hardship issues that they need assistance with before receiving an NRS payment. Common issues include house repossessions, loans from payday lenders, Centrelink debts, credit card debts, Australian Taxation Office debts, homelessness and poverty.
- Many clients need help understanding the implications of an NRS payment, particularly for their existing benefits (e.g. Centrelink) or their social housing entitlements.
- Clients often need support managing their lump sum redress payment, particularly in terms of considering their goals and options for the payment once it is received and protecting their payment from others (see further discussion of economic abuse and elder abuse below).

Against this background, our experience over the last 22 months has also highlighted the problems that can arise for survivors in the absence of access to trauma-informed and expert financial counselling services. Noting that many survivors only come to knowmore for financial counselling after receiving an offer of redress from the NRS, we have identified a number of common problems that put survivors' redress payments at significant risk.

- Many survivors ask for their redress payment to be made into an existing bank account (which is frequently nominated in the Application for Redress, as per Question 30) without understanding the implications of this. These include that:

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87 Royal Commission, *Redress and Civil Litigation Report*, Recommendation 66, p. 392.

88 See NRS website, 'Financial support services', <[www.nationalredress.gov.au/support/financial-support-services](http://www.nationalredress.gov.au/support/financial-support-services)>.

89 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Monday, 6 April 2020*, Evidence of Mr W Strange, pp. 33–34.

90 Financial Counselling Australia, cited in Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, pp. 98 and 150; Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Proof Committee Hansard — Thursday, 28 February 2019*, Evidence of Mr W Strange, p. 5.

91 B Shepherd, 'Fears over drop in demand for financial counsellors during coronavirus pandemic', *ABC News*, 17 April 2020, <[www.abc.net.au/news/2020-04-17/managing-your-finances-during-the-coronavirus-pandemic/12154264](http://www.abc.net.au/news/2020-04-17/managing-your-finances-during-the-coronavirus-pandemic/12154264)>. See also R Young, 'Tasmanian financial counsellors fear "calm before the storm"', *The Examiner*, 12 April 2020, <[www.examiner.com.au/story/6719645/tasmanian-financial-counsellors-fear-calm-before-the-storm/](http://www.examiner.com.au/story/6719645/tasmanian-financial-counsellors-fear-calm-before-the-storm/)>.

- It is more difficult for banks to protect a person's redress payment (for example, from garnishee orders, government debt recovery processes, bankruptcy proceedings) when it is co-mingled with other amounts.
- If a person nominates a joint account (for an example, an account held with their spouse), only half of the redress payment is protected, and there is a risk of them losing control over how their redress payment is spent/distributed.
- Some survivors are vulnerable to economic abuse and/or elder abuse, especially by family members. They can therefore be pressured or coerced into giving their redress payment away or spending the money in ways that are not of their choosing. knowmore is aware of survivors whose redress payments have been targeted by people close to them and, in some cases, apparent scammers.
- Survivors with debt and hardship issues are vulnerable to having their redress payments targeted by creditors. Survivors in this position tend to be so stressed and anxious about their debts that they will look for any way out, including using their redress money to pay back debts that ought to be waived. The case study below highlights the problems that can arise for these survivors in the absence of timely financial counselling advice.

**A survivor who had lost almost a quarter of their redress payment to creditors before seeking knowmore's assistance**

A survivor who had self-lodged their application called knowmore after receiving a redress payment of approximately \$80,000.

The survivor advised us that they had used some of their redress money to repay an old debt after being hassled by a creditor, and that they had paid a further sum to one of the major banks after the bank had contacted the survivor about using the money to repay an old loan. Altogether, almost a quarter of the survivor's redress payment was gone.

knowmore's financial counsellors quickly identified that this should not have happened, and were able to provide the client with some assistance. Ultimately, the creditor and bank returned the money to the survivor and the debts were waived. knowmore also took the issue up with the bank in question to ensure other survivors do not have their redress payments targeted in this way.

Survivors have been incredibly receptive to and grateful for the financial counselling services they have received from knowmore. However, the absence of specialist financial counselling services outside of knowmore means very few survivors seeking redress will receive trauma-informed assistance from a financial counsellor familiar with the specific issues associated with NRS payments, and the vast majority will receive no financial counselling at all. Given the experiences of the survivors we have assisted, this is a serious concern. To help address this, knowmore has been working to enhance the capacity of the broader financial counselling sector to respond to survivors, including by delivering conference presentations and training sessions to financial counsellors and by developing a financial counselling information guide in partnership with the Financial Rights Legal Centre,<sup>92</sup> for community workers engaging with survivors receiving NRS payments.

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92 knowmore and Financial Rights Legal Centre, *Helping Clients Receiving A National Redress Scheme Payment: A Guide for Financial Counsellors, Community Lawyers and Caseworkers*, October 2019, <[knowmore.org.au/wp-content/uploads/2019/10/Helping-clients-receiving-a-National-Redress-Scheme-payment\\_Volume-4\\_knowmore-and-the-Financial-Rights-Legal-Centre.pdf](https://knowmore.org.au/wp-content/uploads/2019/10/Helping-clients-receiving-a-National-Redress-Scheme-payment_Volume-4_knowmore-and-the-Financial-Rights-Legal-Centre.pdf)>.

## Recommendations for improvement

We note that the former JSC heard similar concerns from stakeholders about the adequacy and availability of financial counselling services during its inquiry.<sup>93</sup> In response, it recommended that:

*Noting that the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse committed to providing survivors with access to financial support services,... Commonwealth, state and territory governments explore mechanisms to ensure that survivors have access to free and appropriate financial counselling services, when required.*<sup>94</sup>

As stated previously, we strongly support all of the former JSC's recommendations being implemented as a matter of priority. However, the Australian Government's formal response to this recommendation — that "the Commonwealth, as well as State and Territory Governments, fund community organisations to provide free, independent financial counselling to help people in need or at risk of financial hardship"<sup>95</sup> — appears to suggest that no additional financial counselling services will be made available for survivors accessing redress under the NRS. This is wholly inadequate and ignores the problems of long waiting lists; the unacceptability of services delivered by religious bodies for many survivors of institutional child sexual abuse; and the need for specialist services that are trauma-informed and delivered by financial counsellors who understand the unique issues associated with redress payments.

To support survivors to derive maximum benefit from any redress payment made to them, it is essential that specialist financial counselling services are made available to all survivors as early on in the NRS application process as possible.

### A simple solution to one common problem: changes to the process for nominating a bank account

As noted above, one of the biggest risks to many survivors' redress payments arises from the failure to have the money paid into a separate bank account. To address this, knowmore recommends that the NRS:

- Modify the current Application for Redress to ensure that people are not asked for any bank account details at the time of completing their application.
- Amend its processes to ensure that a person's bank account details are only requested when an offer of redress is made.
- Include with the above request a recommendation that the person opens a new bank account in which to receive their redress payment, to ensure that the payment receives the protections it is entitled to.<sup>96</sup>

In helping survivors to protect their redress payments, these administrative changes would be of significant benefit to those many survivors who are unable to access financial counselling services.

## Exploitative practices of some law firms and 'survivor advocacy' firms

knowmore is becoming increasingly concerned about some law firms and emerging 'survivor advocacy' firms engaging in practices that exploit survivors trying to access redress through the NRS. In particular, we are hearing a growing number of concerns — raised directly by survivors but also by other support services and stakeholders, including the NRS itself — about law firms charging survivors high and arguably excessive

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93 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, pp. 98–99.

94 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, p. 150.

95 Australian Government, *Australian Government Response to the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse Report: Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, p. 10.

96 This is consistent with the Royal Commission's view that the redress scheme "should offer financial advice" (*Redress and Civil Litigation Report*, p. 379).

fees for services that survivors could obtain for no cost from knowmore or other funded support services. At times such conduct has been accompanied by the provision of services that are not of a reasonable, professional standard, leading inevitably to further and unnecessary traumatisation of the survivor.

knowmore is aware of some firms charging up to \$15,000 plus GST to act for survivors in NRS applications, with fees contingent upon the redress payment the survivor receives. Such reports have been received in relation to a small number of law firms, some of which are alleged to be targeting particular groups of clients, including Aboriginal survivors.

knowmore obviously supports survivors being able to decide who they turn to for legal assistance and other support, including using paid services. However, the foundational principles of trauma-informed practice — of empowerment and choice — are important, and it is clear that many survivors are not being advised about the availability of free and specialist services or are being openly dissuaded from seeking help from such sources and, in some instances, are paying a high price for services that are objectively not of an appropriate professional standard.

We will provide the Committee with detailed information about these matters in a separate submission.

## **The lack of protection of a survivor's personal information once it is provided to the institution**

knowmore is concerned about the lack of protection of a survivor's personal information once it is provided to the relevant institution/s as part of the redress process. We are particularly concerned about the lack of protection in relation to how an institution may use and/or disclose a survivor's personal information.

The NRS's legislative framework permits an institution to obtain, record, disclose or use protected information, including a survivor's personal information, for the purpose of undertaking internal investigations and disciplinary proceedings.<sup>97</sup> However, it fails to regulate the circumstances in which the institution may use and/or disclose the survivor's personal information as part of these processes.

The NRS website currently advises survivors that:

*As part of an internal investigation or disciplinary procedure, an institution may be required to present your name and description of abuse to the perpetrator.*<sup>98</sup>

While the NRS Act provides that before disclosing protected information the institution must have regard to the impact the disclosure may have on the survivor,<sup>99</sup> there is no legislative requirement that the survivor be consulted or provide consent before the institution can use and/or disclose their personal information as part of these processes.

knowmore is very concerned that institutions may disclose a survivor's personal information to a perpetrator without their informed consent. There are many reasons why survivors of institutional child sexual abuse may not want their identity or the description of the abuse they experienced to be disclosed to the perpetrator, including that it may put them at further risk of harm from the perpetrator. It may also be re-traumatising for survivors who are reminded of the feelings of powerlessness they experienced as children towards the perpetrator or the institution.

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<sup>97</sup> Section 98(2)(d), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth). See also section 92(2), which defines 'protected information'.

<sup>98</sup> NRS website, 'How we protect your information', <[www.nationalredress.gov.au/about/protect-your-information](http://www.nationalredress.gov.au/about/protect-your-information)> (as at 23 April 2020).

<sup>99</sup> Section 98(3), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

Some of knowmore's clients have been distressed by the prospect of their personal information being disclosed to the perpetrator against their wishes. This has led some survivors to decide not to apply for redress, or to exclude the abuse they experienced at a particular institution in their NRS application.

In our view, the NRS's inability protect a survivor's personal information from being disclosed to the perpetrator without their informed consent is a significant failure, and is inconsistent with the NRS's general principles, including that redress be survivor-focused and avoid, as far as possible, further harming or traumatising the survivor. It is unacceptable that as a result of this failure, some survivors feel they cannot safely access justice and redress for the harm they experienced, and that as a result, institutions may escape accountability.

We are also concerned that many survivors may not be aware of this risk when applying for redress under the NRS due to a lack of clear and consistent information. For example, while the current NRS application form includes a section titled 'Information Sharing', it does not provide any information about the use or disclosure of the applicant's personal information by the institution for the purpose of conducting internal investigations or disciplinary proceedings, or advise that as part of these processes the institution may disclose the applicant's information to the perpetrator.<sup>100</sup> We note that the information provided on the NRS website about this risk is also concerningly vague.

knowmore acknowledges that both the NRS and participating institutions may have legal obligations to disclose a survivor's personal information to the police or other third parties, including as a result of their mandatory reporting obligations. However, we note that the independent and legally regulated processes undertaken by these bodies are in no way comparable to internal processes undertaken by institutions.

### Recommendations for improvement

knowmore recommends that urgent consideration be given to this issue in order to ensure that the NRS can provide survivors with access to justice and redress in a manner that is safe, survivor-focused and avoids further harm or trauma.

knowmore recommends that consideration be given to amending section 98 of the NRS Act to provide that a survivor's informed consent is required before their personal information can be used and/or disclosed by an institution for the purpose of conducting internal investigations or disciplinary proceedings, and importantly, before their personal information can be disclosed by an institution to the perpetrator.

knowmore also recommends that the NRS review, as a matter of priority, the information available to survivors about how their personal information is protected, and how it may be used and/or disclosed by the NRS, participating institutions or other third parties, with a view to ensuring that survivors have access to adequate, clear and consistent information.

### Problematic requirements regarding statutory declarations

As the Committee is aware, section 19(2)(d) of the NRS Act requires the information in a redress application to be verified in person by a statutory declaration. knowmore argued when the original legislation was introduced that this requirement was onerous and unnecessary.<sup>101</sup> Of particular concern to us has been that this requirement acts as a barrier to some survivors applying for redress.<sup>102</sup>

With the current COVID-19 pandemic and the strict rules around travel and social distancing, the requirement for an NRS application to be submitted with a statutory declaration is now especially onerous.

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100 Application for Redress, version NRS001.1902, available on the NRS website, 'Application pack', <[www.nationalredress.gov.au/document/76](http://www.nationalredress.gov.au/document/76)> (as at 23 April 2020).

101 knowmore, *Submission to the Senate Committee for Community Affairs: The Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Related Bill*, p. 27.

102 knowmore, *Submission to the Senate Committee for Community Affairs: The Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Related Bill*, p. 27.



It is currently very difficult for many survivors to access a JP or other person to witness a statutory declaration — key mechanisms for accessing JPs, such as Queensland’s JPs in the Community Program and Western Australia’s JP Document Witnessing Centres, are currently unavailable, and many survivors will not know someone in the witnessing categories. In any event, having a statutory declaration witnessed requires an outing, or at least contact with another person, which may not be practical (for survivors with mobility issues or a lack of transport, for example) and may indeed be unsafe for some survivors. This is particularly a concern for older survivors and survivors with chronic health conditions, who are a significant cohort within our client group. We have one client, for example, who is in poor health and will not leave their house to have their statutory declaration witnessed for fear of contracting COVID-19. In the current environment, the requirement for an NRS application to be submitted with a statutory declaration is simply an additional source of stress and an added layer of difficulty that may prevent already vulnerable survivors from applying for redress.

### Recommendations for improvement

We appreciate that the NRS has been examining this issue in response to the concerns raised by knowmore and other support services, and we acknowledge that it has identified two possible work-arounds:

- Redress support services assisting survivors to access appropriate witnesses who may work at the service or in other essential businesses (for example, pharmacists and Australia Post office employees).
- The NRS temporarily accepting applications without a statutory declaration to start processing, on the understanding that the statutory declaration will be provided once the current restrictions are lifted.<sup>103</sup>

However, and as the NRS has noted, these workarounds are limited. The first in particular does not alleviate our concerns about the practicality and safety of accessing a witness for many survivors. It is also a more limited solution for certain groups of survivors, for example, those who are completing their own applications (and therefore do not have access to potential witnesses in redress support services) and those who live in rural and remote communities. The second option avoids these issues, but raises other serious concerns given the significant risks involved — as the NRS has acknowledged, if the applicant was to pass away before the statutory declaration is signed, the application cannot proceed to the decision-making stage and no offer of redress could ever be made.<sup>104</sup>

We note that urgent legislation has been introduced in some states in response to this issue. For example, in NSW the Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020 commenced on 22 April 2020, allowing for statutory declarations to be witnessed via video in some circumstances.<sup>105</sup> Unfortunately, it is unclear if a person who applies to the NRS and has their accompanying statutory declaration executed under this state-specific legislation will be determined by the NRS to have made a valid application. As the NRS Act is Commonwealth legislation, the Operator of the Scheme would need to make a declaration that any state legislation such as this would need to be capable of operating concurrently under the NRS Act.<sup>106</sup>

We are aware that Parliament is not currently sitting, but given the above problems, we remain firmly of the view that an appropriate and effective solution can only come about with urgent legislative amendments. We therefore repeat our previous calls for the NRS Act to be amended to remove the requirement for information in an application to be verified by statutory declaration,<sup>107</sup> and urge the

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<sup>103</sup> Email from the NRS, ‘Redress Support Services update — 3 April 2020’.

<sup>104</sup> Email from the NRS, ‘Redress Support Services update — 3 April 2020’.

<sup>105</sup> See also the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW), the *COVID-19 Emergency Response Act 2020* (SA), the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Tas), and the *COVID-19 Emergency Response Act 2020* (ACT).

<sup>106</sup> See section 175 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) and section 7 of the *Statutory Declarations Act 1959* (Cth).

<sup>107</sup> knowmore, *Submission to the Senate Committee for Community Affairs: The Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Related Bill*, p. 27.



Committee to recommend that these amendments be brought before Parliament as a matter of high priority. The proposed “trial week” of Parliament in May could provide an opportunity for this.<sup>108</sup>

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<sup>108</sup> Prime Minister of Australia, *Transcript: Press Conference — Australian Parliament House, ACT*, 16 April 2020, <[www.pm.gov.au/media/press-conference-australian-parliament-house-act-15](http://www.pm.gov.au/media/press-conference-australian-parliament-house-act-15)>.

## Conclusion

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knowmore remains strongly supportive of an independent national redress scheme for survivors of institutional child sexual abuse. Our experiences assisting over 1,000 survivors with NRS applications has shown that, for many of our clients, the ability to obtain redress through the NRS is life-changing.

Nevertheless, our experiences with the NRS over the past 22 months have also highlighted a number of problems that require urgent action:

1. The ongoing failure of institutions to join the NRS is preventing many survivors from accessing redress.
2. Assessment timeframes are excessive.
3. There is unfairness and inconsistency in the assessment of applications, particularly in terms of what is and isn't being regarded as sexual abuse and the assessment of relevant prior payments.
4. There are shortcomings in communication from the NRS, including a lack of information to survivors about the status of their applications and an offer process that survivors often find distressing.
5. There is a need for improved cultural safety and support for Aboriginal and/or Torres Strait Islander survivors engaging with the NRS.
6. There is a lack of transparency and accountability in the NRS's operations and decision-making.
7. Certain classes of survivors — particularly prisoners and survivors with serious criminal convictions — continue to be excluded from redress.
8. The counselling and psychological care component of the NRS is not sufficiently survivor-focused or trauma-informed and does not reflect the Royal Commission's key principles of availability, accessibility, acceptability and high quality.
9. There is a lack of specialist financial counselling services for applicants, which puts many redress payments at risk.
10. Some law firms and 'survivor advocacy' firms are engaging in exploitative practices that have serious adverse impacts for survivors seeking redress and may also affect the integrity of the NRS itself.
11. A survivor's personal information is inadequately protected once it is disclosed to the institution during a redress application.
12. The existing requirements regarding statutory declarations are problematic for survivors trying to access the NRS in the current COVID-19 environment.

Some of these problems were examined by the former JSC in its inquiry over 12 months ago. The fact that these problems continue to exist highlights the soundness of the former JSC's findings and the need for its recommendations to be implemented. knowmore urges the Commonwealth and state and territory governments to progress work on these recommendations as a matter of priority.

In this submission, knowmore has also made a number of its own recommendations to improve the implementation and operation of the NRS. These recommendations are based on what we have observed about our clients' experiences in engaging with the NRS since its commencement. We urge the Committee to consider how these recommendations can inform immediate improvements to the NRS, as well as how they can shape the focus of the upcoming second anniversary review of the Scheme. Our view is that until the problems we have identified are properly addressed, the NRS will continue to fall short of delivering survivor-focused and trauma-informed redress that is equally accessible to all survivors of institutional child sexual abuse and ensures all survivors receive equal and fair treatment during the redress process.

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