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

April 2019

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8.17 The committee recommends that any amendment to the scheme proceed on the principle of 'do no further harm' to the survivor, be subject to proper consultation with key survivor groups, and appropriately incorporate feedback from those consultations.

Recommendation 2

8.31 The committee recommends that Commonwealth, state, and territory governments place and maintain pressure on all relevant institutions to join the redress scheme as soon as practicable.

Recommendation 3

8.32 Noting that such a mechanism should only be applied in the context of the National Redress Scheme, the committee recommends that the government consider mechanisms and their efficacy, including those available under the *Charities Act 2013*, to penalise all relevant institutions that fail to join the scheme, including the suspension of all tax concessions for, and for the suspension of charitable status of, any institution that:

- **could reasonably be expected to participate in the scheme, including because the institution was named in the Royal Commission into Institutional Responses to Child Sexual Abuse, or an application for redress names the institution;**
- **has had reasonable opportunity to join the redress scheme; and**
- **has not been declared as a participating institution in the National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018.**

Recommendation 4

8.42 The committee recommends that Commonwealth, state and territory governments expand the circumstances in which the funder of last resort provision applies so that the relevant participating jurisdiction acts as the funder of last resort where:

- **the institution responsible for the abuse is now a defunct institution; and**
- **the defunct institution would not have fallen under the operations of an existing institution.**

Recommendation 5

8.44 The committee recommends that, in regards to the National Redress Scheme, that Commonwealth, state and territory governments revisit the practice of indexing prior payments.

Recommendation 6

8.50 The committee recommends that the Parliament consider referring an inquiry to a parliamentary committee into the adequacy of state and territory responses for survivors of institutional child non-sexual abuse, including consideration of the redress models that could be available to these survivors.

Recommendation 7

8.56 The committee recommends that Commonwealth, state and territory governments give consideration to allowing all non-citizens and non-permanent residents access to redress provided that they meet all other eligibility criteria. Particular regard should be given to allowing the following groups to be eligible for redress:

- **former child migrants who are non-citizens and non-permanent residents;**
- **non-citizens and non-permanent residents currently living in Australia; and**
- **former Australian citizens and permanent residents.**

Recommendation 8

8.65 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 to the survivor would bring the National Redress Scheme into disrepute or adversely affect public confidence in the scheme; and**
- **the 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.**

Recommendation 9

8.83 The committee recommends that Commonwealth, state and territory governments work together to develop and implement a new Assessment Framework which more closely reflects the assessment matrix recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse and which acknowledges that the type or severity of abuse does not determine the impact of sexual abuse for the individual.

Recommendation 10

8.84 If a new Assessment Framework is implemented to replace the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018, the committee makes the following recommendations:

- **That applicants who were assessed using the current framework are re-assessed using the new framework.**
- **When re-determining the redress payment under the new framework, offers of redress must not be lower than the original offer.**

Recommendation 11

8.85 The committee recommends that the government clearly communicates to the public, to the maximum extent allowed under current provisions, how applications for redress are considered and the grounds on which determinations are made.

Recommendation 12

8.86 If the current National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 is maintained, then the committee recommends that any acknowledgment of 'extreme circumstances' in the Assessment Framework be applicable to all applicants, not only those who experienced penetrative abuse.

Recommendation 13

8.87 If the current National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 is maintained, then the committee recommends that the government publicly clarify key terms in the Assessment Framework.

Recommendation 14

8.94 The committee recommends that the government clearly and openly explain how the maximum payments came to be set at $150 000 rather than $200 000, and the rationale for this decision.

Recommendation 15

8.95 In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments agree to increase the maximum redress payment from $150 000 to $200 000.

Recommendation 16

8.100 In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments implement a minimum payment of $10 000 for the monetary component of redress, noting that in practice some offers may be lower than $10 000 after relevant prior payments to the survivor by the responsible institution are considered, or after calculating a non-participating institution's share of the costs.

Recommendation 17

8.105 In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments agree to and implement amendments that would ensure that each survivor receives an adequate amount of counselling and psychological services over the course of their life, noting that the amounts currently provided for, pursuant to section 6 of the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018, are wholly inadequate.

Recommendation 18

8.115 The committee recommends that the Commonwealth government clarify, in the case of declared providers of counselling and psychological care, what services are provided to eligible survivors of the redress scheme that are distinct from or in addition to services already available to Australian citizens.

Recommendation 19

8.122 In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments consider mechanisms to ensure that survivors have life-long access to counselling and psychological care that is available on an episodic basis, is flexible and is trauma-informed.

Recommendation 20

8.127 The committee recommends that Commonwealth, state and territory governments agree to amend an institution's reporting obligations under section 17 of the National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018 to require institutions to provide to the Operator the following information:

- **the number of complaints made to the institution in relation to direct personal responses;**
- **the nature of these complaints; and**
- **how these complaints were resolved.**

Recommendation 21

8.133 The committee recommends that the government ensure that redress support services are appropriately funded so that they are available to all survivors, regardless of the survivor's location, cultural or other barriers.

Recommendation 22

8.134 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, the committee recommends that Commonwealth, state and territory governments explore mechanisms to ensure

that survivors have access to free and appropriate financial counselling services, when required.

Recommendation 23

8.147 The committee recommends that the government ensures a clear process to allow survivors to indicate on the redress application form whether their application should be considered a priority.

Recommendation 24

8.148 The committee recommends that the government ensures that people are regularly informed of the progress of their application.

Recommendation 25

8.149 The committee recommends that the government publish, on the National Redress Scheme website, the average processing time for applications and other key data concerning the redress scheme, and that this data be regularly updated to ensure they are reasonably current. The average processing time should be from either:

- **the date the application was lodged to the date an offer was made; or**
- **the date all relevant information was received for an application to the date an offer was made.**

Recommendation 26

8.154 The committee recommends that Commonwealth, state and territory governments agree to and implement amendments necessary to allow applicants to provide additional information in support of their review application, up to the point of the redress payment being made.

Recommendation 27

8.155 The committee recommends that Commonwealth, state and territory governments agree to and implement amendments necessary to ensure that a review does not result in an applicant receiving a lower redress amount than their original offer.

Recommendation 28

8.156 The committee recommends that the government closely monitor the timeliness of internal review determinations.

Recommendation 29

8.159 The committee recommends that the new Parliament consider the establishment of a parliamentary committee, similar to this committee, to oversee the National Redress Scheme throughout the life of the scheme.

Executive summary

The National Redress Scheme was a primary outcome of the comprehensive, five-year-long Royal Commission into Institutional Responses to Child Sexual Abuse. The establishment of the scheme tells survivors of institutional child sexual abuse that, as a nation, we believe their stories of abuse, that we failed to protect them, and that we will now do everything in our power to try to provide some degree of justice to survivors. The Prime Minister, the Hon Scott Morrison MP, has delivered a National Apology to survivors, but the redress scheme is our opportunity for our words to be translated into measurable outcomes. The National Redress Scheme is too important to not get right. The report has found that, as it currently operates, the redress scheme is at serious risk of not delivering on its objective of providing justice to survivors.

The National Redress Scheme commenced on 1 July 2018 and therefore has been operating for nine months. During this period it has received more than 3000 applications, a mere five per cent of the estimated 60 000 likely eligible participants. As at 28 February 2019, 88 redress payments had been made with a further 22 offers made that were being considered by the applicant.

There is still much about the practical application of certain provisions of the redress scheme that is unclear. This is due, at least in part, to the short period in which the scheme has been operating, combined with the small number of redress payments made. As the scheme matures, and as more survivors seek to access the three redress components, it is likely that some issues only briefly flagged in this report will emerge into sharp focus, while other issues not even considered here will come to light. As these new problems emerge, it is critical that there is ongoing oversight of the redress scheme to allow problems to be properly considered and appropriately addressed. The committee has found that the statutory reviews will not provide adequate oversight and that a committee, similar to this committee, should be established throughout the life of the redress scheme.

However, the committee's oversight of the scheme during its early stages of operation provides an opportunity to make changes to key legislative and policy concerns. The committee is conscious of the significant barriers to implementing any substantive legislative and policy amendments. In addition, the committee is mindful of the need for the scheme to provide certainty for survivors. These barriers and concerns have been balanced with the need to get the scheme right. Significant changes to the scheme cannot wait—they must be made now.

The report makes 29 wide-ranging recommendations. In implementing these recommendations it is essential that the following core principles are adhered to:

- The redress scheme and any amendments to the scheme must continue to be survivor-focused and trauma-informed.
- Amendments to the scheme must proceed on the principle of 'do no further harm' to the survivor.
- Amendments must be subject to proper consultation with key survivor groups and feedback from consultations should be appropriately incorporated.

Intrinsic to a survivor's access to redress are the institutions responsible for the sexual abuse and their decision to join the scheme. While all states and territories are now participating in the scheme, there are no mechanisms to force private institutions to join the scheme. Yet survivors will not be able to obtain redress if the institution responsible for their abuse refuses to join the scheme. This is both unfair and unacceptable. Plainly, more needs to be done to pressure non-participating institutions to join the scheme, and provide survivors with access to redress.

From 27 February 2019, the redress website published the names of institutions that were named in the Royal Commission but have not joined the scheme. Publicly naming these institutions is a start. But it is not, by itself, sufficient. Institutions that refuse to recognise their role in the abuses that occurred and to accept responsibility for their actions should be subject to clear penalties, which could include the suspension of tax concessions and the withdrawal of their charitable status.

While the participation of relevant institutions is crucial, in cases where the institution no longer exists, access to the scheme, and ultimately a step towards justice, can only be achieved if all jurisdictions fill this gap. The committee has found that the funder of last resort provisions are too narrow and that Commonwealth, state and territory governments need to fill the gap where the institution responsible for the abuse is a defunct institution and the defunct institution would not have fallen under the operation of another existing institution.

Central to the redress scheme are the survivors. Wherever possible, the scheme should be an inclusive scheme that does not exclude groups of survivors. Currently, certain groups of survivors are either not eligible for redress or are subject to potentially arbitrary decisions when seeking permission to apply for redress. The government has suggested that some of these exclusions are necessary to protect the scheme from particular risks, such as fraud, while others are necessary to ensure the efficient administration of the scheme. These are not sufficient justifications to unilaterally exclude large groups of survivors, who would otherwise have a legitimate claim, from accessing redress.

Instead, it is up to the redress scheme to find a mechanism, whether through the development of clear guidelines, practices or strategies, to mitigate these risks and overcome any administrative challenges. The committee makes recommendations in relation to the following groups of survivors to allow them to fairly access the scheme:

- Survivors who are not Australian citizens or permanent residents.
- Survivors who are currently in gaol.
- Survivors with serious criminal convictions.

Fundamental to the success of the redress scheme and the assessment as to whether the objects of the scheme are being achieved is whether the key components of redress align with the recommendations of the Royal Commission. The report has found that the redress scheme falls short of many of the key recommendations of the Royal Commission, including in the following areas:

- In relation to the monetary component:
    - an assessment framework that does not reasonably recognise the impact of abuse for each individual;
    - a maximum redress payment of $150 000—which is $50 000 short of the maximum payment recommended by the Royal Commission; and
    - a failure to set a minimum payment of $10 000.
- In relation to the counselling and psychological care component:
    - an assessment framework that unreasonably provides that institutions pay an insufficient amount for the counselling and psychological care of survivors, and which inappropriately places a monetary amount on the care provided based on the kind of abuse suffered rather than the survivor's need for counselling and psychological care;
    - concerns relating to the counselling and psychological care not being available for the life of the survivor, nor on an episodic basis; and
    - concerns relating to the quality and flexibility of care.
- In relation to the direct personal response component:
    - concerns that the responsible institution will be leading the process for the provision of a direct personal response; and
    - concerns relating to the lack of oversight.

Remedying the disparities between the redress scheme and the recommendations of the Royal Commission will require substantive legislative change or changes to key policy. All amendments will require agreement from state and territory governments. These are significant barriers, but they should not be considered insurmountable, nor should they be the reason to not push for legislative amendments when required. The committee has concluded that without legislative change the scheme may never be properly accepted by survivors as a fair scheme and a real alternative to litigation.

The report has also found that redress services—community-based support, financial support services and legal support services—must be adequately funded to ensure that they meet the needs of survivors when required, and regardless of the survivors' location or other barriers that might exist.

Survivors will have difficult decisions to make about the viability of applying for redress. The process of applying for redress will, for many, be a traumatic experience. It will require survivors to recount stories of the abuse they experienced and detail the impact of that abuse on their life. Equally, those who decide to receive a direct personal response from the responsible institution will also need adequate support. It is essential that survivors are supported throughout the entire process.

This report highlights the need for the redress scheme to be transparent and accountable. More information needs to be made publicly available. Governments and departments have a responsibility to ensure that processes are visible and understood by survivors. The committee makes recommendations aimed at ensuring a more transparent scheme.

Additionally, it appears that unnecessary restrictions have been placed on the review of determinations made about an application. When these restrictions are considered in combination, they result in unreasonable outcomes for survivors in what should be a beneficial scheme. The committee makes recommendations to address these unfair outcomes.

The committee recognises that no scheme can remove the trauma felt by victims or adequately acknowledge or correct the wrongs inflicted on survivors. The committee's recommendations are aimed at ensuring that, as far as it is able to, the National Redress Scheme delivers on its objective of recognising and alleviating the impact of past institutional child sexual abuse, and providing justice for survivors. The committee looks forward to Commonwealth, state and territory governments meeting this call.

Chapter 1

Introduction

1.1 On 19 June 2017, the Senate agreed to a resolution providing for the establishment of the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the committee).[1] The House of Representatives concurred with the resolution on 20 June 2017.[2]

1.2 The resolution provided that the committee would be established following the tabling of the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). The Royal Commission presented its final report to the Governor-General on 15 December 2017.[3] The committee was established when the report was tabled in both Houses of Parliament on 5 February 2018.[4]

1.3 The committee was established to inquire into and report upon:

> (a) the Australian Government policy, program and legal response to the redress related recommendations of the Royal Commission, including the establishment and operation of the Commonwealth Redress Scheme and ongoing support of survivors; and
>
> (b) any matter in relation to the Royal Commission's redress related recommendations referred to the committee by a resolution of either House of the Parliament.[5]

1.4 The committee was originally due to present its final report by the final sitting day in November 2018.[6] This reporting date was extended to the second last sitting day in March 2019, following agreement of the Senate on 18 October 2018 and the House of Representatives on 22 October 2018.[7] The reporting date was subsequently extended again, to 2 April 2019, following agreement of the Senate on 14 February 2019 and the House of Representatives on 18 February 2019.[8]

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1 *Journals of the Senate*, No. 45, 19 June 2017, pp. 1472–1474.

2 *House of Representatives Votes and Proceedings*, No. 62, 20 June 2017, pp. 869–871.

3 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 1, Our inquiry*, December 2017, p. 13.

4 *Journals of the Senate*, No. 80, 5 February 2018, p. 2541; *House of Representatives Votes and Proceedings*, No. 92, 5 February 2018, p. 1302.

5 *Journals of the Senate*, No. 45, 19 June 2017, p. 1472.

6 *Journals of the Senate*, No. 45, 19 June 2017, p. 1473.

7 *Journals of the Senate*, No. 125, 18 October 2018, p. 4004; *House of Representatives Votes and Proceedings*, No. 145, 22 October 2018, p. 1913.

8 *Journals of the Senate*, No. 140, 14 February 2019, p. 4681; *House of Representatives Votes and Proceedings*, No. 160, 18 February 2019, p. 2100.

1.5 The full resolution establishing the committee, as agreed by the Senate on 19 June 2017, is at Appendix 1.

Conduct of this inquiry

1.6 Details of the inquiry were advertised on the committee's website. The committee also invited a range of organisations and individuals to make a submission by 17 August 2018. However, the committee made clear on its website that it would continue to consider and accept submissions after that date. The committee received 53 submissions, including one confidential submission. Submissions received are listed at Appendix 2.

1.7 The committee held five public hearings:

- 8 October 2018 in Melbourne, Victoria;
- 10 October 2018 in Sydney, New South Wales;
- 7 November 2018 in Brisbane, Queensland;
- 8 November in Newcastle, New South Wales; and
- 28 February 2019 in Canberra, Australian Capital Territory.

1.8 Witnesses who appeared at these hearings are listed at Appendix 3.

1.9 Copies of all public submissions, Hansard transcripts of public hearings, responses to questions on notice, and other evidence are available on the committee's webpage.[9]

1.10 The committee will cease to exist with the tabling of this report on 2 April 2019.

Structure of this report

1.11 The redress scheme is a substantial program that is of critical importance to survivors of institutional child sexual abuse, their family and friends, and many other affected people. It is therefore not surprising that the committee received evidence going to a broad range of matters related to the scheme, and from an equally broad range of perspectives. This report considers the key issues raised in evidence, as follows:

- Chapters 2 and 3 outline the redress scheme in broad terms:
  - Chapter 2 outlines the establishment of the redress scheme and the governance arrangements.
  - Chapter 3 outlines key aspects of the redress scheme.
- Chapters 4 and 5 examine elements of the broad policy and design of the scheme, and how these elements affect the implementation of the scheme:

9 See https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Royal_Commission_into_Institutional_Responses_to_Child_Sexual_Abuse/RoyalCommissionChildAbuse (accessed 1 March 2019).

  - Chapter 4 examines the coverage of the scheme, and groups who may be excluded.
  - Chapter 5 examines each component of redress and how it relates to the recommendations of the Royal Commission.
- Chapters 6 and 7 examine issues with the implementation of the redress scheme:
  - Chapter 6 examines issues relating to accessing and applying for redress.
  - Chapter 7 examines accountability issues in the implementation of the scheme.
- Chapter 8 provides the committee's view and recommendations.

Acknowledgements

1.12 The committee thanks all witnesses and submitters for contributing to this inquiry. In particular, the committee acknowledges the bravery of all survivors and expresses gratitude to those survivors who spoke about their experiences.

Chapter 2

Establishing and governing the redress scheme

2.1 This chapter outlines key elements of the establishment and governance of the National Redress Scheme (redress scheme). It provides a brief overview of:

- the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) and its redress related recommendations;
- the bills establishing the redress scheme;
- the key legislation and subordinate legislation relating to the redress scheme;
- states and territories opting-in to the redress scheme;
- the governance of and consultation regarding the redress scheme; and
- consideration of the redress scheme by other parliamentary committees.

The Royal Commission into Institutional Responses to Child Sexual Abuse

2.2 On 12 November 2012 the then Prime Minister, the Hon Julia Gillard MP, announced that she would recommend to the Governor-General that a royal commission be appointed to inquire into institutional responses to child sexual abuse.[1] On 11 January 2013 the Governor-General issued Letters Patent appointing a six-member Royal Commission.[2]

2.3 The Royal Commission was originally due to report by 31 December 2015. The deadline was extended to 15 December 2017 following a request from the Royal Commission.[3]

2.4 During its five year inquiry, the Royal Commission:

- was contacted by 16 953 survivors of child sexual abuse who were within the terms of reference;
- heard from 7981 survivors in 8013 private sessions;
- received 1344 written accounts; and
- referred 2562 matters to police.[4]

2.5 The Royal Commission submitted its final report to the Governor-General on 15 December 2017, and the report was tabled in Parliament on 5 February 2018.[5]

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1 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Final Report: Volume 1, Our inquiry*, December 2017, p. 2.

2 Royal Commission, *Final Report: Volume 1, Our inquiry*, December 2017, p. 4.

3 Royal Commission, *Final Report: Volume 1, Our inquiry*, December 2017, p. 12.

4 Royal Commission, *Final information update*, https://www.childabuseroyalcommission.gov.au/preface-and-executive-summary (accessed 4 March 2018).

2.6 The Royal Commission made a total of 409 recommendations.[6] The Royal Commission's *Redress and Civil Litigation Report* (dated August 2015) contained 99 of those recommendations, of which 84 related to redress.[7]

2.7 The Australian Government presented its response to the Royal Commission on 13 June 2018.[8] While the government responded to all 409 recommendations, it provided the following single response to the 84 recommendations that relate to redress:

> The Australian Government is establishing the National Redress Scheme in response to the Royal Commission's recommendations regarding Redress.[9]

2.8 The 84 recommendations relating to redress are numbered 1 to 84 in the Royal Commission's *Redress and Civil Litigation Report*.[10] The report grouped these recommendations under the following headings:

- Justice for victims;
- Redress elements and principles;
- Direct personal response;
- Counselling and psychological care;
- Monetary payments;
- Redress structure and funding;
- Redress scheme processes; and
- Interim arrangements.

2.9 In particular, recommendation four proposed principles for the provision of redress:

> 4. Any institution or redress scheme that offers or provides any element of redress should do so in accordance with the following principles:
>
> a. Redress should be survivor focused.

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5 Australian Government, *Australian Government Response to the Royal Commission into Institutional Child Sexual Abuse*, June 2018, p. v. *Journals of the Senate*, No. 80, 5 February 2018, p. 2541; *House of Representatives Votes and Proceedings*, No. 92, 5 February 2018, p. 1302.

6 Royal Commission, *Final Report: Recommendations*, December 2017.

7 Royal Commission, *Redress and Civil Litigation Report*, August 2015.

8 Attorney-General's Department, 'Australian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse', https://www.ag.gov.au/RightsAndProtections/Australian-Government-Response-to-the-Royal-Commission-into-Institutional-Responses-to-Child-Sexual-Abuse/Pages/default.aspx (accessed 4 March 2018).

9 Australian Government, *Australian Government Response to the Royal Commission into Institutional Child Sexual Abuse*, June 2018, p. 126.

10 Royal Commission, *Redress and Civil Litigation Report*, August 2015, pp. 61–78.

b. There should be a 'no wrong door' approach for survivors in gaining access to redress.

c. All redress should be offered, assessed and provided with 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.

d. All redress should be offered, assessed and provided with appropriate regard to the needs of particularly vulnerable survivors.[11]

Bills establishing the redress scheme in legislation

2.10 On 26 October 2017, the then Minister for Social Services, the Hon Christian Porter MP, introduced into the House of Representatives:

- the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (the Commonwealth bill), and
- the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 (the Commonwealth consequential bill).[12]

2.11 These bills did not provide for a comprehensive national scheme due to constitutional limitations. Mr Porter set out these limitations in advice to the Senate Standing Committee for the Scrutiny of Bills in November 2017:

> …the Commonwealth does not have comprehensive constitutional power to legislate for a national scheme. A referral from all [states] to the Commonwealth under section 51(xxxvii) of the Constitution is the most legally sound way to implement a nationally consistent scheme and maximise participation. It will enable redress to be provided to survivors of institutional child sexual abuse in non-government institutions that occurred in a state or where a state government is deemed responsible.[13]

2.12 The Department of Social Services (DSS) explained that the Commonwealth bill would be superseded by another bill if a state chose to refer its powers to the Commonwealth:

> While [the Commonwealth bill] does not facilitate state governments, or non-government institutions in states, to opt in to the Scheme, it has been drafted in anticipation of their participation should a referral of powers be achieved. If a state government agrees to provide a referral and participate in the Scheme from its commencement, the Commonwealth Bill will be

11 Royal Commission, *Redress and Civil Litigation Report,* August 2015, p. 61.

12 *House of Representatives Votes and Proceedings*, No. 87, 26 October 2017, p. 1218.

13 Letter to the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee), 30 November 2017, published as a ministerial response relating to the Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2017*, 6 December 2017.

> replaced with a National Redress Scheme for Institutional Child Sexual Abuse Bill (National bill) prior to the Scheme's commencement.[14]

2.13 On 9 March 2018, the governments of New South Wales and Victoria announced that they intended to join a national redress scheme.[15] As such, the Commonwealth bill and the Commonwealth consequential bill did not proceed.[16]

2.14 In place of those bills, on 10 May 2018 the then Minister for Social Services, the Hon Dan Tehan MP, introduced into the House of Representatives:

- the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (the national bill), and
- the National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018 (the national consequential bill).[17]

2.15 The effect of these bills was to establish the redress scheme for commencement on 1 July 2018.

2.16 At the time the Commonwealth Parliament debated the national bill, both New South Wales and Victoria had referred powers to the Commonwealth (or commenced the process of doing so) by passing legislation that reproduced the national bill.[18] The manner of the referral of powers from the states to the Commonwealth meant that if Commonwealth Parliament amended the national bill in any way then this would, in effect, void the effect of the referral of powers. As was explained by a representative of DSS in evidence to the Senate Community Affairs Legislation Committee:

> Should the [national] bill not pass, or if it is amended in any way, any referral of powers will be rendered ineffective and there will be no national scheme commencing on 1 July. If this happens, a new bill will have to be

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14 Department of Social Services (DSS), *Submission 27* to the Senate Community Affairs Legislation Committee inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions] and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions], which reported in March 2018.

15 David Crowe, 'NSW, Victoria sign up to child abuse redress scheme, with bill to reach hundreds of millions of dollars', *The Sydney Morning Herald*, 8 March 2018, https://www.smh.com.au/politics/federal/nsw-victoria-sign-up-to-child-abuse-redress-scheme-with-bill-to-reach-hundreds-of-millions-of-dollars-20180308-p4z3ia.html (accessed 4 March 2019).

16 See the bill page for the Commonwealth bill at https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6006 and for the Commonwealth consequential bill at https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6007 (accessed 13 March 2019).

17 *House of Representatives Votes and Proceedings*, No. 109, 10 May 2018, p. 1519.

18 The National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (NSW) was introduced into the NSW Legislative Assembly on 1 May 2018 and was passed by the Parliament on 16 May 2018. The National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (Vic) was introduced into the Victorian Legislative Assembly on 8 May 2018 and was passed by the Parliament on 6 June 2018.

> renegotiated not only with New South Wales and Victoria but with every state which has agreed to the detail of these bills and with each non-government institution that has decided to join. In summary, a process that has taken some 18 months will have to start again, and there is no guarantee a state parliament would provide a referral to a new bill.[19]

2.17 The inability of the Commonwealth Parliament to in any way amend the national bill without, in effect, voiding the referral of powers from the states to the Commonwealth, as well as a desire to enable the redress scheme to commence on 1 July 2018, was noted during debate in the Commonwealth Parliament.[20] The committee makes further comment on this rushed legislative process in chapter 8.

2.18 The House of Representatives passed the national bill and national consequential bill without amendments on 29 May 2018.[21] The bills were introduced into the Senate on 18 June 2018, which passed them without amendments on 19 June 2018.[22] The committee notes that the quick passage of this legislation by each House of Parliament enabled the redress scheme to commence on 1 July 2018.

Key legislation and other governing documents

2.19 The key pieces of legislation and other governing documents relating to the redress scheme include the following:

- The *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (**the Act**), which establishes the redress scheme.
- The *National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Act 2018* (**the Consequential Act**), which provides for consequential amendments relating to the Act.
- The National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (**the Rules**):
  - Under section 179 of the Act, the minister may, by legislative instrument, make rules for giving effect to the Act.
- The National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 (**the Assessment Framework**):
  - Under section 32 of the Act, the minister may, by legislative instrument not subject to disallowance, declare the method for calculating the

19 Ms Kathryn Campbell CSC, Secretary, DSS, Senate Community Affairs Legislation Committee, Budget estimates hearing, *Committee Hansard*, 1 June 2018, p. 120.

20 See, for example, Mr Jason Clare, *House of Representatives Hansard*, 29 May 2018, p. 4753; Senator Louise Pratt, *Senate Hansard*, 18 June 2018, p. 3031; Senator Rachel Siewert, *Senate Hansard*, 18 June 2018, p. 3032; Senator Claire Moore, *Senate Hansard*, 18 June 2018, p. 3047; Senator Stirling Griff, *Senate Hansard*, 18 June 2018, p. 3142; Senator Murray Watt, *Senate Hansard*, 18 June 2018, p. 3145.

21 *House of Representatives Votes and Proceedings*, No. 114, 29 May 2018, p. 1568.

22 *Journals of the Senate*, No. 98, 18 June 2018, pp. 3135–3136; *Journals of the Senate*, No. 99, 19 June 2018, pp. 3160–3161.

amount of a redress payment for a person and the amount of the counselling and psychological component of redress for a person.

- The Assessment Framework Policy Guidelines (**the Assessment Guidelines**):
  - Under section 33 of the Act, the minister may make guidelines for the purposes of applying the Assessment Framework. The Assessment Guidelines are not a legislative instrument and are not publicly available. It is an offence to record, disclose or use the Assessment Guidelines for an unauthorised purpose.[23]
- The National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018 (**the Direct Personal Response Framework**):
  - Under section 55 of the Act, the minister may, by legislative instrument not subject to disallowance, declare guidelines about how direct personal responses are to be provided under the redress scheme.
- The National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018 (**the Declaration**):
  - Under section 115 of the Act, the minister may, by notifiable instrument, declare that an institution is a participating institution or that a state or territory is a declared provider of counselling and psychological services under the redress scheme.

States and territories opting-in to the redress scheme

2.20 Once a state is participating in the scheme, a person is able to apply for redress for institutional child sexual abuse that occurred in that state.[24]

2.21 It is up to states to decide whether to opt-in to the redress scheme.[25] If a state chooses to opt-in, it does so by passing legislation that refers powers to the Commonwealth under section 51(xxxvii) of the Constitution.[26] Once a state passes such legislation, it is taken to be participating in the scheme.[27]

2.22 The Act allows states until 30 June 2020 (two years after the commencement of the scheme) to opt-in.[28] All states have now joined the scheme, although they announced their intention to opt-in, and passed the required legislation, at varying times.

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23 Section 104 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act).

24 Subparagraph 14(1)(b)(i) of the Act.

25 See Part 5–3 of the Act.

26 As discussed above in relation to New South Wales and Victoria.

27 Subsection 144(1) of the Act.

28 Subsection 144(5) of the Act.

2.23 Territories were not required to refer powers or pass legislation in order to participate in the scheme.[29] Rather, the Act provides that the Australian Capital Territory and the Northern Territory are participating jurisdictions.[30]

2.24 Once a jurisdiction is participating in the scheme, it may also agree to the participation of certain government institutions. Doing so allows survivors to access redress in relation to abuse for which those government institutions are responsible.[31]

2.25 A government institution is participating in the scheme once the Commonwealth Minister for Social Services (the minister) lists it in the Declaration.[32] The minister may only do this if the relevant jurisdiction has agreed to the institution being listed.[33] In the *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (Intergovernmental Agreement), the Commonwealth acknowledges that a state may choose to participate in the scheme without committing to declaring its government institutions as participating.[34]

2.26 The table below shows these two key dates in respect of each jurisdiction:

- First, the date that each state commenced participation in the scheme (that is, the date of Assent of the bill referring the state's powers to the Commonwealth).
- Second, the date that government institutions of each jurisdiction were first listed in the Declaration, and therefore participating in the scheme.

29 DSS and the Department of Human Services (DHS), *Submission 19*, p. 2.

30 Section 143 of the Act; also see the definition of 'participating Territory' at section 6 of the Act.

31 See paragraph 13(1)(d) and subsection 108(2) of the Act.

32 Sections 110 and 112, and subsection 115(2), of the Act. There are complexities relating to the participation of jurisdictions in the scheme, because some elements commenced earlier than others. For example, in some cases it was possible for non-government institutions in a jurisdiction to register with the scheme before that jurisdiction's government institutions were listed in the Declaration. See, for example, South Australia Attorney-General's Department, 'Laws enabling redress scheme begin operation', *Media release*, 22 November 2018, https://www.agd.sa.gov.au/newsroom/laws-enabling-redress-scheme-begin-operation (accessed 5 March 2019).

33 Paragraphs 115(3)(a) and 115(3)(b) of the Act.

34 *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (Intergovernmental Agreement), May 2018, clause 54, p. 10.

Table 2.1—The dates that each jurisdiction commenced participation in the redress scheme, and on which government institutions were first declared

Jurisdiction	Date bill referring powers to Commonwealth was Assented	First declaration of government institutions[35]
New South Wales[36]	23 May 2018 *(Prior to the commencement of the scheme)*	20 September 2018
Victoria[37]	13 June 2018 *(Prior to the commencement of the scheme)*	20 September 2018
Tasmania[38]	5 October 2018	1 November 2018
Queensland[39]	28 September 2018	19 November 2018
Western Australia[40]	5 December 2018	1 January 2019
Australian Capital Territory[41]	Territories were not required to refer powers. The Act provides that the Australian Capital Territory and the Northern Territory are participating jurisdictions.	20 September 2018
Northern Territory[42]		16 November 2018

2.27 As shown in the table, all jurisdictions were fully participating in the scheme from 1 February 2019.

35 These dates reflect the date on which the relevant part of the Declaration commenced.

36 *New South Wales Government Gazette, No. 54*, 1 June 2018, p. 3122; section 6 of the National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018 (the Declaration), Compilation No. 1, 20 September 2018.

37 *Victoria Government Gazette, No. S 274*, 13 June 2018, p. 1; section 7 of the Declaration, Compilation No. 1, 20 September 2018.

38 *Tasmania Government Gazette, No. 21 832*, 10 October 2018, p. 936; section 8A of the Declaration, Compilation No. 3, 1 November 2018.

39 *Queensland Government Gazette, No. 29*, 5 October 2018, p. 137; section 8C of the Declaration, Compilation No. 5, 19 November 2018.

40 *Western Australia Government Gazette, No. 186*, 11 December 2018, p. 4723; section 8D of the Declaration, Compilation No. 9, 1 January 2019.

41 Section 143 of the Act; also see the definition of 'participating Territory' at section 6 of the Act; section 8 of the Declaration, Compilation No. 1, 20 September 2018.

42 Section 8B of the Declaration, Compilation No. 4, 16 November 2018.

2.28 It is possible for a state to cease its participation in the scheme.[43] However, all jurisdictions have agreed that withdrawing from the Intergovernmental Agreement would be 'a measure of last resort'.[44]

Governance of and consultation regarding the redress scheme

2.29 There are various governance arrangements and consultative bodies that have been established in relation to the redress scheme. Key arrangements and bodies are summarised below.

Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse

2.30 The Intergovernmental Agreement is an agreement between the Commonwealth, state and territory governments. It sets out the roles and responsibilities of each jurisdiction in relation to the redress scheme. For example, jurisdictions are required to provide regular reports to each other regarding data about the implementation of the scheme.[45]

2.31 The Intergovernmental Agreement was first released in May 2018, but it was signed by representatives of each jurisdiction at various times.[46] The agreement takes effect for each jurisdiction as soon as it is signed by that jurisdiction, and will expire on 30 June 2028, unless terminated earlier or extended by agreement of the jurisdictions.[47]

Ministers' Redress Scheme Governance Board

2.32 The Intergovernmental Agreement provides for the establishment of the Ministers' Redress Scheme Governance Board (Ministers' Board).[48] The purpose of the Ministers' Board is 'to assist the proper, efficient and effective performance of the [redress scheme] during its period of operation'.[49]

2.33 The Ministers' Board consists of the Commonwealth, state and territory ministers responsible for redress.[50] The Commonwealth minister is the chairperson of

43 Subsections 144(6) and 144(7) of the Act.

44 Intergovernmental Agreement, May 2018, clauses 37–41, p. 8.

45 Intergovernmental Agreement, May 2018, clauses 27–29, p. 7.

46 See the dates of signature on the Intergovernmental Agreement (signed) at https://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-national-redress-scheme-institutional-child-sexual (accessed 7 March 2019).

47 Intergovernmental Agreement, May 2018, clause 9, p. 3.

48 Intergovernmental Agreement, May 2018, clause 43, p. 9.

49 Intergovernmental Agreement, May 2018, Schedule A, p. 16.

50 A jurisdiction must be participating in the redress scheme in order for its minister to be a member of the Ministers' Board. All jurisdictions are currently participating in the scheme.

the Board. It was established on commencement of the redress scheme and will cease simultaneously with the scheme (unless terminated earlier or extended).[51]

2.34 The Board will meet at least bi-annually, unless it agrees to meet less frequently. It may meet on an ad hoc basis, and is convened at the request of the relevant Commonwealth minister.[52] Deliberations of the Ministers' Board are confidential.[53]

2.35 Some proposed changes to legislation, rules and policy guidelines require the approval of the Ministers' Board.[54] This works as follows:

- Proposed changes to the redress scheme that would result in increased costs for states or territories, or which are major design changes, require unanimous agreement of the Board.[55]
- Proposed changes which are not of the above nature, but which are nonetheless significant (such as changes to primary legislation), are put to a vote of the Board.[56]
- Minor matters, such as technical changes to legislation, the Rules, or policy documents, do not need to be considered by the Board. However, the Intergovernmental Agreement states that the Commonwealth will nonetheless consult state and territory officials on some of these minor matters.[57]

2.36 Matters requiring consideration by the Board will require a unanimous vote or a two-stage voting process. The two-stage voting process requires two stages to be satisfied:

- First stage—the proposed change must have the support of two-thirds of jurisdictions. The Commonwealth has two votes for this stage of voting.
- Second stage—the proposed change must have the support of jurisdictions representing 75 per cent of the estimated financial liability for participating jurisdictions (see the table below). The Commonwealth does not have a vote for this stage of voting.

2.37 The Intergovernmental Agreement includes the following table estimating the liability of each jurisdiction, which is used as the basis for calculating the 75 per cent liability required for the second stage.[58]

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51 Intergovernmental Agreement, May 2018, Schedule A, p. 16.

52 Intergovernmental Agreement, May 2018, Schedule A, p. 17.

53 Intergovernmental Agreement, May 2018, clause 30, p. 7.

54 Intergovernmental Agreement, May 2018, Schedule A, p. 16.

55 Intergovernmental Agreement, May 2018, Schedule A, pp. 17–18.

56 Intergovernmental Agreement, May 2018, Schedule A, p. 18.

57 Intergovernmental Agreement, May 2018, Schedule A, p. 19.

58 Intergovernmental Agreement, May 2018, Schedule A, p. 18.

Table 2.2—The estimated liability of each jurisdiction[59]

Jurisdiction	Number of survivors	Percentage of liability
New South Wales	8950	34.45%
Victoria	5290	20.36%
Queensland	5030	19.36%
Western Australia	2395	9.22%
South Australia	1690	6.51%
Tasmania	1115	4.29%
Commonwealth	955	3.68%
Northern Territory	330	1.27%
Australian Capital Territory	225	0.87%
Total	***25 980***	***100%***

2.38 The 75 per cent required for a vote to be carried will be calculated based on participating jurisdictions and exclude jurisdictions that have not opted-in to the scheme.[60] When a jurisdiction abstains from voting, that jurisdiction is taken not to be a jurisdiction on the Board for the purposes of calculating the second stage vote.[61]

2.39 The committee understands that, because New South Wales has an estimated 34.45 per cent liability, it is not possible for the 75 per cent threshold to be met without the support of New South Wales. This means that New South Wales has an effective veto on any matters that go to a two-stage vote.[62]

Inter-jurisdictional Committee

2.40 The Intergovernmental Agreement states that senior officials from participating state and territory governments will form an Inter-jurisdictional Committee, which will support the Ministers' Board by providing it with advice. The Inter-jurisdictional Committee will meet as needed to:

59 The committee notes that the table in the Intergovernmental Agreement lists the total number of survivors as 25 890, but the sum of the values is actually 25 980. This apparent typographical error is corrected in the table above.

60 Intergovernmental Agreement, Schedule A, p. 18.

61 Intergovernmental Agreement, May 2018, Schedule A, p. 19.

62 Note that all jurisdictions have an effective veto on more significant matters that require unanimous agreement.

> …specifically discuss key emerging policy, operational and communication issues and provide advice to the Board on amendments to Scheme legislation, rules and policy guidelines.[63]

Redress Scheme Committee

2.41 The Intergovernmental Agreement provides for the establishment of the Redress Scheme Committee.[64] Its purpose is to support the redress scheme Operator (which is the Secretary of DSS), in:

> …ensuring the integrity and ongoing viability of the [redress scheme] during its period of operation through the provision of advice about key operational and Scheme participation issues.[65]

2.42 The Redress Scheme Committee is comprised of senior officials from all participating governments and all participating non-government institutions. It is chaired by a Commonwealth representative. The Intergovernmental Agreement states that the scheme Operator will consult the Redress Scheme Committee on decisions that significantly affect members of the Redress Scheme Committee, and will also keep it informed of scheme costs with regular reporting.[66]

2.43 The Intergovernmental Agreements states that the Redress Scheme Committee will not consider or influence decisions on individual redress applications.[67]

2.44 The Redress Scheme Committee will meet quarterly, although this may be reviewed. As the Intergovernmental Agreement sets out, not all members will be invited to meetings but they will be consulted:

> Only participating governments, [non-government institutions] with high estimated exposure under the Scheme (likely to be faith-based institutions), and some non-faith based institutions will be invited to attend meetings to ensure there is a cross section of [non-government institutions] represented in meetings.
>
> The secretariat will provide all other participating [non-government institutions] (with low estimated exposure) with agenda papers and a record of outcomes from the meeting. The secretariat will also obtain their views prior to and after the meeting to ensure that the [Redress Scheme Committee] and/or the Scheme Operator can consider the views of the wider networks of [non-government institutions] in making their decisions.
>
> [A non-government institution] is able to bring forward a request to the secretariat to attend [a Redress Scheme Committee] meeting if they are not a standard invitee.[68]

63 Intergovernmental Agreement, May 2018, clause 46, p. 9.

64 Intergovernmental Agreement, May 2018, clause 44, p. 9.

65 Intergovernmental Agreement, May 2018, Schedule B, p. 20.

66 Intergovernmental Agreement, May 2018, Schedule B, p. 20.

67 Intergovernmental Agreement, May 2018, Schedule B, p. 20.

2.45 Like the Ministers' Board, the Redress Scheme Committee was established on commencement of the redress scheme and will cease simultaneously with the scheme (unless terminated earlier or extended).

Independent Advisory Council on Redress

2.46 In December 2016, the then Prime Minister, the Hon Malcolm Turnbull MP, appointed an Independent Advisory Council on Redress (Advisory Council) to provide independent advice to the minister on policies and processes necessary to the design and implementation of the redress scheme.[69] The 15-member Advisory Council consisted of 'survivors of institutional abuse and representatives from support organisations, as well as legal and psychological experts, Indigenous and disability experts, institutional interest groups and those with a background in government'.[70]

2.47 The terms of reference for the Advisory Council state that, in particular, the Advisory Council will provide advice on:

- the governing principles that underpin the scheme;
- elements of the scheme's design, that may include eligibility and the principles around the processes of application, assessment, psychological counselling and direct personal response;
- how to best encourage state, territory and non-government institution participation in the scheme; and
- how the Commonwealth scheme will interact with other redress schemes.[71]

2.48 In March 2018, DSS advised a Senate committee that survivor groups were consulted on the text of the Commonwealth bill via the Advisory Council, and that various drafts of the bills were provided at different times to relevant organisations for comment.[72]

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68 Intergovernmental Agreement, May 2018, Schedule B, p. 21.

69 Senator the Hon George Brandis QC, Attorney-General and Leader of the Government in the Senate, 'Redress for survivors of institutional child sexual abuse: members of independent advisory council announced', *Media Release*, 16 December 2016, p. 1.

70 Senator Brandis, 'Redress for survivors of institutional child sexual abuse', *Media Release*, 16 December 2016, p. 1.

71 Senator Brandis, , 'Redress for survivors of institutional child sexual abuse', *Media Release*, 16 December 2016, p. 2.

72 Senate Community Affairs Legislation Committee, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions] and Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]*, March 2018, p. 8.

2.49 In October 2018, a member of the Advisory Council told the committee that, from her perspective, the question of whether the council would continue to meet was not definitively resolved.[73]

2.50 The Intergovernmental Agreement provides that the Commonwealth minister responsible for redress may reconvene the Advisory Council for particular advisory purposes at any time in the future.[74]

Consideration by other parliamentary committees

2.51 Key legislation and subordinate legislation establishing the redress scheme has been considered by various other committees, including the following:

- Senate Community Affairs Legislation Committee:
  - March 2018 report regarding the Commonwealth bill and the Commonwealth consequential bill.
  - June 2018 report regarding the national bill and the national consequential bill.
- Senate Standing Committee for the Scrutiny of Bills:
  - *Scrutiny Digest 13 of 2017* regarding the Commonwealth bill and the Commonwealth consequential bill.
  - *Scrutiny Digest 15 of 2017* regarding the Commonwealth bill.
  - *Scrutiny Digest 6 of 2018* regarding the national bill and the national consequential bill.
- Parliamentary Joint Committee on Human Rights:
  - *Report 13 of 2017* and *Report 2 of 2018* regarding the Commonwealth bill and the Commonwealth consequential bill.
  - *Report 5 of 2018* regarding the national bill and the national consequential bill.
  - *Report 9 of 2018* regarding the national bill, the national consequential bill, the Assessment Framework, the Direct Personal Response Framework, and the Rules.
- Senate Standing Committee on Regulations and Ordinances:
  - *Monitor 8 of 2018* regarding the Rules.

73 Dr Cathy Kezelman AM, President, Blue Knot Foundation, *Committee Hansard*, 10 October 2018, p. 26.

74 Intergovernmental Agreement, May 2018, clause 47, p. 9.

Chapter 3

About the redress scheme

3.1 This chapter examines key aspects of the National Redress Scheme (redress scheme). It briefly outlines:

- the objects of the redress scheme;
- the process of applying for redress, including:
  - who is able to apply for redress;
  - classes of people that are excluded from the scheme or that are subject to additional restrictions;
  - how non-sexual abuse is considered by the redress scheme;
  - the standard of 'reasonable likelihood' that is applied when considering applications;
  - how applicants may accept or decline an offer of redress;
  - the requirement for survivors receiving redress to release the institutions responsible for the abuse from civil liability for the abuse; and
  - how applicants may request a review of a decision on their application;
- the support available for people when they apply for redress;
- the administration of the scheme, including how priority applications are processed;
- the three components of redress that may be provided to a person;
- participation of institutions in the redress scheme;
- who pays the costs of redress, including the provisions for funders of last resort;
- reviews of the scheme that are scheduled to occur two years and eight years after the scheme commenced; and
- key data about the implementation of the scheme to date.

Objects of the redress scheme

3.2 In his second reading speech for the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (the national bill), the then Minister for Social Services, the Hon Dan Tehan MP, said:

> The establishment of the scheme is an acknowledgement by the Australian government and participating governments that sexual abuse suffered by children in institutional settings was wrong. It was a betrayal of trust. It should never have happened.

> It recognises the suffering survivors have experienced and accepts that these events occurred and that institutions must take responsibility for this abuse.[1]

3.3 The Act also provides general principles guiding actions of officers under the scheme, including the following:

- Redress under the scheme should be survivor-focussed.
- Redress should be assessed, offered and provided so as to avoid, as far as possible, further harming or traumatising the survivor.
- Redress should be assessed, offered and provided in a way that protects the integrity of the scheme.[2]

Applying for redress

3.4 The redress scheme will run for 10 years until 30 June 2028.[3] However, the scheme 'can be extended if there is a need to do so'.[4]

3.5 A person can only make one application for redress. However, it is possible for a single application to cover multiple instances of sexual abuse, including across multiple institutions.[5]

3.6 Applications must be made by 30 June 2027 (one year before the scheme sunset date) unless the Operator determines that exceptional circumstances apply.[6]

Who can apply for redress?

3.7 A person can apply for redress if:

- the person experienced sexual abuse while they were a child;[7]
- the abuse occurred before 1 July 2018;[8]
- the abuse occurred inside a participating state, inside a territory, or outside Australia;[9]

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1 The Hon Dan Tehan MP, then Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3632.

2 Section 10 of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (the Act).

3 Section 193 of the Act.

4 The Hon Dan Tehan MP, then Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3633.

5 Paragraph 20(1)(a) of the Act. Note that a single application for redress may cover multiple instances of sexual abuse, including across multiple institutions.

6 Paragraph 20(1)(e) of the Act.

7 Paragraphs 13(1)(a), 13(1)(b), and 14(1)(a) of the Act

8 Paragraph 14(1)(c) of the Act.

9 The provisions acknowledge that states are not automatically participating in the scheme, even though they are currently all participating. See paragraphs 13(1)(b) and 14(1)(b) of the Act.

- at least one of the institutions responsible for the abuse is participating in the scheme;[10]
- the person will turn 18 before the scheme sunset date (that is, they were born before 30 June 2010),[11] and
- the person is an Australian citizen or permanent resident at the time they apply for redress.[12]

Classes of people excluded from the redress scheme

3.8 Certain classes of people are either excluded from the redress scheme or are subject to additional requirements. The provisions applying to some of these classes of people are outlined below.

Application made by a person in gaol

3.9 A person who is currently in gaol cannot make an application unless the Operator determines that there are exceptional circumstances that justify an application being made.[13] In order to make such a determination, the Operator must:

- notify all relevant Attorneys-General—that is, the Attorney-General of the jurisdiction in which the applicant is in gaol and the Attorney(s)-General of the jurisdiction(s) in which the person suffered the abuse;
- consider any advice provided by the relevant Attorney(s)-General as well as any other matters the Operator considers relevant; and
- give greater weight to any advice provided by the Attorney-General of the jurisdiction in which the abuse occurred than to any of the other factors being considered.[14]

3.10 An exception enables the Operator to allow a person in gaol to make an application, without consulting relevant Attorneys-General, if the person:

- is so ill that it is reasonable to expect that the person will not be able to make an application, or respond to a request for further information, after ceasing to be in gaol; or
- is expected to remain in gaol after the scheme's sunset day.[15]

3.11 On 20 March 2019, DSS reported that, as at 1 March 2019:

> 21 applications were on hand with the Scheme where the applicant has disclosed that they are in prison. Applications cannot progress to processing unless a determination is made that there are exceptional circumstances

10 Paragraph 13(1)(d) and section 15 of the Act.

11 Paragraph 20(1)(c) of the Act.

12 Paragraph 13(1)(e) of the Act.

13 Section 20 of the Act.

14 Section 14 of the Rules.

15 Subsection 14(2) of the Rules.

justifying the making of an application while a person is in gaol. Currently, less than 10 determinations have been made.[16]

Applications by a person sentenced to five or more years' imprisonment

3.12 A person who has been sentenced to imprisonment for five or more years (before or after making an application) will not be able to apply for redress unless the Operator makes a determination on the matter.[17]

3.13 The Operator may determine that the person is able to receive redress under the scheme if they are satisfied that providing redress would not:

- bring the scheme into disrepute; or
- adversely affect public confidence in, or support for, the scheme.[18]

3.14 Prior to making a determination, the Operator must seek advice from the relevant Attorney(s)-General—that is:

- the Attorney(s)-General in which the abuse occurred;
- the Attorney(s)-General of the jurisdiction(s) against which the offence(s) was or were committed; and
- if the offence(s) was or were not committed in a participating jurisdiction, then the Commonwealth Attorney-General.[19]

3.15 The Operator must consider this advice, certain other factors (such as the nature of the offence and length of imprisonment), and any other factors they consider relevant.[20]

3.16 In forming their decision, the Operator must give greater weight to any advice provided by the Attorney-General of the jurisdiction in which the abuse occurred than to any of the other factors being considered.[21]

3.17 DSS advised that as at 1 March 2019, the redress scheme had received 101 applications where the applicant had indicated they had a serious criminal conviction.[22] Of these 101 applications, DSS stated:

- 16 had been referred to [DSS].
- Less than 10 of those applications had notices issued requesting advice from the relevant Specified Advisor (Attorney-General or their nominated representative) in accordance with section 63 of the

16 DSS, answers to questions on notice, 28 February 2019 (received 20 March 2019).

17 Section 63 of the Act.

18 Subsection 63(5) of the Act.

19 Subsections 63(3) and 63(4) of the Act.

20 Subsection 63(6) of the Act.

21 Subsection 63(7) of the Act.

22 DSS, answers to questions on notice, 28 February 2019 (received 20 March 2019).

National Redress Scheme for Institutional Child Sexual Abuse Act 2018.

- Less than 10 of those applications had all advice from relevant Specified Advisor(s) returned to the department.
- Less than 10 payments have been made to people with a serious criminal conviction.
- The average time for the special assessment process to be completed once referred to the department is currently 34.5 calendar days. Given the low number of special assessment processes completed to date this average may not be indicative.[23]

Exposure abuse where the perpetrator was under 18 years' of age

3.18 A person who experienced abuse by a perpetrator who was a child at the time of the abuse is not eligible for redress unless the abuse involved physical contact with, or penetration of, the person.[24] The different types of abuse as defined by the scheme—penetrative abuse, contact abuse, and exposure abuse—are explained further below.

3.19 This means that the scheme covers exposure abuse if the perpetrator of the exposure abuse was an adult, but not if the perpetrator was a child.

Requirement that the applicant be an Australian citizen or permanent resident

3.20 As noted above, a person is only eligible for redress if they are an Australian citizen or a permanent resident at the time they apply for redress.[25] However, the Act provides for the Rules to prescribe that other groups of people are also eligible.[26]

3.21 The Explanatory Memorandum to the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (which did not progress) expressed an intention that, on commencement of the scheme, the Rules would provide for the following survivors to be eligible for redress: former child migrants who are non-citizens and non-permanent residents, non-citizens and non-permanent residents currently living in Australia, and former Australian citizens and permanent residents.[27] However, the more recent Explanatory Memorandum to the Act states that non-citizens and non-permanent residents 'will be ineligible to ensure the integrity of the Scheme', and refers to the risk of fraudulent applications.[28]

23 DSS, answers to questions on notice, 28 February 2019 (received 20 March 2019).

24 Section 6 of the Rules and subsection 14(3) of the Act.

25 Paragraph 13(1)(e) of the Act.

26 Subsection 13(2) of the Act.

27 Explanatory Memorandum to the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017, p. 13.

28 Explanatory Memorandum to the Act, p. 117.

Where a security notice is in force

3.22 A person cannot apply for redress if a security notice is in force in relation to the person.[29]

Where a person has received a court-ordered payment

3.23 A person cannot apply for redress if they have already received a court-ordered payment from the institution.[30]

Is non-sexual abuse covered by the redress scheme?

3.24 A person is not eligible for redress unless they were sexually abused.[31]

3.25 However, the Act does state that 'redress for a person is for the sexual abuse, and related non-sexual abuse, of the person that is within the scope of the scheme'.[32] In addition, a person may receive up to $5000 additional redress payment as recognition of related non-sexual abuse.[33]

The standard of 'reasonable likelihood'

3.26 When determining whether a person will be able to receive redress, decision makers will apply the standard of 'reasonable likelihood' with respect to various matters, including:

- whether the person was sexually abused;
- whether the sexual abuse was within the scope of the scheme, and
- whether one or more participating institutions are responsible for the abuse.[34]

3.27 'Reasonable likelihood', in relation to a person being eligible for redress, means the chance of the person being eligible is real, is not fanciful or remote and is more than merely plausible.[35] This standard is lower than the standard applied in criminal matters ('beyond reasonable doubt') and in civil matters ('balance of probabilities').

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29 Paragraph 20(1)(b) of the Act. As set out at subsection 65(1) of the Act, a security notice is given by the Home Affairs Minister in relation to a person, including because the person's visa was cancelled because of an assessment by Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security.

30 Paragraph 13(1)(d) and subsection 15(6) of the Act; section 11 of the Rules; also see National Redress Scheme, 'Who can apply?', https://www.nationalredress.gov.au/applying/who-can-apply (accessed 12 March 2019).

31 Paragraph 13(1)(a) of the Act.

32 Section 17 of the Act.

33 Section 5 of the Assessment Framework.

34 Paragraph 12(2)(b) and section 13 of the Act.

35 Section 6 of the Act.

Accepting or declining an offer of redress

3.28 An applicant may choose to accept or decline an offer of redress.[36] When doing so, there is an approved form that they are required to use.[37]

3.29 If they accept an offer of redress, the applicant must specify whether they want to receive any one, two of three of the components of redress (the three components are outlined below).[38]

Release of institutions from civil liability

3.30 In order to accept an offer of redress, a survivor must sign an acceptance document. The effect of this is to release the responsible participating institution or institutions, and their associates and officials, from any future civil liability for all instances of sexual abuse and related non-sexual abuse of the person within the scope of the scheme.[39]

3.31 This release only applies to abuse that was within the scope of the scheme, and it only applies to the relevant participating institutions, their associates and officials. The release also only applies to civil liability, and does not preclude any criminal liabilities of the institution or alleged perpetrator.[40]

Requesting a review of a determination on an application

3.32 After receiving a decision on their application for redress, an applicant may request a review of that decision.[41] If this occurs then a review must be conducted. The person conducting the review may have regard only to the information and documents that were available to the person who made the original determination.[42]

3.33 It is possible for the review to result in various outcomes, including that the offer of redress is increased or decreased.[43]

3.34 An applicant may withdraw their request for a review before the review has been finalised.[44]

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36 Sections 42 and 45 of the Act.

37 Paragraphs 42(2)(a) and 45(1)(a) of the Act.

38 Paragraph 42(2)(f) of the Act.

39 The Hon Dan Tehan MP, then Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3635; also see paragraphs 42(2)(c), 42(2)(d) and 42(2)(e) and section 43 of the Act; also see Intergovernmental Agreement, p. 12.

40 The Hon Dan Tehan MP, then Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3635; also see section 43 of the Act.

41 Section 73 of the Act.

42 Subsection 75(3) of the Act.

43 Paragraph 75(2)(b) of the Act.

44 Section 74 of the Act.

Support for people applying for redress

3.35 The *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (Intergovernmental Agreement) provides for three types of support to be available over the life of the redress scheme for survivors engaging with the scheme:

- community-based support services;
- financial counselling support; and
- legal support services.[45]

3.36 Regarding community-based support services, the Intergovernmental Agreement states:

> Redress Support Services (RSS) will give survivors timely and seamless access to trauma-informed and culturally appropriate community-based support services throughout their engagement with the Scheme. This may include providing assistance to prepare an application, help with understanding the application process, providing referrals to other services including counselling services, and support during the delivery of the Direct Personal Response by responsible institutions. RSS will be available through Commonwealth funded community-based support services to survivors over the life of the Scheme. RSS will be available nationally and will use face-to-face, telephone, online and outreach services to ensure adequate coverage.[46]

3.37 The financial counselling support is provided by an existing service, namely the National Debt Helpline.[47] The Intergovernmental Agreement states:

> Survivors will have access to financial support services through existing Commonwealth funded financial support services and enhanced with information specific for survivors applying to the Scheme.[48]

3.38 The legal support is provided by knowmore, which has received $37.9 million over three years to provide legal support services to assist survivors to access the redress scheme.[49] The Intergovernmental Agreement states that the service will be available throughout survivors' engagement with the scheme, and includes:

> …assistance to understand the eligibility requirements and the application process, advice on participating in the Scheme, during completion of a survivor's application, after a survivor receives an offer of redress and elects to seek an internal review, and prior to signing the release from civil

45 Intergovernmental Agreement, p. 13.

46 Intergovernmental Agreement, p. 13.

47 National Redress Scheme, 'Financial support services', https://www.nationalredress.gov.au/support/financial-support-services (accessed 8 March 2019).

48 Intergovernmental Agreement, p. 13.

49 knowmore, *Submission 31*, p. 3.

liability to support survivors to understand the effect of the release on their future legal rights.[50]

Administering the scheme and processing applications

3.39 The Act provides that the Secretary of the Department of Social Services (DSS) will be the National Redress Scheme Operator (the Operator). The Operator is responsible for operating the scheme.[51]

3.40 Determinations on applications are made by independent decision-makers. These independent decision-makers also make decisions on reviews of determinations on applications.[52]

3.41 Independent decision-makers are engaged by the Operator, subject to the agreement of participating jurisdictions.[53] As at 21 February 2019, there were four independent decision-makers, who were each appointed in August 2018.[54]

Priority applications

3.42 DSS and the Department of Human Services (DHS) have agreed a set of guidelines regarding what constitutes a priority application and a non-priority application.[55] While these guidelines are not public, the criteria for a priority application include consideration of whether the applicant is aged, terminally ill, or has a mental illness.[56]

3.43 Priority applications are processed faster than they would otherwise be processed. Non-priority applications are processed in the order they were received.[57]

What are the three components of redress that may be provided?

3.44 Redress consists of the following three components:

- A redress payment of up to $150 000.

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50 Intergovernmental Agreement, p. 13.

51 Section 9 of the Act. The Operator may also delegate some of their powers under section 184 of the Act.

52 Section 185 of the Act; also see The Hon Dan Tehan MP, then Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3637.

53 Section 185 of the Act; also see Intergovernmental Agreement, p. 18.

54 Ms Elizabeth Hefren-Webb, Deputy Secretary, Families and Communities, and Ms Tracy Creech, Branch Manager, Redress Implementation, Department of Social Services (DSS), evidence to Senate Community Affairs Legislation Committee, Additional estimates hearing, *Proof Committee Hansard*, 21 February 2019, pp. 38–39.

55 Ms Catherine Rule, Deputy Secretary, programme Design Group, Department of Human Services (DHS), *Proof Committee Hansard*, 28 February 2019, p. 25.

56 Ms Catherine Rule, Deputy Secretary, programme Design Group, DHS, *Proof Committee Hansard*, 28 February 2019, p. 25.

57 Ms Catherine Rule, Deputy Secretary, programme Design Group, DHS, *Proof Committee Hansard*, 28 February 2019, p. 25; also see National Redress Scheme, 'What happens next?', https://www.nationalredress.gov.au/applying/what-happens-next (accessed 12 March 2019).

- A counselling and psychological component that, depending on the approach chosen by the state or territory in which the person lives, will take the form of either:
  - access to counselling and psychological services provided by the state or territory, or
  - a payment of up to $5000 to enable to person to privately access counselling and psychological services.
- A direct personal response (apology) from each of the participating institutions.[58]

3.45 Each of the components is outlined below.

Monetary component

3.46 Under section 5 of the Assessment Framework, the amount of a redress payment for a person is worked out using the following table:

Table 3.1—Assessment Framework: Amount of redress payment

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

3.47 The Assessment Framework provides that only one row of the table can be relevant to a person because a row 'covers all relevant sexual abuse of the person'.[59] As the committee understands it, this means that if, for example, a person experienced both exposure abuse and penetrative abuse, then row 1 would apply to that person.

3.48 The total amount for a person is the amount in column 2 of the relevant row, plus the amounts in any other applicable column.[60] Importantly, this amount is the *maximum* amount for the person.[61] It appears to the committee that the actual amount

58 Section 16 of the Act.

59 Note 1, subsection 5(1) of the Assessment Framework.

60 Subsection 5(2) of the Assessment Framework.

61 See the method for calculating redress payments and an institutions' liability, including at step 1 of the method statement at subsection 30(2) of the Act, and at section 18 of the Rules.

received by a person may be lower, because, for example, it is possible that not all institutions responsible for the abuse are participating in the scheme.[62]

3.49 In addition, a person will receive a lower redress payment if they have previously received a relevant payment from, or on behalf of, the institution responsible for the abuse.[63] Relevant prior payments include payments from other redress schemes or out of court settlements.[64] Relevant prior payments will be adjusted for inflation, then subtracted from the amount for which the institution responsible for the abuse is liable to pay the survivor.[65]

3.50 It is not possible for a person to receive a payment greater than $150 000, regardless of the severity of the abuse or the number of institutions responsible for the abuse.[66]

3.51 According to the Minister, the expected average payment under the scheme is approximately $76 000.[67]

Counselling and psychological component

3.52 Under section 6 of the Assessment Framework, the amount of the counselling and psychological component of redress for a person is worked out using the following table:

Table 3.2—Assessment Framework: Amount of counselling and psychological component of redress

Amount of the counselling and psychological component of redress		
	Column 1 **Kind of sexual abuse of the person**	**Column 2** **Amount of the component**
1	Penetrative abuse	$5,000
2	Contact abuse	$2,500
3	Exposure abuse	$1,250

3.53 It is not possible for the total amount to exceed $5000, regardless of the number of institutions responsible for the abuse or the severity of the impact of the abuse.[68]

62 See Division 2 of Part 6 of the Rules.

63 See the method statement at subsection 30(2) of the Act.

64 Prior payments that are not relevant prior payments are set out at section 26 of the Rules. Also see National Redress Scheme, 'Who can apply?', https://www.nationalredress.gov.au/applying/who-can-apply (accessed 7 March 2019).

65 See the method statement at subsection 30(2) of the Act.

66 Paragraph 16(1)(a) of the Act; Step 1 of the method statement at subsection 30(2) of the Act.

67 The Hon Dan Tehan MP, then Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3634.

68 Subsection 31(2) of the Act.

3.54 Each jurisdiction can choose one of two approaches for the payment of this component of the scheme. The two approaches are:

- paying the component to existing counselling services of the state or territory in which the survivor lives; or
- paying the component directly to the survivor.[69]

3.55 The first approach applies where the jurisdiction in which the person lives is a 'declared provider' of counselling and psychological services.[70] It is open to a participating jurisdiction to notify the minister that it wishes to be a declared provider, in which case the minister must declare that the jurisdiction is a declared provider. It is also open to jurisdictions to cease being declared providers.[71]

3.56 Under the Act, jurisdictions that are declared providers must provide counselling and psychological services to survivors in accordance with the National Service Standards.[72]

3.57 At the time of writing, New South Wales, Queensland, Tasmania, Victoria, the Australian Capital Territory and the Northern Territory have chosen to be declared providers.[73] On 20 March 2019, DSS advised that Western Australia and South Australia have chosen to provide a lump sum payment to survivors, to cover counselling and psychological care services.[74]

3.58 The second approach for delivering this component—paying it directly to the survivor—applies if the person does not live in a jurisdiction that is a declared provider.[75] This payment is intended to assist the survivor to privately access counselling and psychological services.[76]

Direct personal response component

3.59 A person may choose to receive a direct personal response from any or all of the institutions responsible for the abuse.[77] A direct personal response is any one or more of the following:

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69 See section 51 of the Act, also see Intergovernmental Agreement, pp. 13–14.

70 Subsection 51(2) of the Act.

71 Sections 146 and 147 of the Act. Declared providers are listed at Part 5 of the Declaration.

72 Paragraph 52(2)(b) of the Act. The National Service Standards are at Schedule C of the Intergovernmental Agreement.

73 Part 5 of the Declaration.

74 DSS, answers to questions on notice, 28 February 2019 (received 20 March 2019).

75 Subsections 51(2) and 51(3) of the Act. The process for payment is set out at section 33 of the Rules.

76 Intergovernmental Agreement, p. 13.

77 See paragraphs 42(2)(f) and 42(2)(g) and subsection 54(1) of the Act. It is also possible for a survivor to delay or withdraw from a direct personal response at any time, see section 12(2) of the Direct Personal Response Framework.

- an apology or a statement of acknowledgement or regret.
- an acknowledgement of the impact of the abuse on the person.
- an assurance as to the steps the institution has taken, or will take, to prevent abuse occurring again.
- an opportunity for the person to meet with a senior official of the institution.[78]

3.60 A direct personal response may be provided in a face-to-face meeting, in writing, or via any other method agreed with the survivor.[79]

3.61 The Act sets out general principles guiding the provision of direct personal responses, including the following:

- All participating institutions should offer and provide on request by a survivor:
  - meaningful recognition of the institution's responsibility by way of a statement of apology, acknowledgement or regret; and
  - an assurance as to steps taken to protect against further abuse.
- Engagement between a survivor and a participating institution should occur only if, and to the extent that, a survivor wishes it.
- Participating institutions should make clear what they are willing to offer and provide by way of a direct personal response to survivors. Institutions should ensure that they are able to provide the direct personal response that they offer to survivors.[80]

3.62 In addition, the Direct Personal Response Framework specifies, in greater detail, the rules and obligations when providing a direct personal response.[81] This includes that the institution is to demonstrate that the survivor's testimony has been listened to or heeded, and it is not to question the survivor's testimony.[82]

3.63 Institutions must also ask the survivor to provide feedback on the direct personal response, and must have a process for complaints relating to direct personal responses.[83] Institutions must 'make reasonable efforts to consider, and be responsive to,' any feedback or complaints.[84]

78 Subsection 54(2) of the Act.

79 Section 7 of the Direct Personal Response Framework.

81 See subsection 54(3) and section 55 of the Act.

82 Paragraphs 11(1)(g) and 11(1)(h) of the Direct Personal Response Framework.

83 Sections 15 and 16 of the Direct Personal Response Framework.

84 Subsections 15(3) and 16(3) of the Direct Personal Response Framework.

3.64 Every aspect of the direct personal response is confidential unless all participants agree otherwise or there is an actual or potential threat to human life, health or safety.[85]

Participation of institutions in the redress scheme

3.65 A person is not eligible for redress unless one or more of the institutions responsible for the sexual abuse is participating in the scheme (a 'participating institution').[86] There are four types of participating institutions:

- Commonwealth institutions (such as Commonwealth departments and bodies established under Commonwealth law).
- State institutions (such as state departments and certain bodies established under State law).
- Territory institutions (such as territory departments and certain bodies established under Territory law).
- Non-government institutions (such as churches or sporting clubs).[87]

3.66 All Commonwealth institutions are participating institutions.[88] The other types of institutions are only participating institutions if they agree to participate and the minister declares that they are participating institutions.[89]

3.67 As of 1 February 2019, participating state and territory institutions have been declared for each jurisdiction (as discussed in Chapter 2 with regard to jurisdictions opting-in to the scheme).[90]

3.68 Non-government institutions that have joined the scheme are listed at Schedule 1 of the Declaration. However, many institutions that were identified as part of the Royal Commission have not yet joined the scheme. In February 2019, the National Redress Scheme began publishing a list of such institutions.[91] The scheme clarified that there are likely to be other institutions, not named on the list, in which sexual abuse occurred, and that '[t]he Government also expects these institutions to be accountable for this abuse, and join the Scheme'.[92]

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85 Subsection 11(2) of the Direct Personal Response Framework.

86 Paragraph 13(1)(d) and subsection 108(1) of the Act.

87 Section 107, subsection 108(2) and sections 109–114 of the Act.

88 Paragraph 108(2)(a) of the Act.

89 Section 115 of the Act.

90 See Part 2 of the Declaration.

91 This list is on the National Redress Scheme website at: https://www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined (accessed 8 March 2019).

92 National Redress Scheme, 'Institutions that have not yet joined the Scheme', https://www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined (accessed 8 March 2019).

3.69 The Act provides for a defunct institution to join the scheme where it has a representative to act on its behalf and assume its obligations and liabilities under the scheme.[93]

3.70 Institutions have until 30 June 2020 (two years after the scheme commenced) to join the scheme.[94]

3.71 Survivors can apply for redress even if the institution responsible for the abuse has not joined the scheme, but their application will not progress until that institution joins. Where such applications are made, applicants are asked whether they would like to have their application held open until the institution has joined, or withdraw their application and apply again when the institution has joined.[95]

3.72 It is possible for an institution to cease being a participating institution, if it chooses to do so.[96] However, an institution that leaves the scheme would still be considered a participating institution in relation to any application that was made while the institution was participating.[97]

Who pays the costs of redress?

3.73 Funding arrangements are based on the notion that the responsible entity pays.[98]

3.74 The costs of redress payments are initially covered by the Commonwealth. However, each participating institution is liable to reimburse the Commonwealth for its share of the costs.[99] The funding contribution required of the institution is:

- the institution's share of the administration costs of the scheme,[100] and
- the institution's share of the costs for the monetary component and for the counselling and psychological component.[101]

3.75 This means that where the responsible institution is a Commonwealth, state or territory institution, the government of that jurisdiction is liable to pay the costs of

93 Section 107, paragraph 115(3)(d), and Division 4 of Part 5-1 of the Act.

94 However, the Act explicitly provides that this deadline may be extended by the Rules. See subsection 115(4) of the Act.

95 Department of Social Services, *Submission 19*, p. 5.

96 Section 116 of the Act.

97 Subsection 116(7) of the Act.

98 Intergovernmental Agreement, p. 10.

99 Sections 148 and 149 of the Act.

100 Generally speaking, the administration cost for an institution will be 7.5 per cent of the institution's liability for redress payments, plus a contribution of $1,000 per claim (but if there are multiple institutions, this $1,000 will be split between them proportionate to their liability). See section 67 of the Rules and the Intergovernmental Agreement, p. 11.

101 Sections 150, 151, and 152 of the Act.

redress.[102] Additionally, if there are multiple institutions responsible for the abuse, then the liability is split between them.

3.76 The Assessment Framework and the Rules set out how to calculate the amount of liability of an institution that is responsible for abuse, including where there are multiple institutions.[103]

3.77 The amounts owed by an institution are calculated each quarter, and financial penalties apply for late payments.[104]

Funders of last resort

3.78 The Act provides certain precise circumstances in which the government of a participating jurisdiction will act as a funder of last resort.[105] All of the following criteria must be met:

- The institution responsible for the abuse must be a defunct institution.[106]
- The Operator must have determined that a participating government institution is equally responsible with the defunct institution for the abuse.[107]
- The jurisdiction responsible for the participating government institution must agree to act as the funder of last resort.[108]

3.79 Where a jurisdiction acts as a funder of last resort, it pays the defunct institution's (hypothetical) share of the costs of providing redress, as well as the government institution's own share of the costs.[109]

3.80 The Intergovernmental Agreement states that jurisdictions will not agree to act as funders of last resort where:

> …there exists another participating non-government institution which would reasonably be expected to assume liability for the non-existent responsible non-government institution. For example, where the institution that no longer exists would have fallen under a national body that still exists, that national body would be expected to assume liability for the

102 See Intergovernmental Agreement, pp. 10–11.

103 See Division 2 of Part 6 of the Rules.

104 Sections 149, 153 and 154 of the Act.

105 See Division 2 of Part 6-2 of the Act.

106 Section 163 of the Act.

107 See paragraph 29(2)(i) of the Act. Subsection 15(3) of the Act provides that an institution is equally responsible for abuse if the institution and one or more other institutions are approximately equally responsible for the abuser having contact with the person, and no institution is primarily responsible for the abuse of the person.

108 Subsections 164(3) and (4) of the Act; also see Intergovernmental Agreement, p. 12.

109 Note 1 of subsection 29(2) of the Act; also see section 165 of the Act.

defunct institution rather than a government stepping in as funder of last resort.[110]

Reviews of the scheme

3.81 At the end of each financial year, the Operator must give an annual report to the minister for presentation to parliament.[111] The report must outline the operation of the scheme, including the number of applications received, the number of offers made and accepted, the number of institutions found responsible for abuse, and details about the provision of each component of redress.[112]

3.82 The Act also provides for the minister to cause two reviews of the redress scheme to be conducted. One review will be two years after the scheme commenced, and the other will be eight years after the scheme commenced.[113]

3.83 The Act lists a number of factors that the reviews must consider, including:

- the extent to which survivors who are eligible for redress under the scheme have applied for redress;
- redress payments;
- access to counselling and psychological services under the scheme;
- the extent to which survivors access direct personal responses under the scheme, including factors influencing the uptake and experiences with the direct personal response process; and
- the availability of, and access to, support services under the scheme.[114]

Key data about the implementation of the scheme to date

3.84 The committee has made efforts to receive current data about the implementation of the scheme. DSS advised that, as at 1 February 2019:

- 2728 applications had been made;[115]
    - 869 of these applications (about 32%) relate to institutions that had not yet joined the scheme;[116]
- 51 survivors had received payments;[117]

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110 Intergovernmental Agreement, p. 12.

111 Section 187 of the Act.

112 Subsection 187(2) of the Act and section 75 of the Rules.

113 Section 192 of the Act.

114 Subsections 192(2) and 192(4) of the Act.

115 Mr Bruce Taloni, Group Manager, Redress and Reform, DSS, evidence to Senate Community Affairs Legislation Committee, Additional estimates hearing, *Proof Committee Hansard*, 21 February 2019, p. 33.

116 Mr Bruce Taloni, Group Manager, Redress and Reform, DSS, evidence to Senate Community Affairs Legislation Committee, Additional estimates hearing, *Proof Committee Hansard*, 21 February 2019, p. 35.

- the average payment was $79 035;
- 14 payments were between $0 and $50 000
- 34 payments were between $50 000 and $100 000; and
- fewer than 10 payments were between $100 000 and $150 000;[118]

- a further 31 offers had been made and were being considered by the applicant;[119]
- no offers had been rejected by the applicant.[120]
- no offers of $0 had been made;[121] and
- at least one payment was the maximum of $150 000;[122]

3.85 On 28 February 2019, the redress scheme's website was updated to reflect that as of 28 February, the scheme had received over 3000 applications.[123] Of which, 88 redress payments were made and a further 22 offers were made and are being considered by the applicant.[124]

117 Mr Bruce Taloni, Group Manager, Redress and Reform, DSS, evidence to Senate Community Affairs Legislation Committee, Additional estimates hearing, *Proof Committee Hansard*, 21 February 2019, p. 33.

118 Ms Tracy Creech, Branch Manager, Redress Implementation, DSS, evidence to Senate Community Affairs Legislation Committee, Additional estimates hearing, *Proof Committee Hansard*, 21 February 2019, p. 36.

119 Ms Tracy Creech, Branch Manager, Redress Implementation, DSS, evidence to Senate Community Affairs Legislation Committee, Additional estimates hearing, *Proof Committee Hansard*, 21 February 2019, p. 36.

120 Ms Tracy Creech, Branch Manager, Redress Implementation, DSS, evidence to Senate Community Affairs Legislation Committee, Additional estimates hearing, *Proof Committee Hansard*, 21 February 2019, p. 36.

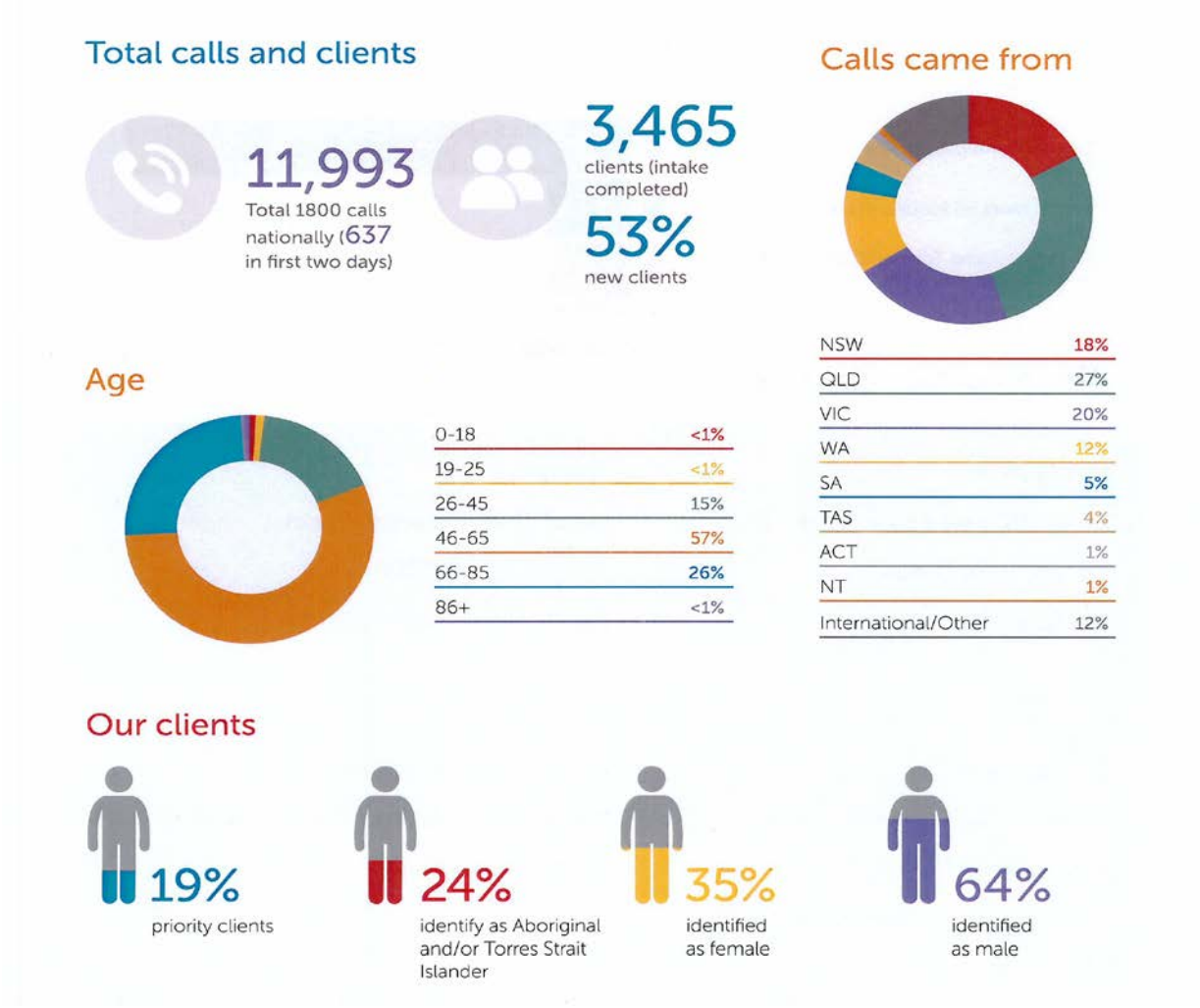
121 Ms Tracy Creech, Branch Manager, Redress Implementation, DSS, evidence to Senate Community Affairs Legislation Committee, Additional estimates hearing, *Proof Committee Hansard*, 21 February 2019, p. 36.

122 Mr Bruce Taloni, Group Manager, Redress and Reform, DSS, evidence to Senate Community Affairs Legislation Committee, Additional estimates hearing, *Proof Committee Hansard*, 21 February 2019, p. 37.

123 https://www.nationalredress.gov.au/about/updates/656 (accessed 25 March 2019).

124 https://www.nationalredress.gov.au/about/updates/656 (accessed 25 March 2019).

3.86 knowmore provided the following data (from 1 July 2018 to 31 January 2019) in relation to the number of calls to knowmore and its clients.[125]



125 Document tabled by knowmore at the public hearing on 28 February 2019.

Chapter 4

Participation of institutions and eligibility of survivors

4.1 This chapter outlines key evidence received by the committee regarding the ability of certain groups of survivors to access redress. It examines:

- the participation of institutions in the scheme and how this affects survivors seeking to access redress, including:
    - encouraging non-government institutions to join the scheme;
    - the provisions for defunct institutions and funders of last resort;
    - institutions that are not capable of discharging their obligations under the scheme; and
    - other institutions that may not be included in the scheme;
- the exclusion of certain groups of survivors and the additional requirements facing other groups, including:
    - the requirement that an applicant must have experienced sexual abuse within the scope of the scheme;
    - the requirement for an applicant to either be an Australian citizen or permanent resident;
    - additional requirements for survivors who are currently in gaol or who have been sentenced to imprisonment for five years or longer; and
    - the exclusion of survivors of exposure abuse perpetrated by a child.

Participation of institutions in the scheme

4.2 In order for a survivor to be eligible for redress, the institution responsible for the abuse must be participating in the scheme. However, as at 1 February 2019, almost one third of applications for redress, of the 2728 received by that date, related to an institution that was not participating in the scheme.[1]

4.3 The committee received a large volume of evidence expressing concern about the participation of institutions, including the time taken for institutions to join, options to encourage institutions to join, and whether institutions will join the scheme at all. It should be noted that some of these concerns were raised in submissions lodged as early as mid-2018, and since then some institutions have joined the scheme.

1 Ms Tracy Creech, Branch Manager, Redress Implementation, Department of Social Services (DSS), Senate Community Affairs Legislation Committee, Additional estimates hearing, *Proof Committee Hansard*, 21 February 2019, p. 35.

4.4 As an example of these concerns, the Care Leavers Australasia Network (CLAN) submitted that 'we wish to see no more delays and that these institutions put their money in to this Redress Scheme immediately!'[2]

4.5 Kelso Lawyers highlighted that participation of institutions is important because it can affect the monetary redress provided to a survivor:

> The calculation of redress is more focused on the institutions' share of the cost of redress than on the survivors' need for that redress. For example, in general, if two institutions are equally responsible for the abuse, but only one is a participating institution, then the maximum redress available to the survivor is reduced by half; this is not a survivor-focused approach.[3]

4.6 The importance of institutions joining the scheme was further demonstrated by the experience of a survivor who learned, after lodging their application, that the institution responsible for their abuse was not, at that point in time, participating in the scheme.

Case study 4.1—Applying for redress and subsequently learning that the institution responsible for abuse is not participating in the scheme

Because my sense of trust in any institution has been damaged, I wanted make sure I had all of "my ducks in a row" with regards to proof and evidence of where I was at the time of my abuse and who were the perpetrators. That meant on my behalf, obtaining under state freedom of information laws, copies of my orphanage records and my ward of the state records. That experience was also counter productive. It re opened old wounds and for weeks later, the content haunted me.

I have put together a substantive and comprehensive application into the [national redress scheme]. When I submitted it in July I was called around a week later by a [national redress scheme] representative, to be told, the Catholic Church, while publicly stating they would be joining the scheme, had not joined. As I write this letter, they still haven't joined the scheme.

This was such an insult and a crushing blow. After all the effort and anxiety that I went through to put my application together, basically I was told your application will be put onto a pile to collect dust until the Catholic church gets it act together.[4]

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2 CLAN, *Submission 40*, p. 14; also see, for example, Ms Shelly Braieoux, private capacity, *Submission 24*, p. 1.

3 Kelso Lawyers, *Submission 5*, p. 6. Note that this can occur because a non-participating institution that is responsible for abuse is counted when calculating the liability of other institutions that are participating. See sections 151, 30 and 31, and paragraphs 29(2)(c) and 29(2)(d) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act); also see Division 2 of Part 6 of the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (the Rules), including the Note to section 21, and subsection 23(2), of the Rules. Also see a simplified outline of sharing costs of redress components at section 18 of the Rules.

4 Name withheld, *Submission 42*, p. 1. It should be noted that, at the time this report was tabled, some parts of the Catholic Church had commenced participation in the scheme.

Encouraging non-government institutions to participate in the scheme

4.7 The Actuaries Institute contrasted a recommendation of the Royal Commission—that a redress scheme must provide equal access and equal treatment for survivors—with the provision stating that a survivor is not eligible for redress unless at least one participating institution is responsible for the abuse of the survivor. It supported 'an option which achieves full coverage for all survivors, regardless of whether the institution in which they were abused in is participating in the scheme'.[5] The Actuaries Institute suggested that in relation to institutions that are active but not participating, there 'may need to be some mechanism or incentive (carrot or stick) for them to opt in'.[6]

4.8 The Australian Lawyers Alliance (Lawyers Alliance) welcomed announcements that several large institutions have agreed to participate in the scheme, but noted that 'at present there appears to be no means of effectively encouraging institutions to participate'.[7] It supported making the charitable status of all non-government institutions against which a redress claim is made conditional on their participation in the scheme.[8] Dr Andrew Morrison RFD QC, Spokesperson for the Lawyers Alliance, elaborated on this point:

> [T]here are a number of organisations—I understand, mostly of a smaller nature—which seem unlikely to enter into the scheme. Those organisations cannot be obliged, as I apprehend the position by Commonwealth law, to enter the scheme, but the Commonwealth does have power over their status as a charitable institution. If the legislation were amended so that organisations which did not register and participate in the scheme lost their charitable status, they would then have a very powerful incentive to change their mind, not least because they would become subject to such things as local council rates. They would become subject to land tax. They would become subject, on any earnings in their organisation, to paying… Commonwealth income tax. For churches, for example, that conduct activities and in large measure managed…to keep their activities within their charitable status, the loss of their charitable status would be an enormously powerful incentive. Participation would perhaps not go to a 100 per cent, because there would be some institutions that had ceased to continue their activities and where you couldn't trace them through to a successor organisation, but, with those relatively minor exceptions I think you would get closer to 100 per cent involvement in the scheme.[9]

4.9 Dr Morrison further explained:

> The Commonwealth, at the moment, permits [non-participating institutions] to retain their charitable status, despite the fact that they're not acting in the

5 Actuaries Institute, *Submission 6*, p. 2.

6 Actuaries Institute, *Submission 6*, p. 2.

7 Australian Lawyers Alliance (Lawyers Alliance), *Submission 4*, p. 10.

8 Lawyers Alliance, *Submission 4*, p. 10.

9 Dr Morrison, *Committee Hansard*, 10 October 2018, pp. 15–16.

> spirit of a charity. Why should they get away with it when other institutions are doing the right thing?[10]

4.10 A number of other submitters and witnesses raised the option of revoking charitable status of institutions that are named in an application but which are not participating in the scheme.[11] Maurice Blackburn Lawyers (Maurice Blackburn) submitted that the threat of removing the concessions associated with charitable status:

> …might encourage institutions to focus more on satisfying the child safe ideals spelled out by the Royal Commission [into Institutional Responses to Child Sexual Abuse]. The Government has been threatening to remove charitable status from charities that spend too much time doing advocacy work. If they can remove charitable status for advocacy, surely they can find a way to remove it for not being child safe.[12]

4.11 knowmore Legal Services (knowmore) suggested a different mechanism for pressuring institutions to participate in the redress scheme, submitting that the government should reconsider the:

> …appropriateness of government funding, contracts or financial concessions being provided to non-government institutions that are delivering child-related services, but do not participate in the Scheme.[13]

4.12 Inquiry participants also raised other potential mechanisms to encourage institutions to join the scheme. For example, knowmore submitted that participation in the redress scheme should 'be part of any decision-making matrix of whether an organisation is a child-safe organisation'.[14] In addition, various submitters and witnesses suggested that it would be appropriate to publicly name any institution that was named in the Royal Commission but has not joined the scheme (an approach, as explained below, that has now been adopted).[15]

4.13 The committee heard from the Department of Social Services (DSS) regarding the participation of non-government institutions in the scheme, and options to encourage their participation.

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10 Dr Morrison, *Committee Hansard*, 10 October 2018, p. 16.

11 See, for example, Ms Shelly Braieoux, private capacity, *Submission 24*, p. 2; Mr Paul Gray, private capacity, *Submission 44*, p. 1; Mr Peter Gogarty, private capacity, *Committee Hansard*, 8 November 2018, p. 8; Ms Kate, private capacity, *Committee Hansard*, 8 November 2018, p. 33.

12 Maurice Blackburn Lawyers, *Submission 25*, p. 15; also see Ms Michelle James, Principal Lawyer, Maurice Blackburn Lawyers, *Committee Hansard*, 7 November 2018, p. 19.

13 knowmore, *Submission 31*, p. 12.

14 knowmore, *Submission 31*, p. 12.

15 See, for example, Ms Braieoux, *Submission 24*, p. 2; Ms James, *Committee Hansard*, 7 November 2018, p. 19; Mr Gogarty, *Committee Hansard*, 8 November 2018, p. 8; Ms Joanne McCarthy, Journalist at the *Newcastle Herald*, *Committee Hansard*, 8 November 2018, p. 39.

4.14 Representatives of DSS referred to the first meeting of the Ministers' Redress Scheme Governance Board, held on 10 December 2018, and the associated communique, which stated:

> The Board noted that the biggest constraint on offers of redress being made is that many [non-government institutions] have not yet joined the Scheme. The Board expressed the strong view that [non-government institutions] should seek to join the Scheme as soon as possible given the impact on survivors of the delay.
>
> The Board indicated that it intends to commence public reporting on the Scheme early in [early 2019], including reporting as to which institutions have, and those that have not, joined the Scheme.[16]

4.15 It appears that this public reporting of non-participating institutions commenced on 27 February 2019, when the redress scheme website published a list of institutions that were named in the Royal Commission but have not signed up to the scheme.[17]

4.16 The Secretary of DSS had written to each of these institutions on 21 February 2019 requesting advice about when each institution intended to join.[18] Where institutions provided advice to DSS about when they intended to join, this information has been added to the list on the website of non-participating institutions. It is intended that the list will evolve as more information is received.[19]

4.17 A representative of DSS told the committee that some institutions 'have not received this well and have indicated that they don't think they should be subject to this sort of persuasion'.[20] The representative was also asked why some institutions have indicated that they do not intend to join the scheme until as late as the final quarter of 2019, and stated:

> Essentially, some of them argue they need more time. They want to do more deliberations et cetera. The way the scheme was designed, they had two years to sign up, and some of them have clearly felt they would take a significant amount of that two years…to sign up, and that's what they were working towards.[21]

4.18 The committee received little evidence about the publication of this list, largely because it occurred relatively late in the committee's inquiry. However,

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16 See Ms Elizabeth Hefren-Webb, Deputy Secretary, Families and Communities, DSS, and Mr Bruce Taloni, Group Manager, DSS, *Proof Committee Hansard*, 29 February 2019, p. 23; also see 'Ministers' Redress Scheme Governance Board Communique', DSS, 10 December 2018, https://www.dss.gov.au/about-the-department/news/2018/ministers-redress-scheme-governance-board-communique (accessed 18 March 2019).

17 Ms Hefren-Webb, *Proof Committee Hansard*, 28 February 2019, p. 16.

18 Ms Hefren-Webb, *Proof Committee Hansard*, 28 February 2019, p. 16.

19 Mr Taloni, *Proof Committee Hansard*, 28 February 2019, p. 20.

20 Ms Hefren-Webb, *Proof Committee Hansard*, 28 February 2019, p. 16.

21 Ms Hefren-Webb, *Proof Committee Hansard*, 28 February 2019, p. 17.

Mr Warren Strange, Executive Officer at knowmore, expressed frustration that some institutions, despite having long known that a redress scheme was likely, were yet to join the scheme:

> We know that many institutions have not yet joined. They've had a long period of time; they knew this was coming. There have been a lot of statements of intent. As of, I think, this morning, we now have a list of institutions named by the royal commission but have not yet joined this scheme…Some of them are claiming that they're intending to join but they're not going to do so until the last quarter of this year. We say that's simply too far away. We don't understand why it's taking so long. More information being published about what these institutions are doing and what government at state and federal level is doing to persuade these institutions to join would be helpful for survivors to understand what's happening.
>
> We have many survivors whose claims are sitting waiting. They can't be processed until the institutions join. You'll see from our info graphic that it's an ageing client group—over 80 per cent of those clients are above the age of 46. Nineteen per cent are in the priority group—they are clients who are elderly or who have very serious illnesses, often life-threatening illnesses. They are at the end of their life and they want to make those applications. They want to have some outcome while they are still alive to see that happen.[22]

4.19 knowmore also advised that of the institutions named in applications lodged by its clients prior to 28 February 2019:

- 85 per cent were participating in the scheme;
- seven per cent were not participating and were included in the list published on the redress scheme website; and
- eight per cent were not participating and were not included in the list published on the redress scheme website.[23]

4.20 Regarding other measures to encourage institutions to participate, DSS advised that ministers have written to non-participating institutions, the department has made multiple phone calls to institutions, and departmental representatives have 'travelled around attending meetings with the boards of all those institutions, encouraging them to sign up to the scheme'.[24] A departmental representative further elaborated on the department's efforts:

> I would say we are continually considering and deliberating about what more we can do. It's not a process that will be over for us. What we're here to do is to get institutions on board so survivors can make successful applications. We won't be resting or stopping. We'll continue to do outreach

22 Mr Strange, *Proof Committee Hansard*, 28 February 2019, pp. 1–2.

23 knowmore, answers to questions on notice, 28 February 2019 (received 12 March 2019), p. 2.

24 Ms Hefren-Webb, *Proof Committee Hansard*, 28 February 2019, p. 16.

> and we'll continue to make ourselves available to the boards of all those institutions. We provide training for them. We will continue to do all that we can. We are open to suggestions and ideas about additional steps.[25]

4.21 When asked about what else the department is doing, a representative stated:

> We can write, we can email, we can visit, we can encourage. We hope that the naming on the website may have motivational affect. We do not have additional powers available to us.[26]

4.22 The committee notes that, to the best of its knowledge, the list published on the redress scheme website has not recorded any institution as 'not intending to join'; rather, the list either states that an institution is intending to join or is blank.[27] Further, in October 2018, the department told the committee that it was not aware of any institutions that have declined to join the scheme.[28] However, the department has had:

> …on initial calls, a handful of institutions who have indicated that they're not inclined to participate in the scheme. However, I don't think we take that as the end of the conversation with that institution. We recognise that in some instances our cold-call to an institution might be the first time they've given any thought to the National Redress Scheme…[29]

Defunct institutions and provisions for a funder of last resort

4.23 As explained in chapter 3, the circumstances in which a state or territory government will act as the funder of last resort are quite narrow. Noting this, some submitters supported broader provisions to ensure that survivors can access redress even if the institution responsible for their abuse is now defunct.

4.24 The Actuaries Institute highlighted that there will be 'a gap in the coverage of the scheme' relating to defunct institutions.[30] It supported ensuring that all survivors are covered, regardless of whether the institution responsible for abuse is participating, and submitted that 'this is simple, inexpensive, fair and good policy in respect of defunct institutions'.[31] As an example of analogous coverage, the Actuaries Institute referred to the New South Wales (NSW) Compulsory Third Party Scheme, which provides that:

> …those injured by uninsured or unidentified persons are still eligible to receive compensation through a "nominal defendant" scheme. The cost of

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25 Ms Hefren-Webb, *Proof Committee Hansard*, 28 February 2019, p. 17.

26 Ms Hefren-Webb, *Proof Committee Hansard*, 28 February 2019, p. 19.

27 The list is available on the redress scheme website at https://www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined (accessed 18 March 2019).

28 Ms Hefren-Webb, Deputy Secretary, DSS, *Committee Hansard*, 10 October 2018, p. 60.

29 Ms Sharon Stuart, Branch Manager, Redress Policy and Legislation, DSS, *Committee Hansard*, 10 October 2018, p. 60.

30 Actuaries Institute, *Submission 6*, p. 2.

31 Actuaries Institute, *Submission 6*, p. 2.

> the nominal defendant scheme is covered by a levy charged to all insurers and the arrangement has been very successful for decades.[32]

4.25 In a similar vein, Maurice Blackburn expressed concern that survivors would miss out on redress simply because the responsible institution is now defunct:

> Maurice Blackburn is keen to ensure that the Commonwealth would still be the funder of last resort even if it had no direct involvement with the claimant, or the defunct institution at all. Failure to do so creates a class of survivor who misses out on redress merely because the abuse occurred in an independent institution which is now defunct.[33]

4.26 The Centre for Excellence in Child and Family Welfare highlighted that, where an institution is now defunct, a survivor would not only be unable to access redress, but would also be unable to pursue civil litigation. It recommended that relevant survivors be able to apply for redress and that the relevant state be liable for the redress payments.[34]

4.27 The Victorian Aboriginal Child Care Agency (VACCA) referred to a relevant recommendation of the Royal Commission:

> 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.[35]

4.28 VACCA argued that the narrow definition of funder of last resort 'means that in practice there is no funder of last resort'.[36] It explained:

> A "funder of last resort" under certain conditions is not a funder of last resort. Government needs to be the funder of last resort for all institutions that no longer exist, not just in instances where the government was at least equally responsible for the institutional abuse. This includes the missions and reserves where Aboriginal survivors experienced abuse (Redress recommendations 36 and 37). Unless the Bill is amended to have a genuine funder of last resort it will depend on which institution a survivor was sexually abused in as to whether they can access redress, and justice therefore will not have been achieved.[37]

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32 Actuaries Institute, *Submission 6*, p. 2.

33 Maurice Blackburn Lawyers, *Submission 25*, p. 13.

34 The Centre for Excellence in Child and Family Welfare, *Submission 18*, Attachment 1, p. 2. Note that this comment and recommendation was made in the Centre's submission to a parliamentary committee examining the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (the national bill), which the Centre attached to its submission to this committee.

35 Victorian Aboriginal Child Care Agency (VACCA), *Submission 26*, p. 33; also see Royal Commission, *Redress and Civil Litigation Report*, December 2015, p. 69.

36 VACCA, *Submission 26*, p. 11.

37 VACCA, *Submission 26*, p. 33.

4.29 Professor Kathleen Daly, Director of the International Redress Project, and Ms Juliet Davis, Research Fellow from Griffith University, presented research of theirs which found that the 'pressure point' for the difference between the Royal Commission's recommendation about funder of last resort, and the provisions of the redress scheme, was 'economics'—that is, 'any monetary costs of the scheme for government and nongovernment institutions'.[38] The authors referred to a report of Finity Consulting—an organisation that conducted modelling for the Royal Commission—and stated that Finity:

> …estimated that the total cost of the scheme, if governments were funders of last resort would be roughly similar for government (47%) and non-government (53%) institutions. We do not know what role nongovernment organisations played in negotiating the economic costs for the scheme, but because their contributions were estimated by Finity to be substantial, the economics at play were (and are) not just a matter for governments.[39]

An institution that is not capable of discharging its obligations

4.30 knowmore highlighted that institutions may only join the scheme if there are reasonable grounds for expecting that the institution could discharge its liabilities and obligations under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act).[40] knowmore further suggested that some institutions may not be able to meet this requirement. Unless survivors are made aware that the institution responsible for their abuse cannot satisfy the requirement, then survivors could wait up to two years—until the deadline for institutions to join the scheme—before learning that they are unable to apply for redress.[41]

4.31 knowmore acknowledged that the requirement 'serves a legitimate purpose', but submitted that:

> …it would be beneficial for survivors if there is an open dialogue between nongovernment institutions and the Minister about what evidence is needed to satisfy the Minister under this section and any alternative arrangements that could be made to facilitate participation, and transparency around the outcomes, so that survivors can be made aware, for example, that an institution is not participating in the scheme as it is unable to satisfy this requirement.[42]

38 Professor Kathleen Daly and Ms Juliet Davis, *Submission 49.2*, p. 6.

39 Professor Kathleen Daly and Ms Juliet Davis, *Submission 49.2*, p. 6.

40 knowmore, *Submission 31*, p. 11; also see subsection 56(3) of the Rules.

41 knowmore, *Submission 31*, p. 11.

42 knowmore, *Submission 31*, p. 11.

Other institutions that may not be included in the scheme

Abuse relating to foster care

4.32 There was some uncertainty about whether abuse relating to foster care is covered by the redress scheme. For example, Mr Frank Golding OAM submitted in a private capacity that he was unable to get a clear answer despite contacting the National Redress Scheme and knowmore.[43]

4.33 Kelso Lawyers submitted that section 15 of the Act, which sets out when an institution is responsible for abuse, should be 'given a very broad interpretation so as to include abuse by relatives and acquaintances of foster parents'.[44] It also submitted that in its experience:

> …the interpretation of statutory compensation schemes by decision-makers tends to become less and less beneficial over time. With time, financial pressures and minimal external review of decisions starts to produce increasingly convoluted and harsh interpretations of the entitlements of applicants. Furthermore, this scheme has the added pressure of wanting to keep institutions participating, which will create pressure to start awarding the bare minimum redress that can be justified on the most strict 'black letter' interpretation of the [National Redress Scheme] Act.[45]

4.34 Kelso Lawyers recommended that the Act or the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (the Rules) be amended to:

> …expressly state that an institution is responsible for abuse by the relatives, neighbours and acquaintances of the foster parents where the institution has arranged or consented to the foster placement.[46]

Abuse relating to Stolen Generations survivors

4.35 The Law Council of Australia (Law Council) raised some issues regarding the ability for Stolen Generations survivors to access redress.[47] It highlighted that in NSW there were:

> …a number of Aboriginal missions and reserves in existence prior to disbanding of the Aborigines Welfare Board in 1969, and there remains a question as to whether these missions and reserves are identifiable as institutions within the redress scheme.[48]

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43 Mr Frank Golding OAM, *Submission 27*, p. 3.

44 Kelso Lawyers, *Submission 5*, p. 3.

45 Kelso Lawyers, *Submission 5*, p. 4.

46 Kelso Lawyers, *Submission 5*, p. 4.

47 Law Council of Australia (Law Council), *Submission 29*, pp. 10–12; also see also see Law Council, *Submission 29.1*, p.2.

48 Law Council, *Submission 29*, p. 11.

4.36 The Law Council submitted that 'at least in NSW, the state government should declare missions and reserves participating institutions'.[49]

4.37 Separately, the Law Council also stated that there is a need for greater clarity about whether the definition of 'sexual abuse' covers children who 'were groomed, and/or witnessed the sexual abuse of other children, particularly in the context of Stolen Generations survivors'.[50]

4.38 The Law Council referred to cases where '"training homes" for Aboriginal boys allowed the wives of managers and staff to stand in the shower rooms while the boys were showering, watching them'.[51] It submitted that while these instances would 'arguably' fall within the definition of sexual abuse, there remains uncertainty.[52] It stated there is a need for:

> …additional guidance material to be produced for individual assessors which addresses the parameters of the definition of sexual abuse, allowing for discretion to be applied on a case-by-case basis to avoid unjust outcomes.[53]

New South Wales local councils

4.39 VACCA submitted that the National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018 (the Declaration) does not include NSW local councils as participating government institutions. If an institution is not listed in the Declaration then survivors of abuse for which that institution is responsible are unable to access redress.[54]

4.40 VACCA raised this concern with the National Redress Scheme and received a response from the scheme, dated 8 August 2018, which stated:

> Although the New South Wales government has made the decision to not opt-in their local councils, this does not mean that local councils in New South Wales will not be covered by the Scheme in the future. The government continues to engage with all institutions to encourage and facilitate their participation in the Scheme.[55]

4.41 VACCA stated that it is 'deeply disappointing' that the redress scheme does not provide equal access for survivors.[56]

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49 Law Council, *Submission 29*, p. 11.

50 Law Council, *Submission 29*, p. 10.

51 Law Council, *Submission 29*, p. 10.

52 Law Council, *Submission 29*, p. 10.

53 Law Council, *Submission 29*, p. 10.

54 VACCA, *Submission 26*, p. 11.

55 National Redress Scheme quoted in VACCA, *Submission 26*, p. 11.

56 VACCA, *Submission 26*, p. 11.

Exclusions and additional requirements facing certain groups of survivors

4.42 As discussed in chapter 3, there are various eligibility requirements for access to redress. This means that some groups of submitters are unable to access redress, or face additional obstacles when doing so.

4.43 These restrictions were opposed by a number of submitters and witnesses. For example, the Centre for Excellence in Child and Family Welfare submitted that it:

> …does not support any restrictions to the eligibility of survivors if they are otherwise in scope. We note that the operator may waive the exemptions if there are exceptional circumstances, however this is not defined in the Bill.
>
> Individuals who have suffered as children should not be doubly punished for the culpability of adults by being excluded from compensation and services because they have been offenders or in prison, or are otherwise excluded. All survivors should be eligible to apply for redress under the scheme.[57]

4.44 Similarly, VACCA recommended that '[a]ll survivors who were eligible to tell their story in a private session to the Royal Commission should be in scope for the subsequent Redress Scheme'.[58]

4.45 Evidence received by the committee about restrictions applying to particular groups is discussed below.

Requirement that a survivor experienced sexual abuse

4.46 A number of submitters and witnesses contended that survivors should be able to access redress for non-sexual abuse, including where they did not experience any sexual abuse.[59]

4.47 For example, the Setting the Record Straight for the Rights of the Child Initiative expressed its disappointment at 'the inherent unfairness of a redress scheme that is limited to child sexual abuse'.[60] The Centre for Excellence in Child and Family Welfare submitted that a redress scheme:

> …should not limit eligibility only to those who were sexually abused as children in institutional care. Redress should extend to all children who suffered forms of abuse while in care settings—sexual abuse, physical abuse, emotional and psychological abuse, neglect and forced separation from their families.[61]

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57 The Centre for Excellence in Child and Family Welfare, *Submission 18*, Attachment 1, p. 2. Note that this comment was made in the Centre's submission to a parliamentary committee examining the national bill, which the Centre attached to its submission to this committee.

58 VACCA, *Submission 26*, p. 19.

59 See, for example, Alliance for Forgotten Australians, *Submission 11*, p. 2

60 Setting the Record Straight for the Rights of the Child Initiative, *Submission 17*, p. 1.

61 The Centre for Excellence in Child and Family Welfare, *Submission 18*, p. 3.

4.48 CLAN argued that for a redress scheme 'to truly serve the purpose of recognition and justice for those abused in the Child Welfare system, it MUST include ALL forms of abuse'.[62] CLAN emphasised that 'all forms of abuse are intertwined', and stated that it is 'unreasonable to only assume sexual abuse was the most damaging'.[63] It also provided quotes from survivors, including the following:

> Overall my experiences in Care have affected my life greatly, all types of abuse must be considered, they are just as important as sexual abuse.[64]
>
> The sexual abuse I suffered was horrific, but nothing compared to the psychological abuse. I still carry the scars, though they may not be visible.[65]
>
> I can't believe Redress is only about sexual abuse—even when combined with physical! I was in an orphanage for 10 years of my life, up at 5am doing 12 hours of labour. The physical and mental abuse should count for something.[66]
>
> Did they not care or listen to what we have been through? Surely the Royal Commission became aware of all of the other types of abuse through their enquiries. I am exhausted by all of this, it just falls on deaf ears.[67]

4.49 Mr Golding acknowledged that 'the simple reason the [National Redress Scheme] is restricted to sexual abuse is that the terms of reference of the Royal Commission did not allow it to recommend a more broad-based redress scheme'.[68] Nonetheless, Mr Golding advanced that 'there was nothing to prevent' the government from introducing a broader scheme. He stated that the Royal Commission's report represented:

> …a once in a lifetime moment to get redress right for all victims and survivors of abuse and neglect. But government turned its back and the nation has again let down the vast majority of Care Leavers. The consequence of establishing sexual abuse as the one exclusive crime against children that warrants redress is that it sends the message to victims of other forms of child abuse and neglect that they count for nothing and should shut up and just continue to put up with their enduring pain and suffering. Governments didn't care about them when they were children—and they don't care about them now.[69]

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62 CLAN, *Submission 40*, p. 3.

63 CLAN, *Submission 40*, p. 3.

64 Unnamed survivor quoted in CLAN, *Submission 40*, p. 3.

65 Unnamed survivor quoted in CLAN, *Submission 40*, p. 3.

66 Unnamed survivor quoted in CLAN, *Submission 40*, p. 4.

67 Unnamed survivor quoted in CLAN, *Submission 40*, p. 5.

68 Mr Golding OAM, *Submission 27*, p. 2.

69 Mr Golding OAM, *Submission 27*, p. 2.

4.50 Similarly, Kelso Lawyers recommended that survivors be allowed to claim for physical abuse regardless of whether sexual abuse also occurred.[70] It also took issue with the maximum payment for recognition of related non-sexual abuse being $5000. It argued that it is:

> …not appropriate that child physical abuse does not qualify without related sexual abuse, and that it is only allocated $5,000 regardless of its severity. We have represented countless survivors who have suffered through brutal physical abuse and humiliation (including broken bones, burns, inmate beatings sanctioned by institution staff, and the use of cages and metal objects). Child physical abuse can result in lifelong physical disabilities, disfigurement, and serious psychiatric injuries. $5,000 is not an appropriate sum to allow for physical abuse.[71]

4.51 Tuart Place, a provider of support services in Western Australia, drew attention to survivors who have previously received payments under state government schemes, but who will not be covered by this scheme because they did not experience sexual abuse. It submitted:

> The many survivors of Redress WA who were beaten, starved and/or denied an education during their time in state care, but were not abused sexually, are finding it hard to understand why their abuse is no longer recognised, as it was in the past. For those who are still alive, exclusion from the new, highly publicised national redress scheme with its own forthcoming apology from the Prime Minister is a bitter pill to swallow.
>
> Care leavers in Queensland and Tasmania who participated in state-level comprehensive redress schemes will also be left wondering why their previously-recognised abuse is no longer acknowledged.[72]

Citizenship and permanent residency requirements

4.52 Some submitters opposed the requirement for a person to be an Australian citizen or permanent resident in order to apply for redress.

4.53 The Law Council expressed concern about the requirement, and told the committee that if a person experienced institutional child sexual abuse in Australia, then it is not clear how their citizenship status is of relevance to redress. It also cited the report of the Royal Commission, which stated that '[w]e see no need for any citizenship, residency or other requirements, whether at the time of the abuse or at the time of application for redress'.[73]

4.54 Similarly, Maurice Blackburn submitted that the 'blanket exclusion of all non-citizens was not contemplated by the Royal Commissioners in their recommendations'.[74] It was concerned the requirement would mean that a number of

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70 Kelso Lawyers, *Submission 5*, p. 8.

71 Kelso Lawyers, *Submission 5*, p. 7.

72 Tuart Place, *Submission 8*, p. 1.

73 Royal Commission quoted in Law Council, *Submission 29*, p. 8.

74 Maurice Blackburn, *Submission 25*, p. 5.

groups who should be eligible for redress would miss out. This includes non-citizen children who experienced abuse during a visit to Australia, such as children on exchange programs. It also includes a person who was an Australian citizen or permanent resident at the time of the abuse, but has since relinquished that status.[75]

4.55 VACCA raised particular concern about former child migrants who experienced institutional child sexual abuse while in Australia but who are not current citizens or permanent residents. It highlighted that this group 'had the additional trauma of being forcibly removed from their own families, their communities, their country and their culture'.[76]

4.56 The committee heard from a survivor who has been advised that they cannot access redress because they are not a citizen, even though they held Australian citizenship when they experienced abuse in Australia as a child.[77]

Case study 4.2—Former Australian citizen unable to access redress due to citizenship requirements

NW[78] suffered sexual abuse while in care as a ward of New South Wales. NW was subsequently adopted by Dutch foster parents and moved to the Netherlands where NW currently resides. In 1971, after arriving in the Netherlands, NW's foster parents renounced NW's Australian citizenship in favour of Dutch citizenship. NW was under the age of eighteen when this occurred. In 2014, NW gave evidence to the Royal Commission. Nonetheless, NW has been advised that they are ineligible for the redress scheme because they do not hold Australian citizenship.

Particular effect on survivors who experienced abuse in immigration detention

4.57 The committee also heard that the citizenship and permanent residency requirements would effectively exclude many survivors who were sexually abused in immigration detention, both onshore and offshore.

4.58 For instance, the Lawyers Alliance submitted that:

> …those children who have been sexually abused in immigration detention, whether offshore or onshore, are excluded from the scheme.
>
> The Commonwealth has made it clear that this is purely to save money. However, Volume 15 of the Royal Commission's final report made detailed findings that conditions in immigration detention are particularly conducive to the risk of child sexual abuse materialising.[79]

75 Maurice Blackburn Lawyers, *Submission 25*, pp. 5–6; also see Ms James, Principal Lawyer, Maurice Blackburn Lawyers, *Committee Hansard*, 7 November 2018, p. 21.

76 VACCA, *Submission 26*, pp. 26–27; also see, for example, Setting the Record Straight for the Rights of the Child Initiative, *Submission 17*, p. 2.

77 Name withheld, *Submission 50*.

78 'NW' is short for 'name withheld' and is used in place of the survivor's name.

79 Lawyers Alliance, *Submission 4*, pp. 6–7.

4.59 The Lawyers Alliance also highlighted the government's responsibility for children in immigration detention, and submitted:

> Given that the children were placed in immigration detention by the Commonwealth and are owed a non-delegable duty of care, the Commonwealth should compensate these victims. The children did not choose to be in immigration detention and committed no crimes…Those in immigration detention or on certain forms of visa should not be discriminated against. This would be a clear breach of the non-delegable duty of care owed to these children and leave the Commonwealth open to common law proceedings for breach of that duty of care, which might end up costing the Commonwealth considerably more than the modest benefits provided for under the Scheme.[80]

4.60 In a similar vein, Maurice Blackburn expressed concern that the provision regarding citizenship and permanent residency:

> …intentionally sets out to make redress unavailable to victims of child abuse in Australian detention facilities, which have been clearly identified by the Royal Commission as places where abuse occurred.[81]

4.61 Like the Lawyers Alliance, Maurice Blackburn drew attention to the focus placed on immigration detention centres by the Royal Commissioners.[82] Maurice Blackburn stated that it believes 'it was not the intention of the Commissioners to exclude those who were abused whilst held in immigration detention, due to their citizenship status'.[83]

4.62 Maurice Blackburn also referred to the Explanatory Memorandum to the Act, which states:

> This eligibility requirement is included to mitigate the risk of fraudulent claims and to maintain the integrity of the Scheme. It would be very difficult to verify the identity of those who are not citizens, permanent residents or within the other classes who may be specified in the rules. Removing citizenship requirements would likely result in a large volume of fraudulent claims that would impact application timeliness and provision of redress to survivors.[84]

4.63 Maurice Blackburn disputed this assessment on various grounds, including the following:

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80 Lawyers Alliance, *Submission 4*, p. 8.

81 Maurice Blackburn Lawyers, *Submission 25*, p. 6.

82 Maurice Blackburn Lawyers, *Submission 25*, pp. 6–7; also see Lawyers Alliance, *Submission 4*, pp. 6–8.

83 Maurice Blackburn Lawyers, *Submission 25*, p. 6; also see Royal Commission, *Redress and Civil Litigation Report*, August 2015, p. 347.

84 Explanatory Memorandum to the Act, p. 20; also see Maurice Blackburn Lawyers, *Submission 25*, p. 7.

- 'To deny eligibility for a particular cohort of victims to apply for redress on the basis that others may apply fraudulently is flawed in logic and morality'.
- 'Regardless of citizenship status, an applicant would still need to satisfy the entitlement requirements set out in the Act. Fraudulent applications would not make it past this step'.[85]

Survivors in gaol or who have been sentenced to five or more years imprisonment

4.64 As explained in chapter 3, the redress scheme provides for the following:

- A person who is currently in gaol is not able to apply for redress unless the Operator determines that there are exceptional circumstances that justify an application being made.
- A person who has been sentenced to imprisonment for five or more years (before or after making an application) is not able to apply for redress unless the Operator makes a determination on the matter.

4.65 The committee notes advice from Professor Kathleen Daly and Ms Juliet Davis that '[b]ased on my knowledge of world government [redress] schemes, none has excluded applicants on the basis of their criminal history'.[86]

4.66 It further notes that it is plausible these restrictions will affect a sizeable number of survivors, as the Royal Commission reported that 10.4 per cent of survivors who participated in a private session were in prison at the time.[87]

Opposition to the provisions relating to gaol and terms of imprisonment

4.67 A large number of submitters and witnesses expressed concern about the restrictions on people in prison or who have been sentenced to five or more years' imprisonment, and recommended that the restrictions be removed.[88]

4.68 For example, Kelso Lawyers advanced that time served in prison:

> …should be punishment enough, survivors should not be punished again, by exclusion from this scheme, for the desperation that their abuse forced them into.[89]

4.69 Dr Morrison, Spokesperson for the Lawyers Alliance, made a similar point:

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85 Maurice Blackburn Lawyers, *Submission 25*, p. 7.

86 Professor Kathleen Daly and Ms Juliet Davis, *Submission 49*, p. 3.

87 Royal Commission, *Final Report: Preface and executive summary*, December 2017, p. 9; also see, for example, Jesuit Social Services, *Submission 20*, p. 2; VACCA, *Submission 26*, p. 27.

88 See, for example, Lawyers Alliance, *Submission 4*, p. 9; Setting the Record Straight for the Rights of the Child Initiative, *Submission 17*, p. 2; The Centre for Excellence in Child and Family Welfare, *Submission 18*, Attachment 1, p. 2; Jesuit Social Services, *Submission 20*, p. 1; Ms Cheryl Brealey, *Submission 35*, p. 1; Angela Sdrinis Legal, *Submission 36*, p. 2; Ms Zoe Papageorgiou, *Submission 37*, p. 1; Dr Chris Atmore and Dr Judy Courtin, *Submission 39*, p. 4; Mr Paul Gray, *Submission 44*, p. 2; Mr Terrence Luthy, Past President, CLAN, *Committee Hansard*, 7 November 2018, p. 32.

89 Kelso Lawyers, *Submission 5*, p. 9.

> Unless you're going to doubly punish someone, there is no relevance between the criminal conviction and the fact that they were abused as a child. The abuse as a child deserves to be compensated. The subsequent criminal conduct deserves to be punished. But it has been punished. That's the point. They've already been convicted. They've been dealt with by the criminal system. There is no reasonable basis for punishing them a second time. Why should it be a matter of discretion?[90]

4.70 Moreover, the Blue Knot Foundation said that the restrictions do not reflect the recommendations of the Royal Commission, and submitted:

> People who are serving or have served custodial sentences are paying their dues in terms of the crimes of which they have been convicted. Regardless of the severity of the crime, all victims, as per the need to deliver a fair and equitable scheme should be able to apply for redress providing they meet the criteria for the scheme, without doubling punishing them, often for the repercussions of their victimhood. These victims have had crimes committed against them and the harm done to them needs to be recognised as it does for all victims.[91]

4.71 Maurice Blackburn lent its voice 'to the many survivor groups which have expressed profound disappointment in this apparently populist course of action'.[92]

4.72 VACCA acknowledged that while it may 'make sense' for prisoners on a short sentence to not apply for redress until they are released, they should be still be able to choose for themselves when to apply.[93]

Possible link between child sexual abuse and subsequent imprisonment

4.73 Much of the opposition to the restrictions highlighted the potential link between experiencing sexual abuse as a child and subsequently being sentenced to a term of imprisonment.[94] For example, Kelso Lawyers submitted that:

> The reality is that it was not uncommon for the abuse in these institutions to so severely affect people that it effectively excluded them from mainstream society. Many were inflicted with serious mental health problems and discharged onto the street with no money, no education, no support network, and blacklisted from employment and relationships by the stigma of the institution they were committed to. Histories of using drugs and alcohol to block out the traumatic memories are not uncommon, and with that occasionally comes a history of incarcerations for related crimes.[95]

4.74 Similarly, VACCA submitted that in its experience:

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90 Dr Morrison, *Committee Hansard*, 10 October 2018, p. 15.

91 Blue Knot Foundation, *Submission 7*, [p. 2].

92 Maurice Blackburn Lawyers, *Submission 25*, p. 8.

93 VACCA, *Submission 26*, p. 27.

94 See, for example, Relationships Australia, *Submission 9*, p. 4; Mr Frank Golding OAM, *Submission 27*, p. 3; Angela Sdrinis Legal, *Submission 36*, p. 2; CLAN, *Submission 40*, p. 6.

95 Kelso Lawyers, *Submission 5*, p. 9.

> …most crime committed by victims who were in out of home care can be best described as survival crime and/or drug related crime. Historically, and unfortunately still today, children leave the care of the state with little or no support from government resulting in children being exited from out-of-home-care into homelessness and may engage in criminal activities simply to survive. In relation to drug-related crime, perpetrators use drugs and alcohol as a form of grooming their victims. Victims who go on to develop addictions and abuse drugs, and/or use drugs to self-medicate for the post-trauma symptoms they experience and are jailed for this, should not then be further punished by being excluded from redress.[96]

4.75 Ms James, Principal Lawyer at Maurice Blackburn, said that the requirements relating to prison and past sentences show:

> …a bewildering lack of understanding about cause and effect, and the lifelong impacts of such complex trauma on a child, and how it can lead to the sorts of behaviours that lead to prison sentences.[97]

Opposition to rationales for the restrictions

4.76 Some submitters also argued that certain rationales for the exclusions are inadequate.

4.77 Regarding the integrity of the scheme, Maurice Blackburn acknowledged the possibility of public concern:

> …arising from redress payments being made to survivors serving lengthy custodial sentences. We do not, however, believe that should mitigate their right to eligibility under the stated principles of the scheme.
>
> We recommend instead examining ways through which redress payments may be held in trust for those serving custodial sentences.
>
> We further believe such survivors should be eligible for the other forms of redress described in section 16 of the Act, even if access to monetary redress is made unavailable to them.[98]

4.78 Maurice Blackburn added that that 'the thing most likely to bring the scheme into disrepute, or adversely affect public confidence in the scheme is the creation of differing classes of survivors'.[99]

4.79 The Law Council submitted that there is no reasonable basis for excluding applicants based on their criminal record, and added that:

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96 VACCA, *Submission 26*, pp. 27–28; also see, for example, Lawyers Alliance, *Submission 4*, p. 9; Australian Association of Social Workers, *Submission 28*, p. 3.

97 Ms James, Principal Lawyer, Maurice Blackburn, *Committee Hansard*, 7 November 2018, p. 20.

98 Maurice Blackburn Lawyers, *Submission 25*, p. 8.

99 Maurice Blackburn Lawyers, *Submission 25*, p. 8.

> At the very least, applications should be assessed on a case-by-case basis with greater weight accorded to the purpose of redress than to concerns about potential reputational damage for the scheme.[100]

4.80 Interrelate suggested that there may be other ways to ensure that the scheme is not brought into disrepute:

> We believe there are other options that could have managed this issue in a way that does not invalidate a survivor's childhood experiences. For example, any redress payment could be diverted to support victims and/or support child protection measures.[101]

4.81 Regarding the provision of redress to people in prison, Relationships Australia acknowledged difficulties but does 'not consider these to be insurmountable'.[102] It noted that it has previously accomplished 'solid therapeutic work to young people detained in the criminal justice system of the Northern Territory'.[103]

Discretion and reviews when implementing these restrictions

4.82 A further element of concern about the restrictions related to the exercise of discretion by the Operator, on advice from relevant Attorney(s)-General, and opportunities for determinations made by the Operator to be reviewed.

4.83 People with Disability Australia highlighted that where an Attorney-General is considering a possible determination about an applicant who has been sentenced to five or more years' imprisonment:

> …there is no publicised or transparent criteria outlining the situations in which such a determination may be made. The only criteria appears to be whether approving redress for the person in question would bring the Scheme into disrepute or negatively affect public confidence in or support for the NRS [National Redress Scheme]. We are concerned that such decisions will therefore be subjective, and will deny people deemed ineligible for the Scheme a right to appeal the Attorney General's decision.[104]

4.84 The Blue Knot Foundation submitted that allowing discretion for Attorneys-General 'introduces an element of randomness and subjectivity and is punitive to those already victimised'.[105] The President of the Blue Knot Foundation, Dr Cathy Kezelman AM, further stated:

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100 Law Council, *Submission 29*, p. 7.

101 Interrelate, *Submission 21*, [p. 5].

102 Relationships Australia, *Submission 9*, p. 5.

103 Relationships Australia, *Submission 9*, p. 5; also see, for example, VACCA, *Submission 26*, p. 27.

104 People with Disability Australia, *Submission 32*, p. 2.

105 Blue Knot Foundation, *Submission 7*, [p. 2]; also see, for example, Jesuit Social Services, *Submission 20*, p. 3.

> It just means that attorneys-general who may not have particular expertise around institutional child sexual abuse are making individual decisions; whereas this is a scheme that should be dependent on the survivor and what the survivor experienced, not on an attorney-general making a decision about them.[106]

4.85 Moreover, the Law Council submitted that it may not be possible to seek a review of a determination by the Operator relating to a survivor who has been sentenced to five or more years' imprisonment:

> It is also not clear from the national redress scheme website whether survivors will be given an opportunity to comment if the Attorney-General does not support their application, or if the scheme operator forms an adverse view about rehabilitation or community expectations. The Law Council therefore seeks greater clarity in respect of the appeal process associated with a decision to refuse redress on the basis of criminal record.[107]

Disproportionate effect on Aboriginal and Torres Strait Islander peoples

4.86 Some submitters raised concerns about how the restrictions on survivors who have been sentenced to five or more years' imprisonment would affect Aboriginal and Torres Strait Islander peoples.

4.87 VACCA stated that the exclusions will 'disproportionately exclude Aboriginal victims from receiving redress' and would 'amount to institutional racism'.[108] It explained:

> Given the well-documented over-representation of Aboriginal people in the justice system, in addition to the well-documented pathway from out of home care to youth detention and adult prison, excluding those with jail terms of over five years would amount to institutional racism. We must work together to Close the Gap, not introduce further barriers that will result in further discrimination, resultant disadvantage and injustice for Aboriginal people.[109]

4.88 The Lawyers Alliance also commented on this subject:

> The [Lawyers Alliance] is particularly concerned that this provision may operate in a discriminatory manner against Aboriginal or Torres Strait Islander people who have been abused as children, given that they are disproportionately represented in the Australian prison population. Given the history of forced child removals of Aboriginal and Torres Strait Islander children and their subsequent institutionalisation, the [Lawyers Alliance] submits that this additional barrier to securing redress for any sexual abuse

106 Dr Kezelman AM, *Committee Hansard*, 10 October 2018, p. 25.

107 Law Council, *Submission 29*, p. 7; also see, for example, knowmore, *Submission 31*, p. 7; Ms Zoe Papageorgiou, *Submission 37*.

108 VACCA, *Submission 26*, pp. 27–28.

109 VACCA, *Submission 26*, pp. 27–28.

> suffered by Aboriginal and Torres Strait Islander people in institutions is manifestly unfair and effectively represents a further level of abuse.[110]

4.89 The committee notes that of the survivors who were in prison when they participated in a private session with the Royal Commission, almost one third indicated that they were an Aboriginal and/or Torres Strait Islander survivor.[111]

Exposure abuse perpetrated by a child is not covered

4.90 As noted in chapter 3, exposure abuse by a child is not covered by the scheme.

4.91 VACCA expressed concern that this exclusion of a group of survivors 'is not trauma informed nor survivor lead'.[112] It submitted:

> The explanatory statement [to the Rules] includes as an example of what would not be included, a 17-year-old sending sexually suggestive texts to a 14-year old. However this exclusion means the following examples are also not covered by the Scheme: A 17 year old forcing a 10 year old to watch their sibling being raped over several months and being told they will also be raped if they tell anyone; being forced to undress and masturbate and watch a 17 year old masturbate and being told their family will be harmed if they report the sexual abuse; being forced to watch extreme child pornography on a regular and ongoing basis and being told the same will happen to them if they ever refuse to continue to watch the pornography.[113]

4.92 After VACCA raised its concerns with the National Redress Scheme, DSS wrote to VACCA and stated, in part:

> In developing this policy, the government considered that certain behaviours (such as the relatively common examples of sexting and bullying), although should not be excused, are more likely to be experimental teenage behaviour and more difficult to attribute to an institution for responsibility. This is because it would be more difficult for an institution to reasonably foresee and therefore take protective action for most cases of exposure abuse perpetrated by children.
>
> The Department understand[s] you are concerned that the rights of applicants should take precedent over costs for participating institutions. Through consultations, many institutions told us that the inclusion of exposure abuse perpetrated by children in the Scheme would be a significant barrier to entering the Scheme. Whilst a crucial aspect of the Scheme is ensuring a trauma informed and survivor focused approach, it is

110 Lawyers Alliance, *Submission 4*, p. 9.

111 Royal Commission, *Final Report: Volume 5, Private sessions*, December 2017, p. 241; also see VACCA, *Submission 26*, p. 27.

112 VACCA, *Submission 26*, p. 6.

113 VACCA, *Submission 26*, pp. 9–10; also see, for example, Mr Golding OAM, *Committee Hansard*, 8 October 2018, p. 2.

> also important for the Scheme to focus on achieving national coverage for survivors.[114]

4.93 DSS also noted that the scheduled review of the first two years of the scheme is able to consider the impacts of this policy.[115]

114 DSS quoted in VACCA, *Submission 26*, p. 10.

115 DSS quoted in VACCA, *Submission 26*, p. 10.

Chapter 5

Disparity between the provision of redress and the recommendations of the Royal Commission

5.1 As outlined in chapter 3, the redress scheme comprises three key elements:

- a monetary component of up to $150 000;
- a counselling and psychological care component; and
- a direct personal response component.

5.2 This chapter will outline the key disparities raised in evidence to the committee between the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) and the redress components.

Monetary component

5.3 As explained in chapter 3, an applicant can receive a redress payment of up to $150 000 for penetrative abuse, up to $50 000 for contact abuse, and up to $20 000 for exposure abuse. The amount a person receives is calculated in accordance with the redress payment table in section 5 of the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 (the Assessment Framework).

5.4 The amounts specified at section 5 of the Assessment Framework are the *maximum* amounts. It is possible for a survivor to not receive the maximum payment amount under two circumstances:

(a) If the survivor received a relevant prior payment, the prior payment will be deducted from the total redress payment.

(b) Where one or more institution(s) responsible for the abuse is not participating in the scheme their share of the liability will be used to calculate the redress payment and will therefore reduce the total redress payment.[1]

5.5 On 22 March 2019, the Department of Social Services (DSS) advised that 31 per cent of redress payments are less than the maximum payment.[2]

5.6 The key issues that will be discussed in this section are:

- the Assessment Framework used to calculate the redress payment;
- the reduction to the maximum amount of redress payment from the amount recommended by the Royal Commission;
- the lack of a minimum redress payment;

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1 Department of Social Services (DSS), answers to written questions on notice, 8 March 2019 (received 22 March 2019).

2 DSS, answers to written questions on notice, 8 March 2019 (received 22 March 2019).

- the disparity between the estimated average redress payment and the average amount payment calculated by the Royal Commission; and
- the indexation of payments.

Assessment Framework

5.7 As set out in chapter 3, the Assessment Framework is used to calculate the redress payment amount, which is determined based on the type of sexual abuse suffered by the survivor—penetrative abuse, contact abuse or exposure abuse. All subsequent monetary determinations, such as the impact of abuse, are derived from the type of sexual abuse a person suffered.

5.8 In contrast, the Royal Commission recommended the adoption of the following matrix for determining the monetary component of redress:

Table 5.1—Matrix recommended by the Royal Commission for assessing and determining monetary payments[3]

Factor	Value
Severity of abuse	1–40
Impact of abuse	1–40
Additional elements	1–20

5.9 The matrix proposed by the Royal Commission would calculate redress payments by allocating 40 per cent of consideration to the severity of abuse, 40 per cent to the impact of abuse, and 20 per cent to additional elements.

5.10 The additional elements factor would have recognised the following:

(a) whether the applicant was in state care at the time of the abuse—that is, as a ward of the state or under the guardianship of the relevant Minister or government agency

(b) whether the applicant experienced other forms of abuse in conjunction with the sexual abuse—including physical, emotional or cultural abuse or neglect

(c) whether the applicant was in a 'closed' institution or without the support of family or friends at the time of the abuse

(d) whether the applicant was particularly vulnerable to abuse because of his or her disability.[4]

5.11 The Royal Commission recommended that the operator of the redress scheme commission further work to develop the above matrix as well as the detailed

3 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Redress and Civil Litigation Report*, August 2015, Recommendation 16, p. 65.

4 Royal Commission, *Redress and Civil Litigation Report*, August 2015, Recommendation 17, p. 66.

assessment procedures and guidelines required for implementation.[5] In determining the redress payment, the Royal Commission acknowledged that severity alone did not determine the impact of abuse for the individual and that the monetary payment must take into account both the severity and the impact of the abuse:

> [T]he consequences for people who are abused may not be proportionate to the severity of their abuse. For some survivors, what may be considered to be a relatively modest level of abuse may have severe or even catastrophic consequences. The appropriate response through a monetary payment under redress must be determined having regard to both the severity and the consequences of abuse for the individual.[6]

Consultation

5.12 The Explanatory Statement to the Assessment Framework states the following in relation to consultations:

> The Assessment Framework, and the policy guidance material on which it was based, were consulted on extensively with officials from all states and territories in order to encourage all jurisdictions to participate in the Scheme. Further consultation on the policy within the Assessment Framework was also undertaken with Commonwealth Departments and key non-government institutions.[7]

5.13 Key stakeholders confirmed that they were consulted on the Assessment Framework prior to its public release on 29 June 2018.[8] This included members of the Independent Advisory Council on Redress (the Advisory Council) such as Dr Cathy Kezelman AM, President of the Blue Knot Foundation, Ms Leonie Sheedy, Chief Executive Officer of the Care Leavers Australasia Network (CLAN) and Professor Kathleen Daly.[9]

5.14 Professor Daly acknowledged that the Advisory Council met in March 2017 and discussed the Assessment Framework, but noted that the framework 'does not comport with what was agreed upon at the Advisory Council meeting'.[10] Professor Daly stated:

> Members of the Advisory Council were led to understand that the assessment framework would be based on 40% abuse severity, 40% impact, and 20% other factors (such as being in residential care), adopting the

5 Royal Commission, *Redress and Civil Litigation Report*, August 2015, Recommendation 18, p. 66.

6 Royal Commission, *Redress and Civil Litigation Report*, August 2015, p. 231.

7 Explanatory Statement to the Assessment Framework, p. 2.

8 See: *Committee Hansard*, 10 October 2018, pp. 25 and 35; Professor Kathleen Daly and Ms Juliet Davis, *Submission 49*, p. 4; Anglican Church of Australia, *Submission 38*, pp. 1–2.

9 See: *Committee Hansard*, 10 October 2018, pp. 25 and 35; Professor Daly and Ms Davis, *Submission 49*, p. 4.

10 Professor Daly and Ms Davis, *Submission 49*, p. 4.

> Royal Commission's recommendations. I do not see this reflected in the current assessment framework.[11]

5.15 Other key stakeholders, such as the Anglican Church of Australia, General Synod (the Anglican Church) also confirmed that the Assessment Framework had been provided to non-government institutions as part of the consultation process, but similarly noted that their concerns are not reflected in the current Assessment Framework.[12]

5.16 When questioned about the development of the Assessment Framework, a representative of DSS stated:

> As I understand it, the assessment framework was based on discussions and consultations with state and territory governments, survivors, advocacy groups et cetera, balanced with the need for something that allows decisions to be made, achieves consistency as far as possible and removes subjectivity as far as possible.[13]

5.17 Notwithstanding the discussions and consultations that took place, the committee notes that it has not received any evidence from a stakeholder who agrees with the Assessment Framework.

Calculating monetary payments

5.18 The redress payment is calculated based on the type of abuse an applicant suffered. Other factors, such as the impact of abuse, are only considered within the constraints of the type of abuse.[14] In contrast, the matrix recommended by the Royal Commission considered those factors without reference to the type of abuse.

5.19 As observed by the Anglican Church, 'the "kind of sexual abuse" which took place was not a factor included in the matrix recommended by the Royal Commission'.[15] The Anglican Church expressed its support for 'the implementation of an assessment framework which appropriately takes into account the impact of abuse, regardless of the severity of abuse suffered'.[16]

5.20 This concern was reiterated over the course of the inquiry. The Victorian Aboriginal Child Care Agency (VACCA) argued that the development of the redress payment table contained in the Assessment Framework:

> …has been in blatant disregard of the work, findings and recommendations of the Royal Commission, is contrary to extensive research on the impacts

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11 Professor Daly and Ms Davis, *Submission 49,* p. 4.

12 Anglican Church of Australia, *Submission 38,* pp. 1–2.

13 Ms Elizabeth Hefren-Webb, Deputy Secretary, DSS, *Committee Hansard,* 10 October 2018, p. 60.

14 As noted in chapter 3, the type of abuse experienced by a person determines which row of the assessment framework matrix applies to that person. The person may then satisfy the criteria for one or more columns, but the additional payments provided by those columns are constrained by the row applicable to the person.

15 Anglican Church of Australia, *Submission 38,* p. 2.

16 Anglican Church of Australia, *Submission 38,* p. 2.

> of child sexual abuse and minimises impacts, related non-sexual abuse, institutional vulnerability and denies the possibility of extreme circumstances unless the sexual abuse is penetrative.
>
> Each category (column) in the Assessment framework should be independent of each of the other categories. For example the Royal Commission's own work as well as extensive research in the area demonstrates the impact of sexual abuse is not determined by the type of sexual abuse. This framework which makes the amount of financial payment in relation to impact dependent on the type of sexual abuse is ill-informed, insulting and retraumatising for survivors.[17]

5.21 During the committee's most recent hearing, when asked what the most important issues to be addressed were, knowmore Legal Services (knowmore) highlighted the Assessment Framework and explained the reason for this:

> The framework itself, as you know from our previous submissions, greatly concerns us. There's currently no recognition of individual circumstances. The impact of the duration—somebody who may have experienced contact abuse, which was of course extreme, in our view, and might have gone on daily for a number of years, can only get the maximum of $50,000. Because the framework moves along, and you fit in a box horizontally, we really need some variation on that to be able to move around so that individual circumstances are taken into account and survivors get what they deserve.[18]

5.22 knowmore further submitted:

> It is also our experience that many of our clients were affected according not only to the type of abuse experienced, but the frequency, duration, other co-existing forms of abuse and the factors outlined above.[19]

5.23 Dr Andrew Morrison RFD QC, Spokesperson for the Australian Lawyers Alliance (Lawyers Alliance), informed the committee that the redress payment table does not align with the way in which the common law assesses damages and medical experience:

> The law doesn't work that way. The law says that you look at the effect on the individual. You look at how much damage was done to that particular individual. Some of those who are raped manage to get on with their lives and do pretty well. Some of those who suffer much less physical abuse do extremely badly and ultimately are unable to work. In any system of justice, in any system that's fair, it has to be the impact on the individual which you take into account. What has been laid down would have to be by someone who has no experience of the common law and has had no medical

17 The Victorian Aboriginal Child Care Agency (VACCA), *Submission 26,* p. 8.

18 Ms Anna Swain, Acting Managing Lawyer, knowmore Legal Services (knowmore), *Proof Committee Hansard,* 28 February 2019, p. 11.

19 knowmore, *Submission 31,* p. 7.

> experience of dealing with those who have suffered the various and multiple forms of abuse which are available.[20]

5.24 Professor Daly, Director of the International Redress Project, and Ms Juliet Davis, Research Fellow from Griffith University, commented that:

> The [National Redress Scheme's] assessment framework is unlike any other I have seen. It is not in line with other schemes in Australia or other countries with respect to publicly available information on individualised assessments of abuse.[21]

5.25 When discussing the frameworks developed in other jurisdictions, they explained that 'all the frameworks are similar in characterising abuse in a more gradational and contingent way and in showing ranges of abuse and ranges in monetary amounts'.[22] Professor Daly and Ms Davis recommended that the Assessment Framework 'be presented in a way that shows the considerations that decision-makers will have in determining a payment', and provided examples of how other jurisdictions have achieved this.[23] They went on to state:

> The assessment framework poorly communicates to survivors how the monetary payment will 'provide a tangible recognition of the seriousness of the hurt and injury suffered by a survivor' (Royal Commission redress recommendation 15). Decision-makers may find it difficult to put the assessment framework into practice, and it is likely to hamstring just decisions.
>
> Based on what is publicly available, I am not confident that the [National Redress Scheme's] assessment framework will promote decisions that will produce just outcomes for survivors.[24]

5.26 Dr Chris Atmore and Dr Judy Courtin from Judy Courtin Legal provided the following explanation and a real life example to illustrate the injustice of the Assessment Framework:

> The Table [in the Assessment Framework] categories and associated possible maximum payments do not reflect survivors' experience, including those of our clients. For example, while some survivors have endured horrific penetrative abuse, there are many others who have suffered years of arguably equally horrific 'contact abuse', with associated fear and trauma, from which psychiatrists' reports have concluded they will never completely recover. The existing redress scheme dismisses such lifelong egregious impacts on survivors, unless the child was 'penetrated'. Such distinctions are fictitious and wholly unjust.

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20 Dr Morrison RFD QC, *Committee Hansard*, 10 October 2018, p. 13.

21 Professor Daly and Ms Davis, *Submission 49*, p. 4.

22 Professor Daly and Ms Davis, *Submission 49*, p. 4.

23 Professor Daly and Ms Davis, *Submission 49*, p. 4.

24 Professor Daly and Ms Davis, *Submission 49*, p. 5.

> An example of the absurdity of such distinctions involves a child who was sexually assaulted by a priest on almost a weekly basis for 5–6 years. This also involved physical and psychological abuse. This man, who has attempted suicide on several occasions, has alcohol abuse problems, cannot study or work and lives alone. Because the priest did not 'penetrate' this boy, the maximum amount he can be awarded by the redress scheme is $50,000.[25]

5.27 VACCA explained that it wrote to DSS to raise concerns about the Assessment Framework and was provided with the following response:

> The design of the assessment framework has been based on the approach recommended by the Royal Commission. It recognises the severity of sexual abuse suffered, the impact on the person who experienced the abuse, related non-sexual abuse, and circumstances including anything that made a person especially vulnerable and made the abuse even more traumatic.[26]

5.28 The VACCA recommended 'a complete overhaul' of the Assessment Framework, to be undertaken by a small group of experts who are both trauma-informed and culturally-informed.[27] Professor Daly and Ms Davis similarly recommended that the Assessment Framework be revised 'to make it more sensitive, appropriate, and relevant to the range of abuse that a diverse group of survivors have suffered'.[28]

Extreme circumstances

5.29 Where an applicant has suffered penetrative abuse, column 6 of the redress payment table provides for a payment of up to $50,000 for recognition of the 'extreme circumstances' of the sexual abuse. Based on the table, a person who has suffered contact abuse or exposure abuse cannot receive any money for the extreme circumstances of sexual abuse. The Assessment Framework defines extreme circumstances:

> sexual abuse of a person occurred in ***extreme circumstances*** if:
>
> (a) the abuse was penetrative abuse; and
>
> (b) taking into account:
>
> (i) whether the person was institutionally vulnerable; and
>
> (ii) whether there was related non-sexual abuse of the person;
>
> it would be reasonable to conclude that the sexual abuse was so egregious, long-term or disabling to the person as to be particularly severe.[29]

25 Dr Chris Atmore and Dr Judy Courtin, *Submission 39,* p. 6.

26 VACCA, *Submission 26,* p. 9.

27 VACCA, *Submission 26,* pp. 3–4.

28 Professor Daly and Ms Davis, *Submission 49,* p. 5.

29 Section 4 of the Assessment Framework.

5.30 Submitters expressed concern that monetary recognition for the extreme circumstances of the abuse could only be obtained for penetrative abuse, and not for any other forms of abuse. Professor Daly and Ms Davis stated 'it is difficult to comprehend why "extreme circumstances" can only be taken into consideration for penetrative sexual abuse, and not for other forms' of abuse.[30]

5.31 Ms Anna Swain from knowmore raised the need for urgent guidance on the factors that are taken into consideration was deciding whether the additional $50 000 is paid to a survivor:

> We urgently need some guidance as to what factors the department is looking at when making that additional $50,000 payment. Is it solely the duration; does it have to have been over five years or more? What are 'extreme' circumstances? For applicants who are making the application themselves, how do they know what to include in a form so that they will meet the criteria needed? As lawyers, we are very concerned that we just don't have the guidance.[31]

5.32 Tuart Place, a provider of support services in Western Australia, also sought clarity on what might constitute extreme circumstances:

> A further condition is that: "it would be reasonable to conclude that the sexual abuse was so egregious, long term or disabling to the person as to be particularly severe".
>
> Greater clarity is needed on this further condition, as well as information about what documentary evidence, if any, needs to be provided to meet its requirements.[32]

5.33 The need for further guidance is discussed further below under the subheading 'Assessment Guidelines'.

Institutionally vulnerable

5.34 Column 5 of the Assessment Framework table regarding the monetary component provides additional payment to a person where they are deemed to be 'institutionally vulnerable', which is defined as follows:

> [A] person who suffered sexual abuse was ***institutionally vulnerable*** if, having regard to the following matters relating to the responsible institution for the abuse and the time of the abuse, it would be reasonable to conclude that the person's living arrangements at the time increased the risk of sexual abuse of the person occurring:
>
> (a) whether the person lived in accommodation provided by the institution;

30 Professor Kathleen Daly and Ms Juliet Davis, *Submission 49*, p. 4.

31 Ms Swain, Acting Managing Lawyer, knowmore, *Proof Committee Hansard*, 28 February 2019, pp. 10–11.

32 Tuart Place, *Submission 8*, p. 4.

(b) whether the institution was responsible for the day-to-day care or custody of the person;

(c) whether the person had access to relatives or friends who were not in the day-to-day care or custody of the institution;

(d) whether the person was reasonably able to leave the day-to-day care or custody of the institution;

(e) whether the person was reasonably able to leave the place where the activities of the institution took place.[33]

5.35 The Centre for Excellence in Child and Family Welfare raised concerns that the definition of institutionally vulnerable would limit the scope to applicants in closed institutions.[34]

5.36 VACCA commented that the definition of institutionally vulnerable is contrary to the findings of the Royal Commission and provided the following explanation:

> Specifically, it is now well-known survivors take on average several decades to disclose sexual abuse to anyone. To use "whether the person had access to relatives or friends who were not in the day-to-day care or custody of the institution" as a determining factor in defining institutional vulnerability is to ignore the extensive evidence of the difficulty victims have in disclosing (or in being believed when they do disclose).
>
> Similarly, having "whether the person was reasonably able to leave..." as a factor in defining institutional vulnerability ignores the many testimonies of those who did leave only to be returned by those in authority including police and punished for both 'absconding' and disclosing.[35]

Clarity of definitions

5.37 Some submitters suggested that the meaning of key terms used in the Assessment Framework is not clear. For instance, Tuart Place referred to column 3 of the table, which recognises the impact of sexual abuse on the survivor. Tuart Place sought further clarity on the information required of an applicant for them to receive the maximum payment under this column:

> The Explanatory Statement provides that:
>
> > (b) the amount in column 3 of that item if the person's application to the Operator for redress indicates that the sexual abuse of the person had an impact on the person's wellbeing. It would be open to the Operator to rely on the information provided in the application as to whether the person's wellbeing was impacted by the sexual abuse, if the Operator believes that the person has provided sufficient information to make that decision.

33 Section 4 of the Assessment Framework.

34 Centre for Excellence in Child and Family Welfare, *Submission 18,* p. 2.

35 VACCA, *Submission 26,* p. 8.

> We do not know if applicants need to provide external evidence of the impact of their abuse for the "Operator to believe they have provided sufficient information to make that decision", or if it is sufficient to just circle some of the *Impacts* listed on page 27 of the application form.
>
> We have sought further information about assessment criteria for the two factors mentioned above, however feedback via the [National Redress Scheme] Helpline and other sources has been somewhat contradictory. We realise it is 'early days' and we're all 'learning as we go' to some degree, however it is essential that survivors have access to clear operational definitions for these elements *prior* to preparing applications.[36]

5.38 In addition, Angela Sdrinis Legal sought further clarity on the definition of 'penetrative abuse'.[37] The current definition of penetrative abuse is 'relevant sexual abuse of a person is ***penetrative abuse*** if any of that abuse involved penetration of the person (even if the rest of that abuse did not)'.[38] Angela Sdrinis Legal questioned whether the definition would include oral penetration and digital penetration, and recommended that all forms of penetration be included in the definition.[39]

Assessment Guidelines

5.39 As explained in previous chapters, the Minister for Social Services (the minister) may make guidelines for the purpose of applying the Assessment Framework.[40] It is an offence to record, disclose or use the Assessment Framework Policy Guidelines (the Assessment Guidelines) for an unauthorised purpose.[41]

5.40 The Explanatory Statement to the Assessment Framework explains the role of the Assessment Guidelines:

> This framework will be supported by assessment framework policy guidelines which will provide further detail and examples to assist decision makers to apply the Assessment Framework to the range of circumstances.[42]

5.41 The Explanatory Memorandum to the Act outlines why the Assessment Guidelines are not made public:

> Subclause 33(4) provides that the guidelines are not a legislative instrument. These guidelines are of an administrative character, the content of which will not be provided in a legislative instrument. The reason for omitting detailed guidelines is to mitigate the risk of fraudulent applications. Providing for detailed guidelines would enable people to

36 Tuart Place, *Submission 8,* p. 4.

37 Angela Sdrinis Legal, *Submission 36,* p. 1.

38 Section 4 of the Assessment Framework.

39 Angela Sdrinis Legal, *Submission 36,* p. 1.

40 Section 33 of the Act.

41 Section 104 of the Act.

42 Explanatory Statement to Assessment Framework, p. 1.

> understand how payments are attributed and calculated, and risks the possibility of fraudulent or enhanced applications designed to receive the maximum redress payment under the Scheme being submitted.[43]

5.42 In answers to questions on notice, DSS advised that the Assessment Guidelines 'are distinguished from other guidelines due to the potentially traumatic nature of the content, the need to minimize further traumatisation of survivors and the low evidentiary threshold of the scheme'.[44]

5.43 Submitters expressed concern about the Assessment Guidelines not being publicly available and the implications this would have on the provision of legal advice as well as accountable and transparent decision-making. Maurice Blackburn Lawyers (Maurice Blackburn) stated:

> Maurice Blackburn is bewildered that, far from moving toward a more transparent approach to the calculation of redress, the legislation actually makes the assessment framework more secretive. Section 104 has made it an offence, punishable with incarceration, for the contents of the assessment process to be made public.[45]

5.44 Maurice Blackburn commented that it would not be possible for legal practitioners to provide appropriate and accurate advice to a client about whether to proceed with a redress claim if they are not able to understand how assessments are made.[46]

5.45 Dr Atmore and Dr Courtin from Judy Courtin Legal explained that, due to the secrecy of the Assessment Guidelines, it would not be possible to assess whether the redress payment amount was correctly calculated and appropriate:

> Such 'extreme circumstances' may allow decision makers to distinguish between years of penetrative abuse and a single incident, but without access to the Guidelines and other details of the decision making process—including any appropriate experience and training requirements for decision makers—we are not confident that even the redress payments for survivors who 'qualify' for Row 1 will be the result of appropriate deliberations and delineations.[47]

5.46 When asked whether it was common, in other areas, for legislation to prevent the publication of similar guidelines, knowmore advised that it was not common practice:

> In common law claims there will be case law, where you can measure previous claims of damages and know how those were reached. To use an example of victims compensation in New South Wales, the scheme is very

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43 Explanatory Memorandum to the Act, p. 38.

44 DSS, answers to written questions on notice, 8 March 2019 (received 20 March 2019).

45 Maurice Blackburn Lawyers, *Submission 25,* p. 11.

46 Maurice Blackburn, *Submission 25,* pp. 10–11.

47 Dr Atmore and Dr Courtin, *Submission 39,* p. 6.

> clear that this is what needs to have happened to you to get this amount. I'd argue that this is not generally what we see. It's just so unknown, it's very concerning, as lawyers.[48]

5.47 knowmore additionally questioned the harm in providing applicants with as much information as possible to assist with their claim:

> They only get one opportunity to do this. It's a very different area of law to tax law or anything like that. We're attempting to administer a scheme to compensate people who were abused through no fault of their own at all, as children. Why shouldn't they be given as much information as possible, particularly when the scheme is said to be non-legalistic, non-adversarial. Why can't they have information that helps them?…Where is the harm? It's not about safeguarding institutional assets; it's about recognising the suffering of survivors.[49]

5.48 When asked for other examples of similar guidelines being treated in the same way as the Assessment Guidelines, DSS confirmed that they are 'not aware of similar guidelines'.[50]

Maximum redress amount

5.49 A large number of inquiry participants raised the fact that the maximum redress payment is $150 000, rather than the $200 000 recommended by the Royal Commission. Many of these inquiry participants also called on the government to increase the maximum amount to what was recommended by the Royal Commission.

5.50 Kelso Lawyers suggested that the maximum redress amount be applied 'per set of abuse' rather 'per person'. Kelso Lawyers explains that the current way in which the maximum is capped 'has the effect of turning the [redress scheme] into a mechanism by which all the responsible participating institutions can cap the cost and split the bill for purchasing the survivor's cause of action against each of them'.[51]

5.51 A number of submitters compared the maximum payment amount under the Redress Scheme with other equivalent schemes that operate internationally. For instance, the Lawyers Alliance noted that the Irish scheme had a cap of €300 000, which could be exceeded in some circumstance.[52]

5.52 Professor Daly and Ms Davis acknowledged that the maximum payment under the redress scheme represents a 'symbolic value'.[53] However, they argued that a

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48 Ms Anna Swain, Acting Managing Lawyer, knowmore, *Proof Committee Hansard*, 28 February 2019, pp. 10–11.

49 Mr Warren Strange, Executive Officer, knowmore, *Proof Committee Hansard*, 28 February 2019, pp. 11–12.

50 DSS, answers to written questions on notice, 8 March 2019 (received 20 March 2019).

51 Kelso Lawyers, *Submission 5*, p. 6.

52 Australian Lawyers Alliance (Lawyers Alliance), *Submission 4*, p. 6.

53 Professor Daly and Ms Davis, *Submission 49*, p. 3.

scheme's maximum payment was not a particularly useful focus as only a very small number of people qualify for the maximum.[54] For example, in the Irish scheme, they noted that only 0.003 per cent of people received the maximum award band of €200 000 to €300 000.[55]

5.53 Some submitters expressed concern that the maximum amount was lower than the Royal Commission's recommendation without any explanation as to the reason for the reduction.[56] Ms Ellen Bucello explained the betrayal felt by survivors at the maximum payment being reduced with no explanation:

> The decision made by these Commissioners were undermined and cut by 50K with no explanation by whom or why. Victims are feeling extremely betrayed, after they were starting to regain confidence and trust, this has been undermined.[57]

5.54 Ms Joanne McCarthy, journalist from the *Newcastle Herald* commented that the reduction in the maximum payment sends a bad message:

> I don't have a theory, but, if the royal commission recommended $200,000, which it did, then what is the argument being used for dropping it down? And, again, what does that say? Everything for me on this comes back to power. Even in terms of changing it—even if it had been changed from 200 [thousand] to 195 [thousand]—somebody else has intervened there, and that is a very bad message to be sent.[58]

5.55 Due to the lack of explanation concerning the reduced maximum payment, a number of submitters speculated that the maximum was reduced to match the maximum payment for the schemes of the Catholic and Anglican Churches.[59]

5.56 The committee has tried to ascertain the reason for the reduction in the maximum payment and has put this question to various witnesses, including DSS and the Department of Human Services (DHS), on numerous occasions. However, apart from acknowledging that $150 000 was the amount agreed to between the Commonwealth, states, and territories, the committee has not received any explanation or rationale about this discrepancy.

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54 Professor Daly and Ms Davis, *Submission 49*, p. 3.

55 Professor Daly and Ms Davis, *Submission 49*, p. 3.

56 See for example: Centre for Excellence in Child and Family Welfare Inc. *Submission 18*, Attachment 2, p. 2; Ms Ellen Bucello, private capacity, *Submission 23*, p. 5; and Mrs Chrissie Foster, *Submission 1*, pp. 5–6.

57 Ms Bucello, private capacity, *Submission 23*, p. 5.

58 Ms Joanne McCarthy, journalist, Newcastle Herald, *Committee Hansard*, 8 November 2018, p. 40.

59 See, for example, Ms Foster, *Submission 1*, pp. 5–6.

Minimum redress amount

5.57 The redress scheme does not set a minimum redress payment. This is in contrast to the Royal Commission, which recommended a minimum redress payment of $10 000.[60]

5.58 As previously stated, the redress payment can be reduced if the survivor received a relevant prior payment or if one or more institution(s) responsible for the abuse is not participating in the scheme.[61]

5.59 A number of submitters recommended that a minimum payment amount be set.[62] As noted by the Lawyers Alliance, the lack of a minimum payment means that it is possible for an applicant to be offered $0 in the monetary component of the scheme.[63]

5.60 DSS advised that as of 1 March 2019, 31 per cent of redress payments are less than the maximum payment.[64] During the Senate Estimates hearing of the Community Affairs Legislation Committee, DSS confirmed that no offers of $0 have been made.[65]

Average redress amount

5.61 The Royal Commission recommended an average payment of $65 000.[66] However, the estimated average payment under the redress scheme is approximately $76 000. Submitters and witnesses to this inquiry, as well as the inquiries conducted by the Senate Community Affairs Legislation Committee, responded positively to this higher average. When questioned about the difference, DSS stated that it attempted to replicate the payment matrix and average of the Royal Commission, but was not able to do so through any of its modelling or testing.[67]

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60 Royal Commission, *Redress and Civil Litigation Report*, August 2015, Recommendation 19.a.

61 DSS, answers to written questions on notice, 8 March 2019 (received 22 March 2019).

62 knowmore, *Submission 31*, p. 7.

63 Lawyers Alliance, *Submission 4*, p. 5.

64 Lawyers Alliance, *Submission 4*, p. 5.

65 Mrs Tracy Creech, Branch Manager, Redress Implementation, DSS, Senate Community Affairs Legislation Committee, *Proof Committee Hansard*, Additional Estimates hearing, 20 February 2019, p. 36.

66 Royal Commission, *Redress and Civil Litigation Report*, August 2015, Recommendation 19.

67 Dr Roslyn Baxter, Group Manager, Families and Communities Reform, DSS, Community Affairs Legislation Committee, inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions], and related bill, *Committee Hansard*, 16 February 2018, pp. 67–68.

5.62 On 21 February 2019, DSS advised that the average payment of the scheme to date was $79 035.[68] This appears to be consistent with the average payment estimated by DSS.

5.63 While submitters positively noted that the average payment under the redress scheme is higher than the amount recommended by the Royal Commission, the Actuaries Institute noted the importance of ensuring the sustainability of the scheme. For example, the Actuaries Institute stated:

> …there is significant uncertainty in the number of scheme participants and their severity and impact of abuse (and hence the monetary payment outcome). It is plausible that the number of scheme participants and/or the average size of the monetary payment exceed projections, resulting in higher than expected costs for participating institutions and this may jeopardise the financial sustainability of the scheme.[69]

5.64 To mitigate the risk of the scheme becoming unviable, the Actuaries Institute suggested that the scheme capture quality data about various matters such as the number of applications received and the amount of redress payment for both the monetary and counselling elements of the scheme.[70] The Actuaries Institute made the following recommendation:

> The Actuaries Institute recommends that a structured 'actuarial control process' be included in the governance arrangements from the outset and that the Committee can play a key role in ensuring this occurs. This will enable the scheme to provide participating institutions with timely information on expected liabilities and to provide insights into particular trends and emerging costs of the scheme. It is a small up-front investment that produces substantial risk management benefits for scheme sustainability—both financially and in operational performance.[71]

Indexation of payments

5.65 As outlined in chapter 3, the redress scheme takes into account any payments a survivor has previously received for institutional child sexual abuse.[72] These relevant prior payments are multiplied by 1.019 per year (which is broadly to account for inflation) and then subtracted from the redress payment.[73]

5.66 This is consistent with the Royal Commission's recommendation:

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68 Mrs Creech, Senate Community Affairs Legislation Committee, *Proof Committee Hansard*, Additional Estimates hearing, 20 February 2019, p. 36.

69 Actuaries Institute, *Submission 6*, p. 3.

70 Actuaries Institute, *Submission 6*, p. 3.

71 Actuaries Institute, *Submission 6*, p. 3.

72 Note that if the prior payment was ordered by a court as compensation or damages then the person is not eligible for redress at all. See paragraph 13(1)(d) and subsection 15(6) of the Act, as well as subsections 11(2) and 11(3) of the Rules.

73 Subsection 30(2) of the Act.

> The monetary payments that a survivor has already received for institutional child sexual abuse should be taken into account in determining any monetary payments under redress by adjusting the amount of the monetary payments already received for inflation and then deducting that amount from the amount of the monetary payment assessed under redress.[74]

5.67 A number of submitters argued that the redress payment should similarly be indexed over the 10 year life of the scheme.[75] VACCA stated:

> VACCA believes that it is inconsistent and unfair that past payments are indexed while redress payments are not indexed over the ten years of the life of the scheme. Indexing past payments and not the payments available in this scheme is mean-spirited and punishing survivors who are often living in financial hardship due to the lifelong impacts of their childhood abuse.[76]

5.68 Tuart Place argued that survivors who received a past payment should know in advance what their claim is likely to be worth, and whether they are likely to receive a $0 payment, so that they are not unnecessarily traumatised.[77]

Counselling and psychological care

5.69 The Royal Commission outlined seven principles underpinning the way in which counselling and psychological care should be supported through the Redress Scheme:

a. Counselling and psychological care should be available throughout a survivor's life.

b. Counselling and psychological care should be available on an episodic basis.

c. Survivors should be allowed flexibility and choice in relation to counselling and psychological care.

d. There should be no fixed limits on the counselling and psychological care provided to a survivor.

e. Without limiting survivor choice, counselling and psychological care should be provided by practitioners with appropriate capabilities to work with clients with complex trauma.

f. Treating practitioners should be required to conduct ongoing assessment and review to ensure treatment is necessary and effective. If those who fund counselling and psychological care through redress have concerns about services provided by a particular practitioner, they should negotiate a process of external review with that

74 Royal Commission, *Redress and Civil Litigation Report*, August 2015, Recommendation 25.

75 knowmore, *Submission 31*, p. 13.

76 VACCA, *Submission 26*, p. 7.

77 Tuart Place, *Submission 8*, p. 4.

practitioner and the survivor. Any process of assessment and review should be designed to ensure it causes no harm to the survivor.

g. Counselling and psychological care should be provided to a survivor's family members if necessary for the survivor's treatment.[78]

5.70 The *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (Intergovernmental Agreement) requires states and territories to commit to service standards set out in Schedule C of that agreement. These standards include providing a minimum of 20 hours of counselling and psychological care to survivors.[79]

5.71 As noted in chapter 3, section 6 of the Assessment Framework contains a table for calculating the amount of the counselling and psychological component for a person. This table is used to determine the financial contribution required of a participating institution which, depending on the approach chosen by the jurisdiction in which the survivor resides, will be provided directly to the survivor or to existing health services of that jurisdiction. The amount (in dollar terms) of counselling and psychological care to be paid is $5000 for penetrative abuse, $2500 for contact abuse, or $1250 for exposure abuse. It is not possible for the total amount to exceed $5000 regardless of the number of responsible institutions.

5.72 DSS advised that as at 1 February 2019, 16 eligible survivors decided to receive the redress counselling and psychological component of the scheme.[80]

Caps on the amount of counselling and psychological care

5.73 The caps on the counselling and psychological care provided under the scheme were described by submitters as 'grossly inadequate', 'seriously inequitable', and 'an area of major concern'.[81]

5.74 Submitters and witness noted that it fell significantly short of the Royal Commission's recommendations that counselling and psychological care be available throughout the survivor's life, on an episodic basis, and that there should be no limits on the care provided.[82]

5.75 Maurice Blackburn noted that previous iterations of the Act had clear principles which 'were a good reflection of those developed by the Royal Commission'.[83] These principles were:

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78 Royal Commission, *Redress and Civil Litigation Report,* August 2015, Recommendation 9, p. 63.

79 *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (Intergovernmental Agreement), Schedule C, p. 22.

80 DSS, answers to written questions on notice, 8 March 2019 (received 20 March 2019).

81 Blue Knot Foundation, *Submission 7,* p. 2.

82 See recommendations 9.a., 9.b. and 9.d. of the Royal Commission, *Redress and Civil Litigation Report*, August 2015.

83 Maurice Blackburn, *Submission 25,* p. 9.

> (1) Survivors should be empowered to make decisions about their own need for counselling or psychological services.
>
> (2) Survivors should be supported to maintain existing therapeutic relationships to ensure continuity of care.
>
> (3) Counselling and psychological services provided through redress should supplement, and not compete with, existing services.[84]

5.76 Maurice Blackburn expressed their disappointment that these principles were not reproduced in the Act.[85]

5.77 VACCA raised concerns that the amount of counselling provided is determined solely on the kind of abuse suffered rather than the impact of the abuse on the individual.[86] VACCA elaborated on this point:

> That the impact of the abuse is considered of no relevance to the amount of counselling required is contrary to even the most cursory understanding of child sexual abuse and associated impacts.[87]

5.78 This view was reiterated by many submitters, including Relationships Australia, who explained that imposing a cap on counselling and psychological care is not trauma-informed:

> We remain deeply concerned by the commitment, set out in the National Service Standards, to only 20 hours of [counselling and psychological care] over the lifetime of a survivor which, given the nature of trauma suffered by survivors, is likely to be inadequate. Caps on access to [counselling and psychological care], whether by reference to hours or dollar value, do not reflect a trauma-informed response to the needs of survivors across the lifespan. Relationships Australia notes that the Royal Commission recommended life-long access to counselling be made available to survivors. The imposition of a cap is a serious and substantial departure from the Royal Commission's recommendations.[88]

5.79 Blue Knot similarly stated that:

> The guide around allocation of the quantum of funds for counselling also shows little understanding of child sexual abuse with an assumption that penetrative abuse by definition is the most severe. This is a very simplistic approach which ignores context e.g. grooming, impacts, mitigating factors etc.[89]

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84 Section 49 of the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017.

85 Maurice Blackburn, *Submission 25*, p. 9.

86 VACCA, *Submission 26*, p. 8.

87 VACCA, *Submission 26*, p. 8.

88 Relationships Australia, *Submission 9*, p. 3.

89 Blue Knot Foundation, *Submission 7*, p. 2.

5.80 The Centre for Excellence in Child and Family Welfare acknowledged that the $5000 limit may be sufficient for some survivors, but that others will require ongoing and unlimited counselling services.[90] Maurice Blackburn argued that where institutions have caused life-long impact, or if the impact is episodic, then the counselling support should similarly be life-long and episodic.[91]

5.81 In relation to the number of counselling sessions $5000 might purchase, Mr Peter Gogarty estimated between 15 and 25 sessions:

> Depending on what form the counselling takes, the qualification of the counsellor and the capacity of the survivor to receive a Medicare rebate, this amount could purchase just 15 sessions. For example, most psychiatrists charge $350 per session. Even with a Medicare rebate, the funding would facilitate just 25 sessions. By way of comparison, I meet with a psychiatrist approximately 20 times per year and have been doing so for more than 10 years. I see no point in the near future where I will not need this support.[92]

5.82 The Actuaries Institute suggested the inclusion of 'an option whereby additional counselling services or payments are made available if the survivor is able to demonstrate the need'.[93] It noted that a similar option is available for Victims Services in New South Wales where eligible applicants have 22 hours of counselling, with further hours that may be approved if required by the victim.[94]

Providing life-long counselling and psychological care

5.83 The provision of life-long counselling and psychological care for survivors has been an issue of contention for some time. In the March 2018 inquiry by the Senate Community Affairs Legislation Committee into the Commonwealth bills, Labor Senators recommended that the bill:

> …be amended to specify that counselling offered through redress packages be available for the life of the Survivor, as recommended by the Royal Commission.[95]

5.84 In response to this recommendation, the Government stated that it 'agrees with this recommendation'.[96]

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90 Centre for Excellence in Child and Family Welfare, *Submission 18,* p. 2.

91 Maurice Blackburn, *Submission 25,* p. 9.

92 Mr Gogarty, private capacity, *Committee Hansard,* 8 November 2018, p. 2.

93 Actuaries Institute, *Submission 6,* p. 3.

94 Actuaries Institute, *Submission 6,* p. 4.

95 Community Affairs Legislation Committee, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions], and Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]*, March 2018, Additional comments by Labor Party Senators, Recommendation 5, p. 116.

5.85 Further questions were asked of DSS in June 2018 to clarify whether caps would apply to survivors for the counselling and psychological component.[97] DSS explained that where a jurisdiction is a 'declared provider' of this component, the dollar value calculated under the Assessment Framework would be paid by the responsible institution to existing state and territory services.[98] Survivors would use these existing services.[99] A DSS representative stated:

> The support that's already provided in a number of areas ranges from support already funded by Medicare to the state jurisdictions. With the state jurisdictions, while that hasn't been confirmed with every jurisdiction, most of them themselves, through their public health networks or equivalent, provide support. Some of these provide it through victims' support units. So already they're providing the support to survivors. So up to $5,000 will go into those existing structures those states have—at the end of the journey as we finalise the arrangements with them and they sign on. It's not as if there is a cap on the $5,000. It's being fed out to contribute to the systems.[100]

5.86 The DSS representative went on to confirm:

> **Senator SIEWERT:** So what you're saying is survivors will still have access to counselling through their life, because the states will be providing services?
>
> **Ms Bennett:** And Medicare provides, on the recommendation of a GP, 10 annual visits.[101]

5.87 DSS advised that states have discussed using their existing state based services such as victims of crime networks or large non-government organisations with a large footprint and capable of providing the service across the state.[102] DSS confirmed that the table at section 6 of the Assessment Framework is used to calculate the amount of liability that responsible institutions are required to pay to the

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96 Government response tabled 29 May 2018, aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AbuseRedressScheme/Government_Response (accessed 12 March 2019).

97 Ms Barbara Bennett, Deputy Secretary, Social Security, DSS, Senate Community Affairs Legislation Committee, *Committee Hansard*, Budget Estimates hearing, 1 June 2018, pp. 122-123.

98 Ms Bennett, Senate Community Affairs Legislation Committee, *Committee Hansard*, Budget Estimates hearing, 1 June 2018, p. 122.

99 Ms Bennett, Senate Community Affairs Legislation Committee, *Committee Hansard*, Budget Estimates hearing, 1 June 2018, p. 122.

100 Ms Bennett, Senate Community Affairs Legislation Committee, *Committee Hansard*, Budget Estimates hearing 1 June 2018, p. 122.

101 Senate Community Affairs Legislation Committee, *Committee Hansard*, Budget Estimates hearing, 1 June 2018, 122.

102 Dr Baxter, DSS, Senate Community Affairs Legislation Committee, *Committee Hansard*, Budget Estimates hearing, 1 June 2018, p. 132.

jurisdiction where the survivor resides. However, there is no 'tally system'[103] because survivors would have access to these existing services irrespective of whether they qualify for redress, as revealed in the following exchange:

> **Senator PRATT:** In effect, if someone is eligible for a $1,200 psychological payment but uses much more than that, you're saying there is in effect no cap, because, under the agreement with the state, the state would still have to service that person irrespective of whether they received a $1,200 or $5,000 payment?
>
> **Ms Bennett:** The state is doing that now without that contribution to their systems.[104]

5.88 Apart from the commitment to provide the National Service Standards as set out in Schedule C of the Intergovernmental Agreement, it is unclear what additional services will be provided to eligible survivors, which any other citizen would not receive.

5.89 The Law Council of Australia (the Law Council) noted that it was pleased with the government's in-principle support to provide life-long counselling to survivors, but suggested that greater clarity be provided in relation to the 'length of entitlement to psychological and counselling services…as well as how the administration of this component of the scheme will be managed'.[105]

5.90 It is noted that on 20 March 2019, DSS advised that Western Australia and South Australia have chosen to provide a lump sum payment to survivors, to cover counselling and psychological care services.[106] All other states and territories have chosen to be declared providers of counselling and psychological care.

Consistency in the quality and delivery of care

5.91 As noted above, the counselling and psychological care will be provided to survivors under existing state and territory services and programs. These services are managed by each individual state and territory, and consequently, would differ between jurisdictions. As stated by one survivor, 'I have had hundreds of hours of counselling thankfully to the New South Wales system of victims of crime'.[107]

5.92 Ms Deb Tsorbaris of the Centre for Excellence in Child and Family Welfare stated 'the Victorian government said that they won't really put a limit on the amount of counselling that victims receive'.[108] She stated:

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103 Ms Bennett, *Committee Hansard*, estimates hearing, 1 June 2018, p. 132.

104 *Committee Hansard*, estimates hearing, 1 June 2018, p. 133.

105 Law Council of Australia (the Law Council), *Submission 29*, p. 9.

106 DSS, answers to questions on notice, 28 February 2019 (received 20 March 2019).

107 Mr Paul Gray, *Submission 44*, p. 1.

108 Ms Tsorbaris, Chief Executive Officer, The Centre for Excellence in Child and Family Welfare, *Committee Hansard*, 8 October 2018, p. 48.

> As we go through the process of implementation of this scheme, there may be times when the Victorian government will need to step up and fill some gaps that the Commonwealth can't or won't fill.[109]

5.93 Dr Kezeleman of the Blue Knot Foundation also commented on the differing standards of care between jurisdictions:

> One of the key tenets of the royal commission was about being fair and equitable, but what we see is a scheme in which the counselling component depends on where people live. In some states there are counselling schemes which give relatively open ended counselling. In other states and territories people will receive something like $1,250 to $5,000 over 10 years, which is just absolutely offensive in terms of the needs of some survivors.[110]

5.94 In addition to the differences in the manner and quantity of care provided between each state and territory, concerns were raised about the potential for inconsistency in the quality of care provided within a state or territory. For example, Dr Kathleen McPhillips, Senior Lecturer at the University of Newcastle raised concerns about the mental health services available in regional and remote areas:

> What happens to people in remote areas and even in regional areas where mental health services are likely to be thin on the ground? Currently, in Newcastle, mental health services, as you know, are really stretched. There are three mental health teams and, in those teams, there are three counsellors and three psychologists, and they're getting 50 to 70 new cases each week. So they're incredibly overstretched.[111]

5.95 The Australian Association of Social Workers also observed that the location of the survivor may also effect the amount of counselling provided to them:

> It opens up the possibility that survivors in locations where it is more expensive to undergo counselling (such as in locations where travel costs or office rents are high) may not be able to purchase as many sessions with that money than others. This also puts a definite limit on the amount of sessions a person can receive.[112]

Flexibility in the care provided

5.96 Some submitters raised concern that survivors would be limited in the type of counselling and psychological care provided and questioned whether survivors would be able to continue to see a counsellor with whom they have an existing

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109 Ms Tsorbaris, *Committee Hansard*, 8 October 2018, p. 48.

110 Dr Cathy Kezelman AM, President, Blue Knot Foundation, *Committee Hansard*, 10 October 2018, p. 25.

111 Dr Kathleen McPhillips, Senior Lecturer, University of Newcastle, *Committee Hansard*, 8 November 2018, p. 11.

112 Australian Association of Social Workers, *Submission 28*, p. 4.

relationship.[113] Relationships Australia argued that survivors should not be confronted with a limited range of supports.[114]

5.97 Interrelate provided its understanding of how this element of the scheme would be managed in New South Wales, and explained why changing counsellors could have devastating effects on the health of the survivor:

> Under the redress scheme, provision of [counselling and psychological care in New South Wales] will be managed by Department of Victims Services with survivors being offered choice of service only from existing state funded services. As such, their choice of ongoing [counselling and psychological care] will be limited and the reality of flexibility and choice will not be realised. We are concerned for existing clients of [Royal Commission Community Based Support Services] that their continuity of care will be compromised. There is ample evidence that the therapeutic alliance is what influences client outcomes and that this therapeutic alliance is forged over time. For clients, changing therapists can mean having to re-tell their story again—for those carrying the effects of long term trauma this can be a significant struggle. Additionally, there is the process of establishing a new relationship with the new practitioner, who also has to learn the client's story and gather information about their relationships, life history, and other aspects of their current circumstances. Continuity of care is also associated with declined use of health services and with improved client satisfaction…[115]

5.98 VACCA recommended the counselling and psychological care for Aboriginal survivors include access to Aboriginal delivered cultural healing programs:

> It is imperative that for Aboriginal survivors this includes access to Aboriginal-run cultural healing programs. VACCA provided culturally healing programs for the survivors they supported to tell their story to the Royal Commission. La Trobe University and VACCA conducted an evaluation of the cultural healing program which demonstrated the need for cultural healing, as Aboriginal survivors did not access, did not receive benefit and/or did not feel culturally safe accessing mainstream (western) counselling services. The evaluation also demonstrated that cultural healing has positive impacts on the social and emotional wellbeing of Aboriginal survivors and survivors have been vocal in stating that cultural healing is what they need.[116]

5.99 The inconsistency in the way in which counselling and psychological care is delivered in each state and territory was highlighted in answers to questions on notice

113 Interrelate, *Submission 21*, p. 3.

114 Relationships Australia, *Submission 9*, p. 4; also see knowmore, *Submission 31*, p. 14.

115 Interrelate, *Submission 21*, p. 3.

116 VACCA, *Submission 26*, p. 7.

provided by DSS when outlining whether a survivor would be able to continue to see their existing mental health practitioner.[117] DSS provided the following information:

- In New South Wales a survivor who has an existing relationship with a counsellor can continue to see that counsellor as part of the Scheme if the counsellor becomes a Victim Services Interim or Approved Counsellor.
- The Victorian Government has elected to connect eligible people who are residing in Victoria to a free and local counselling service as part of their offer of redress. This counselling service is called Restore. Any scope for survivors to continue with an existing counsellor would be determined on a case by case basis by Victoria.
- In Queensland people may continue to use their existing counsellor or practitioner if they are eligible to register on the Trauma Support Directory.
- In the ACT people may have the option of continuing to use their existing counsellor. Victim Support will contact the counsellor to determine whether their services can be included under the Scheme.
- Western Australia and South Australia are providing a lump sum payment to cover counselling and psychological care services.
- Northern Territory and Tasmania are in the process of finalising their counselling arrangements.[118]

Care for family members

5.100 Submitters also called for the extension of counselling services to family members. For example, Relationships Australia stated:

> Further, Relationships Australia believes that for the Scheme to sufficiently reflect the intergenerational impact of child sexual abuse on survivors across the lifespan, family members of survivors should be able to access all components of the Scheme. They, too, are survivors of the abuse perpetrated against their family member. They have often directly and indirectly experienced the far-reaching effects of the abuse perpetrated upon their family member.[119]

5.101 Similarly, VAACA expressed its concern that counselling was not available to family members given 'the evidence base in relation to the impacts on survivors' families and intergenerational trauma'.[120]

5.102 Interrelate recommended that counselling and psychological care be extended to family members, 'even if for only a limited number of sessions'.[121] For its part,

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117 DSS, answers to written questions on notice, 12 March 2019 (received 20 March 2019).

118 DSS, answers to written questions on notice, 12 March 2019 (received 20 March 2019).

119 Relationships Australia, *Submission 9,* p. 4.

120 VACCA, *Submission 26,* p. 6.

121 Interrelate, *Submission 21,* p. 3.

CLAN suggested that care leavers and their family should have access to counselling 'even after the scheme has finished, with no fixed amount, to ensure they receive the best possible support'.[122]

Ongoing counselling at the end of the scheme

5.103 The Lawyers Alliance noted its concern about the facilitation of ongoing counselling and psychological support after the redress scheme concludes.[123] Dr McPhillips also raised concerns about survivors who lodge an application towards the end of the scheme and what this might mean for the care they are provided:

> The other problem is that the length of the scheme is very problematic. It has a 10-year tenure. What happens to somebody who discloses their abuse in 2010, applies through the NRS and that abuse happened 20, 30 or 40 years ago? There are going to be people who fall off the end of that scheme, and so we would like to see, as the royal commission recommended, no closing date for the scheme in general.[124]

Direct personal response

5.104 A number of submitters raised concerns about the framework underpinning direct personal responses. Professor Daly and Ms Davis observed that of the three elements of redress, the direct personal response 'is the most distant from what the Royal Commission had proposed,'[125] and that the framework proposed by the scheme is 'weak, insufficient, and gives little incentive for institutions to be responsive to survivors' needs'.[126]

5.105 The Law Council raised concerns that section 5 of National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018 (the Direct Personal Response Framework) is not consistent with the recommendations of the Royal Commission. The Law Council noted that the Royal Commission recommended that the redress scheme Operator 'should offer to facilitate the provision of a written apology, a written acknowledgement and/or a written assurance of steps taken to protect against further abuse for survivors who seek these forms of direct personal response but who do not wish to have further contact with the institution'.[127] However, the Direct Personal Response Framework merely requires the Operator to provide the contact details of the responsible institution to the survivor, and explain that 'the survivor must contact the institution to commence the direct personal response process'.[128] As observed by the Law Council, there appears to be no

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122 CLAN, *Submission 40,* p. 9.

123 Lawyers Alliance, *Submission 4,* p. 5.

124 Dr McPhillips, Senior Lecturer, University of Newcastle, *Committee Hansard,* 8 November 2018, p. 11.

125 Professor Daly and Ms Davis, *Submission 49,* p. 6.

126 Professor Daly and Ms Davis, *Submission 49,* p. 6.

127 Royal Commission, *Redress and Civil Litigation Report,* August 2015, Recommendation 6.

128 Subsection 5(b) of the Direct Personal Response Framework

provision in the Framework for the Operator to assist in facilitating this if the survivor does not wish to have further contact with the institution.[129]

5.106 To address these concerns, the Law Council recommended that the Direct Personal Response Framework be amended and that legal and support services be funded to provide assistance to the survivor.[130]

5.107 Additionally, Professor Daly and Ms Davis noted that where an applicant wishes to be given a direct personal response from the institution, the Act only requires that the institution take 'reasonable steps' to provide the applicant with a direct personal response.[131]

5.108 Relationships Australia expressed concern relating to the inflexibility of the Direct Personal Response Framework and made the following observation:

> …if a survivor initially declines a direct personal response, but later feels able (and wishes to) receive one, they cannot revisit their initial decision declining it. Again, this would seem not to reflect the realities of experiencing and recovering from complex trauma. This is not a linear process. Relationships Australia considers that the Scheme should expressly allow for greater flexibility for survivors to access all components of the Scheme at any stage during the life of the Scheme.[132]

5.109 Relationships Australia also expressed concern about institutions leading the direct personal response process, on the basis that survivors may perceive this as a conflict of interest and an opportunity for the institution to 'further perpetuate dynamics of control and abuse'.[133] VACCA argued that '[a]n ill-considered direct personal response has the potential to be more damaging than receiving no direct personal response at all'.[134] Interrelate submitted that the direct personal response should also be available to the survivor's family given 'the ripple effect of this trauma on others'.[135]

5.110 Concerns were also raised about the lack of accountability in the provision of direct personal responses. Relationships Australia recommended that direct personal responses be led and administered by an independent agency or body.[136]

5.111 Professor Daly and Ms Davis noted that the Direct Personal Response Framework requires institutions to have a process for managing complaints relating to direct personal responses, that survivors are informed of this complaints process, and

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129 Law Council, *Submission 29,* p. 9.

130 Law Council, *Submission 29,* p. 10.

131 Professor Daly and Ms Davis, *Submission 49,* p. 6. See also subsection 54(1) of the Act.

132 Relationships Australia, *Submission 9,* p. 5.

133 Relationships Australia, *Submission 9,* p. 6.

134 VACCA, *Submission 26,* p. 6.

135 Interrelate, *Submission 21,* p. 3.

136 Relationships Australia, *Submission 9,* p. 6.

that the institution 'must make reasonable efforts to consider, and be responsive to, complaints'.[137] While institutions are required to provide quantitative data to the Operator about the number and types of direct personal responses sought and provided, Professor Daly and Ms Davis noted that the framework does not require institutions to report on the number and nature of complaints, nor their responses to these complaints.[138] In response to these concerns, they made the following recommendation:

> Institutions should be required to report the number and nature of complaints made to them in respect of the [direct personal response] process, and how they responded, as part of their annual reporting requirements to the Operator. This could be item (f) in s. 17 of the [Direct Personal Response Framework].[139]

5.112 On 19 March 2019, DSS acknowledged that it does not have a formal compliance role but that it would 'closely monitor institutions' approach to delivering direct personal responses and provide further guidance as required'.[140] DSS advised that it had developed training and guidance materials in consultation with experts in restorative practice.[141] DSS stated that it provides support and practical guidance to participating institutions concerning direct personal responses, through the following means:

- The provision of written guidance on implementing trauma informed DPR [direct personal response].
- Advising institutions during the process of joining the Scheme about their obligations.
- Deliver training sessions to staff within institutions to provide information relevant for implementing a best practice approach to DPR.
- Establishment of a 'community of practice' to contribute to ongoing refinement in DPR engagement.
- Provision of ongoing advice and guidance, as required.[142]

5.113 The committee notes that it has not received any evidence from survivors who have received a direct personal response. At the committee's hearing on

137 Professor Daly and Ms Davis, *Submission 49,* p. 6. Also see subsection 16(3) of the Direct Personal Response Framework.

138 Professor Daly and Ms Davis, *Submission 49,* p. 6.

139 Professor Daly and Ms Davis, *Submission 49,* p. 6.

140 DSS, answers to written questions on notice, 8 March 2019 (received 19 March 2019).

141 DSS, answers to written questions on notice, 8 March 2019 (received 19 March 2019).

142 DSS, answers to written questions on notice, 8 March 2019 (received 19 March 2019).

28 February 2019, knowmore confirmed that it has not yet assisted an applicant in receiving a direct personal response from an institution.[143]

143 Ms Swain, Acting Managing Lawyer, knowmore, *Proof Committee Hansard,* 28 February 2019, p. 7.

Chapter 6

Accessing and applying for redress

6.1 This chapter will examine the following issues in relation to accessing the National Redress Scheme (the redress scheme) and applying for redress:

- the need to ensure an accessible scheme, with particular regard to survivors who may be difficult to reach;
- early implementation issues, including issues concerning the redress website and phone number;
- issues concerning redress support services, in particular, the financial counselling service and community-based support services;
- issues concerning the application form, including the provision of the impact statement to responsible institution(s); and
- issues regarding the assessment of applications for redress, including the time taken to assess applications, issues concerning priority applications, and transparency concerns.

Awareness of the scheme

6.2 The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) recommended that the scheme be 'widely publicised and promoted',[1] with particular communication strategies for people who might be difficult to reach, including:

a. Aboriginal and Torres Strait Islander communities

b. people with disability

c. culturally and linguistically diverse communities

d. regional and remote communities

e. people with mental health difficulties

f. people who are experiencing homelessness

g. people in correctional or detention centres

h. children and young people

i. people with low levels of literacy

j. survivors now living overseas.[2]

6.3 Additionally, the Royal Commission recommended that the scheme 'should select support services and community legal centres to cover a broad range of likely

1 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Redress and Civil Litigation Report*, August 2015, Recommendation 49.

2 Royal Commission, *Redress and Civil Litigation Report,* August 2015, Recommendation 50.

applicants, taking into account the need to cover regional and remote areas and the particular needs of different groups of survivors, including Aboriginal and Torres Strait Islander survivors'.[3]

6.4 In their submission, the Department of Social Services (DSS) and Department of Human Services (DHS) explained how rural and remote areas were being supported by redress support services:

> There are 33 community-based redress support services operating across Australia that are available to answer enquiries and support people [to] engage with the National Redress Scheme. Of these (noting some organisations provide multiple services):
>
> - 29 (87.9%) offer face to face services either in specific locations or across their state,
> - 10 (30.3 %) provide services nationally over the phone, and
> - 18 (54.5%) organisations are based in regional areas or have outreach to regional locations.
>
> In addition, two organisations—the Aboriginal and Torres Strait Islander Healing Foundation and the Children and Young People with Disability Australia—are funded to assist these services to better respond to the needs of Indigenous Australians and people with disability.[4]

6.5 The committee has received evidence concerning the need for the redress scheme to conduct outreach to rural and remote communities, and to develop communication strategies to target vulnerable survivor groups, so that these survivors do not miss their opportunity to apply for redress. Relationships Australia explained the challenges faced by people living in remote communities and the need for outreach to these communities:

> …for people living remotely with low English literacy, the application forms pose a formidable challenge. These areas often have unreliable internet access, and/or a lack of private internet access. It would be very helpful to provide some modest funding to enable service providers to travel to these survivors, to offer in person help to fill out forms. Without this, the Scheme will—unintentionally—discriminate on the basis of geography and literacy.[5]

6.6 One submitter, a survivor and social worker, noted that when the scheme commenced, 'there was no knowledge of the Scheme amongst community members [of a remote Aboriginal community] and almost no knowledge amongst service providers'.[6] The survivor commented that the scheme's failure to roll out information continues:

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3 Royal Commission, *Redress and Civil Litigation Report,* August 2015, Recommendation 53.

4 Department of Social Services (DSS) and Department of Human Services (DHS), *Submission 19,* p. 4.

5 Relationships Australia, *Submission 9,* p. 3.

6 Name withheld, *Submission 51,* p. 1.

> I found that the Scheme did not have sufficient material ready to conduct this first phase. Material relevant to Aboriginal communities was not ready on July 1st, hence the need for me to develop my own material.
>
> …The material that was eventually provided by the Scheme was very useful. Most notably, the Support Manual for completing an application and the Easy Read Guide. However, the brief leaflet produced for Aboriginal communities contained little information of real use.
>
> There has been a failure by the Scheme to 'roll out' information to providers and to publicise the commencement of the Scheme. This failure continues.[7]

6.7 The Victorian Aboriginal Child Care Agency (VACCA) argued for the need for the redress support services to fund Aboriginal organisations to include community engagement and awareness building:

> It is disappointing that funding for Redress Support Services does not include community engagement and awareness building. It is important the Australian Government rectify this and fund Aboriginal organisations to undertake community awareness and information sharing to make sure that Aboriginal survivors are aware of the redress scheme, and do not have less access to the Scheme as a result of less awareness.[8]

6.8 The Law Council of Australia (Law Council) raised particular issues facing Stolen Generations survivors, including the provision of advice and the implications of past payments that some of these survivors have received. It advocated for independent, accessible and culturally appropriate advice to Stolen Generations survivors.[9]

6.9 The Federation of Ethnic Communities' Councils of Australia (FECCA) suggested that the redress scheme develop a communication strategy, with specific funding, to reach people from culturally and linguistically diverse (CALD) backgrounds.[10] FECCA noted the findings of the Royal Commission with respect to the increased risk of abuse in institutions of children from CALD backgrounds.[11] Due to specific policies that were in effect, the Royal Commission found that children from CALD backgrounds were more likely to be placed in closed institutions than the rest of the population.[12]

6.10 Notwithstanding the increased risk of institutional abuse, FECCA noted that the Royal Commission heard from only a small percentage of people from CALD backgrounds—213 people (3.1 per cent).[13] Given that CALD Australians make up

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7 Name withheld, *Submission 51,* p. 2.

8 Victorian Aboriginal Child Care Agency (VACCA), *Submission 26*, p. 11.

9 Law Council of Australia (Law Council), *Submission 29*, pp. 11–12; also see Law Council, *Submission 29.1*, p. 2.

10 Federation of Ethnic Communities' Councils Australia (FECCA, *Submission 22*, p. 1.

11 FECCA, *Submission 22,* p. 2.

12 FECCA, *Submission 22,* p. 2.

13 FECCA, *Submission 22,* p. 2.

30 per cent of the Australian population, FECCA suggested that there was a failure to adequately engage with CALD survivors. FECCA stated:

> People from CALD backgrounds faced, *and continue to face*, additional barriers to reporting abuse. Fear was cited as one of the key barriers for survivors from CALD backgrounds including fear of retribution, fear of police, fear of deportation and fear of being ostracised.[14]

6.11 At a committee hearing on 10 October 2018, DSS explained their communication strategy and their intention to reach people who are not engaging more broadly with the scheme:

> The communications strategy that's been developed by the department has been based on some developmental research that the department commissioned. What we decided to do was, in the first instance, engage with people who were already engaged in the royal commission with royal commission funded support services—those people who were engaged in the redress process or seeking support and assistance. That decision was made primarily because we didn't have the majority of states engaged in the scheme and the majority of institutions as well. What we're trying to do is target our focus on those who are connected with services as a priority. Then, in the next tranche of our communications engagement, we will start to work with those hard-to-reach people—the people who aren't connected with support services and people who aren't engaged more broadly with the scheme. Some of the data that we had showed that CALD people were not engaged on a very large scale with our funded support services, so that is identified as a piece of work that we do need to do. Part of that work will also need to be not just going on in talking about redress but actually doing some community engagement about it. It's a different conversation because there will be some cultural barriers and different social norms. We almost need to give people permission and understanding about what institutional child sexual abuse is about and have them be okay to have the conversation in a supported way.[15]

6.12 In relation to connecting with Aboriginal and Torres Strait Islander peoples, DSS stated:

> Part of it is, particularly with First Nations, we're very mindful that we don't want to go into communities without the wraparound support. In some cases it might be better to not do anything to begin with until we've got a really good strategy developed. DSS has been working very closely with DHS, and we were up in the Northern Territory a few weeks ago meeting with the NT government support services to start the dialogue. [16]

6.13 Mr Warren Strange, Executive Officer of knowmore Legal Services (knowmore), explained knowmore's communication strategy, which also initially

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14 FECCA, *Submission 22*, p. 2.

15 Mrs Jolanta Willington, Acting Branch Manager, Redress Implementation, DSS, *Committee Hansard*, 10 October 2018, p. 61.

16 Mrs Willington, *Committee Hansard*, 10 October 2018, p. 61.

concentrated on survivors who were 'redress ready'. [17] Mr Strange explained that they are now developing outreach plans and engagement strategies with the aim of reaching as many people:

> We are developing some detailed outreach plans and, during the life of the royal commission, we went repeatedly into a number of remote, regional and rural communities to engage with particular communities of survivors, and we'll certainly replicate that across the life of the scheme.
>
> …it's our aim, across the life of the scheme, to try and reach as many survivors as possible, and we'll concentrate on those who may face barriers in our initial engagement. We know that Aboriginal and Torres Strait Islander clients will need to engage in a way that's culturally safe and secure. We know that young people face challenges in disclosing, and we know that, for people from CALD communities, there are issues there as well. We're developing a variety of different engagement strategies to try and reach those groups that do face those challenges and, more broadly, the general community of survivors.[18]

Early implementation issues

6.14 The commencement of the redress scheme on 1 July 2018 included:

- the launch of a redress website; and
- a dedicated phone number for prospective applicants to contact.

6.15 However, evidence from survivors and organisations suggest that the scheme was not adequately prepared and properly resourced to appropriately respond to the needs of survivors.

Redress website

6.16 The committee received evidence in relation to the usability of the website. As explained by one submitter:

> The website and "updates" are non-existent. I have received ZERO emails with regards to institutions joining and when I do visit the website, the organisations where my abuse occurred does not show up in the participating institutions search portal (due to the Catholic Church not yet joining).[19]

6.17 Another submitter, Ms Shelly Braieoux, also raised concerns that the Redress website only lists the 'conforming institutions' but there was no list of institutions that have not signed up to the scheme.[20]

6.18 Mr Peter Fam from Kelso Lawyers explained the inadequacies with the search function on the Redress website:

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17 Mr Strange, *Proof Committee Hansard*, 28 February 2019, p. 7.

18 Mr Strange, *Proof Committee Hansard*, 28 February 2019, p. 7.

19 Name withheld, *Submission 42*, p. 2.

20 Ms Braieoux, *Submission 24*, p. 2.

> ...the search function on the website for participating institutions is quite broken as well. Often a search that should only return a few results returns over 5,000 results, whereas often a search that should return a result doesn't return a result. The reason I bring these things up is there isn't really another place where a survivor can actually search for a participating institution or get some assistance from somebody at the scheme.[21]

6.19 Kelso Lawyers recommended that the website be 'user friendly, optimised for mobile devices, and that the search functionality of the site can accommodate misspellings'.[22]

6.20 During a committee hearing on 10 October 2018, the committee noted the above issues concerning the redress website with DSS and DHS.[23] On 8 November 2018 the committee commented on the improvements to the website, including listing the institutions that have joined the scheme by state and territory, and improvements to the search functionality.[24]

6.21 On 28 February 2019, DSS advised that the Redress website was updated on 27 February to list the institutions who were named in the Royal Commission and have not signed up to the scheme.[25] This list also indicates whether each of these institutions intend to join the scheme and an approximate timeframe of when they intend to join.[26]

6.22 DSS also reported further improvements to their database to come into effect from 28 February 2019:

> Regrettably our database, which will be up to date in a matter of hours, is not 100 per cent up to date as at this present moment in time, but it will be. We're expecting thousands of entries to come on board, and that will happen within the next couple of hours.[27]

Redress number

6.23 In a joint submission, DSS and DHS noted that 'a dedicated helpline' was available on weekdays to support people to engage with and access the scheme.[28] However, submitters have complained about difficulties with accessing the redress

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21 Mr Fam, Solicitor, Kelso Lawyers, *Committee Hansard*, 10 October 2018, p. 5.

22 Kelso Lawyers, *Submission 5*, p. 10.

23 *Committee Hansard*, 10 October 2018, p. 58.

24 *Committee Hansard*, 8 November 2018, p. 47.

25 Ms Elizabeth Hefren-Webb, Deputy Secretary, Families and Communities, DSS, *Committee Hansard*, 28 February 2018, p. 16.

26 National Redress Scheme website, nationalredress.gov.au/institutions/institutions-have-not-yet-joined (accessed 13 March 2019).

27 Mr Bruce Taloni, Group Manager, Redress and Reform, DSS, *Proof Committee Hansard*, 28 February 2019, p. 17.

28 DSS and DHS, *Submission 19*, p. 5.

number and accessing the free legal advice provided by knowmore during the first few weeks of the scheme's operation. For example, Mr Frank Golding OAM stated:

> The first weeks of the operation of the [National Redress Scheme] have been marred with problems of lack of manpower, and gaps in knowhow by staff and where people can get support. I have personally experienced frustrations of this kind…I telephoned the [National Redress Scheme] 1800 number in the first week of the scheme only to find the phone rang out. Apparently staff simply could not cope with the number of callers. When I finally got through, I was promised a call back on the [National Redress Scheme] 1800 number within a few days. That call has not come.[29]

6.24 As at 10 October 2018, DHS advised that they have 80 staff answering the redress number and another 15 staff assessing the applications and making outbound calls to applicants but that they are 'recruiting constantly to keep up with the numbers of applications'.[30] DHS reiterated that the redress number is a dedicated number that does not go through the 'normal Centrelink call centre'.[31] Also, that the average time for a call to be answered on the redress number was 51 seconds.[32]

Redress support services

6.25 Regarding the type of support offered to survivors, the Royal Commission made the following recommendation:

> A redress scheme should offer and fund counselling during the period from assisting applicants with the application, through the period when the application is being considered, to the making of the offer and the applicant's consideration of whether or not to accept the offer. This should include a session of financial counselling if the applicant is offered a monetary payment.[33]

6.26 As noted in chapter 3, the *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (the Intergovernmental Agreement) provides for three types of redress support services to be available over the life of the redress scheme for survivors engaging with the scheme:

- community-based support services;
- financial counselling support; and
- legal support.

29 Mr Golding, private capacity, *Submission 27,* p. 3.

30 Programme Design Group, DHS, *Committee Hansard,* 10 October 2018, pp. 56–57.

31 Ms Catherine Rule, Deputy Secretary, Programme Design Group, DHS, *Committee Hansard,* 10 October 2018, p. 54.

32 Ms Rule, *Committee Hansard,* 10 October 2018, p. 54.

33 Royal Commission, *Redress and Civil Litigation Report,* August 2015, Recommendation 66.

6.27 The key concerns about redress support services raised during this inquiry related to the provision of financial counselling services and the community-based support services. These two matters will be discussed below.

Financial counselling support

6.28 The Intergovernmental Agreement provides that survivors will have access to financial support 'through existing Commonwealth funded financial support services and enhanced with information specific for survivors applying to the Scheme'.[34]

6.29 This is reflected on the redress website, which lists financial support as one form of free support service available to survivors.[35] Specifically, it states '[f]inancial counselling is a free, independent and confidential service that can help you think through how to manage your Redress payment'.[36] The redress website directs survivors to the National Debt Helpline.

6.30 However, Financial Counselling Australia raised concerns that the existing financial services are 'at capacity, and have long waiting lists'.[37] Financial Counselling Australia advised:

> There is an implicit, and erroneous policy assumption, that there is spare capacity in financial counselling services to meet demand. This is not the case.
>
> Demand for financial counselling services already exceeds supply, and we are concerned that many people seeking help will not get access to financial counselling.[38]

6.31 At a committee hearing, Mr Peter Gartlan, a Consultant from Financial Counselling Australia, explained that DSS funds about 30 per cent of financial counselling throughout Australia and reiterated that these community-based services are overstretched.[39] Mr Gartlan further explained that about half of the financial counselling agencies funded by DSS are faith-based institutions, which may be inappropriate providers of counselling to survivors whose abuse occurred within or was related to a faith-based institution:

> What we're really concerned about is that if DSS is suggesting that these services are there to support people, someone who was sexually abused by the Catholic Church will not want to go to see someone from Anglicare or someone from the Salvation Army. When you consider that, for example, in

34 Paragraph 75 of the Intergovernmental Agreement.

35 National Redress Scheme website, www.nationalredress.gov.au/support/financial-support-services (accessed 13 March 2019).

36 National Redress Scheme website, www.nationalredress.gov.au/support/financial-support-services (accessed 13 March 2019).

37 Financial Counselling Australia, *Submission 41*, p. 1.

38 Financial Counselling Australia, *Submission 41*, p. 1.

39 Mr Gartlan, Consultant, Financial Counselling Australia, *Committee Hansard,* 8 October 2018, p. 33.

> Tasmania Anglicare is the sole employer of financial counsellors and that throughout the country 50 per cent of financial counselling services are faith-based institutions, you don't want to have the risk of people accessing services where they may well in fact walk away from them.[40]

6.32 Financial Counselling Australia argued that, to address the demand, it urgently required one-off funding to train and employ:

- 10 specialist redress financial counsellors to be located with knowmore's offices in Brisbane, Melbourne, Sydney and Perth; with a projected funding of $1.3 million per annum, for three years; and
- 6.5 full-time equivalent positions, phone financial counsellors, within the National Debt Helpline service; with a projected funding of $845,000 per annum, for three years.[41]

6.33 Mr Strange explained that knowmore had identified these same issues concerning wait times and faith-based institutions delivering this service:

> The royal commission had recommended additional financial counselling services be funded. The response was to refer people with that need to the National Debt Helpline. We identified that there are significant waiting periods for face-to-face consultations, which are often necessary for our client group. In some states, the financial counselling services are auspiced through bodies like the Salvation Army or Anglicare, so that's immediately a bridge too far for a significant proportion of our clients. [42]

6.34 Mr Strange explained that to rectify these issues, knowmore approached a charitable trust—the Financial Counselling Foundation—and secured a grant of $1 million.[43] The grant will be used to fund financial counselling roles within knowmore over the next two years.[44]

6.35 When questioned about the need for additional funding to employ financial counsellors, DSS stated:

> In answer to your question, there was a decision not to provide additional financial counselling support. As I understand it, that was informed by experience with the Defence redress scheme, where very few people wanted to take up the offer of financial counselling.[45]

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40 Mr Gartlan, *Committee Hansard*, 8 October 2018, p. 33.

41 Financial Counselling Australia, *Submission 41*, pp. 2–3.

42 Mr Strange, Executive Officer, knowmore, *Proof Committee Hansard*, 28 February 2019, p. 5.

43 Mr Strange, *Proof Committee Hansard*, 28 February 2019, pp. 1, 5.

44 Mr Strange, *Proof Committee Hansard*, 28 February 2019, p. 1.

45 Ms Hefren-Webb, Deputy Secretary, Families and Communities, DSS, *Committee Hansard*, 28 February 2018, p. 26.

Community-based support

6.36 The need to provide survivors with counselling support during the application and decision-making process was recognised by the Royal Commission and is contained in the Intergovernmental Agreement.

6.37 DSS advised that it funded Royal Commission Community Based Support Services and that it has continued to fund these services to deliver redress support services.[46] DSS explained that redress support services:

> …are in place across Australia to provide timely and seamless access to trauma-informed and culturally appropriate community-based support services to assist people's engagement with the Scheme.
>
> For many people who experienced institutional child sexual abuse, applying for redress may be the first time they disclose their abuse. It has the potential to be a difficult and confronting experience and requires professional and qualified support.[47]

6.38 On 7 November 2018, DSS reported that it employed 35 support services.[48] DSS also advised that from April 2019, it anticipates that an additional five services, delivered by one existing provider and four new providers, would commence.[49] Additionally, DSS stated that the service provided in rural and remote communities is complemented by seven providers delivering national telephone support.[50]

6.39 The committee heard evidence that these support services were not prepared at the commencement of the scheme and were potentially underfunded to deal with the demand. As explained by the Blue Knot Foundation:

> While support services were funded to cover the transitional period, the funding has not been commensurate with the significant increase in demand and complexity of support needed to support victims through and around the application process.[51]

6.40 The Blue Knot Foundation explained that it has been providing warm-referrals to redress support services, and in doing so, has identified the following issues:

- Many [Royal Commission Community Based Support Services] (funded by DSS) are not adequately prepared for implementation of support services for survivors who are wanting support with applications. Front line staff do not understand redress, services are

46 DSS and DHS, *Submission 19*, p. 3.

47 DSS and DHS, *Submission 19*, pp. 3–4.

48 Mr Taloni, Group Manager, Redress and Reform Group, DSS, *Committee Hansard*, 7 November 2018, p. 44.

49 DSS, answers to written questions on notice, 8 March 2019 (received 19 March 2019).

50 DSS, answers to written questions on notice, 8 March 2019 (received 19 March 2019).

51 Blue Knot Foundation, *Submission 7*, p. 3.

> unclear about what they are providing, we have had funded services say "we don't do redress"…
>
> - Some services when contacted are unaware that they are providing redress services, the parameters for doing so, including what and when
> - Some services are providing misinformation, including making ad hoc assessments around eligibility and redress amounts, which indicate a lack of understanding around the boundaries of their roles
> - Centralised numbers have been problematic, and mean significant challenges in trying to access the right team in the right area
> - Sometimes referrals from DHS have been provided to national telephone services for face to face support when the service does not provide that sort of support. This shows a lack of understanding about the service sector for government departmental staff
> - Some services have a very complicated intake process for survivors seeking support with redress. This process is potentially re-traumatising.[52]

6.41 When asked at a committee hearing whether this issue has improved, Dr Cathy Kezelman AM, President of the Blue Knot Foundation stated:

> It's hard to say if it's improved a bit but it's still an issue, obviously. There is a lack of services across the board. In some organisations that we've tried to warm-refer to, the people taking the calls don't actually know that they're funded for redress—they don't actually know that they're meant to be providing this service—or they have long waiting lists already, so they don't have the capacity. There are still massive holes in the service system.[53]

6.42 Relationships Australia Victoria noted that, leading up to the implementation of the redress scheme, they were unable to access 'prepared collateral, marketing, consumer handouts or explanatory information, which remain pending as at the date of this submission'.[54] They further stated that they were provided with other information 'only days prior to the commencement date of 1 July and/or in the days and week after the scheme commencement'.[55]

6.43 The need for adequate support services to be available during the application process was highlighted in a number of submissions. For example, Dr Chris Atmore and Dr Judy Courtin stated:

> Many victims who engaged with both the Melbourne Response and Towards Healing processes described to Dr Courtin how they felt overwhelmed, intimidated and traumatised. Alarmingly, the main reason that more than three-quarters of the victims wanted counselling was to deal

52 Blue Knot Foundation, *Submission 7*, pp. 3–4.

53 Dr Kezelman AM, President, Blue Knot Foundation, *Committee Hansard*, 10 October 2018, p. 27.

54 Relationships Australia Victoria, *Submission 12*, p. 2.

55 Relationships Australia Victoria, *Submission 12*, p. 2.

with the harm and trauma they suffered as a result of engaging in these processes.[56]

6.44 The committee has similarly received submissions from survivors who have started the application process and have found this process to be re-traumatising.

6.45 The following example is a submission which the committee accepted confidentially, which highlights the importance of having accessible community-based support services.

Case study 6.1: Example of the impact that completing the redress application form could have on an individual[57]

The submitter told of spending two days with a friend to complete the redress application form. The submitter described the process as horrific, submitting that they had been forced to relive every minute of abuse, and the associated pain and trauma. The submitter described the horror being very raw, of crying constantly, and of feeling suicidal. The submitter also commented that they are a strong person, yet the application process has resulted in them breaking down, and questions how other applicants', who may be more mentally vulnerable and without support, are coping.

6.46 The committee notes that this is just one of many examples.

Issues concerning the application form

6.47 The committee received a significant amount of evidence that raised concerns about the application form. Concerns raised in evidence included, for example, that:

- the length of the application form may deter some survivors from making a claim;[58]
- the list of words that applicants are invited to circle 'is next to worthless';[59]
- question 36 of the form asks whether the applicant was a state ward, foster child, in relative or kinship care. There are survivors who would fit all categories but there is no instruction to tick as many as apply, leaving survivors to randomly pick one;[60]
- the form does not ask the survivor which of the three elements of redress they would like to apply for;[61]
- questions 59 and 60 asks for the details of the support person who helped complete the form, which is not necessary and therefore should not be

56 Dr Atmore and Dr Courtin, *Submission 39*, p. 9.

57 Confidential, *Submission 16*, p. 1.

58 Dr Tamara Blakemore and Dr Kathleen McPhillips, *Submission 46*, p. 3.

59 Mr Golding, *Submission 27*, p. 5.

60 Mr Golding, *Committee Hansard*, 8 October 2018, p. 3.

61 VACCA, *Submission 26*, p. 12.

asked.[62] Additionally, providing these details bring into question the privacy rights of the support person;[63]

- the form creates a risk of re-traumatising survivors; [64] and
- survivors have reported feeling suicidal after completing the form, therefore the form should include details on the front page, for 24 hour mental health support.[65]

6.48 A copy of the application form is reproduced at Appendix 4.

6.49 VACCA raised numerous specific concerns related to the application form,[66] and made the following recommendation:

> The National Redress Scheme Application form, manual and website should be subject to a continuous quality improvement process and updated over the course of the ten years based on survivor and support services feedback in completing the forms and from Redress Scheme staff and independent assessors in reviewing completed forms.[67]

6.50 On 10 October 2018, the committee raised with the departments that it had received criticism concerning the form and asked whether it was being 'reworked'. DHS confirmed that they were reviewing the application form in light of feedback they had received and anticipated that the new form would be released in November 2018.[68]

6.51 On 28 February 2019, when asked if the new application form had been released, DSS advised:

> So, we've done significant consultation with stakeholder groups, with survivors, right through November and December, with the last of that consultation happening in late January. We've been working with people to make sure that we get it right, and we're anticipating now being able to release that form in the next couple of weeks.[69]

Part three of the application form

6.52 The delay in the release of the new application form and the consultations to which DSS referred was due to concerns raised that part three of the application form was being provided to responsible institution(s). Part three of the application form

62 VACCA, *Submission 26,* p. 13.

63 Mr Golding, *Submission 27,* p. 5.

64 Law Council, *Submission 29,* p. 8.

65 VACCA, *Submission 26,* p. 13.

66 These concerns are provided in detail in VACCA, *Submission 26,* pp. 11–13.

67 VACCA, *Submission 26,* p. 4.

68 Ms Rule, Deputy Secretary, Programme Design Group, DHS, *Committee Hansard,* 10 October 2018, p. 50.

69 Ms Rule, Deputy *Proof Committee Hansard,* 28 February 2019, p. 15.

requires an applicant to explain the impact sexual abuse has had on their life. The form provides a list of words that applicants can circle. Alternatively, applicants may choose to explain the impact of sexual abuse.[70]

6.53 Parts one, two and three of the application form were provided to responsible institution(s) for two purposes:

1. So that institutions are provided an opportunity to respond to the information contained in the form, which would allow the Operator to assess the application and determine whether the burden of proof of 'reasonable likelihood' has been met.[71]
2. To allow an institution to 'provide the information to their insurer'.[72]

6.54 Ms Chrissie Foster explained that providing part three of the application form to responsible institution(s) is humiliating and a breach of trust:

> Because of the passing on of information from the Independent Redress body to the churches insurance companies, victims are subjected to a breach of trust and suffer the humiliation of the institutions which never protected them as children, having access to their most personal and heartbreaking evidence for the debased reason of churches making insurance claims to protect their assets and minimize costs to themselves.[73]

6.55 Ms Leonie Sheedy explained her strong opposition to having part 3 of the application form shared with responsible institutions:

> I object so strongly to filling in a redress application in the way it's worded. I will not apply for redress while that form stays in that condition. I think the churches, the charities and the state governments lose the right to know the impact on my life, and I'm not prepared to share it with those organisations.
>
> This is deeply personal and deeply sensitive. My own family don't even know the impact it's had on my life.[74]

6.56 Maurice Blackburn Lawyers submitted that there are 'unacceptable risks' with institution having access to such private information prior to an offer being accepted or the application being withdrawn.[75] Instead, they recommended that part 3 be

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70 Page 27 of the Application for Redress.

71 The standard of proof of 'reasonable likelihood' was recommended by the Royal Commission, see recommendation 57. Also see page 5 of the notes of the Application for Redress form which states 'This exchange of information is so that we can assess your application and the responsible institution(s) can provide you with redress'. Page 6 of the notes of the Application for Redress form states that 'we will share some information with the institution(s) relevant to your redress. We need to do this to confirm who was responsible for the abuse'.

72 Refer to page 6 of the notes of the Application for Redress.

73 Ms Chrissie Foster, *Submission 1, Supplementary submission,* pp. 1-2.

74 Ms Leonie Sheedy, Chief Executive Officer, CLAN, *Committee Hansard,* 10 October 2018, p. 32.

75 Maurice Blackburn Lawyers, *Submission 25,* p. 14.

provided to responsible institutions only after an offer for redress has been accepted and the deed of release has been signed.[76]

6.57 On 12 October 2018, it was reported that the Prime Minister, the Hon Scott Morrison MP, had undertaken to make changes to the application process, to make it optional for applicants as to whether part 3 of their application would be provided to institutions.[77]

6.58 When questioned on 8 November 2018 about the changes to the application process and the revised form, DHS provided the following explanation:

> The form is currently under review, and this week the revised application form, with the changes in part 3, has been sent to around 40 stakeholders for comment and feedback on the revised application form. From 15 October, we ceased providing part 3 to responsible institutions as part of the process that we undertake to obtain information from them as part of the applicants' process. We will ask people, at the outbound acknowledgement call and/or the outcome call, if they would like us to provide part 3 to the responsible institution, but I can confirm we are not sending part 3 to responsible institutions from 15 October.[78]

6.59 At the committee's recent hearing on 28 February 2019, DSS provided a further update on the revised application form:

> I'll come back to the form, but what actually happens from 24 October is that when we receive an application we ring the survivor and acknowledge that we've received that application and we ask them, 'Would you like us to provide your information to the institution?'—yes or no—and then obviously we act on the advice that they give us on the phone. So, the process has already changed.
>
> As for the form itself, we thought it was really important to do the right level of consultation. One of the criticisms that we heard from stakeholders was about particular aspects of the form—the layout of the form, the way the questions were asked. So, we've done significant consultation with stakeholder groups, with survivors, right through November and December, with the last of that consultation happening in late January. We've been working with people to make sure that we get it right, and we're anticipating now being able to release that form in the next couple of weeks. It will come down to our ICT. We need to get the ICT system to match the paper form so that it's as smooth as possible, and we're working through that at the moment. We acknowledge that it's taken some time, but we tried to move immediately to respond to the feedback that people were most

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76 Maurice Blackburn Lawyers, *Submission 25*, pp. 13-14.

77 Bellinda Kontominas and Philippa McDonald, 'Care Leavers Australasia Network head cancels national apology boycott after meeting PM', *ABC News*, 12 October 2018 www.abc.net.au/news/2018-10-12/clan-head-cancels-national-apology-boycott/10370690 (accessed 14 March 2019).

78 Ms Susan Cartwright, National Manager, National Redress Scheme, DHS, *Committee Hansard*, 8 November 2018, p. 43.

> concerned about—that third part of the application being shared with the institution and whether or not they had the choice.[79]

Assessing applications

6.60 As outlined in chapter 3, as at 28 February 2019, the redress scheme has received over 3000 applications.[80] There have been 88 redress payments made and an additional 22 offers have been made, which are being considered by the applicant.[81]

Time taken to decide application

6.61 On 28 February 2019, DHS provided the following information about the time taken to assess an application:

- The median processing time of an application is 147 calendar days. The time is calculated from when all the relevant information has been received, to the date the redress payment has been made.
- The minimum processing time has been 41 days.
- The maximum processing time has been 207 days.[82]

6.62 At the committee hearing, knowmore advised that of the offers that have been made, they provided advice on 10 of those offers, of which they assisted with two applications.[83] knowmore stated that they had identified both of these applications as priority cases.[84]

6.63 Of these two priority applications which knowmore assisted with, they stated that one took six months for the applicant to receive a decision.[85]

6.64 knowmore also provided information about how applications from survivors who have been sentenced to five or more years' imprisonment are processed:

> Once an application has been lodged the Scheme will ask the survivor to complete a *Criminal Convictions – Additional Information Form*. The survivor is asked to return this completed form to the Scheme within eight weeks of receiving it. Once in receipt of the completed form, the Scheme will then request additional information from the Attorney General in the State or Territory where the abuse happened and also where the person was

79 Ms Catherine Rule, Deputy Secretary, Programme Design Group, DHS, *Proof Committee Hansard*, 28 February 2019, p. 15.

80 https://www.nationalredress.gov.au/about/updates/656 (accessed 25 March 2019).

81 https://www.nationalredress.gov.au/about/updates/656 (accessed 25 March 2019).

82 Ms Rule, *Proof Committee Hansard*, 28 February 2019, pp. 24–25.

83 Ms Anna Swain, Acting Managing Lawyer, knowmore, *Proof Committee Hansard*, 28 February 2019, p. 3.

84 Ms Swain, *Proof Committee Hansard*, 28 February 2019, p. 3.

85 Ms Swain, *Proof Committee Hansard*, 28 February 2019, p. 4.

> sentenced, if different. Based on this information the Scheme Operator will then make a determination on whether the application can proceed.[86]

6.65 Regarding its experience with such processes, knowmore provided the following advice (as at 14 March 2019):

- knowmore has lodged six applications where the relevant survivors has been sentenced to five or more years' imprisonment.
- All six of those applications were priority cases, as the applicants had 'a limited life expectancy'.
- The redress scheme has taken on average between three and 10 weeks from lodgement of the original application to provide the survivor (or knowmore) with the additional application form. For one of these applications, it has been 10 weeks since the application was lodged and the additional form has still not been received.
- None of the six applications has progressed to a determination being made.[87]

6.66 In relation to how long knowmore considered an internal investigation should take, knowmore stated:

> Some of those people will have brought redress claims before against those institutions. For instance, if it was a claim against the Catholic Church, there might be a Towards Healing folder, so all of those records and internal investigations should be available and that process should take maybe two weeks. It shouldn't take months.[88]

6.67 DHS explained that there are complexities around assessing redress applications but that they are assessing applications as quickly as possible:

> This is not a program that DHS delivers that I think we've got backlogs in processing. We are processing the applications as quickly as possible. There's not a glut of applications sitting there, waiting for us to get to them. In terms of factors that we can control, we are moving them through the system as quickly as we can. I think we are very tuned in to the sensitivities around them—the fact that people have been waiting and the expectations around them. We are processing them as quickly as possible. It's not a matter of not having enough resources or any of that stuff, but it is complex. To get all the ducks lined up—the institution has opted in; it is clear which institution it is; we've got enough information to make the right kind of decision—is complicated. There is complexity that we didn't anticipate. When somebody has put in an application, we've deliberately made the application quite open-ended. It's not a very structured form. People can give information to us as an attachment to a form. Sometimes we are

86 knowmore, answers to questions on notice, 28 February 2019 (received 14 March 2019), p. 2.

87 knowmore, answers to questions on notice, 28 February 2019 (received 14 March 2019), pp. 2–3.

88 Mr Strange, Executive Officer, knowmore Legal Services (knowmore), *Proof Committee Hansard,* 28 February 2019, p. 4.

> getting hundreds of pages, and in one or two cases thousands of pages, of information attached to those applications. The complexity around assessing those is high. It does take some time, but we are pushing them through as quickly as we can.[89]

6.68 Given the number of offers made, the committee acknowledges that it is difficult to identify clear trends in relation to the processing of applications.

Priority applications

6.69 The departments informed the committee that they have agreed on a set of guidelines on what constitutes a priority application.[90] DSS advised that an applicant will be identified as a priority for the purposes of processing their application if one or more of the following circumstances exist:

1. The applicant is terminally ill, dies, or is rapidly losing mental capacity.
2. The applicant is particularly vulnerable:
    a) is homeless
    b) is at risk of self-harm.
3. The applicant is elderly:
    a) for Indigenous Australians, the person is aged over 55
    b) for non-Indigenous Australians, the person is aged over 75.[91]

6.70 At the time of writing, the guideline was not public a document. However, on 21 March 2019, DHS advised that it would work with DSS to make the guideline publicly available.[92]

6.71 Apart from the age of the applicant, there appears to be no clear process which enables an applicant to inform the redress scheme of reasons why their application should be considered a priority. As explained by Mr Golding:

> We're told that the scheme will give priority, in the processing, to survivors who are terminally ill, but there's nowhere on the application form that gives you an opportunity to say that you're terminally ill or frail or in bad health. There's nothing about your health status.[93]

6.72 When asked how the redress scheme identifies priority applications, DHS stated that the criteria for a priority application include consideration of whether the applicant is aged, terminally ill, or has a mental illness.[94] Additionally, DHS advised

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89 Ms Catherine Rule, Deputy Secretary, Programme Design Group, DHS, *Proof Committee Hansard*, 28 February 2019, p. 25.

90 Ms Rule, *Proof Committee Hansard*, 28 February 2019, p. 25.

91 DHS, answers to questions on notice, 28 February 2019 (received 21 March 2019).

92 DHS, answers to questions on notice, 28 February 2019 (received 21 March 2019).

93 Mr Golding, *Committee Hansard*, 8 October 2018, p. 3.

94 Ms Rule, *Proof Committee Hansard*, 28 February 2019, p. 25.

that they may become aware that an application should be treated as a priority application during an initial phone conversation:

> We do make an outbound acknowledgement call when someone's application is received by the scheme and we will have a conversation with the person. Usually if someone's quite ill or terminally ill, they will disclose that during the conversation with the staff member.[95]

6.73 DHS advised that where an application is considered a priority case, institutions have four weeks to respond to a request for information, whereas for a non-priority case, institutions have eight weeks to respond.[96]

6.74 At the hearing, Mr Strange noted that one in five of knowmore's clients (19 per cent) have been identified as a priority case.[97]

6.75 Ms Anna Swain, Acting Managing Lawyer, knowmore described their process for identifying and processing priority clients:

> It's very dependent on each person. But when somebody comes through our intake process, one of the first questions asked is: 'Do you have any need for us to have to expedite your matter?' As soon as we find out that someone is a priority client, because of their age or because of a life-shortening illness, it's allocated to one of the legal team within a day or two. And they will be moved to the top of the list of that lawyer's matters that they're assisting with. Recently, we've had an example of somebody who came through intake, who possibly had only weeks to live. We went to visit that survivor in hospital with the support team, worked on the application and, a day or two later, we'd lodged it. We will certainly do everything we can to work as quickly as we can with that person.[98]

6.76 Ms Swain went on to explain that knowmore will attach a cover letter to the application, noting the urgency and the reasons, and if available, will also attach letters from doctors or medical professionals.[99]

6.77 In relation to DHS's response to a priority case, Ms Swain stated:

> …we've been told that they will act as quickly as they can. But, then, sometimes that hasn't been the case, as we can see from that application that was lodged in August and there wasn't a decision made until recently. We

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95 Ms Cartwright, National Manager, National Redress Scheme, DHS, *Committee Hansard,* 8 November 2018, p. 45.

96 Ms Cartwright, *Committee Hansard,* 8 November 2018, p. 46. Also see subsection 25(5) of the Act.

97 Mr Strange, Executive Officer, knowmore, *Proof Committee Hansard*, 28 February 2019, p. 8.

98 Ms Swain, *Proof Committee Hansard*, 28 February 2019, p. 8. It is noted that where an applicant dies before a determination on their application is made, the Operator must continue to deal with the application (section 58 of the Act), and the Operator must determine who should receive any redress payment amount and in doing so may consider the person's will and the law relating to the disposition of property of deceased persons (section 60 of the Act).

99 Ms Swain, *Proof Committee Hansard*, 28 February 2019, p. 8.

> have had some cases where somebody has got days to live and the department have responded very quickly.[100]

6.78 Ms Swain explained that the applicant is contacted when the application is received to confirm the person's identity, and contacted again to be told that they will soon receive a decision. Ms Swain commented '[t]hat's the only contact that we and the applicant receive until they actually receive an offer'.[101]

Transparency

6.79 knowmore argued for the need for transparency and how this would assist with survivors having confidence in the scheme:

> We have a general concern around transparency in how the scheme is operating. I say that in the context that it's vitally important that survivors have confidence in this scheme if they are going to be able to access it and have the confidence to engage with services to pursue this as a justice option for them.[102]

6.80 In relation to publishing 'only the bare information that a handful of applications have been determined', knowmore explained that they are being asked questions about the value of apply for redress:

> …our clients come to us and ask: 'What's wrong with the scheme? Why aren't people applying? Why am I going down this path if only a handful of people have got an outcome? Isn't it working for survivors? Aren't they deciding things the right way?' They're the sorts of questions we get asked.[103]

6.81 knowmore explained that if the departments published the average processing time, it would provide some indication as to how long their application might take to process:

> …around publication of information—to have those time frames 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 time frame that this is how long the average claim takes, people are accepting of that. It's difficult when you can't give them a time frame, when you have to give them an estimate: well, it might take three months or it might take 12 months, because they look at the three months and then start wanting an answer at that stage.[104]

6.82 knowmore suggested, as a minimum, the monthly publication of the following information:

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100 Ms Swain, knowmore, *Proof Committee Hansard*, 28 February 2019, p. 8.

101 Ms Swain, *Proof Committee Hansard*, 28 February 2019, p. 4.

102 Mr Strange, knowmore, *Proof Committee Hansard*, 28 February 2019, p. 1.

103 Mr Strange, knowmore, *Proof Committee Hansard*, 28 February 2019, p. 2.

104 Mr Strange, *Proof Committee Hansard*, 28 February 2019, p. 2.

- Numbers of applications lodged, and where applicants are living (State or Territory level);
- Some basic non-identifying demographic information about applicants (e.g. percentage identifying as Aboriginal and/or Torres Strait Islander peoples; gender; and age groups);
- Numbers of priority cases;
- Data (similar to that below) about institutions named in the applications and their participation/non-participation status and, in time, the nature of those institutions (e.g. schools, juvenile detention centres, residential homes, religious settings etc.);
- Processing times (including for institutions to respond to requests for information) for priority and non-priority applications (perhaps in the form of a range of processing times, with median figures);
- Number of offers made and accepted;
- Broad information around the application of the Assessment Framework (e.g. of the redress payments accepted, what percentages involved a component recognising related non-sexual abuse; institutional vulnerability; and extreme circumstances of sexual abuse);
- Average redress payment made; and
- (In time) Information about reviews requested and outcomes.[105]

105 knowmore, answers to questions taken on notice, 28 February 2019, (received 13 March 2019).

Chapter 7

Accountability of the redress scheme

7.1 The National Redress Scheme (the redress scheme), has a number of accountability mechanisms, including:

- the ability to make complaints to the Department of Social Services (DSS), the Department of Human Services (DHS) and the Commonwealth Ombudsman;
- the ability to seek an internal review of a decision; and
- the requirement for statutory reviews to be undertaken.

7.2 However, evidence provided to the committee suggests that each of these accountability mechanisms is limited in their scope. This chapter will discuss these matters.

Complaints

The complaints process of the redress scheme

7.3 Complaints about the redress scheme can be made to either department and to the Commonwealth Ombudsman. When asked about how people can provide feedback on the redress scheme, DHS explained that often feedback is received directly by staff who manage and administer the scheme:

> When we receive an application, one of the things that we do is ring to advise people that we've received that application. At that point, people are often giving us feedback that says, 'Well, I'm glad you got my application, but here are all the things that were hard about it.' As we have to chase more people up to ask some clarifying questions or ask for some further information, we realise that we probably have a problem here if we're having to repeatedly gather, clarify or whatever. Because each one is handled by a relatively small team of people, the trends in the feedback become really obvious really quickly. So customers and stakeholders are telling us directly, and we're doing ongoing engagement with stakeholders, along with DSS, to get some of that information. It's just about as real-time as we get in a big organisation like ours when we're talking directly to clients or applicants as they go through the process.[1]

7.4 DSS advised that they also receive feedback through a number of other avenues:

> We also have a general complaints line, and some people have used that as a pathway…[S]ome stakeholders call the team directly. Of course, ministers' offices have received feedback, and they pass it on to us. The support services that we fund give us feedback. So there's a myriad of ways

1 Ms Catherine Rule, Deputy Secretary, Programme Design Group, Department of Human Services (DHS), *Committee Hansard,* 10 October 2018, p. 54.

> in which…things that are troubling or bothering people come to our attention quite quickly.[2]

7.5 DSS advised that between 1 July 2018 and 28 February 2019, it had received '606 email enquiries, Ministerial Correspondence or complaints regarding the scheme'.[3] DSS provided the following information about the nature of these complaints:

> Key themes within enquiries and complaints when the Scheme first commenced related to:
>
> - scheme eligibility
>
> - the maximum payment amount
>
> - the criminal convictions policy.
>
> Enquiries about institutions have been steady since Scheme commencement and predominantly relate to whether an institution is a participating institution, how an institution joins the Scheme and timeframes to 'on-board' to the Scheme.
>
> Over the last three months, service delivery issues such as the timeliness of the outbound acknowledgement calls, application status enquiries and the quality of helpline information and assistance provided, have been the common themes of feedback. [4]

7.6 The Commonwealth Ombudsman confirmed that they have jurisdiction to receive complaints about the administration of the scheme but noted that they cannot conduct a merit review of a decision.[5] The Commonwealth Ombudsman provided an overview of its role:

> The Office will not conduct a merit review of Scheme decisions, and the focus of any investigation will be on whether DHS and/or DSS has followed the correct process when assessing a person's application under the Scheme. In doing so, the Office will consider whether the Department has taken into account all of the relevant information and whether it has relied on any irrelevant information when reaching its decision.[6]

7.7 The Commonwealth Ombudsman explained that the office would not normally consider a complaint if the complainant had not yet used the agency's internal review process.[7] However, the Ombudsman went on to make the following observation:

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2 Ms Elizabeth Hefren-Webb, Deputy Secretary, Families and Communities, Department of Social Services (DSS), *Committee Hansard*, 10 October 2018, p. 54.

3 DSS, answers to written questions on notice, 8 March 2019 (received 19 March 2019).

4 DSS, answers to written questions on notice, 8 March 2019 (received 19 March 2019).

5 Commonwealth Ombudsman, *Submission 15*, p. 3. See also Mr Michael Manthrope, Commonwealth Ombudsman, *Committee Hansard*, 10 October 2018, p. 44.

6 Commonwealth Ombudsman, *Submission 15*, p. 3.

7 Commonwealth Ombudsman, *Submission 15*, Attachment 1, p. 8.

> Our oversight is most effective when the Scheme operator is able to address any issues we may identify. It is unclear what options exist within the Scheme for further reconsideration of decisions which may have been made incorrectly.[8]

7.8 As at August 2018, the Commonwealth Ombudsman reported that they had not received any complaints about the redress scheme.[9]

Concerns raised relating to insufficient oversight

7.9 Submitters raised concerns about the scheme's lack of oversight. As outlined in chapter 5, Professor Kathleen Daly and Ms Juliet Davis noted that the Direct Personal Response Framework requires each institution to have a process for dealing with complaints.[10] However there is no process for institutions to report these complaints, and their response to complaints, to the Operator.[11] They recommended that an institution be required to report on the number and nature of complaints, and their response to the complaints, to the Operator.[12]

7.10 Professor Daly and Ms Davis also raised concerns about the lack of oversight of the legal profession and people assisting survivors to complete forms.[13] They observed that the entry of lawyers and 'form fillers' into the redress scheme process may give rise to potential 'misconduct and exploitation of vulnerable survivors'.[14]

7.11 The committee has received evidence of possible unethical conduct of lawyers acting on behalf of institutions. This included information provided by Shine Lawyers who stated:

> We have observed our opponents in civil matters pulling back from established collaborative arrangements to resolve matters for clients seeking compensation for institutional child sexual abuse. We are told, expressly or by implication, that now that a redress scheme exists, any survivor who is *eligible* for redress should *only seek redress*.[15]

7.12 Shine Lawyers provided a number of specific examples of institution not negotiating in common law settlements in good faith.[16] One example is outlined below:

> We act for a survivor who experienced child sexual abuse in a school operated by the [redacted]…Our opponents refused to engage in genuine

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8 Commonwealth Ombudsman, *Submission 15*, Attachment 1, p. 8.

9 Commonwealth Ombudsman, *Submission 15*, p. 3.

10 Professor Kathleen Daly and Ms Juliet Davis, *Submission 49*, p. 6.

11 Professor Daly and Ms Davis, *Submission 49*, p. 6.

12 Professor Daly and Ms Davis, *Submission 49*, p. 6.

13 Professor Daly and Ms Davis, *Submission 49, Supplementary submission 1*, pp. 1–2.

14 Professor Daly and Ms Davis, *Submission 49, Supplementary submission 1*, p. 2.

15 Shine Lawyers, *Submission 34*, p. 3.

16 Shine Lawyers, *Submission 34*, p. 4.

> negotiations at mediation and instead negotiated in the shadow of the redress scheme. Our opponent refused to properly consider quantum considerations and were not prepared to offer any payment in excess of what might be available under the redress scheme. This argument was put knowing that the redress scheme offers payments substantially lower than those available at common law, in part because of the lower standard of proof to access a redress payment.[17]

7.13 People with Disability Australia also reported of hearing of possible unethical conduct by institutions and their legal representatives:

> We have heard from a few of our clients that some lawyers, upon reaching a certain figure in mediation, have told them that if that amount of compensation is not accepted, the client will then have to take their matter to court. This figure is often equivalent to a likely [National Redress Scheme] payment. This has been a distressing experience for our affected clients, some of whom have felt coerced into accepting these amounts. Given that compensation payments made through civil litigation and monetary payments available through the [National Redress Scheme] have quite different purposes and are based upon different criteria, we are therefore concerned to ensure that the [National Redress Scheme] does not pose a barrier to civil litigation.[18]

7.14 The regulation of the legal profession is the jurisdiction of each state and territory. Consequently, as argued by Professor Daly and Ms Davis, oversight of the legal profession is 'highly fragmented', which could result in 'the widespread nature of these harmful practices' being overlooked.[19]

7.15 Regarding 'form fillers', which Professor Daly and Ms Davis define as non-lawyers who charge a fee to assist the survivor to complete the application form, it is unlikely that they would fall under regulations governing the legal profession.[20] They submitted:

> It is unclear how a claimant can be protected from, or hope to resolve, problems arising from a contract with a form filler, such as when a claimant is charged an unfair amount, is required to pay contingency fees on their redress payment, or has their application completed in a sloppy or dishonest manner. As such, it is necessary that protections are put in place to ensure that form fillers are adequately regulated and that claimants are aware of the complaint mechanisms available.[21]

7.16 Professor Daly and Ms Davis made a number of recommendations to address these issues, including that:

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17 Shine Lawyers, *Submission 34*, p. 4.

18 People with Disability Australia, *Submission 32*, p. 2.

19 Professor Daly and Ms Davis, *Submission 49, Supplementary submission 1*, p. 2.

20 Professor Daly and Ms Davis, *Submission 49, Supplementary submission 1*, p. 2.

21 Professor Daly and Ms Davis, *Submission 49, Supplementary submission 1*, p. 2.

> The Operator should establish a national complaints mechanism through which applicants can lodge a complaint about 'unsatisfactory professional conduct' or 'professional misconduct' by a lawyer or form filler. These complaints could relate to either the [National Redress Scheme] or civil litigation claims in respect of institutional abuse.[22]

Reviews

7.17 An applicant may seek a review of an original decision.[23] The review is an independent review conducted by a different independent decision-maker who was not involved in the original decision.[24] The review is conducted on the papers, and further information cannot be provided. Therefore, the person reviewing the decision can have regard only to the information and documents that were available to the person who made the original decision.[25]

7.18 The *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act) does not allow for an external review to be conducted by an agency or a tribunal. As advised by the Commonwealth Ombudsman, the Ombudsman cannot conduct a merit review of a redress decision. Additionally, the Act does not provide for merit review at the Administrative Appeals Tribunal (AAT), or judicial review by the Federal Circuit Court or the Federal Court.[26] Where an applicant disagrees with an internal review decision, the only recourse available to challenge the decision is to apply to the High Court, which is provided for in the Australian Constitution.[27]

7.19 A review decision can vary or set aside the original decision and substitute a new decision.[28] Where this occurs, the new decision takes effect on the day specified in the review decision.[29] An applicant may withdraw an application for review at any time before the review has been completed.[30] The concerns raised by submitters included:

- that the redress scheme precludes external reviews;
- the limit placed on survivors to make one application;
- the inability to provide additional information at the review stage; and
- the possibility of a review resulting in a lower redress payment.

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22 Professor Daly and Ms Davis, *Submission 49, Supplementary submission 1*, p. 3.

23 Section 73 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act).

24 Subsection 75(1) of the Act.

25 Subsection 75(3) of the Act.

26 Kelso Lawyers, *Submission 5*, p. 5.

27 Section 75(iii) of the Constitution.

28 Subsection 75(2) of the Act.

29 Section 76 of the Act.

30 Section 74 of the Act.

7.20 Each of these issues will be discussed below.

Preclusion of external reviews

7.21 The Explanatory Memorandum to the Act notes that the Independent Advisory Council on Redress (the Advisory Council) considered whether to allow for external reviews. The Advisory Council concluded that it was not necessary on the basis that 'it would be overly legalistic, time-consuming, expensive and would risk harm to survivors'.[31]

7.22 A number of submitters raised concerns that the redress scheme does not allow for an external review of redress decisions.[32] The Commonwealth Ombudsman commented that '[g]ood administrative practice involves an external review mechanism to promote good decision making'. [33] Kelso Lawyers also commented on the need for an external review mechanism:

> In our decades of experience representing survivors of abuse in statutory compensation schemes we have seen some very unjust and illogical determinations from government assessors. The ready availability of external merits review of determinations is crucial. It has been the recurrent theme of the Royal Commission that effective accountability systems are critical to keeping institutions honest and just in their behaviour—the conduct of the National Redress Scheme should be no exception.[34]

7.23 Kelso Lawyers acknowledged that the scheme provides for an internal review process, but argued that where no external review mechanisms exist, their experience has shown that the effectiveness of internal reviews degrades over time.[35] Kelso Lawyers stated:

> In our experience, the ready availability of external merits review is not abused by applicants to statutory schemes. Instead, this option is generally used intermittently to maintain the effectiveness of internal reviews. The result is a just, quick, and cheap system for ensuring correct and preferable decision-making.[36]

7.24 At a committee hearing, Mr Ashley Kelso, Senior Associate of Kelso Lawyers, elaborated:

> This is the kind of erosion that you get. You must have external accountability. People cannot be a judge in their own case. There must be some way for the Redress Scheme to be held accountable, and it would be

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31 Explanatory Memorandum to the Act, p. 10.

32 See, for example, Dr Chris Atmore and Dr Judy Courtin, *Submission 39*, p. 4; Victorian Aboriginal Child Care Agency (VACCA), *Submission 26*, p. 4; Commonwealth Ombudsman, *Submission 15*, pp. 7–8 of Attachment 1; Kelso Lawyers, *Submission 5*, pp. 4–5.

33 Commonwealth Ombudsman, *Submission 15*, pp. 7–8 of Attachment 1.

34 Kelso Lawyers, *Submission 5*, p. 4.

35 Kelso Lawyers, *Submission 5*, p. 4.

36 Kelso Lawyers, *Submission 5*, p. 5.

> very good to have that done by the Administrative Appeals Tribunal—full merits review, because people understand merits review. Judicial review, highly technical merits review: you're just saying, 'I didn't like the outcome. I think a more favourable one could be achieved.' As it is, the only option constitutionally for someone to challenge their Redress Scheme decision is to go to the High Court. The Independent Advisory Council says that we shouldn't have external review because it would be too time consuming, costly, stressful and expensive for victims, and the effect of that decision is their only option is the High Court, which can't be excluded because of section 75 of the Constitution. I would say that that is actually the most expensive, onerous and legalistic option there.[37]

7.25 Mr Kelso went on to explain the importance of external reviews:

> Even if we fix issues with the assessment framework, no system is going to stay good and be good without real accountability. You must have that feedback loop. You must have government departments, the defendants, view that someone external and independent of themselves will actually make them behave with intellectual honesty rather than with what just suits them.[38]

7.26 Other submitters argued that a review by a second independent decision-maker does not reflect a genuine review. As noted by the Victorian Aboriginal Child Care Agency (VACCA):

> The review process available to applicants needs to be changed to reflect a genuine review where applicants can seek a review which consists of the initial decision being reviewed, rather than as it currently stands a second Independent Decision Maker assessing the application blind from the first assessment. This review must not result in an applicant's payment being decreased or an applicant who was initially deemed eligible being deemed ineligible for redress.[39]

7.27 The Commonwealth Ombudsman suggested that the scheme provide for a judicial review of decisions, and explained the rationale for this:

> I acknowledge the desire to keep the Scheme survivor-focussed and non-legalistic, and commend the initial decision-making aspects of the Scheme. However, this should be complemented by at least one avenue of external review, probably judicial review given some of the novel administrative law concepts (such as the standard of 'reasonable likelihood' that also applies to our decisions) to guard against an incorrect decision being made.

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37 Mr Ashley Kelso, Senior Associate, Kelso Lawyers, *Committee Hansard,* 10 October 2018, p. 9.

38 Mr Kelso, *Committee Hansard*, 10 October 2018, p. 8.

39 VACCA, *Submission 26*, p. 4.

> The Ombudsman's reporting of Defence abuse function is not subject to external merits review, but judicial review is available.[40]

7.28 In contrast, Kelso Lawyers made four recommendations in relation to allowing both merits and judicial review:

> 2.1 Allow survivors to apply as of right to the Administrative Appeals Tribunal for a full merits review.
>
> 2.2. Allow additional submissions and evidence to be filed at both the internal review stage and on review by the AAT.
>
> 2.3. Allow Judicial Review under the [*Administrative Decisions (Judicial Review) Act 1977*] by the Federal Circuit Court.
>
> 2.4. Allow survivors who are successful before the AAT or [Federal Circuit Court] to have their legal costs covered, so that their redress is not reduced by the cost of correcting a mistake by the [National Redress Scheme] Operator.[41]

One application limit

7.29 A number of submitters were concerned that survivors could only make one application. As explained by the Blue Knot Foundation this one application limit is not trauma-informed:

> The provision that each person can only submit one application is not sufficiently informed by an understanding of trauma and memory. Many survivors experience fragmented incomplete memories related to their abuse and their ability to provide a complete narrative including chronological details is often flawed. This means that depending on triggers and circumstances victims' accounts may vary over time and people can potentially recall additional information up to and including the naming of additional institutions over a multiple year period. This can mean that people can potentially have entirely valid reasons to submit additional applications which present new information re other institutions or the abuse and its impacts. An understanding of these dynamics needs to inform process and timing for applications.[42]

7.30 Children and Young People with Disability Australia similarly commented that the one application limit could adversely affect the redress decision:

> It is thought that there may be circumstances in which this condition would unnecessarily restrict a person from accessing redress. For example, if a person makes an application that is not approved, after which substantial new evidence comes to light, they would not be able to make a second application despite this new evidence. Further, the restrictive nature of this section of the Bill contrasts with the Royal Commission's recommendation

40 Commonwealth Ombudsman, *Submission 15*, pp. 7–8 of Attachment 1.

41 Kelso Lawyers, *Submission 5*, p. 5.

42 Blue Knot Foundation, *Submission 7*, p. 3.

> that "there should be a 'no wrong door' approach for survivors in gaining access to redress".[43]

Provision of new information during a review

7.31 Submitters also expressed concern that applicants are not able to provide additional information during a review. The VACCA commented that the preclusion of new information at the review stage fails to acknowledge the difficulties survivors may have to obtain and remember relevant information:

> The internal review assessors will not take into account any new information or documents found after the application is lodged. This does not acknowledge the difficulty survivors have had, and continue to have, in accessing their records. Information not accessible at the time of submitting the application but obtained during the application process should be able to be provided to the assessors for consideration. Furthermore survivors may remember further details as the application process unfolds—confronting the past, which is required in order to make an application, can trigger other details and instances of abuse being recalled that may have previously not been remembered. This was the case for several of VACCA's Royal Commission Support Service clients while preparing for their private sessions.[44]

7.32 The Ombudsman similarly noted its concerns that applicants are not able to provide new information during the review stage, given in the Ombudsman's experience, it is difficult for people affected by trauma to tell their story completely in the first instance:

> The Office noted in its February 2018 submission that the Scheme precludes new information being presented by an applicant for consideration in the formal review process. This element of the decision-making process has not changed since our previous submission. The view of the Office remains, as informed by our experience of accepting reports of serious abuse within the ADF [Australian Defence Force], that it is difficult for people affected by trauma to tell their story completely in the first instance. This, in turn, may affect the outcome of a person's application under the Scheme.[45]

7.33 The Commonwealth Ombudsman explained that during a briefing provided by the departments, concerning preliminary assessments, the departments confirmed that additional information may be sought under certain circumstances and that applicants may continue to provide information up to a determination decision being made.[46] The Ombudsman concluded that this would 'address the risk associated with applicants not providing all relevant information in the first instance', but that a

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43 Children and Young People with Disability Australia, *Submission 10*, Attachment 1, pp. 4–5.

44 VACCA, *Submission 26*, p. 12.

45 Commonwealth Ombudsman, *Submission 15*, p. 3.

46 Commonwealth Ombudsman, *Submission 15*, p. 4.

process of putting a draft decision to the applicant for them to respond and provide further information would be the preferable approach.[47]

7.34 While further information can be provided, and can be sought by DSS prior to an original decision being made, this would not appear to address the issue of new information being provided at the review stage. Kelso Lawyers commented that:

> Further injustice is caused by s75(3) of the NRS [National Redress Scheme] Act which prevents an applicant providing additional evidence or submissions to correct a misunderstanding of the original decision-maker. This feature demonstrates an ignorance of the complex lives that many survivors have led. The result is that the internal review mechanism is almost completely ineffective, and in essence a mere formality.[48]

7.35 At a committee hearing, Mr Warren Strange, Executive Officer, knowmore Legal Services (knowmore) argued that further clarity about the review process was needed.[49] Mr Strange similarly observed the absurdity of allowing for a review of a decision but not allowing for an applicant to highlight why the original decision was made in error:

> Second, we've not been able to obtain clarity around how the review process will work. We know that it is a review on the papers, and that's a concept that we understand, but we've also been told that no material will be accepted in support of a review. We would like that to be clarified. If the department is able to clarify that today, that would be wonderful. It seems to me rather absurd to have a review process but then not allow a legal service like ours to make a submission highlighting why we think the decision is in error. To use, perhaps, an extreme example, if we acted for two survivors who named the same perpetrator and one claim was accepted while the other one was rejected on the basis of not reasonable likelihood that abuse occurred, we wouldn't be able to draw attention to that apparent discrepancy. We'd like that to be clarified.[50]

7.36 On 28 February 2019, DSS confirmed that they have received one request for a review of an original decision.

Review resulting in a lower redress offer

7.37 A number of submitter raised concerns that subsection 75(2) of the Act allows a review decision to vary and to set aside the original decision and substitute a new decision.

7.38 Children and Young People with Disability Australia explained that if a review is sought, and a new offer is made, the person would not have the option to

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47 Commonwealth Ombudsman, *Submission 15*, p. 4.

48 Kelso Lawyers, *Submission 5*, p. 5.

49 Mr Warren Strange, Executive Officer, knowmore Legal Services (knowmore), *Proof Committee Hansard*, 28 February 2019, p. 11.

50 Mr Strange, *Proof Committee Hansard*, 28 February 2019, p. 11.

accept the original offer.[51] They argued that this could have the effect of deterring people from seeking a review.[52]

7.39 Ms Jeannie McIntyre, from the VACCA, referred to the provision as punitive:

> DSS staff have confirmed that the result could be that the payment is reduced or even that the survivor is deemed ineligible. This is punitive. Our survivors have trust issues—unsurprisingly, given that they have been betrayed and abused as children by those who should have been caring for them. A survivor's decision not to seek a review should not be based on fear and the belief that they may be punished.[53]

7.40 knowmore explained that applicants could be in a worse situation following a review and noted their concern that there was no opportunity for an applicant to be informed of a possible adverse decision and given the opportunity to withdraw their review.[54] knowmore explained that this was the usual practice and provided the following example:

> This is the usual position in, for example, the hearing of sentence appeals, where in determining an appeal against the severity of sentence a court would ordinarily indicate its intention to increase the sentence should the appeal proceed to judgment, effectively allowing the appellant the opportunity to withdraw and avoid that adverse outcome.[55]

7.41 knowmore argued that given the legislation is beneficial legislation, the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (the Rules) should be amended to allow for a similar process to take place:

> Given that this legislation is beneficial legislation, knowmore submits that the Rules should be amended to the effect that anyone who requests a review will not be in a worse situation after making that request if the independent decision maker decides that the redress payment offered was in fact higher than that which he or she considers should be awarded upon review. It will inevitably be extremely distressing for a survivor, who already perceives their offer of redress to be inadequate, to learn upon review that it has been further reduced. The Operator of the scheme should bear the onus of getting determinations right in the first instance and should carry the consequences in the expected very small number of cases where there is an error on quantum made in favour of a survivor.[56]

7.42 On 28 February 2019, DSS acknowledged that they were aware of the criticisms regarding the review process:

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51 Children and Young People with Disability Australia, *Submission 10,* p. 1.

52 Children and Young People with Disability Australia, *Submission 10,* p. 1.

53 Ms McIntyre, Manager, Redress Support Service, VACCA, *Committee Hansard,* 8 October 2018, p. 23.

54 knowmore, *Submission 31,* p. 10.

55 knowmore, *Submission 31,* p. 10.

56 knowmore, *Submission 31,* p. 10.

> …we're fully cognisant of the issues. They have been the subject of discussions and consideration. I can assure you that we're aware of those issues. They have been brought to our attention. I think they fall into the category of things that need state and territory agreement. But we are acutely aware of those concerns and criticisms.[57]

Statutory reviews

7.43 As set out in chapter 3, the Operator is required to provide an annual report to the Minister for Social Services (the minister), for presentation to Parliament concerning the operation of the scheme.[58] Section 75 of the Rules sets out the matters which must be included in the annual report.

7.44 In addition, the Act provides for the minister to cause two reviews into the operation of the scheme, at the two and eight year anniversaries of the scheme.[59] Subsections 192(2) and 192(4) of the Act list a number of factors that the review must consider.

7.45 A number of submitters expressed their support for the statutory reviews, while noting their concern that to wait two years for the first review to commence was too long and that a number of issues needed to be resolved immediately. For example, knowmore submitted that it:

> …supports the intent to conduct a thorough review of the NRS at a relatively early stage of its life, when sufficient data and information is available to properly inform such a review. To a large extent the NRS is embarking on uncharted territory as the largest scheme of this nature ever implemented in the world, and inevitably issues and improvements will be identified as it unfolds. We expect it will be preferable to start this review before the second anniversary.
>
> We have identified above some issues that we consider require urgent attention, such as the impact and effectiveness of section 37. These issues require attention ahead of the second year anniversary of the scheme start date and this comprehensive review—they should be actioned as soon as possible.[60]

7.46 In its supplementary submission, the Law Council of Australia supported knowmore's position for a statutory review to commence sooner:

> The Law Council is concerned that a review occurring two years after the implementation of the scheme may be too late in its timing to address some

57 Ms Hefren-Webb, Deputy Secretary, Families and Communities, DSS, *Proof Committee Hansard,* 28 February 2019, p. 28.

58 Section 187 of the Act. Note that a number of suggestions have been outlined throughout the report concerning ways in which the annual reporting requirements of the scheme could be strengthened through the inclusion of further information.

59 Section 192 of the Act.

60 knowmore, *Submission 31*, p. 10. Note that section 37 of the Act relates to the admissibility of certain documents in evidence in civil proceedings.

> of the fundamental concerns that have been identified, and endorses the position of knowmore that the review should be brought forward and commence before the second anniversary.[61]

7.47 Mr Frank Golding OAM stated:

> Let's fix the scheme. It's not too late. The act says there should be a review after two years and after eight years. I don't know why we have to wait for two years. The information is already there that the scheme is flawed, and it can be fixed. It should be fixed.[62]

7.48 Mr Boris Kaspiev, Executive Officer of the Alliance for Forgotten Australians expressed his support for a review to commence immediately:

> The review should start now. We are puzzled and probably aghast that, with such an expenditure of government money, there appears to be no evaluation strategy. There's no baseline attempt as far as we're aware to collect data. That data would start to show us the things that are wrong already. Why isn't a review of the form already built into the system after three months?
>
> It seems we're making things up as we go along. There's no programmed, systemic consultation on how the scheme is evolving, how it's being administered or whether the policies themselves are the right ones.[63]

7.49 VACCA were similarly supportive of the reviews at the second and eighth anniversaries of the commencement of the scheme, but recommended that an additional review be conducted at the mid-point of the scheme—at the fifth anniversary of the commencement of the scheme. [64]

7.50 The Alliance for Forgotten Australians expressed its interest in working with DSS 'at a formative stage of the review', and in particular, in providing input into the review or evaluation framework.[65] The Alliance for Forgotten Australians went on to identify provide some specific issues, regarding the review, for consideration:

- Review or evaluation to be established at the start of implementation so that the correct data, including baseline data, may be collected.
- We would like to participate in a partnership to learn in advance, not learn after the fact.
- Review and evaluation will be particularly complex because of the risk of re-traumatising survivors. The Alliance for Forgotten Australians has survivor members as well as service provider

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61 Law Council of Australia, *Submission 29. Supplementary submission,* p. 1.

62 Mr Golding, private capacity, *Committee Hansard,* 8 October 2018, p. 6.

63 Mr Kaspiev, Executive Officer, Alliance for Forgotten Australians, *Committee Hansard,* 8 October 2018, p. 10

64 VACCA, *Submission 26,* p. 15.

65 Alliance for Forgotten Australians, *Submission 11*, pp. 1, 3.

members in all states and territories. While we can provide anecdotal feedback, our preference is for a more structured approach.

- If an external organisation undertakes the review or evaluation, it should be independent of past providers, governments, and providers of Find and Connect Services.

If the committee has concerns about the implementation of redress, you may wish to ask the Australian National Audit Office (ANAO) to schedule a performance audit in its work program for 2019–20.[66]

66 Alliance for Forgotten Australians, *Submission 11*, p. 3.

Chapter 8

Committee view

8.1 The National Redress Scheme (redress scheme) is critically important for all Australians. It is one of the primary outcomes of the five-year Royal Commission into Institutional Child Sexual Abuse (the Royal Commission). No child should have to experience the trauma of child sexual abuse, which can have lifelong impacts on the child and those around them. The redress scheme presents an opportunity to provide some recognition and justice for past wrongs.

8.2 The role of this committee is to oversee the implementation of the redress scheme. Over the course of its inquiry, the committee was greatly assisted by all those who provided evidence, and expresses its gratitude to them. In particular, the committee wishes to acknowledge the bravery of survivors who shared their story.

8.3 The committee acknowledges that it is up to survivors to decide whether to apply for redress, and that some will choose not to do so. It also recognises that to recount personal stories of childhood sexual abuse is not an easy process, and it will be a traumatic experience for many. However, it is critical that survivors are not placed in a situation where they would like to apply for redress, but are held back by issues with the scheme's implementation. The importance of this was demonstrated by the experience of a survivor and Forgotten Australian:

> Redress keeps touching on our ego and the image we have of ourselves…it's like touching on our soul, it can destroy rather than repair. The rest of our life started in childhood! Sometimes it feels like it would just be safer to withdraw from the whole process of redress.[1]

8.4 Notwithstanding the issues discussed below, the committee is optimistic about the prospects of the redress scheme.

Legislative process relating to the national bill

8.5 As explained in chapter 2, the Commonwealth Parliament had very little opportunity to consider or amend the bills establishing the redress scheme—that is, the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and the National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018.

8.6 By the time the bills were before the Parliament for debate, the parliaments of New South Wales and Victoria had already referred powers to the Commonwealth (or commenced the legislative process to do so) on the basis of the bills as drafted. This meant that any amendments to the bills would have required those states to pass new referral legislation, and would have necessitated fresh negotiations between all jurisdictions.

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1 A 'Forgotten Australian' quoted in Alliance for Forgotten Australians, *Submission 11*, pp. 3–4.

8.7 This limitation was compounded by time pressure. With the scheme scheduled to start on 1 July 2018, the Commonwealth Parliament had very little time to consider the bills. They were introduced into the House of Representatives on 10 May 2018 and introduced into the Senate on 18 June 2018 and passed the following day.

8.8 The committee has grave concerns about this legislative process. While acknowledging that senators and members of parliament had access to earlier versions of the bills (such as the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017), there was very little time or ability for the final version of the scheme to be duly considered.

8.9 The committee has been conscious that survivors have been waiting for a redress scheme for a significant length of time. With this in mind, the committee considers, as many senators and members of parliament expressed at the time, that there was little option but to agree to pass the bills without any amendments. The committee expresses it deep dissatisfaction with the rushed legislative process that took place.

8.10 The committee is of the view that there would have been some reasonable basis for the legislative process to be expedited in this way if the scheme had adopted every recommendation of the Royal Commission. Had all the recommendations been adopted and reflected in the Act, parliamentarians would have been assured that the bill had a reasonable basis in appropriate and adequate consultation with survivor groups.

8.11 The rushed legislative process that took place only compounds the barriers to amending the scheme, which is discussed below. It is noted that over the life of the redress scheme, survivors will have to contend with the legislation in place.

Barriers to amending the redress scheme

8.12 The committee is cognisant of the considerable barriers associated with amending certain elements of the redress scheme. The barriers stem from the fact that the redress scheme is already established and has been underway for nine months. At this stage, especially careful consideration is required before making changes to the ongoing scheme.

8.13 In particular, many changes to the scheme would require the agreement of the Ministers' Redress Scheme Governance Board. In some cases, such as for significant changes to legislation or subordinate legislation, this agreement must be unanimous. Moreover, any changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act) would require state parliaments to pass new legislation referring powers to the Commonwealth.[2] This would likely involve renewed negotiations with state governments.

2 This is due to the way in which state parliaments originally referred powers to the Commonwealth, as discussed in chapter 2.

8.14 It is also critical to ensure that the scheme provides certainty for survivors. Regular and significant change to the scheme may cause a loss of confidence in the scheme and risks survivors choosing not to engage with it on the basis of this uncertainty. Additionally, the committee is of the view that any proposed changes to the scheme should only occur after key survivor groups have been properly consulted and their feedback appropriately incorporated. It is also critical that amendments to the scheme proceed on the principle that it will do no further harm to the survivor.

8.15 Finally, the committee notes that the scheme has been designed in consultation with participating institutions. While these institutions should by no means dictate the design of the scheme, it is nonetheless important to ensure that institutions choose to join the scheme so that as many survivors as possible can access redress.

8.16 The committee has grappled with these barriers during the course of this inquiry. It is important to emphasise, however, that these barriers do not automatically rule out changes to the scheme. Rather, they are a factor to consider when weighing up potential reforms. The committee has closely considered these issues when determining its recommendations.

Recommendation 1

8.17 The committee recommends that any amendment to the scheme proceed on the principle of 'do no further harm' to the survivor, be subject to proper consultation with key survivor groups, and appropriately incorporate feedback from those consultations.

Non-government institutions joining the scheme

8.18 While the legislative process to establish the redress scheme was extremely rushed, discussions about the establishment of a scheme have occurred for some time. The Royal Commission's *Redress and Civil Litigation Report*, which recommended and discussed the establishment of a redress scheme, was published in August 2015. The Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 was introduced into the House of Representatives on 26 October 2017.

8.19 Institutions have had a considerable amount of time to prepare for the commencement of the scheme. Despite this, large faith-based institutions, such as the Catholic and Anglican churches, only joined the scheme in December 2018, with numerous arms of the Catholic and Anglican churches yet to join (although they have announced their intention to do so).[3] Of particular concern, Jehovah's Witnesses has

3 www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined (accessed 18 March 2019).

not joined the scheme, and it appears that it has not indicated to the redress scheme whether it intends to join.[4]

8.20 Many institutions have committed to join the redress scheme. However, the committee is concerned that despite the accolades these institutions received, many have still not actually joined the scheme, or were slow to do so.

8.21 The committee notes that a survivor will not be able to receive a redress payment if the institution responsible for the abuse is not a participating institution. Furthermore, where there are two or more institutions that are responsible for the abuse, one which is participating in the scheme and the other that is not participating, the non-participating institution will still be liable for their share of the redress payment. This would have the effect of reducing the total amount that a survivor would receive. The committee is gravely concerned about the impact to the survivor under both these circumstances.

8.22 The committee acknowledges that the Act sets a two-year deadline for institutions to join the scheme.[5] This means that from 1 July 2020, institutions will not be able to join the scheme unless this deadline is extended by amendment to the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (the Rules).[6] In the committee's view, institutions should not take the view that they are right to join any time prior to 30 June 2020. Rather, they should consider that 30 June 2020 is the deadline after which they forfeit their ability to join, and should join the scheme as soon as practicable—which is now. Institutions delaying their involvement until June 2020, in the committee's opinion, gives weight to the argument that they are just waiting for the problem to disappear as some survivors will die before that date.

8.23 The committee acknowledges the difficulty that some large faith-based institutions face in joining the scheme. The committee is aware that these institutions, such as the Catholic Church, would be responsible for large numbers of bodies including archdioceses, dioceses, schools, and other organisations, across Australia. Additionally, the way in which each of these bodies is established differs between states and territories. Notwithstanding these complexities, the committee is of the view that institutions that were named in the Royal Commission have had ample opportunity to prepare for the commencement of the scheme. Additionally, large faith-based institutions, such as the Catholic Church, should have been able to expedite the process of joining by using the 'umbrella' system that they used during the Royal Commission. The committee does not accept the complexity or scale of these institutions as legitimate reasons for the delay in these institutions joining the scheme.

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4 www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined (accessed 18 March 2019).

5 Paragraph 115(4)(a) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act).

6 Paragraph 115(4)(b) of the Act.

8.24 The committee is also concerned that there are a number of other institutions which were not named in the Royal Commission, and have been informed that a redress application has been made against them and in turn given reasonable opportunity to join the scheme, but have not yet done so.

8.25 The committee wishes to draw particular attention to evidence from Dr Andrew Morrison RFD QC, Spokesperson for the Australian Lawyers Alliance, who stated:

> If the legislation were amended so that organisations which did not register and participate in the scheme lost their charitable status, they would then have a very powerful incentive to change their mind, not least because they would become subject to such things as local council rates. They would become subject to land tax. They would become subject, on any earnings in their organisation, to paying…Commonwealth income tax. For churches, for example, that conduct activities and in large measure managed…to keep their activities within their charitable status, the loss of their charitable status would be an enormously powerful incentive.[7]

8.26 The committee agrees with the views expressed by Dr Morrison that non-participating institutions should not be able to retain their charitable status if they are not acting in the spirit of charity:

> The Commonwealth, at the moment, permits [non-participating institutions] to retain their charitable status, despite the fact that they're not acting in the spirit of a charity. Why should they get away with it when other institutions are doing the right thing?[8]

8.27 The committee also supports the suggestion made by knowmore Legal Services (knowmore), that governments consider the appropriateness of providing government funding, contracts or financial concessions, to non-government institutions that are delivering child-related services, but do not participate in the scheme.

8.28 From 27 February 2019, the redress website listed institutions that were named in the Royal Commission but have not joined the scheme. The committee supports this public 'naming and shaming' of these institutions. However, the committee does not consider that this is sufficient. Institutions in this category should be subject to clear penalties after they have been provided with a reasonable opportunity to join the scheme. Subject to proper consideration by government, these penalties could potentially include suspending all tax concessions, including suspending institutions charitable status.

8.29 The committee notes that these are extraordinary circumstances and that the recommendation to suspend the tax concessions of relevant institutions has not been made lightly. The committee emphasises that the suspension of an institutions'

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7 Dr Andrew Morrison RFD QC, Spokesperson, Australian Lawyers Alliance, *Committee Hansard*, 10 October 2018, pp. 15–16.

8 Dr Morrison, *Committee Hansard*, 10 October 2018, pp. 15–16.

charitable status should not be used by governments as a tool to penalise institutions that may have contradicting views to the government. However, the committee reiterates that these circumstances are exceptional and unique to only institutions that have not signed up to the redress scheme.

8.30 The committee's below recommendation provides that institutions should have a 'reasonable opportunity' to join the scheme. What constitutes a reasonable opportunity will likely vary dependent on a number of factors, including whether the institution was named in the Royal Commission and the size of the institution. However, the committee is of the view that, for institutions that were named in the Royal Commission, their 'reasonable opportunity' to join the scheme has passed.

Recommendation 2

8.31 The committee recommends that Commonwealth, state, and territory governments place and maintain pressure on all relevant institutions to join the redress scheme as soon as practicable.

Recommendation 3

8.32 Noting that such a mechanism should only be applied in the context of the National Redress Scheme, the committee recommends that the government consider mechanisms and their efficacy, including those available under the *Charities Act 2013*, to penalise all relevant institutions that fail to join the scheme, including the suspension of all tax concessions for, and for the suspension of charitable status of, any institution that:

- **could reasonably be expected to participate in the scheme, including because the institution was named in the Royal Commission into Institutional Responses to Child Sexual Abuse, or an application for redress names the institution;**
- **has had reasonable opportunity to join the redress scheme; and**
- **has not been declared as a participating institution in the National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018.**

Non-participating institutions named in applications from 1 July 2020

8.33 Where a survivor applies for redress and names an institution as responsible for their abuse in their application, and the institution is not participating, it will affect the survivor's claim for redress in one of the following ways:

- If the named institution is the only named institution, the survivor will not be able to access redress.
- If the named institution is one of two or more named institutions, the redress payment will be divided, based on degree of responsibility, by the total number of named institutions (regardless of whether or not they are participating in the scheme). This would result in the survivor receiving only a portion of the total redress payment.

8.34 As previously stated, institutions have until 30 June 2020 to join the redress scheme, unless this deadline is extended by the Rules. This means that where an application names an institution that has not joined the redress scheme by 30 June 2020, and that institution is not a defunct institution, the institution will not be able to join the scheme and the survivor's claim for redress will be adversely affect.

8.35 The committee acknowledges the need to provide certainty for survivors, as well as the need to set a clear deadline for institutions to join the scheme. The committee is of the firm view that for institutions named in the Royal Commission, and institutions named in applications prior to 30 June 2020 and that has had a reasonable opportunity to join the scheme, this two-year deadline should not be moved.

8.36 However, the committee is concerned that where an application made after 30 June 2020, names an institution that is not already a participating institution, that this would adversely affect the survivor's claim for redress. The committee is of the opinion that further consideration be given to allowing non-participating institutions named in redress application forms, for the first time after 30 June 2020, an opportunity to join the redress scheme after the two-year deadline.

Defunct institutions and provisions for funders of last resort

8.37 The circumstances in which a state, territory or Commonwealth government will act as the funder of last resort are very narrow. As explained in previous chapters, the provision will only apply where the institution responsible for the abuse is a defunct institution, the participating government institution is *equally responsible* for the abuse, and the jurisdiction responsible for the participating government institution has agreed to act as the funder of last resort.

8.38 The *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (the Intergovernmental Agreement) states that a jurisdiction will not agree to act as the funder of last resort for a defunct institution where there exists another participating institution that would reasonably be expected to assume liability for the defunct institution. This applies, for example, where the defunct institution would have fallen under the responsibility of another institution that currently exists. The committee agrees with this approach.

8.39 However, the committee is concerned that the narrow terms of the current funder of last resort provisions will mean that a group of survivors, who would otherwise have legitimate claims, will not be able to apply for redress simply because the institution responsible for their abuse is now defunct. The committee is of the firm view that survivors should not be excluded from redress in these circumstances.

8.40 In the committee's opinion it is reasonable to expect the relevant jurisdiction to act as the funder of last resort where the responsible institution is defunct and where no other participating non-government institution would reasonably be expected to assume liability for the defunct institution.

8.41 The committee also notes that there may be some misunderstanding amongst survivors concerning when the funder of last resort provision applies. It appears that

some survivors may believe that the relevant jurisdiction will act as the funder of last resort where that institution is not capable of discharging its liabilities under the scheme. The committee is of the view that, under these circumstances, survivors should be clearly informed of the reason why an institution has not joined the scheme, including when they are not able to discharge their liabilities under the scheme.

Recommendation 4

8.42 The committee recommends that Commonwealth, state and territory governments expand the circumstances in which the funder of last resort provision applies so that the relevant participating jurisdiction acts as the funder of last resort where:

- **the institution responsible for the abuse is now a defunct institution; and**
- **the defunct institution would not have fallen under the operations of an existing institution.**

Indexation of prior payments

8.43 As outlined in chapter 5, prior payments received by a survivor for institutional child sexual abuse are indexed to broadly account for inflation and then subtracted from the redress payment. The committee notes that the indexation of prior payments is consistent with the recommendations of the Royal Commission. However, the committee acknowledges the concerns raised, that to apply an index to prior payments, but not similarly apply an index to redress payments, would appear to not be fair. The committee is of the view that further consideration be given to the indexation of prior payments.

Recommendation 5

8.44 The committee recommends that, in regards to the National Redress Scheme, that Commonwealth, state and territory governments revisit the practice of indexing prior payments.

Coverage of the scheme

Requirement that an applicant must have experienced sexual abuse

8.45 The scheme places various restrictions on who can apply for redress. One restriction is that a survivor must have experienced sexual abuse. Where a survivor has experienced non-sexual abuse (such as physical or mental abuse) as well as sexual abuse, the non-sexual abuse will be considered when determining the redress payment only if it was related to the sexual abuse. However, survivors who did not experience sexual abuse will not be eligible for redress, regardless of the severity of any non-sexual abuse.

8.46 The committee also heard that there is uncertainty as to whether abuse relating to foster care was covered by the redress scheme and notes that a number of inquiry participants suggested that such arrangements should be covered.

8.47 The committee acknowledges the concerns of advocates and survivors of physical and mental abuse on this issue. It recognises that physical and mental abuse can be extreme and have lifelong impacts for the survivor. The committee further acknowledges the inequity of excluding survivors of physical and mental abuse from the scheme and expresses its regret that survivors of non-sexual abuse were not covered in the terms of reference of the Royal Commission.

8.48 The committee understands that there have been calls for a separate Royal Commission into the physical, mental, and other non-sexual abuse of children in orphanages and other institutions. Many survivors of such abuse have come forward since the Royal Commission. The committee expresses its deep disappointment that victims of non-sexual abuse are excluded from the redress scheme and is of the view that these victims are equally deserving of redress.

8.49 The committee recommends that the Parliament consider referring an inquiry to a parliamentary committee into the adequacy of state responses for survivors of neglect or abuse, as well as any redress models that could be made available to survivors of physical and mental abuse.

Recommendation 6

8.50 The committee recommends that the Parliament consider referring an inquiry to a parliamentary committee into the adequacy of state and territory responses for survivors of institutional child non-sexual abuse, including consideration of the redress models that could be available to these survivors.

Citizenship and permanent residency requirement

8.51 The scheme requires a person to be an Australian citizen or permanent resident in order be eligible for redress. This requirement was also contained in the earlier version of the scheme proposed by the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (which did not proceed). However, the Explanatory Memorandum to that bill stated that it was the intention that subordinate legislation would prescribe eligibility for:

- former child migrants who are non-citizens and non-permanent residents;
- non-citizens and non-permanent residents currently living in Australia; and
- former Australian citizens and permanent residents.[9]

8.52 The Act similarly provides that eligibility for redress can be prescribed by the Rules, but this capability has not been used as originally envisaged. The committee acknowledges that the Explanatory Memorandum to the Act provides a justification for this revised policy—that the 'verification of identity documents for non-citizens and non-permanent residents would be difficult'.[10] The Explanatory Memorandum

9 Explanatory Memorandum to the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017, p. 13.

10 Explanatory Memorandum to the Act, p. 117.

suggests that removing the citizenship and permanent residency requirement could open the scheme up to fraudulent claims from organised crime groups.[11]

8.53 The committee acknowledges that it is important to maintain the integrity of the scheme, including by avoiding making payments to fraudulent applicants. However, in the committee's view, it is the role of the scheme to put in place mechanisms to assess the veracity of claims made in redress applications. To reasonably exclude a group of survivors from the scheme due to the potential risk of fraud would require an extremely clear, detailed and persuasive rationale, including an explanation of why the risk cannot be sufficiently mitigated in other ways. The committee does not accept that the justification provided is sufficient.

8.54 The committee is also concerned that this exclusion will disproportionately affect many survivors who were sexually abused in immigration detention, both onshore and offshore. The committee agrees with the views expressed by inquiry participants, that these survivors are owed a duty of care by the Commonwealth. The committee sees no justifiable reason why these survivors should be excluded from the redress scheme.

8.55 On the information currently available to the committee, the committee does not consider it reasonable to exclude survivors who would otherwise have a legitimate redress claim on the basis that others will try to exploit the scheme, or that the scheme would be more difficult to administer.

Recommendation 7

8.56 The committee recommends that Commonwealth, state and territory governments give consideration to allowing all non-citizens and non-permanent residents access to redress provided that they meet all other eligibility criteria. Particular regard should be given to allowing the following groups to be eligible for redress:

- **former child migrants who are non-citizens and non-permanent residents;**
- **non-citizens and non-permanent residents currently living in Australia; and**
- **former Australian citizens and permanent residents.**

Survivors who are in gaol or who have been sentenced to imprisonment for five years or longer

8.57 The committee heard strong opposition to the additional provisions that apply to survivors who are currently in gaol or who have been sentenced to imprisonment for five years or longer. Submitters argued that these survivors should not be punished twice, and noted the possible link between childhood sexual abuse and subsequent imprisonment.

11 Explanatory Memorandum to the Act, p. 117.

8.58 The committee is concerned by the discretion allowed for relevant Attorney(s)-General, whose views may be determinative under current provisions, as it allows for arbitrary decisions and possibly, an element of luck.

8.59 The committee is also concerned by the evidence that this exclusion will disproportionately impact Aboriginal and Torres Strait Islander peoples. As outlined in the report, almost one third of survivors who were in prison when they participated in a private session with the Royal Commission indicated that they were Aboriginal and/or Torres Strait Islander. This is an alarming statistic, although unfortunately not a surprising one, given the high rates of Indigenous incarceration in Australia.

8.60 The committee acknowledges the rationale to this exclusion—that there may be some instances in which providing redress to a person could bring the scheme into disrepute or undermine public confidence in the scheme. However, the committee is of the view that this would only apply to a small fraction of cases. Providing redress to the vast majority of survivors who are currently in gaol or who have been sentenced to imprisonment for five years or longer would be unlikely to seriously damage public confidence in the scheme, and these survivors should not be penalised.

8.61 In particular, the committee wishes to highlight evidence from Maurice Blackburn Lawyers which submitted that 'the thing most likely to bring the scheme into disrepute, or adversely affect public confidence in the scheme is the creation of differing classes of survivors'.[12]

8.62 The committee sees merit in ensuring the integrity of the scheme, but is of the view that the current provisions should be applied in the inverse. This would mean that a survivor who is in gaol or who has been sentenced to imprisonment for five or more years' imprisonment would be able to access redress, unless the Operator determines that providing redress to the survivor would bring the scheme into disrepute or undermine public confidence in the scheme. The objective of this approach should be to include as many survivors in the redress scheme as possible, rather than to exclude survivors.

8.63 The committee is of the strong opinion that a high threshold should be applied when determining whether providing redress to the survivor would bring the scheme into disrepute or undermine public confidence. The committee is also of the view that guidelines should be developed and made publicly available regarding the factors to be taken into consideration when making a decision. These guidelines should note the high threshold that must be met.

8.64 The decision would be made by the Operator, who must follow the guidelines. Existing provisions relating to consulting relevant Attorney(s)-General should be removed. This approach would ensure a greater degree of certainty for survivors, and remove one of the less transparent components of the redress scheme as it currently stands.

12 Maurice Blackburn Lawyers, *Submission 25*, p. 8.

Recommendation 8

8.65 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 to the survivor would bring the National Redress Scheme into disrepute or adversely affect public confidence in the scheme; and**
- **the 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.**

Exposure abuse perpetrated by a child

8.66 Where sexual abuse was perpetrated by a child, the abuse is only within the scope of the scheme if it was contact or penetrative abuse. Exposure abuse perpetrated by a child is not within the scope of the scheme, even though exposure abuse perpetrated by adults is within scope.

8.67 The committee was alarmed to hear examples of exposure abuse perpetrated by a child that would not be covered by the scheme. The Victorian Aboriginal Child Care Agency (VACCA) provided the following examples:

> A 17 year old forcing a 10 year old to watch their sibling being raped over several months and being told they will also be raped if they tell anyone; being forced to undress and masturbate and watch a 17 year old masturbate and being told their family will be harmed if they report the sexual abuse; being forced to watch extreme child pornography on a regular and ongoing basis and being told the same will happen to them if they ever refuse to continue to watch the pornography.[13]

8.68 VACCA raised these examples with the Department of Social Services (DSS), which made two points in response. First:

> …the government considered that certain behaviours (such as the relatively common examples of sexting and bullying), although should not be excused, are more likely to be experimental teenage behaviour and more difficult to attribute to an institution for responsibility. This is because it would be more difficult for an institution to reasonably foresee and therefore take protective action for most cases of exposure abuse perpetrated by children.[14]

Second, DSS stated:

13 VACCA, *Submission 26*, pp. 9–10.

14 Department of Social Services (DSS) quoted in VACCA, *Submission 26*, p. 10.

> Through consultations, many institutions told us that the inclusion of exposure abuse perpetrated by children in the Scheme would be a significant barrier to entering the Scheme. Whilst a crucial aspect of the Scheme is ensuring a trauma informed and survivor focused approach, it is also important for the Scheme to focus on achieving national coverage for survivors.[15]

8.69 The committee notes that the recommendations of the Royal Commission does not categorise the forms of abuse into penetrative, contact or exposure abuse. Consequently, the Royal Commission's recommendations are silent on the question of whether exposure abuse perpetrated by a child should be covered by a redress scheme. Volume 10 of the Royal Commission's final report, *Children with harmful sexual behaviours*, considered the issue of sexual abuse perpetrated by a child and concluded that the response should be proportionate to the behaviour and the circumstances in which they occurred.[16] The Royal Commission's recommendations focused on improving the framework for assessing and intervening in cases of sexual abuse perpetrated by a child.[17]

8.70 The committee acknowledges that this is a highly complex area and agrees that where a child exhibits harmful sexual behaviours there should be early intervention by adults and the relevant institution. The committee is of the view that, as part of a broader review into the scheme, further consideration be given as to whether it is appropriate for exposure abuse perpetrated by a child to be included in the redress scheme.

Development of the Assessment Framework

8.71 The National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 (the Assessment Framework) has been one of the key areas of contention during the course of this inquiry. It is evident that it departs from the recommendations of the Royal Commission.

8.72 The committee made efforts to understand how the framework was developed. DSS advised that the Assessment Framework was developed based on consultations with key stakeholders, balanced with the need to ensure consistency and remove subjectivity.[18] DSS further advised:

> The design of the assessment framework has been based on the approach recommended by the Royal Commission. It recognises the severity of sexual abuse suffered, the impact on the person who experienced the abuse,

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15 DSS quoted in VACCA, *Submission 26*, p. 10.

16 Royal Commission, *Final Report: Children with harmful sexual behaviours, Volume 10*, December 2017, p. 21.

17 Royal Commission, *Final Report: Children with harmful sexual behaviours, Volume 10*, December 2017, pp. 18–19.

18 Ms Elizabeth Hefren-Webb, Deputy Secretary, DSS, *Committee Hansard*, 10 October 2018, p. 60.

> related non-sexual abuse, and circumstances including anything that made a person especially vulnerable and made the abuse even more traumatic.[19]

8.73 The committee considers this a wholly inadequate response, and one that does not withstand a basic level of scrutiny. The Assessment Framework under the redress scheme clearly categorises survivors based on the kind of abuse they suffered. Furthermore, it fails to take into account the vast body of evidence that the kind of abuse suffered does not, in and of itself, determine the impact of abuse for the individual.

8.74 The committee is aware that members of the Independent Advisory Redress Council (Advisory Council), as well as key stakeholders, such as the Anglican Church of Australia, General Synod, were consulted on the Assessment Framework. However, as stated in chapter 5, notwithstanding the discussions and consultations that took place, the committee has not received evidence from any stakeholder expressing support for the Assessment Framework.

8.75 Instead, stakeholders who were consulted and who gave evidence to the committee were scathing of the Assessment Framework and unequivocally stated that the framework does not reflect the concerns they expressed. The committee is concerned that the Advisory Council were led to believe that the Assessment Framework would be similar to the assessment matrix as developed by the Royal Commission.

8.76 The committee agrees with the views of submitters and witnesses, that the determination of redress payments pursuant to the Assessment Framework is:

- ill-informed;[20]
- does not adequately nor equitably recognise the impact sexual abuse has on different survivors;[21]
- appears inconsistent with the frameworks that other schemes in Australia and in other jurisdictions have applied to determine the monetary payment;[22] and
- is inconsistent with general jurisprudence and best practice regarding compensating victims of abuse.[23]

8.77 The committee acknowledges the complexities in developing a framework that takes into account the vastly different contexts and impacts of sexual abuse, and of reasonably representing this in an Assessment Framework.

8.78 The committee cannot understand why recognition of the 'extreme circumstances' of the sexual abuse can only apply for penetrative abuse, and not for

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19 DSS quoted in VACCA, *Submission 26,* p. 9.

20 VACCA, *Submission 26,* p. 8.

21 Dr Chris Atmore and Dr Judy Courtin, *Submission 39,* p. 6.

22 Professor Kathleen Daly and Ms Juliet Davis, *Submission 49,* p. 4.

23 Dr Morrison, Australian Lawyers Alliance, *Committee Hansard,* 10 October 2018, p. 13.

other forms of abuse. The committee heard graphic evidence at the public hearing of young children being dreadfully sexually abused in unspeakable fashion when penetration did not occur. The committee does not agree that cases such as the example provided by Dr Chris Atmore and Dr Judy Courtin do not qualify as 'extreme circumstances'. This example is outlined below:

> An example of the absurdity of such distinctions involves a child who was sexually assaulted by a priest on almost a weekly basis for 5–6 years. This also involved physical and psychological abuse. This man, who has attempted suicide on several occasions, has alcohol abuse problems, cannot study or work and lives alone. Because the priest did not 'penetrate' this boy, the maximum amount he can be awarded by the redress scheme is $50,000.[24]

8.79 Leaving aside the content of the Assessment Framework, it is critical that survivors and the public properly understand how assessments will be determined and why it was designed as it was. However, the committee is concerned about the secret nature of the Assessment Framework Policy Guidelines (Assessment Guidelines), which are made for the purpose of applying the Assessment Framework. While it is of course important to mitigate the risk of fraudulent applications, the committee does not accept that this is a sufficient reason for not making the detailed Assessment Guidelines public.[25] This is particularly important in light of other constraints placed on applicants, such as the limit of one application per person, the inability to provide additional information after a determination has been made, and the preclusion of an external review. The lack of transparency in relation to the Assessment Guidelines and consequently, the details of how redress payments are determined, appear to be emblematic of broader issues concerning the transparency of the scheme.

8.80 The committee acknowledges and agrees with the concerns of submitters and witnesses that certain terms in the Assessment Framework require clarification. The committee considers that any clarification to key terms or other aspects of the scheme should be made publicly available, so that other organisations and survivors can benefit.

8.81 The committee acknowledges the barriers to implementing changes to the Assessment Framework, which would require agreement from all states and territories. The committee is also mindful that changes to the Assessment Framework may cause some uncertainty in relation to the operation of the scheme, and ultimately, uncertainty for survivors wishing to access the scheme. Notwithstanding these barriers, the committee has concluded that to not amend the Assessment Framework would result in unfair outcomes and could jeopardise the success of the scheme.

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24 Dr Atmore and Dr Courtin, *Submission 39*, p. 6.

25 Explanatory Memorandum to the Act, p. 38.

Recommendation 9

8.82 The committee recommends that Commonwealth, state and territory governments work together to develop and implement a new Assessment Framework which more closely reflects the assessment matrix recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse and which acknowledges that the type or severity of abuse does not determine the impact of sexual abuse for the individual.

Recommendation 10

8.83 If a new Assessment Framework is implemented to replace the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018, the committee makes the following recommendations:

- **That applicants who were assessed using the current framework are re-assessed using the new framework.**
- **When re-determining the redress payment under the new framework, offers of redress must not be lower than the original offer.**

Recommendation 11

8.84 The committee recommends that the government clearly communicates to the public, to the maximum extent allowed under current provisions, how applications for redress are considered and the grounds on which determinations are made.

Recommendation 12

8.85 If the current National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 is maintained, then the committee recommends that any acknowledgment of 'extreme circumstances' in the Assessment Framework be applicable to all applicants, not only those who experienced penetrative abuse.

Recommendation 13

8.86 If the current National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 is maintained, then the committee recommends that the government publicly clarify key terms in the Assessment Framework.

Maximum redress payment

8.87 A particular area of concern during the inquiry was the reduction of the maximum redress payment from the Royal Commission's recommendation of $200 000 to $150 000. The committee notes that the reduced maximum payment has caused survivors great anxiety and stress, as was witnessed at public hearings. The committee has sought to ascertain at each of its public hearings, as well as during private meetings, the reason for the reduction in the maximum redress payment from $200 000 to $150 000. However, as stated in chapter 5, the committee has not

received a clear and reasonable explanation about how the maximum redress payment came to be $150 000.

8.88 The failure to properly explain the reason for the reduced maximum payment has resulted in survivors speculating that the maximum payment amount of $150 000 was to match the maximum payments made under the Catholic and Anglican Churches' respective redress schemes.

8.89 Due to the rushed legislative process, parliamentarians were warned that any attempt to amend that figure to $200 000 would prevent the commencement of the scheme on 1 July 2018 and delay the scheme by at least 18 months. This was because the legislation would need to be agreed to, as well as require New South Wales and Victoria to pass new legislation in their respective parliaments.

8.90 The committee is deeply dissatisfied that the maximum payment amount has been reduced and that no clear explanation has been provided about why this occurred or who advocated for this reduction.

8.91 The committee acknowledges that the average payment may be perceived as more important than a maximum payment and that the scheme provides for a higher average than what was estimated by the Royal Commission. However, the maximum payment is of huge symbolic importance and the committee understands the betrayal that would be felt by many survivors. The committee acknowledges that this is particularly significant with survivors of child sexual abuse whose voices were silenced and ignored by institutions for many decades.

8.92 The committee appreciates the significant barriers to having the maximum redress amount amended and accepts that only a small group of survivors will qualify for the maximum redress amount. However, the committee is also of the view that transparency is crucial to the success of the scheme as well as the perception that justice has been delivered.

Recommendation 14

8.93 The committee recommends that the government clearly and openly explain how the maximum payments came to be set at $150 000 rather than $200 000, and the rationale for this decision.

Recommendation 15

8.94 In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments agree to increase the maximum redress payment from $150 000 to $200 000.

Minimum redress payment

8.95 It appears that the redress scheme does not set a minimum payment amount for the monetary component of redress. This is contrary to Royal Commission's recommendation that there be a minimum redress payment of $10 000.

8.96 The committee acknowledges that where there are one or more institution(s) responsible for the abuse that are not participating in the redress scheme, these institutions' liability will be taken into account to calculate the redress payment. This would have the effect of reducing the redress payment. The committee acknowledges that to require institutions that have joined the scheme to pay for a non-participating institution's share of the costs would ultimately have the effect of penalising those institutions that have rightly joining the scheme. Further, a clear objective of the scheme is to encourage all relevant institutions to join the scheme. However, the committee also acknowledges that this approach may result in some survivors receiving less than they would otherwise receive.

8.97 In relation to relevant prior payments, the committee supports the recommendation of the Royal Commission regarding a minimum payment. The committee also acknowledges that relevant prior payments to the survivor by the institution should be factored into the monetary component of redress.

8.98 It is the committee's view that the scheme should not make any offers lower than $10 000, unless the applicant's payment was calculated to be $10 000 or greater and was then reduced to account for either relevant prior payments or in cases where one or more of the institutions responsible for the abuse is not participating in the scheme. It would therefore be possible for offers to be $0, but only where relevant prior payments amount to at least $10 000 after indexation. Where there are no relevant prior payments, offers should be at least $10 000.

Recommendation 16

8.99 In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments implement a minimum payment of $10 000 for the monetary component of redress, noting that in practice some offers may be lower than $10 000 after relevant prior payments to the survivor by the responsible institution are considered, or after calculating a non-participating institution's share of the costs.

Counselling and psychological care

8.100 The committee considers this element of the scheme to be vitally important to supporting the mental health of survivors as well as to the ongoing success of the scheme.

8.101 The process for providing this component of redress is outlined in earlier chapters. In short, the Assessment Framework is used to calculate the monetary amount of the component for each applicant. The responsible institution or institutions are liable to pay this amount.

Provision of counselling and psychological care by lump sum payment

8.102 If the applicant lives overseas or in a jurisdiction that is not a 'declared provider', then the money is provided directly to the applicant to assist them to privately access services. South Australia and Western Australia recently indicated

that they have chosen to not be declared providers of counselling and psychological care. This means that survivors residing in South Australia and Western Australia will receive a lump sum payment in accordance with the amount specified in section 6 of the Assessment Framework.

8.103 The committee notes the compelling evidence that the counselling needs of each survivor would vary. Some survivors will require on-going regular counselling while others may require counselling on an episodic basis. It is important that the counselling offered is responsive to the needs of survivors and available when required. Inquiry participants also expressed concern that the amounts provided for under section 6 of the Assessment Framework would not adequately provide for the counselling needs of many survivors. The committee is concerned that for survivors in these two jurisdictions, the payment for counselling and psychological care may be wholly insufficient to adequately meet their needs.

Recommendation 17

8.104 In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments agree to and implement amendments that would ensure that each survivor receives an adequate amount of counselling and psychological services over the course of their life, noting that the amounts currently provided for, pursuant to section 6 of the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018, are wholly inadequate.

Declared providers of counselling and psychological care

8.105 The other six participating jurisdictions are 'declared providers' of counselling and psychological care.

8.106 If the survivor lives in a jurisdiction that is a 'declared provider', the money is provided to the jurisdiction where the survivor resides. The jurisdiction is then required to provide for the delivery of counselling and psychological services in accordance with the National Service Standards, which are set out in Schedule C of the Intergovernmental Agreement. These standards include, among other things, that eligible survivors receive at least 20 hours of counselling and psychological care over the course of their lifetime.

8.107 The precise way in which counselling and psychological care will be delivered by declared providers is not entirely clear. The committee notes that while the National Service Standards set out a number of requirements, many are broad and open to interpretation. In addition, the standards include the following:

> It is acknowledged that in some circumstances it may be impractical or impossible for the jurisdiction to comply with some or all of these standards. These circumstances may include where the survivor (a) cannot be contacted despite the jurisdiction's best efforts; (b) has moved interstate

> or overseas; (c) is detained in a correctional or other secure facility; or (d) is otherwise incapacitated.[26]

8.108 When pressed on the point of whether survivors would receive life-long counselling, as agreed to by the government, DSS confirmed that they would. It appears that DSS' basis for this claim is that Medicare currently provides coverage for any citizen to visit counselling services up to ten times per year.

8.109 The committee is astounded by this response. Apart from the commitment to the National Service Standards, it is unclear what additional services each state and territory would provide to an eligible survivor that they would not already be able to receive, or that any other citizen would not receive. For example, the provision of 20 hours of care over a survivor's lifetime is generally already provided for by Medicare.

8.110 The committee notes that the service standards provide for minimum standards and it is difficult to imagine that any state or territory would say that these standards go beyond their normal service standards. For example, clause 5 of the standards states that the preferences of the survivor will be taken into account when developing a plan for their care, and clause 10 refers to being culturally appropriate and considering the diverse needs of the survivor including needs that relate to disability, gender, sexuality and language. It appears that a possible difference for eligible survivors is clause 1, which refers to making contact with the survivor and providing them with information about how to access the service and what is available.

8.111 Moreover, the committee notes that the service standards are the same for all eligible survivors, regardless of the monetary amount of this component calculated under the Assessment Framework. If survivors eligible for $5000 of care receive the same services as those eligible for $1250, then it is difficult to see how the Assessment Framework actually affects the delivery of services. Contrary to common belief, it appears that there is no accounting of whether an eligible survivor has reached the cap under the Assessment Framework.

8.112 As noted above, the responsible institution will be required to make a financial contribution, as determined by the Assessment Framework, to the counselling and psychological care of the survivor, by providing this amount to the state or territory where the survivor resides.

8.113 It may be that the counselling and psychological component is effectively a small contribution to each jurisdiction's health budget. The committee is extremely concerned that the counselling and psychological component of the scheme will amount to little additional support for eligible survivors.

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26 Intergovernmental Agreement, Schedule C, p. 23.

Recommendation 18

8.114 The committee recommends that the Commonwealth government clarify, in the case of declared providers of counselling and psychological care, what services are provided to eligible survivors of the redress scheme that are distinct from or in addition to services already available to Australian citizens.

Quality and flexibility of care

8.115 Because the counselling and psychological component is reliant on the existing services of each state and territory, witnesses raised concerns that the quality of counselling provided to survivors may differ. Witnesses also expressed concerns that further differences may exist within a state or territory, again due to where the survivor lives.

8.116 The Centre for Excellence in Child and Family Welfare informed the committee that the Victorian government said that they would not place a limit on the amount of counselling that survivors receive. Similarly, a survivor based in New South Wales submitted that he would be receiving hundreds of hours of counselling under the New South Wales system of victims of crime. [27] The committee is pleased to hear that Victoria and New South Wales will be providing a significant quantity of counselling and psychological care to survivors. However, it is not clear what survivors in other states and territories will receive. This raises issues of potential inequity with how this component of the scheme is applied.

8.117 Witnesses also raised concerns relating to the acute challenges in accessing counselling and psychological care in rural and remote communities and have noted that services are over-stretched. The committee also notes that in some communities where counselling services are in short supply, or non-existent, survivors may need to incur significant travel costs to see a counsellor in-person.

8.118 Evidence to the committee also raised issues relating to the flexibility of the type of care that would be available to survivors and whether other types of mental health services could continue under the component of the scheme. For example, VACCA argued for Aboriginal-run cultural healing programs to be available to Aboriginal and Torres Strait Islander survivors.[28]

8.119 Questions were raised as to whether a survivor with a pre-existing relationship with a counsellor could continue to see that counsellor under the redress scheme. It is unclear whether jurisdictions will agree to fund a private practitioner where they have a pre-existing relationship with a survivor. It appears that this may depend on each individual jurisdiction.

8.120 The committee notes that it did not receive any evidence from survivors who have accessed counselling and psychological care. This is, in part, due to the limited

27 Mr Paul Gray, *Submission 44*, p. 1.

28 VACCA, *Submission 26*, p. 7.

number of redress offers accepted. However, it is envisaged that with the maturing of the scheme, and as more survivors try to access this component of the scheme, issues will likely arise that will need to be remedied.

Recommendation 19

8.121 In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments consider mechanisms to ensure that survivors have life-long access to counselling and psychological care that is available on an episodic basis, is flexible and is trauma-informed.

Direct personal response

8.122 The committee is not aware of a survivor receiving a direct personal response. This is likely due to the limited number of offers that have been accepted. Consequently, the committee acknowledges that little is known of how this component is operating in practice.

8.123 The committee agrees that if institutions are responsible for leading the process for providing direct personal responses, that this is likely to be perceived by survivors as a direct conflict. Also, if the direct personal response delivered by the institution is not delivered with appropriate sensitivity, this may cause more damage to the survivor rather than being part of a healing process. The committee considers it essential that survivors are appropriately supported during this process.

8.124 The committee acknowledges that support and guidance is provided to participating institutions concerning direct personal responses, however, is concerned that there appears to be little oversight of this component of redress. While the National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018 (Direct Personal Response Framework) requires institutions to have a process for managing complaints, and being responsive to these complaints, this process is controlled by the institution.

8.125 Section 17 of the Direct Personal Response Framework requires an institution to provide to the Operator information relating to the number, and type, of direct personal responses relevant to that institution. However, the data collected by the Operator in relation to this component appears to be quantitative, rather than qualitative. The committee see merit in the recommendation made by Professor Kathleen Daly and Ms Juliet Davis, that institutions be required to report on the complaints made to it concerning direct personal responses and the institutions' responses to these complaints. The committee notes that the privacy of the survivor should remain a primary consideration and that any identifying information should only be provided to the Operator and should not be made public.

Recommendation 20

8.126 The committee recommends that Commonwealth, state and territory governments agree to amend an institution's reporting obligations under section 17 of the National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018 to require institutions to provide to the Operator the following information:

- **the number of complaints made to the institution in relation to direct personal responses;**
- **the nature of these complaints; and**
- **how these complaints were resolved.**

Delivering an accessible scheme

8.127 Actuarial modelling obtained by the Royal Commission estimated the number of likely eligible participants to be 60 000 for a redress scheme across Australia.[29] As at 28 February 2019 (eight months into the operation of the scheme), the redress scheme received over 3000 applications, making up five per cent of the estimated total number of applications. The committee acknowledges it is not clear why the number of applications is so low. However, the committee is concerned that the scheme may not be reaching enough survivors, including those survivors who are more difficult to contact.

8.128 The departments acknowledge the need to conduct outreach to target survivors who have not yet engaged with support services and that they will conduct outreach 'once more institutions have joined'.[30] DSS further advised that they would be working 'closely with stakeholders to inform the next stage of the communication approach, and to determine the best channels and methods to reach survivors who have not yet engaged with the Scheme'.[31] DSS also stated that in addition to the 35 redress support services, an additional four providers will commence in April 2019. The committee supports the additional services being provided and emphasises the importance of ensuring that survivors who are difficult to reach do not forfeit their opportunity to participate in the redress scheme.

8.129 The committee is aware that the application process is often a highly traumatic experience for survivors, and therefore support offered by community-based support services is critical during this process. The committee considers that consideration should be given to ensure that proper supports are available to survivors, as and when they are needed. The committee acknowledges that this may require an expansion of community-based support services.

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29 Royal Commission, *Redress and Civil Litigation Report,* August 2015, p. 8.

30 DSS and DHS, *Submission 19,* p. 4.

31 DSS, answers to written questions on notice, 8 March 2019 (received 19 March 2019).

8.130 The committee is also concerned that financial counselling was identified by the Royal Commission as a service that should be provided to survivors who are offered a monetary payment.[32] The Intergovernmental Agreement provides that survivors will have access to financial support services.

8.131 The committee understands that the redress scheme utilises existing financial counselling services, such as the National Debt Helpline. While survivors are referred to existing financial services, additional funding has not been provided to these services. The committee is concerned with the evidence it received, that financial counselling services are 'at capacity, and have long waiting lists'.[33]

Recommendation 21

8.132 The committee recommends that the government ensure that redress support services are appropriately funded so that they are available to all survivors, regardless of the survivor's location, cultural or other barriers.

Recommendation 22

8.133 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, the committee recommends that Commonwealth, state and territory governments explore mechanisms to ensure that survivors have access to free and appropriate financial counselling services, when required.

Redress website and form

8.134 Central to the accessibility of the redress scheme is ensuring that relevant information is publicly available. The redress website and redress number are key services which survivors and organisations turn to when seeking information about the redress scheme. The committee is pleased with the updates to the website.

8.135 In relation to the application form, the committee acknowledges that with any new scheme, particularly one with a short implementation phase, it is not uncommon for implementation issues to arise. The committee is pleased that the departments undertook consultations in light of criticisms to the application form and encourages the departments to continue to seek feedback and respond appropriately to the feedback. However, the committee expresses its disappointment that the new application form, which was promised in November 2018, was still not available at the time of writing.

8.136 The committee is of the opinion that the redress application form and website should be subject to ongoing improvement.

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32 Recommendation 66 of the Royal Commission's report, *Redress and Civil Litigation*, August 2015.

33 Financial Counselling Australia, *Submission 41*, p. 1.

Delays in processing applications

8.137 The Department of Human Services (DHS) provided the following information in relation to the time taken to process applications:

- Median—147 calendar days.
- Minimum—41 calendar days.
- Maximum—207 calendar days.[34]

8.138 DHS confirmed that these processing times are from when all the relevant information has been received to the date the redress payment has been made.[35] Noting that an applicant has up to six months to consider an offer, it is not known the length of time an applicant took to accept the offer.

8.139 Additionally, the processing times provided do not start from the date when the applicant first submitted the application. The committee notes that there may be legitimate reasons why an application took longer to process, such as an institution only recently joining the scheme. However, from the survivor's perspective, the date that the application was submitted would be the date of significance to the survivor. Due to the manner in which the processing times have been calculated, the committee considers that it is difficult to draw conclusions in relation to these figures. However, the committee suggests that a more appropriate way to represent the processing times is:

- from the date the application was lodged to the date an offer was made;
- from the date all relevant information was received for an application to the date an offer was made; and
- from the date the offer was made to the date the offer was accepted.

8.140 The committee was advised by knowmore that 19 per cent of their clients were priority cases. The committee is concerned with this high proportion of priority cases and considers this is more reason to ensure that applications are processed as expeditiously as practicable.

8.141 The committee was also concerned with the example provided by knowmore involving a priority application taking six months to process. According to knowmore, the applicant was initially contacted soon after submitting the application, and was contacted again (in six months) when a decision was ready to be made. While the committee acknowledges that this is only one example, it is concerning that no contact was made with the applicant or knowmore for six months.

8.142 The committee is concerned that, apart from the age of the applicant, there appears to be no clear process which enables a survivor to inform the redress scheme of reasons why their application should be considered a priority. On

34 Ms Catherine Rule, Deputy Secretary, Programme Design Group, DHS, *Proof Committee Hansard,* 28 February 2019, pp. 24–25.

35 Ms Rule, *Proof Committee Hansard,* 28 February 2019, p. 24.

28 February 2019, the departments informed the committee that they have agreed on a set of guidelines in which to identify a priority case. DHS later informed the committee that these guidelines included the following considerations:

1. The applicant is terminally ill, dies, or is rapidly losing mental capacity.

2. The applicant is particularly vulnerable:

    a) is homeless

    b) is at risk of self-harm.

3. The applicant is elderly:

    a) for Indigenous Australians, the person is aged over 55

    b) for non-Indigenous Australians, the person is aged over 75.[36]

8.143 At the time of writing, these guidelines were not a public document, however, DHS advised that they would work with DSS to make the document public, including it being made available on the redress website. The committee is of the view that survivors should have access to relevant information which may impact on, or assist them with, their application.

8.144 The committee also notes that further information could be published on the redress website, which would assist in the transparency of the scheme. The committee notes the suggestions from knowmore, for the following information to be published on a monthly basis:

- Numbers of applications lodged, and where applicants are living (State or Territory level);
- Some basic non-identifying demographic information about applicants (e.g. percentage identifying as Aboriginal and/or Torres Strait Islander peoples; gender; and age groups);
- Numbers of priority cases;
- Data (similar to that below) about institutions named in the applications and their participation/non-participation status and, in time, the nature of those institutions (e.g. schools, juvenile detention centres, residential homes, religious settings etc.);
- Processing times (including for institutions to respond to requests for information) for priority and non-priority applications (perhaps in the form of a range of processing times, with median figures);
- Number of offers made and accepted;
- Broad information around the application of the Assessment Framework (e.g. of the redress payments accepted, what percentages involved a component recognising related non-sexual abuse; institutional vulnerability; and extreme circumstances of sexual abuse);

36 DHS, answers to questions on notice, 28 February 2019 (received 21 March 2019).

- Average redress payment made;
- (In time) Information about reviews requested and outcomes.[37]

8.145 The committee is supportive of the provision of regular updates as suggested by knowmore.

Recommendation 23

8.146 The committee recommends that the government ensures a clear process to allow survivors to indicate on the redress application form whether their application should be considered a priority.

Recommendation 24

8.147 The committee recommends that the government ensures that people are regularly informed of the progress of their application.

Recommendation 25

8.148 The committee recommends that the government publish, on the National Redress Scheme website, the average processing time for applications and other key data concerning the redress scheme, and that this data be regularly updated to ensure they are reasonably current. The average processing time should be from either:

- **the date the application was lodged to the date an offer was made; or**
- **the date all relevant information was received for an application to the date an offer was made.**

Reviews

8.149 The committee notes with concern the evidence it has received relating to institutions refusing to engage in genuine negotiations during common law settlements, where the amount sought by the survivor was more than what would be offered under redress. The committee expresses its deep dissatisfaction with institutions that may be using the redress scheme as leverage in common law negotiations. The committee notes that the regulation of the legal profession is the jurisdiction of states and territories and therefore acknowledges the difficulties in being able to oversee the conduct of the legal profession. Notwithstanding this barrier, the committee is of the view that consideration be given to establishing a complaints mechanism to oversee the misconduct of lawyers acting on behalf of relevant institutions and other individuals assisting survivors to complete application forms.

8.150 While the redress scheme provides for an internal review, no provision is made for an external review. The committee acknowledges the concerns raised by inquiry participants that external reviews provide a key accountability mechanism. The committee also acknowledges that a deliberate decision was taken on the advice

37 knowmore, answers to questions on notice, 28 February 2019 (received 13 March 2019).

of the Advisory Council, that external reviews would be 'overly legalistic, time-consuming, expensive and would risk harm to survivors'.[38]

8.151 During the course of this inquiry, concerns were also raised that additional information could not be provided at the review stage. An example provided by knowmore was the inability to draw the reviewer's attention to two similar cases where one claim was accepted while another was rejected. The committee is of the view that applicants should be provided the opportunity to submit additional information in support of their review. This is particularly important given the inability to seek an external review, combined with the limitation that survivors may only make one application.

8.152 A number of submitters also raised concerns that a review may result in an applicant receiving a lower redress amount. The committee heard that it is not uncommon in the hearing of sentence appeals for an appellant to be informed of a court's intention to increase the sentence should the appeal proceed to judgement and effectively allow the appellant the opportunity to withdraw the matter. Notwithstanding the barriers to legislative change, the committee cannot see a reason why such an approach should not be taken with respect to redress reviews.

Recommendation 26

8.153 The committee recommends that Commonwealth, state and territory governments agree to and implement amendments necessary to allow applicants to provide additional information in support of their review application, up to the point of the redress payment being made.

Recommendation 27

8.154 The committee recommends that Commonwealth, state and territory governments agree to and implement amendments necessary to ensure that a review does not result in an applicant receiving a lower redress amount than their original offer.

Recommendation 28

8.155 The committee recommends that the government closely monitor the timeliness of internal review determinations.

Statutory reviews

8.156 The committee supports the initiation of a statutory review process at the second and eighth years of the commencement of the scheme. However, the committee shares the concerns expressed by submitters and witnesses that to wait two years to commence a review into the operation of the scheme may be too long. The committee is of the view that a scheme with such importance as the redress scheme should continue to have oversight to allow issues to be resolved when they are identified.

38 Explanatory Memorandum to the Act, p. 10.

8.157 Nine months has passed since the commencement of the scheme, however only a small proportion of survivors have applied to the scheme. An even smaller proportion (88) has received a redress offer. The committee has highlighted many concerns, but acknowledges that there is still much uncertainty, particularly in relation to how the counselling and psychological component, and the direct person response component, will operate in practice. As the scheme continues, it is likely that issues concerning the implementation of these two components will emerge. The committee sees merit in the continuation of a similar committee, over the life of the redress scheme, to oversee and highlight these implementation problems as they arise.

Recommendation 29

8.158 The committee recommends that the new Parliament consider the establishment of a parliamentary committee, similar to this committee, to oversee the National Redress Scheme throughout the life of the scheme.

Senator Derryn Hinch
Chair

Appendix 1

Resolution establishing the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse

(1) That a joint select committee, to be known as the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse be established following the tabling of the final report of the Royal Commission to inquire into and report upon:

(a) the Australian Government policy, program and legal response to the redress related recommendations of the Royal Commission, including the establishment and operation of the Commonwealth Redress Scheme and ongoing support of survivors; and

(b) any matter in relation to the Royal Commission's redress related recommendations referred to the committee by a resolution of either House of the Parliament.

(2) That the committee present its final report on the final sitting day of November 2018.

(3) That the committee consist of 8 members - 4 senators, and 4 members of the House of Representatives, as follows:

(a) 2 members of the House of Representatives to be nominated by the Government Whip or Whips;

(b) 2 members of the House of Representatives to be nominated by the Opposition Whip or Whips;

(c) 1 senator to be nominated by the Leader of the Government in the Senate;

(d) 1 senator to be nominated by the Leader of the Opposition in the Senate;

(e) 1 senator to be nominated by any minority party or independent senator; and

(f) the Leader of Derryn Hinch's Justice Party (Senator Hinch).

(4) That:

(a) participating members may be appointed to the committee on the nomination of the Government Whip in the House of Representatives, the Opposition Whip in the House of Representatives, the Leader of the Government in the Senate, the Leader of the Opposition in the Senate or any minority party or independent senator or member of the House of Representatives; and

(b) participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of the committee, but may not vote on any questions before the committee.

(5) That every nomination of a member of the committee be notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(6) That the members of the committee hold office as a joint select committee until the House of Representatives is dissolved or expires by effluxion of time.

(7) That the committee may proceed to the dispatch of business notwithstanding that all members have not been duly nominated and appointed and notwithstanding any vacancy.

(8) That Senator Hinch be appointed as chair of the committee and the committee elect as deputy chair a member or senator nominated by the Opposition.

(9) That the deputy chair shall act as chair of the committee at any time when the chair is not present at a meeting of the committee, and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(10) That the committee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament and have leave to report from time to time its proceedings and the evidence taken and such interim recommendations as it may deem fit.

(11) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President of the Senate and the Speaker of the House of Representatives.

(12) That the committee be empowered to print from day to day such papers and evidence as may be ordered by it, and a daily Hansard be published of such proceedings as take place in public.

(13) That the committee have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives.

(14) That the provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

(15) That a message be sent to the House of Representatives seeking its concurrence in this resolution.

Appendix 2

Submissions, additional information, answers to questions on notice and tabled documents

Submissions

1. Ms Chrissie Foster

   Supplementary to submission 1
2. Aboriginal Health & Medical Research Council
3. Ms Rhonda Janetzki
4. Australian Lawyers Alliance
5. Kelso Lawyers
6. Actuaries Institute
7. Blue Knot Foundation
8. Tuart Place
9. Relationships Australia
10. Children and Young People with Disability Australia
11. Alliance for Forgotten Australians
12. Relationships Australia Victoria
13. Mr Philip Hodges
14. Name Withheld
15. Commonwealth Ombudsman
16. Confidential
17. Setting the Record Straight for the Rights of the Child Initiative
18. The Centre for Excellence in Child & Family Welfare
19. Department of Social Services and Department of Human Services
20. Jesuit Social Services
21. Interrelate
22. Federation of Ethnic Communities' Councils of Australia (FECCA)
23. Ms Ellen Bucello
24. Ms Shelly Braieoux
25. Maurice Blackburn Lawyers

26. Victorian Aboriginal Child Care Agency
27. Mr Frank Golding OAM
28. Australian Association of Social Workers
29. Law Council of Australia
    Supplementary to submission 29
30. Australian Catholic Bishops Conference
31. knowmore
32. People with Disability Australia
33. Name Withheld
34. Shine Lawyers
35. Ms Cheryl Brealey
36. ANGELA SDRINIS Legal
37. Ms Zoe Papageorgiou
38. Anglican Church of Australia
39. Dr Chris Atmore and Dr Judy Courtin
40. Care Leavers Australasia Network (CLAN)
41. Financial Counselling Australia
42. Name Withheld
43. Name Withheld
    Supplementary to submission 43
    Supplementary to submission 43
44. Mr Paul Gray
45. Ms Kate
46. Dr Tamara Blakemore and Dr Kathleen McPhillips
47. Name Withheld
48. Name Withheld
49. Professor Kathleen Daly and Ms Juliet Davis
    Supplementary to submission 49
    Supplementary to submission 49
50. Name Withheld
51. Name Withheld

52. Ms Lara Kaput and Mr Steven Unthank
53. Ms Renee Pickles

Additional Information

1. Additional information provided by Mr Peter Gogarty, received on 13 November 2018.
2. Forde Foundation – Correction to evidence given on 7 November 2018 (received 17 December 2018).
3. Additional information provided by Mr John Parmeter at the Newcastle public hearing, 8 November 2018. .

Answers to Questions Taken On Notice

1. Alliance for Forgotten Australians, answers to questions on notice, 8 October 2018 (received 25 October 2018).
2. Department of Human Services, answers to questions on notice, 10 October 2018 (received 29 October 2018).
3. Judy Courtin Legal, answers to questions on notice, 10 October 2018 (received 29 October 2018).
4. Commonwealth Ombudsman, answers to questions on notice, 10 October 2018 (received 1 November 2018).
5. Department of Social Services - answer to question taken on notice at the public hearing on 08 November 2018 (received 27 November 2018).
6. Department of Social Services – answers to questions taken on notice at the public hearing on 10 October 2018 (received 8 November 2018).
7. Forde Foundation - answer to question taken on notice at the public hearing on 7 November 2018 (received 11 December 2018).
8. Dr Tamara Blakemore - answers to questions taken on notice at the public hearing on 8 November 2018 (received 28 November 2018).
9. knowmore - answers to questions taken on notice at the public hearing on 28 February 2019 (received 13 March 2019
10. Department of Human Services - answers to questions taken on notice at the public hearing on 28 February 2019 (received 21 March 2019)

11. Department of Human Services - answers to questions taken on notice at the public hearing on 28 February 2019 (received 15 March 2019)
12. Department of Social Services - answers to questions taken on notice at the public hearing on 28 February 2019 (received 19 March 2019)
13. Department of Social Services - answers to questions taken on notice at the public hearing on 28 February 2019 (received 20 March 2019)
14. Department of Social Services - answers to written questions taken on notice sent on 8 March 2019 (received 22 March 2019
15. Attorney-General's Department, answers to written questions on notice, 12 March 2019 (received 1 April 2019)
16. Department of Social Services - answers to written questions on notice sent on 8 March 2019 (received 19 March 2019)
17. Department of Social Services - answers to written questions on notice sent on 12 March 2019 (received 20 March 2019)
18. Department of Social Services - answers to written questions on notice sent on 8 March 2019 (received 20 March 2019)

Tabled Documents

1. Document tabled by the Department of Human Services at the public hearing on 10 October 2018.
2. Document tabled by knowmore at the public hearing on 10 October 2018.
3. Document tabled by Micah Projects at the public hearing on 7 November 2018.
4. Document tabled by Mr Peter Gogarty from the public hearing on 8 November 2018.
5. Document tabled by the Forde Foundation at the public hearing on 08 November 2018.
6. Document tabled by Knowmore at the public hearing on 28 February 2019.

Appendix 3

Public Hearings

Melbourne VIC; 8 October 2018

Members in attendance: Senators Hinch, Moore and Ms Claydon, Mr Laundy.

ATMORE, Dr Chris, Lawyer and Advocate, Judy Courtin Legal

BEVITT, Mrs Harriet, Policy Officer, The Centre for Excellence in Child and Family Welfare

BOWDEN, Mr Matthew, Co-Chief Executive Officer, People with Disability Australia

CARROLL, Ms Caroline, OAM, Chair, Alliance for Forgotten Australians

COURTIN, Dr Judy, Principal Lawyer and Advocate, Judy Courtin Legal

EVANS, Associate Professor Joanne, Convenor, Setting the Record Straight for the Rights of the Child Initiative

GARTLAN, Mr Peter, Consultant, Financial Counselling Australia

GOLDING, Mr Frank, OAM, Private capacity

KASPIEV, Mr Boris, Executive Officer, Alliance for Forgotten Australians

LEVIN, Ms Lauren, Director, Policy and Campaigns, Financial Counselling Australia

McCARTHY, Mrs Lucy, Practice Specialist—Therapeutic Services, Relationships Australia Victoria

McINTYRE, Ms Jeannie, Manager, Redress Support Service, Victorian Aboriginal Child Care Agency

ROLAN, Dr Gregory, Research Fellow, Faculty of Information Technology, Monash University as part of Setting the Record Straight for the Rights of the Child Initiative

TSORBARIS, Ms Deb, Chief Executive Officer, The Centre for Excellence in Child and Family Welfare

Sydney NSW; 10 October 2018

Members in attendance: Senators Hinch, Moore, Ms Claydon and Mr Laundy.

ATKINS, Mr Geoff, Member, Actuaries Institute

CARTWRIGHT, Ms Susan, National Manager, National Redress Scheme, Department of Human Services

FAM, Mr Peter, Solicitor, Kelso Lawyers

FLYNN, Mrs Lisa, Special Counsel, Shine Lawyers

GORDON, Ms Raylene, Chief Executive Officer, Aboriginal Health and Medical Research Council of New South Wales

HARRIS, Ms Kristen, Senior Counsel, Care Leavers Australasia Network

HEFREN-WEBB, Ms Elizabeth, Deputy Secretary, Department of Social Services

KATAUSKAS, Ms Lee, Acting Senior Assistant Ombudsman Strategy, Office of the Commonwealth Ombudsman

KELSO, Mr Ashley, Senior Associate, Kelso Lawyers

KELSO, Mr Peter, Director, Kelso Lawyers

KELSO, Ms Lydia, Solicitor, Kelso Lawyers

KEZELMAN, Dr Cathy, AM, President, Blue Knot Foundation

MANTHORPE, Mr Michael, Commonwealth Ombudsman, Office of the Commonwealth Ombudsman

MORRISON, Dr Andrew, RFD QC, Spokesperson, Australian Lawyers Alliance

PFITZNER, Mr Paul, Senior Assistant Ombudsman Program Delivery, Office of the Commonwealth Ombudsman

RULE, Ms Catherine, Deputy Secretary, Programme Design Group, Department of Human Services

SEAMAN, Miss Cassandra, Senior Policy Officer, Aboriginal Health and Medical Research Council of New South Wales

SHEEDY, Ms Leonie, Chief Executive Officer, Care Leavers Australasia Network

STRANGE, Mr Warren, Executive Officer, knowmore legal service

STUART, Ms Sharon, Branch Manager, Redress Policy and Legislation, Department of Social Services

SWAIN, Ms Anna, Acting Managing Lawyer, knowmore legal service

WILLINGTON, Mrs Jolanta, Acting Branch Manager, Redress Implementation, Department of Social Services

Brisbane QLD; 7 November 2018

Members in attendance: Senators Hinch, Moore and Ms Claydon, Mr Dick.

ADAMS, Ms Mary, Historical Abuse Network

ALLAWAY, Mr Allan, Historical Abuse Network

CURNOW, Mr Jeffrey, Care Leavers Australasia Network

GALDAMEZ, Mrs Silvia, National Manager of Advocacy and Support Services, Bravehearts Foundation

JAMES, Ms Michelle, Principal Lawyers, Maurice Blackburn Lawyers

LUTHY, Mr Terrence, Past President, Care Leavers Australasia Network

MATHEWS, Professor Ben, Private capacity

RYAN, Mr Rob, Chair, Forde Foundation Board of Advice

THOMPSON, Mrs Deirdre, Director of Therapeutic and Support Services, Bravehearts Foundation

WALSH, Ms Karyn, Chief Executive Officer, Micah Projects

Newcastle NSW, 8 November 2018

Members in attendance: Senators Hinch, Siewert and Ms Claydon.

ANDERSEN, Mr Michael John, Private capacity

ANDERSEN, Mrs Glenis, Private capacity

BLAKEMORE, Dr Tamara, Senior Lecturer, Social Work, University of Newcastle

BRIDGER, Ms Maree, Acting Deputy Secretary, Program Design Group, Department of Human Services

CARTWRIGHT, Ms Susan, National Manager, National Redress Scheme, Department of Human Services

Cate, Private capacity

GOGARTY, Mr Peter, Private capacity

McCARTHY, Ms Joanne, Journalist, Newcastle Herald

McPHILLIPS, Dr Kathleen, Senior Lecturer, University of Newcastle

MILLER, Mr James, Private capacity

O'HEARN, Ms Maureen, Coordinator—Healing and Support, Zimmerman Services, Diocese of Maitland Newcastle

PARMETER, Mr John, Private capacity

STUART, Ms Sharon, Branch Manager, Redress Policy and Legislation, Department of Social Services

TALONI, Mr Bruce, Group Manager, Redress and Reform Group, Department of Social Services

WILLINGTON, Ms Jolanta, Director, Scheme Implementation, Redress Implementation Branch, Department of Social Services

Canberra ACT; 28 February 2019

Members in attendance: Senators Hinch, Siewert and Ms Claydon, Mr Dick, Mrs Sudmalis.

BRIDGER, Ms Maree, General Manager, Child Support and Redress Division, Department of Human Services

CREECH, Mrs Tracy, Branch Manager, Redress Implementation, Department of Social Services

HEFREN-WEBB, Ms Elizabeth, Deputy Secretary, Families and Communities, Department of Social Services

RULE, Ms Catherine, Deputy Secretary, Programme Design Group, Department of Human Services

STRANGE, Mr Warren, Executive Officer, knowmore Legal Service

STUART, Ms Sharon, Branch Manager, Redress Policy and Legislation, Department of Social Services

SWAIN, Ms Anna, Acting Managing Lawyer, knowmore Legal Service

TALONI, Mr Bruce, Group Manager, Redress and Reform, Department of Social Services

Appendix 4

National Redress Scheme – Redress application form as at 1 April 2019

National
Redress Scheme
For people who have experienced institutional child sexual abuse

Application for Redress

Use this form to apply for redress under the National Redress Scheme

What is Redress?

Redress means to acknowledge harm done. The National Redress Scheme (the Scheme) seeks to acknowledge harm done to people who experienced institutional child sexual abuse.

What redress is available through the Scheme?

1. Access to counselling and psychological services.
2. A direct personal response from the institution(s) responsible for the abuse.
3. A redress payment.

Contact the Scheme

- Visit **nationalredress.gov.au**
- Phone **1800 737 377** (call charges may apply). Contact us 8.00am – 5.00pm local time Monday to Friday, excluding public holidays.
- If calling from overseas, please call +61 3 6222 3455 and ask to speak to someone from the National Redress Scheme.

Return your completed application to

NRS
Reply Paid 7750
Canberra BC ACT 2610
Australia

Please make and keep a copy of your completed application before you return it to us.

Information and help

More information

You can find more information about the Scheme at **nationalredress.gov.au**

You can register to receive email updates about the Scheme, including updates when new institutions join the Scheme at **nationalredress.gov.au**

Help to apply

Redress Support Services are specialist community based services available to people applying for redress under the Scheme. They can offer you information and support to complete your application for redress.

Find more information about these support services at **nationalredress.gov.au** You can also contact us for help to find support services on **1800 737 377** (call charges may apply). If you are calling from overseas, please call +61 3 6222 3455 and ask to speak to someone from the National Redress Scheme.

People applying to the Scheme can access free redress legal advice through knowmore.

The knowmore legal service is for anyone considering applying to the National Redress Scheme. It is free, confidential and independent.

knowmore will help you work out if applying to the National Redress Scheme or making a civil claim is a better option for you. knowmore can also assist you through the application process for the National Redress Scheme.

You may want to use your own legal service to obtain advice and assistance. This may not be free.

Contact knowmore at **knowmore.org.au** or call **1800 605 762** (call charges may apply). If calling from overseas, please call +61 2 8267 7400.

Redress nominees

A redress nominee is a person or an organisation who can act on your behalf for the purposes of the Scheme.

A redress nominee would act for you if you:

- want to apply for redress but you do not want to deal with us yourself;
- need extra support to deal with us; or
- have an existing legal arrangement, such as a Power of Attorney, Guardianship or Financial Management Order.

For more information about what nominees can do on your behalf in the Scheme, or to get a copy of the Redress Nominee Form: *Authorising a person or organisation to act on your behalf*, visit **nationalredress.gov.au** or contact us on **1800 737 377** (call charges may apply). If you are calling from overseas, please call +61 3 6222 3455 and ask to speak to someone from the National Redress Scheme.

Eligibility for the Scheme

Find more information about eligibility under the Scheme at **nationalredress.gov.au**

To be eligible

- You experienced sexual abuse when you were a child (under 18 years of age);
- The sexual abuse happened before the Scheme start date of 1 July 2018; and
- An institution was responsible for bringing you into contact with the person who sexually abused you. The institution must be participating in the Scheme.

You can only make one application

You can only make one application for redress under the Scheme. Please use the application to write about each institution where you experienced sexual abuse. You can withdraw your application at any time prior to a decision on your application being made.

The Scheme will use the information you give and any other information available to assess your application. This would include information provided by the institution.

You can apply up until 30 June 2027.

Residency

To be eligible, you need to be an Australian citizen or permanent resident at the time you apply for redress. You did not need to be an Australian citizen or permanent resident at the time the abuse happened.

Participating institutions

To be eligible, a participating institution must be responsible for the abuse.

A participating institution is an institution that has chosen to join the Scheme.

A responsible institution is one that brought you into contact with the person or people who sexually abused you.

If you would like to find out which institutions are participating in the Scheme visit **nationalredress.gov.au** You can register to receive email updates about the Scheme, including when new institutions join the Scheme at **nationalredress.gov.au**

Children applying to the Scheme

If you will turn 18 years of age before 30 June 2028 you can apply for redress.

A decision about whether you are eligible for redress will not be made until you turn 18 years of age.

If you will not turn 18 years of age before the Scheme ends on 30 June 2028, you could consider seeking advice about your options from knowmore. Contact knowmore at **knowmore.org.au** or call **1800 605 762** (call charges may apply). If calling from overseas, please call +61 2 8267 7400.

Serious criminal convictions

Your eligibility may be impacted if you have been convicted of an offence and have been sentenced to imprisonment for five years or more. The conviction may have happened in Australia or overseas.

You should still apply.

When you apply, we will contact you to get more information and to explain the next steps in the application process for applicants with serious criminal convictions.

When can you not apply for redress?

You cannot apply for redress:

- if you have already made an application and a decision has been made;
- if you do not turn 18 years of age before 30 June 2028;
- if you are in gaol (unless there are exceptional circumstances);
- after 30 June 2027 (unless there are exceptional circumstances).

If you have any doubt about your eligibility please contact us on **1800 737 377** (call charges may apply). If you are calling from overseas, please call +61 3 6222 3455 and ask to speak to someone from the National Redress Scheme.

The use of your information

Privacy Notice

The Australian Government Department of Human Services (the department) is responsible for the administration of the Scheme. Your personal information is protected by law, including the *Privacy Act 1988*. It is collected by the department to administer the Scheme, including to assess your application for redress.

Your information may be used by the department, or given to other parties where you have agreed, or where the law allows or requires it.

You can find out more about the way the department will manage your personal information, including our privacy policy, at **humanservices.gov.au/privacy**

Information sharing

Some of the information you provide in your application will be shared with the institution(s) responsible for the abuse. This exchange of information is so that we can assess your application and the responsible institution(s) can provide you with redress.

From Part 1: Your name and date of birth will be shared.

From Part 2: Your experience of sexual abuse and Part 3: The impact sexual abuse has had across your life, will be shared with the responsible institution(s) your answers are relevant to.

Freedom of Information

The *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* prohibits the disclosure of all information that the department obtains for the purposes of the Scheme (secrecy provisions), except in very limited circumstances.

Documents to which the secrecy provisions apply may be exempt from disclosure to any third party under the *Freedom of Information Act 1982*.

Child safe reporting

We have obligations to report risks of ongoing abuse, based upon the information in your application, to the police and/or child protection authorities.

We will contact you to let you know if we need to report the abuse.

You should also be aware that institutions may have obligations to report child abuse.

Things to think about before you apply

To apply for redress you will need to:

- give personal information to us;
- confirm your identity with us;
- write about the sexual abuse and related non-sexual abuse that happened to you as a child;
- write about the impact child sexual abuse has had across your life; and
- sign the statutory declaration at the back of this application and have it witnessed.

When you apply for redress you acknowledge that:

- the Scheme will need to call and send you letters;
- some information about the people who sexually abused you may be reported to police and/or child protection authorities;
- your name, date of birth, Part 2, and Part 3 of this application will be shared with the relevant institution(s). The institution(s) may need to provide this information to their insurer;
- we will share some information with the institution(s) relevant to your redress. We need to do this to confirm who was responsible for the abuse; and
- decisions about your redress will be shared with the responsible institution(s). This may be a decision about your eligibility, an offer of redress or an outcome from a review. If you accept an offer of redress the institution will use this information to check that you are not pursuing further claims against them.

Before you apply for redress you may also want to:

- know that you do not need to have statements, reports, photographs or other evidence to apply, but you can attach them if you want to;
- find out what a redress payment may mean for you. For example, a redress payment is exempt from income tax, but may affect various Centrelink asset tests; and
- check that you are an Australian citizen or permanent resident. You must be either of these to apply.

Other things you may want to know before you apply:

- we are able to request more information from you and participating institutions, if we need it;
- we may need to contact you to talk about your options if an institution you have identified in your application as responsible for abuse is not participating in the Scheme; and
- if you accept an offer of redress you need to sign a document that will release the institution(s) from further claims. Free legal advice and information about redress is available through knowmore. Contact knowmore at **knowmore.org.au** or call **1800 605 762** (call charges may apply). If calling from overseas, please call +61 2 8267 7400.

There is more information at **nationalredress.gov.au**

Quick facts about applying for redress

- Apply in your own time and at your own pace. You can apply online or by using this application form.
- Redress Support Services are specialist community based services available to people applying to the Scheme. They can offer you information and support to complete your application for redress.
- Find more information about these services at **nationalredress.gov.au** You can also contact us for help to find support services on **1800 737 377** (call charges may apply). If you are calling from overseas, please call +61 3 6222 3455 and ask to speak to someone from the National Redress Scheme.
- If you don't have an answer please write what you can, then keep going with your application. There is information to help you answer the questions at **nationalredress.gov.au** You can also contact us on **1800 737 377** (call charges may apply).
- You should write about each institution responsible for bringing you into contact with the person or people who sexually abused you. You can only make one application for redress under the Scheme so it is important to include details in your application about each of these institutions.
- Before you submit your application, you will need to sign a statutory declaration in front of a witness. The witness does not need to look at any of your answers, they only need to see you sign the declaration. Some people who can witness your signature include nurses, pharmacists or legal practitioners. You can find the entire list on page 2 of the Statutory Declaration.
- There is a checklist at the back of the application so you can make sure your application is complete.
- We will contact you to confirm that your application has been received and to talk to you about what will happen next.
- It is important to let us know if you have changed your contact details. We can only use the contact details you provide.
- To add more information after you have submitted your application please contact us. You can add more or change your application up to the time a decision has been made.
- You can withdraw your application up to the time a decision has been made. You may choose to withdraw because you want to change or add more information, or if you want to wait to see if a particular institution decides to participate in the Scheme. Call us to discuss your options on **1800 737 377** (call charges may apply).
- If you are uncertain about a question please contact us on **1800 737 377** (call charges may apply). If you are overseas, please call +61 3 6222 3455 and ask to speak to someone from the National Redress Scheme.
- We can accept applications up until 30 June 2027.

Answering the questions in this form

To apply for redress you need to fill out this application. Complete all three parts plus the statutory declaration.

Part 1 Asks personal information

This section asks for information about:

- your name, date of birth and contact details;
- your eligibility for the Scheme;
- your identity.

You need to answer all of the questions in Part 1.

Part 2 Asks about your experience of sexual abuse

This section asks confronting questions about your experience of child sexual abuse and related non-sexual abuse, please:

- write about the institution responsible for bringing you into contact with the person or people who abused you;
- if you were abused in more than one institution, please include each one separately in this application;
- answer with as much detail as you can.

Part 3 Asks about the impact sexual abuse has had across your life

You need to answer this question. You only need to write about the impact once, even if you have written about more than one institution in Part 2.

Statutory declaration

When you make an application for redress under the Scheme you need to make a statement that the information you are providing is true, and any documents attached are true copies of the originals.

To do this, please sign the statutory declaration at the end of this form and have it witnessed. A list of people that can witness your statutory declaration is included in this form. It is an offence to intentionally make a false statement in a statutory declaration.

For more information:

- visit **nationalredress.gov.au**
- seek help from Redress Support Services;
- call us on **1800 737 377** (call charges may apply). If calling from overseas, please call +61 3 6222 3455 and ask to speak to someone from the National Redress Scheme.

How to fill in this form

Write clearly so we can understand.

Write in BLOCK letters.

N	A	M	E						

Use Black Pen.

Black out where you make a mistake.
Please do not use correction fluid or tape.
Please initial any changes you make.

	N	A	M	E					

Mark boxes like this ☒

Part 1: Your personal information

1 Your name

Your name will be exchanged with the relevant institution(s).

☐ Mr ☐ Mrs ☐ Miss ☐ Ms ☐ No title

☐ Other

First name

Other given name

Other given name

Last name

2 What name would you like us to use?

☐ Please use the name above
OR

☐ Use a different name. (please write this below)

3 What is your date of birth (DD/MM/YYYY)?

Your date of birth will be exchanged with the relevant institution(s).

If you do not know your date of birth please write 01/ 01/ YEAR.

Where you know only part of your date of birth, use an X to show the parts you are not sure of and write the parts you know.

For example: XX / 10/ 1951.

☐☐ / ☐☐ / ☐☐☐☐

4 What is your residential address?
Please do not use a PO Box for this question.

Street

Suburb

State ☐ ACT ☐ NSW ☐ VIC ☐ WA
☐ TAS ☐ QLD ☐ NT ☐ SA ☐ Overseas

Postcode

Country

5 What is your postal address?
You can use a PO Box, mailing address or myGov. You can choose more than one option.

☐ Use the address above

☐ Use a different address (please write this in the space below)

☐ Use myGov inbox You will need to link your myGov account to the Scheme. Visit **my.gov.au**

Street / PO Box

Suburb

State ☐ ACT ☐ NSW ☐ VIC ☐ WA
☐ TAS ☐ QLD ☐ NT ☐ SA ☐ Overseas

Postcode

Country

Questions 6 – 17 are about your eligibility. You may want to speak with Redress Support Services to see if the Scheme is right for you.

6 Were you under 18 years of age when the sexual abuse happened?

☐ Yes

☐ No

7 Did the sexual abuse happen before the Scheme start date of 1 July 2018?

☐ Yes

☐ No

8 Was an institution responsible for bringing you into contact with the person or people who sexually abused you?

☐ Yes

☐ No Please contact us on **1800 737 377** (call charges may apply).

9 Have you already applied to the Scheme?

You can only make one application for redress under the Scheme. If you have already applied to the Scheme and want to add to or change your application, you will need to withdraw your application and submit a new application. Please contact us on **1800 737 377** (call charges may apply) if you want help to withdraw your application.

If you have already applied to the Scheme and a decision has been made on your application you should not complete this form as you cannot make another application.

☐ Yes Please write your Redress ID in the box below (if known)
You can find this on the top of most letters you have received from the Scheme.

R	V								

☐ No

10 Has an institution already paid you damages ordered by a court?

☐ Yes It is recommended you seek advice. Free legal advice is available through knowmore. Visit **knowmore.org.au** or call **1800 605 762** (call charges may apply). If calling from overseas, please call +61 2 8267 7400.

☐ No

11 Are you an Australian citizen?
You must be an Australian citizen or permanent resident at the time you apply. You did not have to be an Australian citizen or permanent resident at the time the sexual abuse happened.

☐ Yes (go to question 16)

☐ No

12 Are you a permanent resident of Australia?

☐ Yes

☐ No

13 Do you have a visa?

☐ Yes What type of visa?

- ☐ Permanent
- ☐ Temporary
- ☐ Unknown (for example arrived on parent's passport)

☐ No Please contact us on **1800 737 377** (call charges may apply)

14 What is your visa number?

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

15 What date was the visa granted?
Please write DD/MM/YYYY.

☐☐ / ☐☐ / ☐☐☐☐

16 Have you been convicted of an offence and sentenced to imprisonment for a period of 5 years or more in Australia or a foreign country?
This can impact eligibility. You should still apply, but we will need to contact you for more information.

☐ Yes

☐ No

17 Are you currently in gaol?
You cannot apply from gaol. You can apply once you leave gaol. You may be able to apply from gaol if exceptional circumstances apply. Please contact us on **1800 737 377** (call charges may apply) to find out if these apply to you.

☐ Yes

☐ No

18 What is your preferred spoken language?
Please write one language.

19 What phone number should we use to call you?
We will call to let you know your application has been received and if more information is needed. We will call before sending you a letter about any decision about your application.

20 Can we leave voice messages for you?
If you answer yes to this question it means we can leave you a message asking you to contact us on **1800 737 377** (call charges may apply). The message will not specifically identify the Scheme. Please choose one option.

☐ Yes Use the phone number at question 19

☐ Yes Use this number

☐ No Do not leave voice messages for me

21 Can we send SMS to you?
If you answer yes to this question it means we can send you SMS asking you to contact us on **1800 737 377** (call charges may apply). The SMS will not specifically identify the Scheme. Please choose one option.

☐ Yes Use the phone number at question 19

☐ Yes Use this number

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐ No

22 Is there another way to leave you a message asking you to contact us?
This would only be used if we were unable to make contact with you using any of the options above. Is there an organisation, for example a Redress Support Service, where a message could be left for you?

☐ Yes Please give details below

☐ No

Organisation name

Contact person

Phone number

23 What is your gender?

☐ Male

☐ Female

☐ X Indeterminate/Intersex/Unspecified

24 Are you an Aboriginal Australian or Torres Strait Islander Australian?

☐ Yes Aboriginal Australian

☐ Yes Torres Strait Islander Australian

☐ Yes Both Aboriginal and Torres Strait Islander Australian

☐ No

☐ I choose not to answer this question

25 Do you have a disability?

☐ Yes

☐ No

☐ I choose not to answer this question

Please briefly describe the nature of your disability below

26 How will you confirm your identity with the Scheme?

Confirming your identity is one way your privacy and your information is protected.

Please write your Centrelink Customer Reference Number (CRN), if you have one. We will call you to ask some questions about your identity and to discuss next steps.

My CRN is

☐☐☐☐☐☐☐☐☐ ☐

If you do not have a CRN, you will need to visit a Centrelink service centre. You will need to take the required identity documents with you.

At least one of these documents must have a photo of you. All documents must be original. We cannot accept:

- copies or certified copies;
- expired documents.

You can find out more about the documents you can use to confirm your identity at **humanservices.gov.au/identity**

The validity of your documents will be checked with the authority that issued them.

When you provide these documents, you are agreeing to your documents being validated in this way.

Help and support to confirm your identity

It may be difficult for some people to confirm their identity. If you are finding it hard to find your identity documents or visit a Centrelink service centre, please contact us on **1800 737 377** (call charges may apply). If you are calling from overseas, please call +61 3 6222 3455 and ask to speak to someone from the National Redress Scheme.

You can find your nearest Centrelink service centre at **humanservices.gov.au/findus**

27 Do you have a Power of Attorney, Guardianship or Financial Management Order in place?

☐ Yes

☐ No (go to question 29)

28 Will they be acting on your behalf in the Scheme?

☐ Yes Please attach a copy of the Power of Attorney, Guardianship or Financial Management Order.
A Redress Nominee Form: *Authorising a person or organisation to act on your behalf* will need to be completed.
Download the form at **nationalredress.gov.au** or contact us on **1800 737 377** (call charges may apply). If you are calling from overseas, please call +61 3 6222 3455 and ask to speak to someone from the National Redress Scheme.

☐ No The orders do not cover decisions relevant to redress

☐ Not sure Please attach a copy of your orders and we will contact you.

29 Would you like to appoint a nominee to act for you with the Scheme?

☐ Yes You and your nominee need to complete the Redress Nominee Form: *Authorising a person or organisation to act on your behalf*. You need to do this even if they are already your nominee for Centrelink.
Download the form at **nationalredress.gov.au** or contact us on **1800 737 377** (call charges may apply). If you are calling from overseas, please call +61 3 6222 3455 and ask to speak to someone from the National Redress Scheme.

☐ No

30 Bank account details

You can provide your details now or you can provide them once an offer of redress is made to you.

For Australian bank accounts

Branch or BSB number

Account number (this may be different to the card number)

Name(s) the account is held in

For International bank accounts

Please provide all relevant account details below

What comes next?

The next page has instructions for answering the questions in Part 2, Your experience of sexual abuse.

Part 2: Your experience of sexual abuse

Part 2 asks you to answer some confronting questions.

In this section, you will be asked to describe:

- your experience of child sexual abuse; and
- non-sexual abuse such as physical abuse, psychological abuse or neglect; and
- the person or people who abused you.

How to answer these questions

You can only make one application for redress under the Scheme. You need to write about each institution responsible for bringing you into contact with the person or people who sexually abused you. Please ensure you:

- give detail so your answers show the type and extent of the abuse that happened to you;
- remember there are no wrong answers; and,
- know we are not looking at spelling or grammar.

What will be shared?

The law requires that the whole of Part 2 be shared with those participating institution(s) relevant to your redress.

The institution(s) will use this to look for records they may have about:

- when the abuse happened; and
- the person or people who abused you.

We understand some institutions may not have records. Please do not be concerned, this will not stop your application from being assessed.

If these questions raise any issues for you, please seek support from a person or service you trust.

Redress Support Services can help. Find more about these services at **nationalredress.gov.au** You can also contact us for help to find support services on **1800 737 377** (call charges may apply). If you are calling from overseas, please call +61 3 6222 3455 and ask to speak to the National Redress Scheme.

If you need immediate support, 24-hour telephone assistance is available through:

- Lifeline: **13 11 14**
- 1800RESPECT: **1800 737 732**
- MensLine Australia: **1300 789 978**
- beyondblue: **1300 224 636**
- Suicide Call Back Service: **1300 659 467**.

Help to answer questions in Part 2

In Part 2 you need to answer questions about each institution responsible for bringing you into contact with the person or people who sexually abused you.

Important: If you experienced child sexual abuse in multiple institutions, please copy pages 12 to 26 before you write on them. You need to complete pages 12 to 26 for each of the institution(s) you were sexually abused in.

- You need to copy pages 16 and 17 if you will be writing about more than one person who abused you.
- You may need to copy pages 23 to 26 if you have had more than one prior payment for the abuse.

You may want to use the table below to assist you to put your experience of abuse in order.

It may also help you work out which pages you need to copy.

Name of institution	Date
	/ /
	/ /
	/ /

31 Please use this space to give as much identifying information as you can about the institution responsible for bringing you into contact with the person or people who abused you.

Reminder: If you experienced child sexual abuse in multiple institutions, please copy pages 12 to 26 before you write on them.

Name of institution
Your answer could be the name you knew the institution by, the name of the organisation who operated it, or the name it was known by in the community.

Do you know what type of institution it was?
For example, an orphanage, children's home, mission, church, foster care provider, school, disability service or youth detention centre.

Street

Suburb, town or city

State ☐ ACT ☐ NSW ☐ VIC ☐ WA ☐ TAS ☐ QLD ☐ NT ☐ SA ☐ Overseas

Postcode

Country

Please write other things that could help identify the institution below

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32 How you were known at this institution?

Please write any ways you know the institution used to identify you.

First name

Last name

Nickname(s)

If you know any other ways this institution made records about you please write it here.
This could be a date, a number or the name of another family member.

What comes next?

The next questions are about the dates and time you were at this institution.

33 What were the dates you were at the institution?

These might be the dates you were placed there, lived there, were employed or went to school.

Approximate dates are fine if that is what you know. If you left the institution and came back then please write a date range.
For example: January - June 1985. Sometime in 1987, 1989 - 1992.

34 How old were you when the sexual abuse happened?

If you are unsure, or if the sexual abuse happened over more than one year, please write your age range.
For example: 9-12 years old.

35 Did you live at this institution when the sexual abuse happened?

- ☐ Yes
- ☐ No

36 When the sexual abuse happened at this institution, were you:

- ☐ A state ward
- ☐ A foster child
- ☐ In relative or kinship care
- ☐ Under other court ordered care
- ☐ An unaccompanied child migrant
- ☐ A military cadet
- ☐ Apprentice in the Defence Force
- ☐ None of these apply to me

37 If you were a child migrant, were you from

- ☐ The United Kingdom or Malta
- ☐ Other

38 Did the sexual abuse at this institution happen more than once?

- ☐ Yes
- ☐ No

39 Over what period did the sexual abuse happen?
Please only tick one box.

- ☐ Less than 12 months
- ☐ More than 12 months but less than 2 years
- ☐ More than 2 years but less than 3 years
- ☐ More than 3 years but less than 4 years
- ☐ More than 4 years but less than 5 years
- ☐ More than 5 years

What comes next?

The next questions ask you about the person who sexually abused you.

Reminder: If you were sexually abused by more than one person, please copy pages 16 and 17 before you write on them. Make enough copies to write about each person who abused you at this institution.

40 Do you remember the name of the person who sexually abused you while you were at this institution?
Please write what you can to help identify them.

First name

Last name

Other names
Include nicknames or aliases.

Other things you remember that identifies them
For example, tattoos, gender, voice, facial hair.

41 How did they come into contact with you?
Please write a short description. Some examples are:

I was living in an orphanage. The person was an employee of the orphanage. Sometimes they worked as the cook.

Living in foster care, the person was my foster parent.

At the mission. It was the priest and his visitor.

On school camp. They were a group leader who worked for the outdoor education program.

42 Do you know if they had an official role at the institution?
Some examples are a manager, leader, carer, coach, support worker, teacher, staff member, nurse, volunteer or a worker.

☐ Yes Please write their role as you remember it

☐ No

☐ Not sure

43 Do you know if this person was under 18 years of age at the time they sexually abused you?

☐ Yes

☐ No

☐ Not sure

What comes next?

The next question asks you about the sexual abuse.

44 Please describe the sexual abuse that happened while you were at this institution.

Please write in a way that gives a clear understanding of the sexual abuse that happened.

Detail is important. So are the words you choose.

A statement like 'the person sexually assaulted me' would not give enough detail to make a decision about your application.

When you write about the sexual abuse, you should also include related non-sexual abuse such as physical abuse, psychological abuse or neglect that happened at this institution. It is important to write separate statements for each institution responsible for bringing you into contact with the person or people who abused you.

What comes next?

On the next page, there is more free space to write about the sexual abuse, if you need it.

What comes next?

The next question asks you about people you believe knew about the sexual abuse.

45 Please write about any person at the institution you believe may have known about the sexual abuse.

This question is not asking if the abuse was reported, it is asking you to identify others connected with this institution who may have known about the abuse.

If you are able, please use the spaces to write the name(s) they were known by. You could also write their job, title, role or place at the institution. For example, a supervisor, classmate, manager or volunteer.

If you have documents that show another person knew about the sexual abuse, that can help too. Please submit those documents with your application and list them on page 30. Remember, it is okay if you do not have such documents.

Name of person 1

Role of person 1

Name of person 2

Role of person 2

Name of person 3

Role of person 3

☐ I am unable to answer any part of this question

46 Please use this space to write as much as you are able to identify anyone else who may have known about the sexual abuse.

This could be the police, a doctor, friend, clergy, support worker or family member.

Please attach any documents that might be relevant and list them on page 30.

What comes next?

The next question asks you about the role other institutions may have had in your life at the time of this abuse.

47 The role of institutions in your life

The questions so far asked about the sexual abuse in relation to the institution responsible for bringing you into contact with the person or people who abused you.

This question is about any other institutions you understand may have had responsibility for you at the time of the sexual abuse. Tick any boxes that describe you and your situation at that time. Please write the name of the institution if you are able.

Do not worry if none of these apply to you.

At the time of the abuse did you live in?

☐ Orphanage
Please write the name of the orphanage or the institution responsible for the orphanage

☐ Mission
Please write the name of the mission or the institution responsible for the mission

☐ Foster care where the abuser was also the carer
Please write the name of the institution responsible for the foster care

☐ Out of home care
Please write the name of the institution responsible for the out of home care

☐ Relative or kinship care
Please write the name of the institution responsible for the care

☐ Youth detention
Please write the name of the detention facility

☐ Disability Housing
Please write the name of the institution responsible for the disability housing

☐ Boarding School
Please write the name of the school

☐ Other institution
Please write the name of the institution

☐ Defence Force
Please write the name of the force

☐ None of these apply to me

48 At the time of this abuse were you in the Defence Force and

☐ At sea

☐ On operation

☐ Deployed overseas

☐ At a residential training establishment

☐ None of these apply to me

What comes next?

The next questions ask you about prior payments.

Prior payments

The following questions are about any prior payment(s) you may have received from this institution for abuse. Any previous deed of release or confidentiality agreement you may have signed cannot stop you applying to this Scheme.

What prior payments do I need to include?

Please tell us about payments that have been made to recognise the harm done. For example:

- Victims of crime payments
- Other redress scheme payments
- Court awarded payments
- Any other payments.

What prior payments do I not need to include?

- Associated medical costs
- Payments for counselling
- One-off hardship payments.

Reminder: If you received more than one prior payment for the abuse, you may need to copy pages 23 to 26 before you write on them.

49 Have you received any payments in relation to this abuse?

☐ Yes

☐ No I have not had a prior payment for this abuse (go to question 58)

☐ Not sure Please give any details you think may be relevant at question 56 (go to question 56)

50 Was the payment made through a victims of crime scheme?

☐ Yes

Please write the name of the scheme

Write the amount paid

$ ☐☐☐☐☐☐

Date of payment (DD/MM/YYYY)

☐☐ / ☐☐ / ☐☐☐☐

☐ No (go to question 52)

☐ Not sure Please give any details you think may be relevant at question 56 (go to question 56)

51 What was this payment made for?

☐ Sexual abuse

☐ Non-sexual abuse

☐ Other

Please write other details for this payment

52 Was the payment made through another redress scheme?

☐ Yes

Please write the name of the scheme

Write the amount paid

$

Date of payment (DD/MM/YYYY)

/ /

☐ No (go to question 54)

☐ Not sure Please give any details you think may be relevant at question 56 (go to question 56)

53 What was this payment made for?

☐ Sexual abuse

☐ Non-sexual abuse

☐ Other

Please write other details for this payment

54 Was the payment awarded by a court?

☐ Yes
Write the amount paid
$ ☐☐☐☐☐☐

Date of payment (DD/MM/YYYY)
☐☐ / ☐☐ / ☐☐☐☐

☐ No (go to question 56)

☐ Not sure Please give any details you think may be relevant at question 56 (go to question 56)

55 What was this payment made for?

☐ Sexual abuse

☐ Non-sexual abuse

☐ Other

Please write other details for this payment

56 Did you receive a payment, but are unsure who it was from?

☐ Yes
Write the amount paid
$ ☐☐☐☐☐☐

Date of payment (DD/MM/YYYY)
☐☐ / ☐☐ / ☐☐☐☐

☐ No (go to question 58)

57 What was this payment made for?

- ☐ Sexual abuse
- ☐ Non-sexual abuse
- ☐ Other

Please write other details for this payment

What comes next?

On the next page, you are asked to describe the impact of sexual abuse across your life.

Part 3: The impact sexual abuse has had across your life

58 Please describe the impact of child sexual abuse across your life

It is important that you answer this question. Please use it to describe the impact all sexual abuse and related non-sexual abuse has had across your life. You only need to answer this question once.

To answer, you could circle words from the list below or write a short statement. You could do both if you want to.

Education	Relationships	Emotions
Shame	Sleep	Mental health
Fertility	Permanent physical disability	Use of drugs and alcohol
Home life	Ability to trust others	Sexual health
Opportunities	Cultural heritage	Physical health
Wellbeing	Faith	Financial security
Potential	Parenting	Life choices
Confidence	Sexuality	Family
Hospitalisation from injury	Friendships	Work
Sense of self	Housing and homelessness	

Use this space to write about the impact sexual abuse has had across your life. You do not have to write in this section if you circled the words in the list above.

What comes next?

On the next page, there is more free space to write about the impact of child sexual abuse across your life.

What comes next?

The next questions ask you about supports you may have used to complete your application.

59 Please write details of any support person who helped you complete your application

This would include any help from your nominee, family members, organisations, Redress Support Services and/or legal or advocacy groups. If you completed this application on your own, please leave blank and go to the next page.

Name

Position

Organisation

60 Please write how they helped

For example, they gave information, helped me write the application form or provided legal advice.

What comes next?

The next page asks you for attachments that may support your application.

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61 Attachments to support your application

You can attach copies of any documents that you feel support your application.

Some examples might be photographs, school reports, medical records, psychological reports, police reports, witness statements, testimony or other signed statements.

Please send copies as original documents cannot be returned.

Number	Type of Document For example Statement to police. Dated 12/6/72. Copy of Photograph. Date approx. 1945. Taken at the institution. I am the child in the centre of the photograph.
1	
2	
3	
4	
5	

What comes next?

The next page is the Statutory Declaration.

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

1 Insert the name, address and occupation of person making the declaration

I,[1]

make the following declaration under the *Statutory Declarations Act 1959*:

2 Set out matter declared to in numbered paragraphs

[2]All of the information in the attached application is true and correct.

Where I have provided documents in support of the application, those documents are true copies of the originals.

I have read and understand the Privacy Notice provided on page 5 of the Notes.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 Signature of person making the declaration

[3]

4 Place

Declared at [4]

5 Day

6 Month and year

on [5] of [6]

Before me,

7 Signature of person before whom the declaration is made (see next page)

[7]

8 Full name, qualification and address of person before whom the declaration is made (in printed letters)

[8]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

A statutory declaration under the *Statutory Declarations Act 1959* may be made before–

(1) a person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Nurse	Physiotherapist
Dentist	Optometrist	Psychologist
Legal practitioner	Patent attorney	Trade marks attorney
Medical practitioner	Pharmacist	Veterinary surgeon

(2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

(3) a person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public

Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)

Bailiff

Bank officer with 5 or more continuous years of service

Building society officer with 5 or more years of continuous service

Chief executive officer of a Commonwealth court

Clerk of a court

Commissioner for Affidavits

Commissioner for Declarations

Credit union officer with 5 or more years of continuous service

Employee of the Australian Trade Commission who is:

(a) in a country or place outside Australia; and

(b) authorised under paragraph 3 (d) of the *Consular Fees Act 1955*; and

(c) exercising his or her function in that place

Employee of the Commonwealth who is:

(a) in a country or place outside Australia; and

(b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and

(c) exercising his or her function in that place

Fellow of the National Tax Accountants' Association

Finance company officer with 5 or more years of continuous service

Holder of a statutory office not specified in another item in this list

Judge of a court

Justice of the Peace

Magistrate

Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*

Master of a court

Member of Chartered Secretaries Australia

Member of Engineers Australia, other than at the grade of student

Member of the Association of Taxation and Management Accountants

Member of the Australasian Institute of Mining and Metallurgy

Member of the Australian Defence Force who is:

(a) an officer; or

(b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or

(c) a warrant officer within the meaning of that Act

Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants

Member of:

(a) the Parliament of the Commonwealth; or

(b) the Parliament of a State; or

(c) a Territory legislature; or

(d) a local government authority of a State or Territory

Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*

Notary public

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

Permanent employee of:

(a) the Commonwealth or a Commonwealth authority; or

(b) a State or Territory or a State or Territory authority; or

(c) a local government authority;

with 5 or more years of continuous service who is not specified in another item in this list

Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

Police officer

Registrar, or Deputy Registrar, of a court

Senior Executive Service employee of:

(a) the Commonwealth or a Commonwealth authority; or

(b) a State or Territory or a State or Territory authority

Sheriff

Sheriff's officer

Teacher employed on a full-time basis at a school or tertiary education institution

Checklist

You can use the checklist to make sure your application is complete.

- ☐ Are you using a nominee? Have you completed a Redress Nominee Form: *Authorising a person or organisation to act on your behalf*? (see question 29)
- ☐ Have you attached copies of any Power of Attorney, Guardianship or Financial Management Order? (see question 28)
- ☐ Have you completed pages 12 to 26 for each institution where you experienced child sexual abuse?
- ☐ Have you completed pages 16 and 17 for each person who sexually abused you?
- ☐ Have you completed pages 23 to 26 if you have had more than one prior payment for the abuse?
- ☐ Have you attached copies of any reports or other supporting documents you want to include?
- ☐ Has the Statutory Declaration been signed and witnessed?
- ☐ Have you made and kept a copy of your application for your own records?

Reminder

Free legal advice and information about redress is available through knowmore. Contact knowmore at **knowmore.org.au** or call **1800 605 762** (call charges may apply). If calling from overseas, please call +61 2 8267 7400.

Return your completed application to

NRS
Reply Paid 7750
Canberra BC ACT 2610
Australia

Please make and keep a copy of your completed application before you return it to us.