



**Submission to the Joint Standing Committee on
implementation of the National Redress Scheme**

Inquiry into the operation of the National Redress Scheme

Forgotten Australians Coming Together Inc, trading as Tuart Place

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About Tuart Place

Tuart Place is the State Government funded support service for Western Australian Care Leavers. Care Leavers include the ‘Forgotten Australians’, former child migrants from the UK and Malta, members of the Stolen Generations, and other Aboriginal people placed in out-of-home care during childhood.

Tuart Place is a survivor-governed ACNC-registered charity offering a wide range of free services. Professional and clinical services include National Redress Scheme support, trauma-informed and culturally sensitive counselling, phone counselling, therapeutic and life-skills groups, supported access to records and photos, family tracing and connection, and individual advocacy. Weekly financial counselling sessions are held onsite, and staff facilitate contact with other specialist services and mainstream services such as housing. We assist people to obtain free legal advice from knowmore, and/or to book a free consultation with a private law firm.

An on-site Aged Care Service Navigator provides assistance to register with *My Aged Care*, and practical help to access a range of aged care and community services. Staff and IT volunteers provide tuition in using mobile phones and other equipment in our computer lab.

Activities organised with participant (client) involvement include art and craft workshops, a singing group, entertainment events, reunions, in-house gatherings and lunches, and outings. A participant-produced newsletter, *The High Street Happenings*, is published every three months and is also available on the Tuart Place website.¹

In the 2022 calendar year, 635 clients received a direct service from Tuart Place. The demographic profile of these individuals is shown in the table below.

| Tuart Place Demographic Statistics Report: 1-1-22 to 31-12-22 | | | |
|--|--------------------|---------------------------|--------------------|
| Age Group | No. Clients | Origin | No. Clients |
| 18 - 30 | 11 | Australian Non-Indigenous | 223 |
| 31 - 50 | 76 | Australian Indigenous | 220 |
| 51 - 70 | 224 | Former Child Migrants | 155 |
| 71 + | 274 | Unspecified | 37 |
| Unspecified | 50 | | |
| Gender | No. Clients | Postcode | No. Clients |
| Male | 339 | WA | 557 |
| Female | 292 | Interstate | 38 |
| Unspecified | 4 | Overseas | 4 |
| | | Unspecified | 16 |

Service model

Tuart Place’s holistic community support model is ideally suited to working with Care Leavers and other survivors of institutional child sexual abuse, many of whom have complex welfare needs and face extreme disadvantage affecting every area of their lives. The ‘no wrong door’, informal, ‘drop-in’ elements of the service allow us to provide wrap-around support to clients and participants. Our co-design service model ensures a strong survivor voice and peer leadership. Half the members of our Board of Governance, *Forgotten Australians Coming Together (FACT) Inc.*, are Care Leavers with lived

¹ <https://www.tuartplace.org/category/high-street-happenings/>

experience of institutional child abuse. The remaining Board members have professional qualifications in areas such as law, accounting, service management, and academic research.

The environment at Tuart Place is non-bureaucratic and the drop-in centre has a friendly, welcoming feel. People can build trust at their own pace and access services when they feel ready. It is an ideal therapeutic model of service developed with survivors, for survivors. It is a model well suited to providing trauma informed service delivery for all vulnerable and disadvantaged people. Intensive support is provided through multiple pathways and activities.

NRS support at Tuart Place

During the 2022 calendar year, 225 individual clients received a service directly related to the National Redress Scheme. NRS services were delivered in 2,249 occasions of service, over 1,683 hours. Tuart Place has prepared and submitted 178 NRS applications, with another ten currently with knowmore for legal feedback prior to submission, and a further 41 applications in progress. At the time of writing, approximately 50 survivors are on Tuart Place's waiting list for assistance to prepare NRS applications.

The redress support provided by Tuart Place is comprehensive and multi-faceted. New client intakes are screened for NRS eligibility prior to acceptance onto our waiting list. There is still considerable confusion about the NRS, perhaps particularly in WA, where the previous *Redress WA* scheme was available to survivors of non-sexual institutional abuse or neglect in state governed out-of-home care. Establishing eligibility for the NRS also involves exploring whether institutional responsibility is likely to be established in the assessment of the survivor's experience of child sexual abuse. Even children who were Wards of the State must have been 'introduced' to their abuser by an institution.

Early assessment needs to be conducted on relevant prior payments, which sometimes exceed the level of payment available under the NRS. Tuart Place staff seek any relevant documentation on previous payments and any available records of the person's time in out-of-home care. Applicants are supported to manage their expectations around the level of payment potentially offered under the Scheme.

In addition to preparing the survivor's personal account of abuse and perceived impacts, staff assist applicants to fulfill requirements such as obtaining a Centrelink CRN, and the multiple forms of identification needed if 'Special Assessment' is indicated. Tuart Place offers Assistance Nominee support to all applicants, and helps survivors to understand and participate in the various stages of the NRS process, including the Outcome call, and completion of the Acceptance forms, which must be accompanied by evidence of bank deposit details.

It may be hard for the 'average citizen' to imagine how difficult it might be for traumatised, disadvantaged survivors to complete seemingly everyday tasks like producing identification, or filling in a form. We appreciate the valuable work of the JSC Committees and the NRS in the implementation of this important Scheme, which will serve to raise awareness of child sexual abuse and the often devastating impacts of trauma.

Tuart Place has provided four submissions to previous Inquiries on the NRS, and a submission to the Second Year Review of the Scheme. We have not repeated our prior recommendations in this submission, however many of them remain current, and we draw the Committee's attention to our prior recommendations.²

In this submission, Tuart Place addresses the Inquiry's Terms of Reference and two other relevant matters.

² All submissions are available at <https://www.tuartplace.org/about/submissions-and-evaluations/national-redress-scheme-submissions/>

Applications for redress from First Nations people

The staff at Tuart Place bear daily witness to the impacts of systemic marginalisation of Australia's First Nations peoples and the intergenerational harms arising from past removal practices. Our agency started working with Aboriginal³ clients in 2008, with the commencement of the *Redress WA* scheme. By the end of *Redress WA* in 2011, the scheme had received a total of 5,917 applications, with 51 percent of these from Aboriginal survivors. Our *Redress WA* support service at 24 High Street in Fremantle supported more than 600 clients to engage with this scheme, 29 per cent of whom were Aboriginal people.

Increase in the number of First Nations NRS applicants

Many former *Redress WA* clients (both Aboriginal and non-Aboriginal) have returned to Tuart Place for support with their NRS applications, and the proportion of Aboriginal people seeking assistance from our service has increased significantly since 2018.

The proportion of Aboriginal clients continues to grow, and comprised 71 per cent of Tuart Place's 110 new client intakes in the 2022 calendar year. Prior to July 2022, 57 per cent of the 133 NRS applications submitted by Tuart Place were for Aboriginal clients. Seventy-five per cent the 45 NRS applications submitted since July 2022 were for Aboriginal applicants. Currently, Tuart Place is working on a further 41 applications for NRS clients, of whom 33 (80%) are Aboriginal people.

Cultural propriety and safety are taken very seriously at Tuart Place and staff are required to undertake cultural awareness training with a Registered Training Organisation, and have ongoing supervision on working with First Nations people. Tuart Place is a member of the WA Stolen Generations Corporation, and has a close working relationship with Yokai, including warm client referrals. One of our Board members, Mr Dale Lynch, identifies as Aboriginal, and one of Tuart Place's three Patrons, Dr Robert Isaacs AM OAM, is a Noongar Elder.

The steep increase in First Nations NRS applicants is attributed to existing clients' word-of-mouth referrals of family members and fellow ex-residents of former missions, Homes, and foster care; and referrals from other agencies. First Nations clients and participants tell us they feel comfortable and welcome at Tuart Place. The Aboriginal flag and other visual markers of respect are displayed inside the building, and all events at Tuart Place commence with a Welcome to Country by a Noongar Elder. Increasing awareness of the NRS among human service agencies and the wider community (although still low) may contribute to the increasing trend in Aboriginal applicants enquiring about the Scheme.

Applications for redress from people living with disability

'Disability' is not a term defined by the Scheme. Applicants can self-identify as having a disability, which includes illness and age-related conditions. Many of our NRS clients have serious health problems and age-related infirmities, and routinely check the box on the application form indicating they have a disability.

The NRS *Strategic Success Measures* for July 2021 reported that 48 per cent of applicants self-identified as living with a disability⁴, however this may not indicate the proportion of applicants living with a condition classified as disability for the purposes of the NDIS or the Disability Support Pension. In the

³ Respected Noongar Elders have expressed a preference for the descriptor *Aboriginal* person rather than *Indigenous*. *First Nations* is also acceptable.

⁴ NRS *Strategic Success Measures July 2021*. (p.9)

Second Year Review of the Scheme, independent reviewer Robyn Kruk AO questioned the accuracy of data on applicants with a disability, commenting that confusion about terminology could result in potentially misleading data, that may not indicate the proportion of applicants requiring additional specialised support from the Scheme.⁵

A considerable proportion of Tuart Place's NRS clients have very severe medical conditions, and some have clinically diagnosed physical disabilities - most often affecting mobility. A smaller proportion have intellectual disabilities and are under guardianship/administration orders. Almost half our clients are aged over 70, and the early (and sometimes advanced) signs of dementia are apparent among some members of this group.

However, by far the most common disability among people who access our NRS support service is Post-Traumatic Stress Disorder (PTSD). An extremely high proportion of survivors of childhood sexual abuse have symptoms of PTSD. This condition is under-recognised as a 'disability', but is classified as such by the NDIS, and the Disability Support Pension.⁶ The majority of survivors (both Aboriginal and non-Aboriginal) who seek assistance from Tuart Place describe symptoms consistent with PTSD, and many have been formally diagnosed with the condition.

PTSD, Complex PTSD, and Chronic Trauma Syndrome

PTSD symptoms are amplified among Care Leavers, whose experience included traumatic childhood separation from family, followed by sexual abuse and further trauma in a mission, orphanage or foster care. This group is more likely to have debilitating forms of Complex PTSD, and Chronic Trauma Syndrome.⁷

Lawyers working with civil claimants who have undergone psychiatric evaluations in recent years estimate that more than 75 per cent of claimants meet the *DSM-5* diagnostic criteria for PTSD. A similarly high incidence of PTSD diagnosis was found in the collection of psychiatric evaluations retrieved for participants in a 1997 class action against the Christian Brothers.

More than 90 percent of approximately 70 *Redress WA* applicants screened by our agency between 2008-2011 met the *DSM-IV* diagnostic criteria for PTSD⁸; and the majority recorded 'Extremely Severe' or 'Severe' symptoms of Depression, Anxiety and Stress on the *DASS-21* self-report scales.⁹

There is no doubt that redress and civil claims processes intensify the severity of survivors' existing trauma-related symptoms, and the disclosure process is inevitably triggering. Engaging in a redress process is *inherently* re-traumatising.

Strategies to assist people to access the Scheme

Redress applicants often say that disclosing their childhood sexual abuse is as distressing as the original experience. Ideally, disclosures are determined by the survivor's psycho-social readiness and therapeutic goals and timelines. However, redress schemes create artificial imperatives and timelines for disclosure. Additionally, redress disclosures must include particulars of the abuse so the claim can be assessed,

⁵ Kruk, R. (2021). *Final report: second year review of the National Redress Scheme*, 26 March 2021. (p.40)

⁶ <https://www.servicesaustralia.gov.au/disability-support-pension>

⁷ Herman, J. (2001). *Trauma and Recovery*. Pandora, London, UK. (pp. 86 & 121)

⁸ Using the *PTSD Checklist Civilian version* (PCL-C). Available at:
<https://www.ptsd.va.gov/professional/assessment/documents/APCLC.pdf>

⁹ Lovibond, S. & Lovibond, P. (1995). *Depression Anxiety Stress Scales* (DASS-21, DASS-42) Available at:
<https://www.thecalculator.co/health/DASS-21-Depression-Anxiety-Stress-Scale-Test-938.html>

requiring survivors to think and talk in detail about experiences they have generally tried to put in the past. Redress processes undermine the psychological manoeuvres of *avoidance* and *suppression* used by survivors to cope with traumatic memories. Redress schemes require strategies and interventions to ameliorate and minimise re-traumatisation created by the redress process.

The offer of counselling throughout the Scheme

A key element of safe redress is the offer and availability of counselling throughout the application and assessment processes. While it is certainly important to offer counselling post-redress, it is essential for counselling support to be available early in the process, and during the process as required.

Redress experts in Australia and overseas emphasise the importance of counselling. For example, Daly’s 2014 review of 15 redress schemes showed that ‘interim counselling’ is the norm, with 13 of the 15 schemes offering counselling from the time of announcement of the scheme, and/or as applicants wait for the outcome of their claim. Daly’s research found that benefits such as counselling “may matter more than a lump sum payment”.¹⁰ Studsrød and Enoksen have observed that: “As survivors seem to go through exhausting personal and social processes before even deciding to apply, we argue that information about programmes needs to be extensive, and that support during the process should be comprehensive.”¹¹ Similarly, in his 2022 analysis of 10 redress schemes, Winter found that:

“...redress processes harm applicants who must recall, relive, or even learn about their injurious experiences. To manage these difficulties, survivors need access to counselling throughout the programme, and after.”¹²

In its *First Interim Report* in May 2020, the previous Joint Select Committee recommended “*Increasing access to counselling and psychological care ... throughout the application process*”.¹³ This recommendation was carried through by the Second Year Review of the Scheme, which recommended that: “*The scope of redress counselling be increased to provide end-to-end support for survivors, including for survivors who intend to apply for the Scheme and throughout the application process...*”.¹⁴

Tuart Place notes that additional RSSs were engaged by the Scheme in July 2022, and that some services offer phone counselling and in-person counselling in specific locations. However, many RSSs do not offer interim counselling and anecdotal feedback is that this is not available – especially once the application has been submitted. Of particular concern is the group of survivors who submit their own applications and find themselves re-traumatised and without support.

The point of disclosure and the period of waiting for redress are key opportunities for therapeutic intervention in a survivor’s potential journey of recovery. Many, particularly older, redress applicants do not feel able to engage in a structured therapeutic process, and some reject the idea outright. However, if the environment is trusted and familiar, a significant proportion of survivors feel safe enough to ‘have a chat’ with experienced specialist clinicians at a place where being a survivor of institutional child abuse is ‘normal’. Survivors can emerge with crucial, life-changing realisations (eg. “*It wasn’t my fault*”; “*It’s not surprising I felt angry/sad/alone*”; “*I wasn’t the only one*”).

¹⁰ Daly, K. (2014) *Redressing institutional abuse of children*. New York, NY: Palgrave Macmillan. (pp.139 & 195).

¹¹ Studsrød, I. & Enoksen, E. (2022) *But then again, in the end, I decided to apply for redress: Stories of ambivalence from survivors of institutional abuse*, Nordic Social Work Research, DOI: 10.1080/2156857X.2022.2155217. <https://www.tandfonline.com/doi/full/10.1080/2156857X.2022.2155217>

¹² Winter, S. (2022) *Monetary Redress for Abuse in State Care*. Cambridge: Cambridge University Press. doi:10.1017/9781009082662 <https://www.cambridge.org/core/books/monetary-redress-for-abuse-in-state-care/57AB2994831FFC5AA3B827DC40EE74AF> (p.210).

¹³ Joint Select Committee. (April 2020) *First interim report on Implementation of the National Redress Scheme*. (p.42)

¹⁴ Kruk, R. (2021) *Second Year Review*. (p.118).

The proportion of applicants who engage in a structured counselling process may not be high, but a scheme's failure to offer interim counselling could be considered remiss. The *offer* of counselling itself, even if not utilised, is therapeutic, as it signals to the survivor that it is 'normal' to be triggered by the process, and that survivors are not expected to manage it entirely on their own. Survivors who have little contact with Tuart Place have commented that it is *comforting just to know it's there if they need it*.

- 1. We ask the Committee to examine options for offering counselling and psychological care to applicants who do not go through an RSS; to enquire whether NRS applicants submitting applications via RSSs are routinely offered interim counselling; and to what degree it is being provided.**

Community agency model of service delivery

A community agency model is optimal for enhancing accessibility for survivors considering redress. A non-bureaucratic, informal premises with a 'drop-in' facility and a comprehensive suite of ancillary supports available onsite is ideal for offering redress. This environment enables survivors to develop trust in an agency before engaging in a re-traumatising process. It is effective in breaking down the barriers to disclosing childhood sexual abuse because it is a 'group norm', and a sense of safety has had time to develop. Word-of-mouth referrals grow as people hear of the positive experiences of family members and trusted fellow survivors.

The local community agency model has friendly staff well trained in welcoming survivors of institutional abuse, particularly older Care Leavers. The setting is homely and open-plan, with ample room to manoeuvre mobility scooters and walking frames and, disability-accessible bathrooms. The furniture is senior-friendly and comfortable. Private consultation rooms are spacious with plenty of natural light. Survivors can choose to have the door open or closed.

Important ancillary services include open-ended counselling, support groups, assistance to access records, legal and financial advice, aged care referrals, and warm referrals to mainstream and specialist services. Facilitated IT access and support is becoming increasingly important, with many survivors feeling left behind as services increasingly go online and require both computer literacy and access to equipment.

Community agencies can operate a variety of programs that benefit NRS clients but are funded by other sources. A good example is Tuart Place's on-site Aged Care Service Navigator, who offers specialist support to Care Leavers to access aged care and community supports. This position is funded via the WA Primary Health Alliance and is frequently utilised by our NRS client group.

As reported in recent research on monetary redress schemes:

"Comprehensive community agencies should be at the centre of the [redress] programme's survivor-support strategy. The best community agencies are local, personable, and comprehensive. They take a holistic approach centred on the survivor's well-being."¹⁵

The holistic community agency, with its 'no wrong door' approach, facilitates wrap-around support addressing welfare-related and psycho-social needs as survivors go through the prolonged and difficult process of redress. The availability of this kind of support assists in addressing the barrier of lengthy waiting times for NRS applicants, discussed below.

¹⁵ Winter, S. (2022) *Monetary Redress for Abuse in State Care*. (p.213)

Streamlining processes and communication

The amount of time involved in the overall NRS process is a barrier for survivors, and the suffering of applicants is apparent as they ‘wait to be believed’. An analysis of the NRS published in 2022 found that: “[w]aiting compounded uncertainty and was re-traumatising for survivors. Some avoided seeking redress due to likely delays and risks of re-traumatisation”.¹⁶

The \$10,000 NRS Advance Payment introduced in October 2021 has helped to ameliorate this problem, and is seen as a gesture of good will and an interim ‘acknowledgement’ of the survivor’s application. It is also of concrete, practical assistance to survivors, many of whom are financially disadvantaged.

We are aware that the NRS has made attempts to reduce the length of time applicants are waiting and, as the Scheme has progressed, the length of time between submission and outcome has – in some cases – decreased. However, the *responsible entity pays (first)* funding model will inevitably slow down the NRS process, unlike other schemes in which a government pays first and then recoups contributions from responsible entities.¹⁷ We commend the Australian Government on facilitating timely access to the \$10,000 Advance Payment by applying this funding model.

Further reductions in the lengthy NRS process would be welcome and would increase the Scheme’s accessibility. The reliance on postal mail is an impediment to timely progress, and has been raised many times, although an email system has not been implemented due to security concerns. However, the dependence on postal mail, particularly with the continuing decline of Australia Post services, increasingly hinders efficient progress. Some facility for secure email communication between support services and the NRS would assist in reducing lengthy delays.

- 2. Tuart Place supports the former Committee’s observations of merit “...in DSS considering a dedicated contact point for support services within the NRS. Significant efficiencies and greater clarity for survivors may be achieved through direct communication channels”¹⁸. We ask the current Committee to consider reiterating this observation as a recommendation.**

Availability of legal advice for survivors and their advocates

Quality of funded legal advice - knowmore Legal Service

knowmore Legal Service has developed an internationally recognised model of holistic legal support for redress applicants. The proficiency in trauma informed support of abuse survivors developed by knowmore during the Royal Commission years (2013–2017), left the organisation well qualified to support applicants when the NRS began in 2018. A recent analysis of monetary redress schemes found that:

“A community law initiative in Australia offers a promising model ... because better legal representation is a key to better redress programmes, knowmore’s holistic service is a model for how programmes can support survivors.”¹⁹

All NRS applications drafted by Tuart Place staff are reviewed by knowmore lawyers prior to submission. The feedback we receive is comprehensive, timely, high-quality legal advice. knowmore’s Law Reform

¹⁶ Cortis, N. & Katz, I. (2022) *Waiting for redress: Child sexual abuse survivors’ experiences of Australia’s National Redress Scheme*. Child Abuse & Neglect, Volume 129. (April 2022). Available at:

<https://www.sciencedirect.com/science/article/pii/S0145213422001776>

¹⁷ For example, Northern Ireland’s Historical Institutional Abuse Redress Scheme. <https://www.hiaredressni.uk>

¹⁸ Joint Select Committee on Implementation of the National Redress Scheme (Joint Select Committee), *Second interim report on Implementation of the National Redress Scheme*, November 2021. (p.39).

¹⁹ Winter, S. (2022) *Monetary Redress for Abuse in State Care*. (p.208).

and Advocacy team is active in working to improve the NRS for victims and survivors. Tuart Place and knowmore frequently consult/collaborate on individual and systemic advocacy issues. Tuart Place commends the work of knowmore and commends their excellent submission to the Committee's current Inquiry.

Opportunities for applicants to consider legal options and to exercise their own choices

People who engage with Tuart Place seeking reparation for institutional sexual abuse are advised of their options, which are usually limited to the NRS or a civil claim. If there was no sexual abuse, the person may be able to claim directly from a past provider institution, and we assist with this.

It is very important that every effort is made to ensure that survivors are making informed choices about pursuing either redress or civil claims. The large difference in the amounts of money available through the two processes creates ample room for those who accept redress to later regret their decision. It may be tempting for funded RSSs to direct clients straight to redress, without fully exploring possibilities for a civil claim, and/or to portray the latter process as overly unappealing. We have heard anecdotal reports to this effect.

Some survivors are very clear from the outset that they do not want to engage in a civil claims process, and may resist even hearing about what is involved, or accepting legal advice. It is particularly important that this group of survivors is clearly advised of the alternatives, and the implications of accepting redress (ie: that they cannot pursue a civil claim afterwards).

Trauma can make it difficult for some survivors to absorb verbal information, especially during early meetings when there is a lot of information to exchange. As a matter of course, Tuart Place provides new clients with one-page fact sheets and FAQs to take home, so that they (and potentially trusted others) have written information available to absorb at their own pace.

Impact of relevant prior payments

Prior payments can preclude survivors from receiving an NRS payment, particularly in jurisdictions where redress schemes have previously operated. For example, many WA survivors of institutional child sexual abuse received a \$45,000 payment under the *Redress WA* scheme. Once indexation is applied, the amount is greater than \$50,000 – the maximum payment for 'Contact' (non-penetrative) sexual abuse under the NRS.

Adequate preliminary research on prior payments is essential to trauma-informed practice with NRS clients and should be undertaken for all prospective applicants. We understand this is not necessarily standard practice. Tuart Place's RSS staff pay particular attention to this issue, and routinely apply for records of prior payments from the State Government and religious institutions. It is not at all uncommon for survivors to forget how much they received, and it is vital to find out before potentially assisting people to apply to the NRS.

Of the almost 200 NRS applications submitted by Tuart Place, none so far has received a nil financial offer due to prior payments. Only one application prepared by Tuart Place has been found 'ineligible', due to an IDM's assessment that the institution did not 'introduce' the child (a Ward of the State) to the man who raped her, despite this occurring within a State-sanctioned foster care setting.

Minimum payments

Applicants who are not aware of the implications of prior payments will be distressed by receiving a far lower NRS offer than anticipated, especially a nil offer. The Second Year Review reported that: "Given

*the stress and anxiety involved in the redress process for survivors, receiving a nil outcome creates significant despair.*²⁰

The McClellan Royal Commission; the Joint Select Committee with oversight of the NRS during the 45th Parliament; and the Second Year Review of the Scheme all recommended a minimum monetary payment of \$10,000.²¹ We fully support these recommendations.

- 3. The problem of nil offers could most affect survivors who prepare and submit their own applications without input from knowmore or an RSS. Tuart Place asks that current data is made available on (i) the number of finalised applications that have resulted in nil offers; and (ii) the number of NRS payment offers below \$10,000. We support the many previous recommendations for a \$10,000 minimum payment to be introduced.**

Adequacy of advice from private law firms

Private legal advice for survivors has not been of uniform quality, nor have the referral processes, particularly in the latter years of the McClellan Royal Commission and before the NRS commenced.

Survivors who disclosed sexual abuse to the Royal Commission were routinely provided with contact details for private law firms, in anticipation of WA's impending removal of the statute of limitations. At that time, there was no national redress scheme to which they could be referred. An unknown number of survivors languished on the books of law firms, sometimes for years, before their circumstances were examined, and civil claims deemed unviable.

In 2020, one law firm jettisoned clients (mainly First Nations people) *en masse*, referring them for help with NRS claims. As far as we know, none of this group incurred legal fees or disbursements, however they had endured extended periods of inevitable re-traumatisation as they waited and hoped, believing that a civil claim was possible. Other law firms retained their Royal Commission referrals but shifted them from civil claims to NRS applications and charged them for the work. The average amount charged by lawyers in WA to assist with NRS claims appears to be around \$5,000.

The NRS has not been available to a considerable proportion of Tuart Place's existing client group – in particular, male former child migrants from the UK and Malta. Prior payments from previous claims processes such as *Towards Healing*, the *Redress WA* scheme, and a 1997 class action have exceeded the level of payment available under the NRS. For these survivors, the only available option for reparation was to bring a civil claim.

Of the several private law firms that approached Tuart Place when legislative change was imminent in WA, one stood out as exceptional, and is the only law firm to which we refer clients. Key attributes include: a physical office in Perth; genuine 'no-win-no fee' (including disbursements); a social justice approach; high financial settlements; and legal fees set at the lower end of the scale.

Most other firms have not met all these criteria, and some have behaved unscrupulously. A cohort of former child migrants signed costs agreements before they were fully aware of the implications and options. The contracts were legal, and nothing could be done. The cases were brought against the Commonwealth in the ACT, so WA's cap on legal fees did not apply, and this group generally lost half of their financial settlements to legal costs. Adding to their disappointment, the civil settlements achieved were comparatively low.

²⁰ Kruk, R. (2021) *Second Year Review*. (p.115)

²¹ Joint Select Committee (November 2021) *Second Interim Report*. (p.116).

Permanent stays

The steady development over the last year of successful applications by defendant institutions for permanent stays of civil proceedings in child sexual abuse matters is extremely unhelpful and undoubtedly a move away from the intent of the Royal Commission's recommendation on removal of limitation periods. It has led some law firms to take a 'wait and see' approach to this emerging trend, resulting in stalling of civil claims in progress; further stress and anxiety for survivors; and further delays to the already prolonged process.

The very reasons underpinning the legislated removal of limitation periods are now being used to thwart civil claims, as defendant institutions cite the passage of time and deceased offenders as factors in their applications for permanent stays.

Civil courts in all Australian States and Territories have the power to grant permanent stays in child sexual abuse matters. Granting of a stay is supposed to be an 'exceptional remedy'. Feedback from law firms indicates that some religious past provider institutions are now routinely applying for stays as a way of defending civil claims. So far, we are not aware of any permanent stay applications by a State Government, and, given the States' model litigant obligations, we would not expect to see misuse of this mechanism.

- 4. We ask the Committee to investigate the prevalence of permanent stay applications, with a view to potentially recommending stronger legislative protections for survivors in problematic jurisdictions (including WA).**

Protected information

Improper use of information disclosed in the NRS 'Special Assessment' process

The current provisions for protecting applicants' personal information need strengthening to prevent information disclosed in the 'Serious Criminal Conviction Additional Information Form' (SCC) from being used by state-based fines enforcement agencies to pursue survivors for outstanding debts.

NRS applicants who have been sentenced to jail for five or more years for a single offence are required to complete an SCC form, in which they must provide a current residential address. The form is forwarded to the Australian Criminal Intelligence Commission as part of the criminal history check process and 'special assessment' of these applicants. DSS has provided the following advice on this matter:

"... It is possible that, when an applicant signs the *Serious Criminal Conviction Additional Information Form* and consents to an ACIC check, the information provided for the ACIC check may be used by police agencies to update contact information, and for law enforcement purposes".²²

This problem came to light when, 10 months after submitting an NRS application and SCC form, one of our clients received a \$17,500 fine in the mail, issued by the Queensland Government State Penalties Enforcement Registry. The fine was for an offence committed 28 years ago. The applicant is unable to pay it. He states that Queensland police could only have become aware of his WA address from the information he disclosed in his SCC form. He regrets ever engaging with the Scheme and fears that the SCC process could prevent him from receiving a redress payment, leaving him 'worse off than ever'.²³ knowmore Legal Service is currently providing financial counselling to this client, and examining the circumstances in which the fine was issued.

²² DSS. Written communication. (16-10-22)

²³ Verbal communications with NRS applicant. (2022/2023).

The use of SCC information by state-based authorities to pursue applicants for outstanding fines is a misuse of information provided (in good faith) for a specific purpose, and is contrary to the intention of NRS provisions designed to protect payments:

“Legislative protections are in place to ensure that persons who receive a redress payment through the National Redress Scheme are not unduly exposed to additional liabilities as a result of having received a payment. These protections are to ensure that a person who receives a redress payment is not made worse off...”²⁴

“Payments from the National Redress scheme are protected from Commonwealth Government debt recovery processes (such as Centrelink debts, tax debts, Child Support debts and HECS/HELP debts) and State Government debt recovery (such as fines)”.²⁵

While debt recovery entities cannot directly garnishee money from a person’s redress payment, there is nothing to stop them using information disclosed in an SCC form to track down an applicant and re-issue unpaid fines. Given DSS’s abovementioned advice, that: “...*the information provided for the ACIC check may be used by police agencies to update contact information, and for law enforcement purposes*”, it could presumably also be used to enforce warrants, imprison, or deport people.

- 5. The use of applicants’ information to fine or prosecute them is inappropriate and contrary to the intent of the Scheme. It further adds to the re-traumatisation of survivors in this position. We ask the Committee to investigate this matter.**

Overly restrictive protection of information about progress with ‘onboarding’ institutions

Currently, survivors whose NRS applications are on hold because an institution is not yet participating are unable to access any information about the Scheme’s progress in approaching and potentially ‘onboarding’ the named institution. NRS staff have advised us that they are unable to disclose this information, and the only way an applicant can find out if ‘their’ institution has joined the Scheme is to monitor the list of participating institutions periodically published in batches on the NRS website. The following case study illustrates this situation:

Case study: NRS application involving Nollamara Church of Christ

A survivor for whom Tuart Place submitted an NRS application in September 2021 was telephoned directly by the NRS in September 2022 (contrary to her instructions that all contact be via her nominee). The purpose of the call was to notify the applicant that the institution at which her childhood abuse occurred, the Nollamara Church of Christ (Nollamara COC), was not participating in the Scheme, and to enquire whether she would like to put her application on hold. The applicant was advised that if she did not put her application on hold, it could proceed to the assessment phase, and was likely to be deemed ‘ineligible’.

The applicant was told that, although Churches of Christ in Western Australia Inc, (the Association representing affiliated Churches of Christ in WA), had opted into the Scheme, Nollamara COC was claiming to be a separate entity. The NRS would be contacting Nollamara with an invitation to join the Scheme. However, the only way the applicant could find out if Nollamara COC had signed was to check the NRS website periodically to see if it has been added as a participating institution. The applicant was told that if she found the institution on the website, she should contact the NRS to instruct that she would like her application to be progressed.

²⁴ <https://guides.dss.gov.au/national-redress-guide/5/1/4>

²⁵ knowmore Legal Service (2022) *Things to consider if you receive a National Redress Scheme payment*. (July 2022). <https://knowmore.org.au/redress-schemes/redress-scheme/>

There are many things wrong with this situation:

- The applicant's stated preference for contact via her nominee was ignored.
- The applicant was presented with complex information with serious implications and asked to provide an on-the-spot response.
- It is contrary to trauma-informed practice to put the onus on a survivor to pursue information about the institution in which their childhood abuse occurred.
- It is unreasonable to ask an applicant to monitor the NRS website in search of 'their' institution. Apart from the assumption of internet access and computer literacy, the list of institutions can be confusing, as the official title of an entity may be different to the name of the institution.
- It is unreasonable to require an applicant to take the next step of calling the NRS to request that the application be taken off hold and progressed.

The process described above is not trauma sensitive. As Mathews points out: "...the avoidance symptom of PTSD means that the survivor will persistently avoid all stimuli related to their experience"²⁶, which is contrary to the practice of expecting an applicant to (a) monitor the progress of a responsible institution, and (b) notify the NRS if the institution opts in.

Further, the lack of transparency in the process of 'onboarding' institutions mirrors the original power imbalance of institutional child sexual abuse and the prioritisation of the institution's interests and reputation over the interests of child. Survivors perceive this as a situation in which an institution is allowed to harm them 'yet again', and this is re-traumatising. If the Scheme's progress in approaching and onboarding an institution is 'protected information', then this provision is too restrictive, and should be amended.

Tuart Place has previously recommended that *the NRS should take responsibility for advising applicants when a relevant entity opts into the Scheme...*²⁷. The factors informing this recommendation continue to create difficulties for applicants whose abuse occurred in institutions not yet participating in the Scheme. We re-iterate our earlier recommendation, and anticipate that five years into the Scheme, with less institutions currently opting in, it would be easier to accommodate. Once any potential restrictions are removed, we suggest the proposed change could easily be made to ensure a more respectful, trauma-informed response to applicants faced with this situation without compromising an institution's confidentiality. We ask the Committee to examine this matter.

Nollamara COC: A non-participating institution, named in the Royal Commission

Nollamara COC has never been listed as a 'Non-participating Institution' on the NRS website, despite being named in abuse complaints made to the McClellan Royal Commission. Nollamara was thought to be covered by Churches of Christ WA Inc (COCWA) and appears as part of the 'COCWA Family' on their website: <https://www.cocwa.com.au/churches/nollamara-church-christ/>. After COCWA advised Tuart Place on 23 May 2019 that: "COCWA as an organisation is not opting into the NRS", COCWA subsequently joined the Scheme among the last cohort of institutions to avoid losing charity tax concessions by signing up just prior to the 30 June 2020 deadline.

At the time of writing, there is still no reference to Nollamara COC on the NRS website. The applicant mentioned in our case study still has no idea whether the NRS has sought contact with the institution (or not), or whether the institution has indicated an intention to participate (or not). She is 73 years old, and her application is still on hold.

²⁶ Mathews, B. (2019) *New international frontiers in child sexual abuse: Theory, problems and progress*. Springer, Switzerland.

²⁷ Tuart Place (August 2018) *Submission to Joint Select Committee*. Recommendation 5. Available at: <https://www.aph.gov.au/DocumentStore.ashx?id=935868a5-54f3-4871-9d40-dbe40199b063&subId=658595> (p.5)

- 6. We ask the Committee to: (i) investigate the circumstances by which an institution named in the Royal Commission can seemingly ‘slip through the cracks’ of the NRS; (ii) ascertain whether information about progress in onboarding institutions is ‘protected information’ and, if so, recommend changes to the current provisions; and (iii) recommended greater transparency in this area, and that the NRS is tasked with notifying applicants when a relevant institution opts into the Scheme.**

Other matters: The impact of NRS payments on aged care fees

Currently, survivors living in residential aged care facilities can face a (sometimes substantial) increase in the level of fees they pay as the result of receiving an NRS payment. This is an anomaly in the treatment of redress payments, and, as explained in the National Redress Guide:

“Legislative protections are in place to ensure that persons who receive a redress payment through the National Redress Scheme are not unduly exposed to additional liabilities as a result of having received a payment. These protections are to ensure that a person who receives a redress payment is not made worse off as a result of their sudden change in financial circumstances. Additionally, for the purposes of the *Social Security Act 1991* and the *Veterans’ Entitlements Act 1986* and the income tax assessment test, a redress payment is not considered income”.²⁸

However, under the provisions of the *Aged Care Act 1997* and the *Aged Care (Transitional Provisions) Act 1997*, NRS payments are considered both as income and as an asset. Considerable work towards addressing this anomaly has been conducted by knowmore Legal Service and the *National Aged and Community Care Roundtable for Forgotten Australians*.

In April 2022, Health Department representatives resolved to fix this anomaly. The catalyst for action was a powerful four-minute audio-visual presentation,²⁹ screened at the *National Enabling Better Aged and Community Care Forum* (Brisbane, 4 April 2022). The presentation features Cevrina Reed, the Chairperson of Forgotten Australians Coming Together Inc, who has lived experience of institutional child abuse. Speaking from a survivor’s perspective, Cevrina talked of the potentially devastating impact on her fellow NRS applicants. Community outrage at the idea of NRS payments being ‘clawed back’ in residential aged care fees may also result in wider damage to the reputation of the Scheme.

Health Department officials at the Brisbane Forum were so affected by the presentation, they immediately pledged to act. Since then, solid progress has been made in collaborative discussions with the Health Department, and the process of drafting the necessary legislative amendments is now underway.

We understand this matter may be raised with the Committee by the *National Aged and Community Care Roundtable for Forgotten Australians* and/or knowmore Legal Service. Tuart Place joins these organisations in asking for the Committee’s oversight on this matter.

- 7. We ask the Committee to monitor the progress of amendments to the *Aged Care Act 1997* and, if necessary, to prompt further progress towards implementing the amendments to prevent NRS payments causing an increase in residential aged care fees.**

²⁸ Australian Government (2023) *Impact & treatment of redress payments on other entitlements*. National Redress Guide, Version 1.14 – Released 3 January 2023. <https://guides.dss.gov.au/national-redress-guide/5/1/4>

²⁹ Available at <https://www.youtube.com/channel/UCjBl1wjV1DWFpbo3X0Zz-wA>

Other matters: Engagement with survivors

The need for greater engagement and consultation with survivors has been a constant theme in submissions to NRS Inquiries, and is reflected in recommendations by previous Committees and the Second Year Review. Recommendation 1 in the Committee's First Interim Report in April 2020 was that "*the National Redress Scheme make a more concerted effort to engage with survivors and survivor groups*"³⁰, with the NRS Survivor Roundtable and the Second Year Review specified as key opportunities to formally engage with survivors.

Survivors and survivor groups were extensively consulted for the Second Year Review, and its Report pays considerable attention to increasing survivor input to improve the scheme. The Review recommended establishing "*a robust feedback loop to ensure the survivor voice is embedded throughout the Scheme*"³¹, and that:

"...there is significant merit in the Scheme developing and implementing feedback loops for identified and emerging problems. This will improve Scheme design and operation and ensure that the survivor voice is 'hardwired' into Scheme governance."³²

In contrast to the Review's evident success in engaging with survivors, the level of engagement achieved via the NRS Survivor Roundtable is less clear.

Survivor voice in NRS Survivor Roundtables

The Second Year Review reported in March 2021 that: "*the survivor roundtable has held three meetings, with up to 30 survivors invited to participate*", although the number of survivors who took part was not recorded.³³

No survivors are listed among the 36 attendees at the NRS Survivor Roundtable held in Darwin on 15 June 2021. Only six of the 47 attendees at the most recent roundtable in December 2022 are listed as survivors, the remainder being representatives of RSSs, funded advocacy organisations, departmental and ministerial staff.³⁴ While there is great value in bringing agencies together to improve the NRS, to call these gatherings 'survivor roundtables' is a misnomer, and may cause misperceptions about the degree to which survivors voices are being heard.

This situation is deeply frustrating for the population of survivors, peer leaders and 'lived experience' Board members associated with Tuart Place, none of whom has ever been invited to contribute in any way to the NRS Survivor Roundtable initiative. Survivors supported by Tuart Place have been sought out by the convenors of a diverse array of other public forums, conferences, university lectures, and community initiatives held in WA, interstate, and even internationally. This wealth of experience in conveying the survivor perspective is apparent just from the biographies of 'lived experience' Board members on the Tuart Place website alone.

Why have these survivor voices not been heard at any NRS Survivor Roundtables?

Recent changes to the Intergovernmental Agreement (IGA) on the NRS have elevated the Roundtable's capacity to provide feedback on the operation of the Scheme and Service Charter. This change was

³⁰ Joint Select Committee (April 2020) *First Interim Report* (p.7)

³¹ Kruk, R. (2021) *Final Report - Second year review of the National Redress Scheme*. (p.60).

³² Kruk, R. (2021) *Final Report - Second year review of the National Redress Scheme*. (p.53).

³³ Kruk, R. (2021) *Final Report - Second year review of the National Redress Scheme*. (p.38).

³⁴ DSS. (2023). *Overview and Outcomes - Draft. NRS Survivor Roundtable, Sydney 6 December 2022*. Unpublished document circulated by DSS NRS External Engagement Branch, by email, 1-2-2023. (p.3).

recommended by the Second Year Review, to increase input from the NRS Survivor Roundtable.³⁵ In making this recommendation, the Reviewer may have assumed it would elevate the survivor voice.

The IGA's updated Terms of Reference state that Roundtable participants "*will be selected by the Minister from across Australia and from specific survivor groups*".³⁶ This raises questions about the basis on which '*specific survivor groups*' are selected, and whether some survivor voices may be privileged over others. Given the NRS Roundtable's total exclusion to date of any West Australian survivor associated with Tuart Place or its Board, these questions have some force.

- 8. We request that the Committee examines two areas: (i) the level of survivor participation in the NRS Survivor Roundtable initiative; and (ii) the basis on which 'specific survivor groups' will be identified and selected by the Minister to participate in NRS Survivor Roundtables.**

Redress support services: Accessibility and funding

The strategies to address barriers to accessibility discussed earlier in this submission included: decreasing re-traumatisation of survivors through the offer of counselling (ideally in non-bureaucratic, informal settings); cultural awareness and sensitivity in working with First Nations survivors; and further efforts to decrease the length of time NRS applicants are left 'waiting to be believed'. We noted that the availability of 'no wrong door' help with financial counselling, housing and welfare support is important as applicants wait for their NRS outcome. The introduction of a \$10,000 Advance Payment has also helped significantly, being perceived as a gesture of good will and an interim form of acknowledgement, as well as providing concrete, practical assistance to survivors.

The next section of the submission refers to an accessibility issue specifically affecting Western Australia; and increasing waiting lists as a barrier to accessibility.

Accessibility for NRS applicants in Western Australia

Currently, NRS Helpline operating hours are "8am-5pm local time Monday to Friday" but in fact WA's access to NRS Helpline staff ends at 2.00pm WST, after which calls divert to a voicemail facility, until 5pm WST; when the message changes to "*please call back during operating hours*". Tuart Place clients and staff alike have found there is questionable value in leaving voicemail requesting a return call. Obviously, this problem is aggravated when the applicant doesn't own a mobile phone, or is homeless. It is not uncommon for our First Nations NRS clients in particular to be homeless, or at risk of homelessness, and to lack consistent access to a mobile phone. Making contact is often (reciprocally) difficult.

Tuart Place has raised this issue with the NRS on many occasions, asking that Helpline operating hours be extended so that WA callers can reach support staff after 2.00pm WST. As an alternative, they have asked for 'compensatory' access before 8am WST, when we know that Helpline staff are onsite, but WA callers receive a message to call back during operating hours.

A further barrier to progressing NRS applications is the 'three applicants per phone call' limit imposed on RSSs. Currently, RSS staff are only able to discuss a maximum of three NRS applications per call. It is highly inefficient for staff, often managing substantial NRS caseloads and needing to discuss more than three people's applications, to have to make second or third attempts to reconnect with the Helpline. This limitation is particularly frustrating for support services in WA, which are already 'short changed' by three hours a day.

³⁵ Kruk, R. (2021) *Final Report - Second year review of the National Redress Scheme*. (p.21).

³⁶ DSS. (2022) *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse*. https://www.dss.gov.au/sites/default/files/documents/02_2023/intergovernmental-agreement-national-redress-scheme-institutional-child-sexual-abuse-updated-2023.docx (updated 1-2-23, accessed 25-2-23). (p23).

9. We ask the Committee to investigate whether it is possible to reduce the current barriers to Helpline accessibility that particularly affect callers from Western Australia.

Long waiting lists

Lengthy waiting lists are a barrier to accessibility, and survivors often make their initial approach for support when they are psychologically ready to disclose their abuse.

A 2022 analysis of the NRS found that the length of time created uncertainties for survivors considering applying to the Scheme, and that: “[s]ome avoided seeking redress due to likely delays and risks of re-traumatisation”.³⁷

A number of RSSs report having lengthy waiting lists of prospective applicants. At the time of writing, Tuart Place has a waiting list of more than 50 survivors, and our small team of RSS staff is currently working on applications for a further 41 people, 33 of whom are First Nations clients.

Survivors waiting in a queue for the opportunity to talk about their child sexual abuse are very likely to feel re-traumatised and triggered. The principles of trauma informed practice are inconsistent with survivors having to wait a long time before actually engaging in a painful process, which will then involve substantially more waiting.

An obvious solution to this problem is greater resourcing of agencies that have consistently high demand and long waiting lists. The distress of survivors waiting to engage in redress can be ameliorated somewhat if survivors have access to interim counselling and other services, ideally from the same agency.

Survivors on waiting lists also benefit from regular reassurance that they have not been ‘forgotten’. People on Tuart Place’s NRS waiting list receive a phone call from a clinical staff member at least every fortnight, unless otherwise indicated. The recent influx of new NRS enquiries is making it increasingly difficult to meet our goal of fortnightly check-ins.

An emerging area of need: Online NRS applications

Applicant numbers increased significantly after the removal of the Statutory Declaration requirement in March 2022, with a large number of survivors submitting NRS applications through *myGov*. Removal of the Statutory Declaration, as recommended in the previous Committee’s first and second Interim Reports, and by the Second Year Review, was an important and positive development change to the Scheme for improving the survivor experience.

Unwarranted feelings of shame and self-blame among survivors of child sexual abuse can be a total barrier for some, who are too embarrassed to disclose their abuse to a redress support worker. Others believe that engaging with a local support agency could compromise their privacy. It is important that survivors have the option of submitting their own applications online, without the need for a face-to-face encounter.

However, survivors preparing and submitting their own applications can encounter difficulties in articulating details of the abuse and its impacts. The NRS application form is complicated and not user friendly. We have been advised that among the influx of online NRS applications a large number, reportedly around 900 applications, contained insufficient information to be assessed. This group of

³⁷ Cortis, N. & Katz, I. (2022). *Waiting for redress: Child sexual abuse survivors' experiences of Australia's National Redress Scheme*. Child Abuse & Neglect, Volume 129. (April 2022). Available at: <https://www.sciencedirect.com/science/article/pii/S0145213422001776>

applicants has received a letter from the NRS saying that more information is needed to progress their applications, and identifying RSSs where they can get help if needed.

This development has increased the already growing demand for NRS support from agencies including Tuart Place, resulting in even longer waiting lists.

Funding for Redress Support Services

Applicant numbers have increased considerably over the last 12 months, and cumulative figures to the end of June 2022 show that the proportion of applications submitted via RSSs or knowmore has grown to approximately 34 per cent.³⁸

Adequacy of support service funding is not a new issue and has been raised many times with previous Committees. Responding to the Joint Select Committee's 2020 recommendation that the Second Year Review "examine the funding of redress support services as a matter of high priority", the Reviewer found that: "[t]here are major differences between the levels and types of support offered, the value of the different support services, and the costs for the Scheme". Acknowledging the great variation in the types of redress support available across Australia, the Reviewer elected not to comment on the appropriateness of individual support service funding or expenditure.³⁹

Ms Kruk noted that the Scheme had conducted an internal performance review in 2019 to assess the effectiveness of redress support services, but that at the same time an internal audit report had identified a need for performance information in five specific areas. Unable to ascertain whether this information had been collected or analysed, Ms Kruk was "supportive of this direction".⁴⁰

"Similarly, the Review found there should be regular and publicly reported evaluation of support services. The Scheme should co-develop, with support services and survivors, trauma informed performance and success measures as a condition of funding in order to provide greater choice to survivors and to assist Scheme workforce planning. These evaluations should be reported publicly."⁴¹

Funding for NRS support services needs to be sufficient to enable timely, comprehensive, trauma-informed professional assistance to applicants. Evaluation of funding and performance of support services is necessary to ensure value for money and high-quality service provision.

10. Tuart Place supports greater transparency in evaluations designed to improve the Scheme for survivors; and supports the former Joint Select Committee's recommendation that "formal evaluation of redress support services be established to ensure that the needs of survivors and their families are being met through professional and timely engagement."⁴²

Model of funding applied to Tuart Place's Redress Support Service

Since 2018, Tuart Place has provided NRS services to 514 survivors in 4,845 hours of service delivery that has included: providing information about the NRS; supported assistance to seek legal advice on options via knowmore and private law firms; obtaining relevant records of institutional care and relevant prior payments; assisting survivors to engage with the Scheme; preparing applications; acting as Assistance Nominee; and providing multi-faceted trauma informed support to applicants before, during and after

³⁸ Commonwealth of Australia (2022) *Department of Social Services Annual Report 2021-22*. (p.139).

<https://www.dss.gov.au> accessed 22-2-23.

³⁹ Kruk, R. (2021) *Second Year Review*. (p.212).

⁴⁰ Kruk, R. (2021) *Second Year Review*. (p.213).

⁴¹ Kruk, R. (2021) *Second Year Review*. (p.217).

⁴² Joint Select Committee (November 2021) *Second Interim Report*. (p.39).

the process. Tuart Place has submitted nearly 200 NRS applications, all of which have been comprehensively prepared and accompanied by relevant documents, seeking to achieve the best possible outcomes for applicants.

Despite our extensive work in supporting large populations of survivors over many years, the Department of Social Services (DSS) has consistently refused to fund Tuart Place. Over the past 11 years, DSS has rejected all four of our grant applications for federal programs supporting survivors of institutional child abuse. The first occurrence was in 2012 with 'Find & Connect' – the initial federal grant involving Care Leavers. Tuart Place encountered the same barrier with the Royal Commission support service grants (2013); Redress Support Services grants (2018); and the second round of Redress Support Services grants in 2021.

DSS's feedback on each of Tuart Place's four unsuccessful applications has acknowledged the extensive professional experience and knowledge of our staff; Tuart Place's proven track record of delivering high quality, trauma-informed services to a large population of survivors; and our survivor-focused leadership model.

In each instance, the stated rationale for refusing to fund Tuart Place has been the same: an allegation that Tuart Place lacks independence, or has a perceived lack of independence, from the Congregation of Christian Brothers. Tuart Place has repeatedly demonstrated in a succession of appeals that the sole purpose of this agency has always been to provide independent, confidential, specialist support to survivors of institutional child abuse. The Terms of Reference for Tuart Place and forerunner service CBERS clearly established the functional independence of these agencies.

The totally baseless claim that Tuart Place lacks independence, or perceived independence, from the Christian Brothers has been particularly galling and insulting to our peer leaders, mentors, and Board members who survived abuse in Christian Brothers' orphanages in WA (including three currently serving members of our Board).

DSS has never provided any evidence to support these extremely damaging false allegations. No person has ever contacted Tuart Place to raise this issue privately, nor has it been raised publicly. In contrast to DSS's total lack of evidence, literally hundreds of Tuart Place clients have been willing to stand up and voice their support and belief in the independence of this service. Many of our participants and survivor advocates have written letters to DSS (and the former FaHCSIA), all of which have been ignored.

Finally, in 2020, after a decade of supporting survivors to engage in federal initiatives without any federal funding or support, the scales were tipped by powerful external advocacy on our behalf. The outcome was that DSS agreed to contribute a small amount of money towards the operation of Tuart Place's redress support service, via a third party. knowmore Legal Service was approached to act in this role, and, in what was intended to be a temporary arrangement, a service contract was executed between knowmore and Tuart Place.

We appreciate knowmore's willingness to facilitate the arrangement, and knowmore has been nothing but supportive of Tuart Place and its work. The contract with knowmore was proposed by DSS as an interim funding solution until the next round of RSS grants in 2021, at which time Tuart Place could apply for a grant to deliver services in 2022-24. Wary of engaging in a further pointless exercise, prior to proceeding we raised our concerns with DSS about yet again devoting substantial resources into preparing such a funding application, for it to be again declined. The response received from DSS was that Tuart Place was 'strongly encouraged' to apply.

On 10th March 2022, DSS notified us by phone that, despite the unquestionably high quality of Tuart Place's NRS support service and our funding application, it had been once again unsuccessful due to a

perceived lack of independence from the Christian Brothers. In the same phone call, DSS offered Tuart Place an opportunity to continue delivering NRS support for the next two years for much less than the already small amount of funding provided in the previous two years. It was presented to us as a ‘take it or get nothing’ offer. Fortunately, we once again had the benefit of strong external advocacy, which was successful in at least reinstating the previous level of funding.

Soon after the abovementioned phone call from DSS, we received an ‘Unsuccessful Notification’ letter, stating that Tuart Place had been: “...determined to be ineligible to apply due to not sufficiently outlining strategies to manage actual or potential conflicts of interest.”⁴³ This assertion is simply not true. The ‘Independence Assurance Management Strategy’ document submitted with Tuart Place’s 2021 funding application was 12 pages long and outlined in considerable detail the strategies in place to ‘manage actual or potential conflicts of interest’ (of which there have been none to date).

Questions regarding the funding model

Tuart Place seeks a response to the following questions:

1. Where is the evidence for DSS’s allegations? It is insufficient and a denial of procedural fairness to rely on an unverified allegation from an anonymous source, and to refuse to provide any particulars, on the basis that it is ‘confidential information’, especially given the grave consequences for Tuart Place and the survivors it supports, and in the face of overwhelming evidence to the contrary.
2. If DSS has a genuine belief that Tuart Place is compromised by the Christian Brothers, what is the rationale for funding Tuart Place via an alternative pathway?
3. There is a potential conflict of interest for DSS in deeming Tuart Place’s RSS grant application unsuccessful, at the same time offering to extend an existing service agreement for a much smaller amount of money. What was the rationale for offering less funding (when operational costs had increased, not decreased); and what probity framework was applied to ensure fairness in this process?

- 11. We ask the Joint Standing Committee to seek a response to Tuart Place’s questions regarding funding of Tuart Place’s RSS. We ask the Committee to consider the issues we have raised and assess them on their merits. In raising these matters, Tuart Place has exposed itself to the very real risk receiving no RSS funding at all once its current service agreement expires on 30 June 2023. We ask that the Committee monitors the Department’s actions and how Tuart Place is treated in this regard.**

An unavoidable emphasis on funding

It is disappointing to conclude this submission with an emphasis on funding, however this is the reality for Tuart Place. Our current RSS service agreement – presented as a temporary solution in 2020 – is a meagre amount covering only a fraction of our NRS work. The cost of meeting the demand for NRS services far outstrips the small amount contributed by the service agreement and is eating into resources intended for other purposes and programs.

We are aware that insufficient funding is a common cry from support services – most often with genuine cause – but the circumstances of Tuart Place’s funding are anomalous. The minimal funding Tuart Place receives for its RSS is a fraction of the amount delivered to other equivalent RSSs via DSS grants, which

⁴³ Community Grants Hub. *Redress Support Services – Open Grant Round - Unsuccessful Notification – FACT Inc – Tuart Place – 9 March 2022*. PDF received via email, 16-03-22.

can be up to ten times greater than the funding given to Tuart Place. In order to convey Tuart Place's unusual situation, a brief background summary is provided below.

Background

Between 2008 and 2011, our agency received grant funding from the WA State Government to provide trauma-informed support for survivors engaging with the *Redress WA* scheme. From 2012 until the present day, the State has continued to fund Tuart Place to support Care Leavers. Unlike the Commonwealth, the State recognised the value in the extensive professional expertise developed by our agency through its origins as an independent counselling and support service for survivors of abuse in institutions formerly operated by the Christian Brothers, and the Sisters of Mercy and Nazareth in WA.

A fore-runner agency, CBERS, was established in 1998 to provide confidential, independent support and advocacy to ex-residents of WA's large catholic orphanages, most of whom were former child migrants from the UK and Malta. This service received funding from the three congregations under terms of reference that ensured total functional independence and strict confidentiality. By the time it closed in 2012, more than 500 former child migrants had received support from CBERS. We are not aware of any public allegation or private complaint that any service provided by CBERS (or Tuart Place) was not delivered appropriately, and in the interests of survivors. The support delivered by CBERS was described as an example of 'best practice' in the 2009 *Forgotten Australians* Senate Inquiry.⁴⁴

In fact, so highly was the service regarded, that a group of survivors approached us in 2009 to collaborate in co-designing a drop in centre for Care Leavers with peer leadership and professional services available on-site. The outcome was the joining of *CBERS Redress Service* and *Forgotten Australians Coming Together (FACT) Inc*, launched in 2012 as *Tuart Place*.

Over the next decade, Tuart Place continued to receive State funding as well as unconditional annual donations from the three catholic congregations. The propriety of all our financial interactions is scrutinised by various entities, including our Board of Governance. From the outset, Care Leavers with lived experience of institutional child abuse have comprised approximately half the membership of our Board. Currently, six Board members have lived experience, including three men who survived abuse in Christian Brothers orphanages. If there had been any 'conflict of interest' compromising Tuart Place's integrity and independence of services, these board members would have been the first to raise it.

On the contrary, the peer leaders and other survivors associated with Tuart Place over the last 11 years have consistently endorsed our funding model as a mechanism for justice. In its *Report on Redress and Civil Litigation*, the Royal Commission observed that it was especially important for some survivors that counselling, support, and redress "*be funded by the institutions responsible for the abuse*".⁴⁵ Unfortunately, the endorsement of our survivor leadership and clients; the Royal Commission's recommendations; and the demonstrated, proven functional independence of our service, have been repeatedly dismissed by DSS, which has continued to assess Tuart Place's funding applications on a demonstrably false and flawed basis.

⁴⁴ Senate Community Affairs References Committee. (2009) *Lost Innocents and Forgotten Australians revisited : Report on the progress with the implementation of the recommendations of the Lost Innocents and Forgotten Australians reports*. (25-6-09)

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2008-10/recs_lost_innocents_forgotten_aust_rpts/report/index (p.84).

⁴⁵ Commonwealth of Australia (2015) *Report on Redress and Civil Litigation*, Royal Commission into Institutional Responses to Child Sexual Abuse. (p.206).

It has often been said that the Founder of Tuart Place, the late Laurie Humphreys, a former child migrant who survived abuse in the notorious Bindoon Orphanage, would ‘turn in his grave’ at DSS’s suggestion of any lack of independence from the Christian Brothers.

Impact of the NRS and civil claims

Commencement of the National Redress Scheme and legislative changes enabling civil claims for historical child sexual abuse have, with bitter irony, worked to erode Tuart Place’s funding. Justice McClellan saw the ‘writing on the wall’ when he warned that “... *nothing that we recommend in relation to redress and civil litigation is intended to reduce resources for, or divert effort from, existing support services*”.⁴⁶

From 2019 onwards, it became increasingly difficult for Tuart Place to secure annual donations from the three catholic congregations. All three cited the growing financial pressures of redress and payment of damages in civil claims as the reason for them steadily decreasing the amount they donated, until in 2021/2022 they stopped altogether.

Tuart Place continues to receive WA State Government grants, but the amount is not large, and covers just over a third of our annual operating budget. An even smaller amount of money is provided for our NRS support service via the current third-party service agreement.

Tuart Place finds itself in a difficult and somewhat ironic situation. The meagre amount of funding via the current service agreement is totally insufficient to cover even part of the NRS services Tuart Place delivers. The recent influx of new applicants with complex histories and multiple welfare needs has escalated and, as a matter of urgency, we must engage additional staff resources to meet the demand for NRS support – which does not finish when applications are submitted.

Tuart Place urgently needs appropriate federal funding to operate its RSS. There is also a need for deeper analysis of the trajectory of funding decisions in DSS grants, beginning with *Find & Connect* in 2012.

A domino effect

The awarding of *Find & Connect* grants in 2012 was controversial, and questions were raised in Senate Estimates.⁴⁷ WA was the only state to have a second funding round. Tuart Place was not treated fairly, and questions about decision-making on Tuart Place’s grant application remain unanswered. Further details can be provided to the Committee on request.

The original injustice in the awarding of Find & Connect grants in 2012 has had a domino effect, as Find & Connect services automatically rolled into Royal Commission support services, and Royal Commission support services automatically rolled into National Redress support services. Tuart Place was effectively ‘locked out’.

Currently, 11 organisations across Australia are funded by DSS to deliver Find & Connect services. In 2021, the Australian Government committed an additional \$23.4 million over five years from 1 July 2021 to 30 June 2026 to ensure the continuation of Find & Connect.⁴⁸

⁴⁶ Commonwealth of Australia (2015) *Report on Redress and Civil Litigation*. (p.131).

⁴⁷ Commonwealth of Australia (2012) Senate Community Affairs Legislation Committee, *Estimates: Official Hansard* (Part Publish), Thursday 18 October 2012 (pp.19-27).

⁴⁸ DSS website <https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/find-and-connect-support-services-and-representative-organisations#03> (Updated 8-10-21, accessed 25-2-23).

Tuart Place did not have an opportunity to apply in the 2021 grant round because the selection process was ‘Closed, non-Competitive’.

While the lack of funding is debilitating, the absence of a Find & Connect identity is a significant problem for Tuart Place and the survivors it supports. Consultations and new initiatives affecting Care Leavers automatically link to DSS-funded Find & Connect services in each State. This includes important projects in areas such as specialist aged care support and access to records for Forgotten Australians/Care Leavers.

In a sector that reportedly values survivor input, the exclusion of one of the few survivor-led services, with a wealth of expertise and a willingness to share it, is outrageous. Tuart Place should be part of the Find & Connect network.

Tuart Place’s long struggle for appropriate federal funding has deprived our agency of valuable resources – apparent yet again in this section of our submission. Time and energy have been diverted from our core purpose of supporting survivors of institutional abuse, and wasted on a debilitating battle with the Department responsible for assisting the agencies that carry out its work.

- 12. We ask for the Committee’s help in examining the circumstances and trajectory of federal funding denied to Tuart Place, and to rectify an 11-year injustice that continues to this day.**

Summary of requests to the Committee

- 1. We ask the Committee to examine options for offering counselling and psychological care to applicants who do not go through an RSS; to enquire whether NRS applicants submitting applications via RSSs are routinely offered interim counselling; and to what degree it is being provided.**
- 2. Tuart Place supports the former Committee’s observations of merit “...in DSS considering a dedicated contact point for support services within the NRS. Significant efficiencies and greater clarity for survivors may be achieved through direct communication channels”. We ask the current Committee to consider reiterating this observation as a recommendation.**
- 3. The problem of nil offers could most affect survivors who prepare and submit their own applications without input from knowmore or an RSS. Tuart Place asks that current data is made available on (i) the number of finalised applications that have resulted in nil offers; and (ii) the number of NRS payment offers below \$10,000. We support the many previous recommendations for a \$10,000 minimum payment to be introduced.**
- 4. We ask the Committee to investigate the prevalence of permanent stay applications, with a view to potentially recommending stronger legislative protections for survivors in problematic jurisdictions.**

Grant Connect website <https://www.grants.gov.au/Search/KeywordSearch?keyword=find+and+connect> (Updated 10-2-23, accessed 25-2-23).

5. The use of applicants' information to fine or prosecute them is inappropriate and contrary to the intent of the Scheme. It further adds to the re-traumatisation of survivors in this position. We ask the Committee to investigate this matter.
6. We ask the Committee to: (i) investigate the circumstances by which an institution named in the Royal Commission can seemingly 'slip through the cracks' of the NRS; (ii) ascertain whether information about progress in onboarding institutions is 'protected information' and, if so, recommend changes to the current provisions; and (iii) recommended greater transparency in this area, and that the NRS is tasked with notifying applicants when a relevant institution opts into the Scheme.
7. We ask the Committee to monitor the progress of amendments to the *Aged Care Act 1997* and, if necessary, to prompt further progress towards implementing the amendments to prevent NRS payments causing an increase in residential aged care fees.
8. We request that the Committee examines two areas: (i) the level of survivor participation in the NRS Survivor Roundtable initiative; and (ii) the basis on which 'specific survivor groups' will be identified and selected by the Minister to participate in NRS Survivor Roundtables.
9. We ask the Committee to investigate whether it is possible to reduce the current barriers to Helpline accessibility that particularly affect callers from Western Australia.
10. Tuart Place supports greater transparency in evaluations designed to improve the Scheme for survivors; and supports the former Joint Select Committee's recommendation that "*formal evaluation of redress support services be established to ensure that the needs of survivors and their families are being met through professional and timely engagement.*"
11. We ask the Joint Standing Committee to seek a response to Tuart Place's questions regarding funding of Tuart Place's RSS. We ask the Committee to consider the issues we have raised and assess them on their merits. In raising these matters, Tuart Place has exposed itself to the very real risk receiving no RSS funding at all once its current service agreement expires on 30 June 2023. We ask that the Committee monitors the Department's actions and how Tuart Place is treated in this regard.
12. We ask for the Committee's help in examining the circumstances and trajectory of federal funding denied to Tuart Place, and to rectify an 11-year injustice that continues to this day.