



# National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020

Submission to the Senate Community  
Affairs Legislation Committee

22 October 2020

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# About knowmore

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## Our service

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

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). knowmore receives funding from the Australian Government, represented by the Departments of Attorney-General and Social Services. knowmore also receives some funding from the Financial Counselling Foundation.

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

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

## Our clients

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

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 30 September 2020, knowmore has received 36,844 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 7,131 clients. Over a quarter (28%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. Almost a quarter (23%) of clients are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

# knowmore's submission

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This section outlines knowmore's overall position on the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, and details knowmore's views on key amendments in Schedule 1 of the Bill.

## knowmore's overall position on the Bill

knowmore welcomes the introduction of the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020 (the Bill) and the opportunity to provide comments on the Bill. knowmore is broadly supportive of the aims of the Bill. In particular, we are supportive of proposed amendments that:

- introduce protections for the names and symbols used in connection with the Scheme
- permit a redress payment to be made to a person who has been appointed by a court, tribunal or board to manage the financial affairs of a person entitled to redress and
- authorise disclosure of protected information about a non-participating institution for the purpose of encouraging the institution to become a participating institution.

While we support other aspects of the Bill in principle, we are concerned with how some of the proposed amendments will be implemented in practice. In particular, the amendments in Schedule 1, Part 1 of the Bill. We also have concerns regarding certain amendments in Schedule 1, Part 5 of the Bill. We provide detailed comments and recommendations below relating to key amendments.

knowmore notes that there are currently two independent inquiries into the National Redress Scheme, being the second anniversary review of the Scheme and the inquiry by the Joint Select Committee on Implementation of the National Redress Scheme. We support the ongoing work of these inquiries and in our submissions and consultations with both the second anniversary review and the Joint Select Committee, have raised a number of systemic problems with the Scheme that prevent it from delivering access to justice and redress to survivors in the manner that was envisaged by the Royal Commission.<sup>1</sup> While these issues largely fall outside the scope of the current Bill, we reiterate the need for broader legislative, policy and procedural reforms to be introduced at the earliest possible opportunity.

## knowmore's position on key amendments in Schedule 1 of the Bill

### Part 1 – Associates of participating institutions

knowmore understands that the proposed amendments in Schedule 1, Part 1 of the Bill apply to determinations on National Redress Scheme applications involving responsible institutions that are members of participating groups.<sup>2</sup> The amendments will apply retrospectively.<sup>3</sup> While knowmore generally

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<sup>1</sup> For detailed analysis of these issues see: knowmore, *Submission to the second anniversary review of the National Redress Scheme*, 30 September 2020, <<https://knowmore.org.au/wp-content/uploads/2020/10/Submission-Second-anniversary-review-of-the-National-Redress-Scheme-30-September-2020.pdf>>; knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, 28 April 2020, <<https://www.aph.gov.au/DocumentStore.ashx?id=0b31875e-ce72-4a05-a47b-fcb0f572e4df&subId=680321>>; and knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, 29 May 2020, <<https://www.aph.gov.au/DocumentStore.ashx?id=6d888fef-153f-4aa2-9b44-898efa20760e&subId=680321>>.

<sup>2</sup> For the meaning of a participating group see section 133 of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018, <<https://www.legislation.gov.au/Details/C2018A00045>> (as at 21 October 2020).

supports the amendments, we have some concerns about how they will be implemented in practice and the possible implications this could have on the ability of survivors to make an informed decision about whether to accept an offer of redress.

#### The existing legislative requirements regarding associates of participating institutions

Currently under the NRS Act, in making a determination on an application, the Scheme Operator must determine whether the responsible institution is a member of a participating group. Where this is the case, the Scheme Operator must determine each other participating institution that is a member of the participating group at that time.<sup>4</sup> Members of a responsible institution's participating group are referred to as "associates" under the NRS Act.<sup>5</sup>

In providing a survivor with a letter of offer, the Scheme Operator must specify all participating institutions that are associates of the responsible institution.<sup>6</sup> This is because if a survivor accepts an offer of redress under the Scheme, they are required to release not only the responsible institution, but all associates of the responsible institution, from civil liability for abuse that is within the scope of the Scheme.<sup>7</sup>

For example, if a survivor experienced abuse in a church or school managed by the Catholic Church of Australia that institution is likely to be a member of a participating group represented by Australian Catholic Redress Limited.<sup>8</sup> Where the survivor receives an offer of redress, the letter of offer includes a list of all associates of the responsible institution that will also be released from civil liability if the survivor accepts the offer. In the case of Australian Catholic Redress Limited, this list is currently six pages in length.

#### The proposed amendments

knowmore understands that the proposed amendments in Schedule 1, Part 1 of the Bill will alter the way the Scheme Operator determines applications involving participating groups. For example, as a result of item 1, the Scheme Operator will only need to "determine the participating group of which the responsible institution is a member at that time"<sup>9</sup> rather than determining each associate of the responsible institution. We understand that the purpose of this amendment is to introduce administrative efficiencies and to reflect that whether a participating institution is an associate of the responsible institution is ultimately dependent upon whether they are included in the participating group under the National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018 (NRS Declaration).<sup>10</sup>

The proposed amendments will also change the way the Scheme Operator notifies both institutions and survivors of a determination on an application. For example, as a result of item 7, the Scheme Operator may provide survivors with a letter of offer that identifies classes of participating institutions that will be released from civil liability, rather than individually listing all associates that will be released. The justification for this amendment is set out in the second reading speech:

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<sup>3</sup> National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, item 2 – Commencement, <[https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6606\\_first-reps/toc\\_pdf/20121b01.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6606_first-reps/toc_pdf/20121b01.pdf;fileType=application%2Fpdf)> (as at 21 October 2020).

<sup>4</sup> National Redress Scheme for Institutional Child Sexual Abuse Act 2018, section 29(g).

<sup>5</sup> National Redress Scheme for Institutional Child Sexual Abuse Act 2018, section 133.

<sup>6</sup> National Redress Scheme for Institutional Child Sexual Abuse Act 2018, section 39(g).

<sup>7</sup> National Redress Scheme for Institutional Child Sexual Abuse Act 2018, sections 42 and 43.

<sup>8</sup> National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018, section 11, <<https://www.legislation.gov.au/Details/F2020C00861>> (as at 21 October 2020).

<sup>9</sup> National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Schedule 1, Part 1, items 1 and 2.

<sup>10</sup> National Redress Scheme for Institutional Child Sexual Abuse Act, section 133 and National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Explanatory Memorandum, pp.4-6, <[https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6606\\_ems\\_978c8773-d2b4-438d-847b-9011e61849a6/upload\\_pdf/JC000179.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6606_ems_978c8773-d2b4-438d-847b-9011e61849a6/upload_pdf/JC000179.pdf;fileType=application%2Fpdf)> (as at 21 October 2020).

*...Individually listing associates of institutions who are found responsible for abuse in the letter of offer to the applicant is not practical or trauma informed, especially for groups with thousands of participating institutions. This measure will clarify that associate institutions are able to be determined and listed in a letter of offer by way of a class description. Importantly, this measure will not affect the release from civil liability of the associate institutions.<sup>11</sup>*

### **knowmore's concerns regarding the implementation of the proposed amendments**

While we support the proposed amendments in principle, we are concerned about how they will be implemented in practice and particularly how they will affect the letter of offer provided to survivors.

Releasing institutions from future civil liability is a significant legal right that survivors are required to forego when accepting an offer of redress under the Scheme. It is therefore important for survivors to understand both the nature and consequences of this deed of release in order to make an informed decision about whether to accept or decline an offer of redress. This includes understanding which institutions they will be releasing from civil liability if they accept the offer of redress.

While we agree that the current practice of providing a long list of all associates in the letter of offer can be unhelpful and may be overwhelming for some survivors, it is unclear how survivors will be able to access this information if the proposed amendments are passed. We are concerned that the letter of offer provided to survivors will merely refer to the participating group, and direct survivors to the NRS Declaration located on the Federal Register of Legislation.

The NRS Declaration is not accessible to many survivors, including survivors who are elderly, experiencing ill-health and/or have low levels of literacy. While many survivors seek independent legal advice from knowmore prior to accepting an offer of redress, there are survivors who do not access legal advice and support. In addition, the NRS Declaration is subject to regular amendment and we expect that it will be difficult for many survivors to identify the version that was in force at the time of their redress offer.<sup>12</sup> While it may not be trauma-informed to provide survivors with a long list of institutions in the letter of offer, it is necessary to make this information accessible.

Survivors may also access information about participating institutions through the National Redress Scheme website, including the search function relating to participating institutions.<sup>13</sup> However, this search function is very limited when it comes to participating groups. For example, a search of Australian Catholic Redress Limited does not return any information about the members of this participating group.

In this context, it is important to note that survivors have only a limited period of time to make a decision about accepting an offer of redress.<sup>14</sup> Some survivors, upon receiving an offer of redress, will at that time decide to investigate the prospects of success of a potential civil claim for damages, in order to determine whether they should pursue that option as an alternative to accepting the offer from the Scheme. It is essential that those survivors, and/or the lawyers advising them, have access to an accurate and detailed

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<sup>11</sup> Australian Parliament, Hansard, House of Representatives, 8 October 2020, National Redress Scheme for institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020 (the Hon. Trevor Mark Evans MP), <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2Fa28c39ce-4e49-4b78-914d-ccca686a471e%2F0022;query=id%3A%22chamber%2Fhansardr%2Fa28c39ce-4e49-4b78-914d-ccca686a471e%2F0022%22>> (as at 21 October 2020).

<sup>12</sup> We note that survivors have six months to accept an offer of redress, and this period may be extended upon request. In the six months preceding the date of this submission, the NRS Declaration was amended on 10 occasions, meaning that 10 different versions of the NRS Declaration were registered in this period. See Federal Register of Legislation, National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018, 'Compilations', <<https://www.legislation.gov.au/Series/F2018N00072>> (as at 21 October 2020).

<sup>13</sup> NRS website, 'Search for Institutions that have joined the Scheme', <<https://www.nationalredress.gov.au/institutions/search>> (as at 21 October 2020).

<sup>14</sup> See note 12 above.

list of institutions to enable advice to be given and an informed decision made by the survivor about their legal rights.

For the above reasons, it is important that the proposed amendments are not implemented in a way that inhibits the ability of survivors to access information that has the potential to affect their future legal rights. In our view, if the proposed amendments are passed and the letter of offer is amended to remove the list of associates, the Scheme Operator should develop an alternate process for providing survivors and their advisors with access to this important information. This could involve, for example, improving the search function on the National Redress Scheme website so that survivors can easily access information about participating groups and the associates of a responsible institution, as well as the dates that those associates joined the participating group. knowmore also believes that survivors should be able to receive this information in writing upon request. If these procedures are adopted, the letter of offer could refer survivors to the search function and inform them that they can also request this information in writing.

knowmore would welcome the opportunity to engage further with the Scheme to ensure that information about associates of participating institutions is provided to survivors in both a trauma-informed and accessible manner.

## Part 2 - Funder of last resort provisions

knowmore understands that the proposed amendments in Schedule 1, Part 2 of the Bill have been introduced to enable more than one participating government institution to be declared as a funder of last resort for a defunct institution. The amendments also provide that where the Scheme Operator determines a defunct institution to be liable for abuse experienced by a survivor and there is more than one funder of last resort for that defunct institution, they will be proportionately liable for what the defunct institution would have been liable to pay to the survivor under the Scheme.<sup>15</sup>

The Explanatory Memorandum to the Bill does not clarify how the proposed amendments are likely to apply in practice or the types of cases they are likely to apply to. However, knowmore envisages that there may be some cases where it is appropriate for more than one participating government institution to become a funder of last resort for a defunct institution. For example, where a defunct institution operated in more than one jurisdiction, or where more than one participating government institution is responsible for abuse experienced by a survivor, such as in the circumstances of some former child migrants where both the Commonwealth and a state government may be responsible.

knowmore supports the proposed amendments as they are likely to provide further clarity and certainty regarding the operation of the funder of last resort provisions. The amendments may also encourage some participating government institutions to become the funder of last resort for defunct institutions where liability can be shared with other participating government institutions.

However, we urge the Scheme Operator as well as all participating government institutions to ensure that the amendments are not implemented in a way that further disadvantages survivors. In our recent submissions on the National Redress Scheme we have highlighted our concerns regarding the current implementation of the funder of last resort provisions, including the excessive delays some survivors have faced in waiting for the institution in which they experienced abuse to be covered in a funder of last resort declaration.<sup>16</sup> For example, one of our elderly Aboriginal clients has been waiting almost two years for Bomaderry Aboriginal Children's Home in New South Wales to be covered by a funder of last resort

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<sup>15</sup> National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Schedule 1, Part 2.

<sup>16</sup> knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, 28 April 2020, pp. 6-8 and knowmore, *Submission to the second anniversary review of the National Redress Scheme*, 30 September 2020, pp. 15-17.

declaration.<sup>17</sup> Such delays prevent survivors from accessing justice and redress under the Scheme and may have significant implications for their mental wellbeing.

Should the proposed amendments be passed, we urge the Scheme Operator and all participating government institutions to ensure that the process of identifying and declaring more than one funder of last resort for a defunct institution does not result in further delays for survivors. In our view, declarations should be made for defunct institutions as soon as possible after they are first named in an application. For those that have already been named in applications, the relevant declarations should be made by 31 December 2020 to give affected survivors certainty.

### **The need for further amendments to make the funder of last resort provisions consistent with the Royal Commission’s recommendations**

As we have raised in previous submissions, the existing funder of last resort provisions have been narrowly framed and are contrary to what the Royal Commission recommended.<sup>18</sup> Until the NRS Act is amended to rectify this, some survivors will continue to be deprived of access to justice and redress. Although such reforms are outside the scope of the current Bill, we reiterate our strong support for amendments to be introduced at the earliest possible opportunity to ensure that the funder of last resort provisions are consistent with the Royal Commission’s recommendations.

### **Part 3 – Engaging independent decision-makers**

knowmore understands that the proposed amendments in Schedule 1, Part 3 of the Bill have been introduced to streamline the process for engaging Independent Decision-Makers (IDMs) by removing the requirement to obtain the approval of the Minister and by allowing the Scheme Operator to delegate the power to engage IDMs to Senior Executive Service employees.

knowmore has previously raised concerns regarding the lengthy delays experienced by some survivors in receiving a decision on their redress application.<sup>19</sup> Such delays can be “a significant source of distress, anxiety and frustration for our clients (and undoubtedly other applicants)”.<sup>20</sup> There are many factors that can contribute to excessive assessment timeframes, including insufficient resourcing of the Scheme. While we have observed that assessment timeframes have improved in recent months, we continue to support measures that may further reduce assessment timeframes for survivors and accordingly we support the proposed amendments that will improve the Scheme’s ability to efficiently engage IDMs.

### **Part 4 – Protected names and symbols**

knowmore welcomes the proposed amendments in Schedule 1, Part 4 of the Bill that seek to protect the names and symbols of the National Redress Scheme from unauthorised use. The proposed amendments establish a strict liability offence that will apply to certain uses of protected names and symbols without the written consent of the Scheme Operator.<sup>21</sup> The Explanatory Memorandum to the Bill provides:

*There is a strong policy basis for regulating the use of those names and symbols used in relation to the Scheme given the potential for harm to survivors should, for example, services*

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<sup>17</sup> Ibid.

<sup>18</sup> See for example knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, 28 April 2020, pp. 7-9 and knowmore, *Submission to the second anniversary review of the National Redress Scheme*, 30 September 2020, pp. 16-17.

<sup>19</sup> knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, 28 April 2020 pp. 9-11.

<sup>20</sup> knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, 28 April 2020, p. 9.

<sup>21</sup> National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Schedule 1, Part 4, item 40.



*unrelated to the Scheme be mistaken as being provided under, or in connection with, the Scheme.*<sup>22</sup>

We agree. We have previously raised our concerns with the Joint Select Committee on Implementation of the National Redress Scheme about how some law firms and emerging ‘survivor advocacy’ businesses are engaging in practices that exploit survivors trying to access redress through the NRS.<sup>23</sup> Our submission to the Joint Select Committee noted our concerns about the practices being adopted by some law firms and ‘survivor advocacy’ businesses, including charging seemingly excessive fees to assist with redress applications while not advising survivors of the availability of free legal services, as well as targeting particular groups of survivors, including Aboriginal survivors.<sup>24</sup> We are also aware of advertising that has been undertaken which references names and/or symbols of the National Redress Scheme. For example, an ABC Background Briefing program addressing these issues noted one firm’s use of the URL “nationalredressscheme.com.au”.<sup>25</sup>

knowmore strongly supports the adoption of specific measures that will assist to protect survivors from being targeted and exploited. In our view, such measures are necessary given the significant shortcomings in the existing regulatory framework and the unique vulnerability of some survivors of institutional child sexual abuse:

*Many survivors are in circumstances of vulnerability, including through advanced age, isolation, ill health, low literacy levels, financial disadvantage and incarceration. These circumstances, often occurring in combination, may impact upon their capacity to fully understand the implications of engaging with particular service providers, leaving survivors susceptible to exploitation.*<sup>26</sup>

The proposed amendments in Schedule 1, Part 4 of the Bill will help in protecting survivors from exploitative practices. The amendments are both necessary and reasonable, given that they do not apply to situations where protected names and symbols are used in good faith, or are used in accordance with rights conferred by law, such as trademarks registered prior to the amendments commencing.<sup>27</sup> Where these exceptions do not apply, those seeking to use protected names and symbols are able to seek the written consent of the Scheme Operator.<sup>28</sup>

### **The urgent need for additional legislative and policy amendments to protect survivors from exploitation**

While we support the proposed amendments, we remain of the view that further reform is needed as a matter of urgency to ensure that survivors are adequately protected from exploitative practices. In our submission to the Joint Select Committee noted above, and in our recent submission to the second anniversary review of the National Redress Scheme,<sup>29</sup> we have made detailed recommendations regarding

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<sup>22</sup> National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Explanatory Memorandum, p. 8.

<sup>23</sup> knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, 28 April 2020, p. 32.

<sup>24</sup> knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, 28 April 2020, pp. 32-33 and knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, 29 May 2020.

<sup>25</sup> Jeremy Story Carter, ABC Background Briefing, ‘Money for trauma’, first published 19 June 2020, <<https://www.abc.net.au/news/2020-06-19/lawyers-target-redress-abuse-clients-in-new-cottage-industry/12006878?nw=0>> (as at 21 October 2020).

<sup>26</sup> knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, 29 May 2020, p. 3.

<sup>27</sup> National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Schedule 1, Part 4, item 40.

<sup>28</sup> Ibid.

<sup>29</sup> knowmore, *Submission to the second anniversary review of the National Redress Scheme*, 30 September 2020, pp. 53-56.

specific legislative and policy amendments that should be introduced. We urge all governments to progress these additional amendments at the earliest possible opportunity.

#### **Part 5 – Payment of redress payments etc.**

knowmore is supportive of the proposed amendments in Schedule 1, Part 5 of the Bill which will permit the Scheme Operator, in certain limited circumstances, to make a redress and/or counselling and psychological services payment to an administrator. In our experience, some survivors are subject to financial management orders that have been made by courts, tribunals and other bodies under relevant state or territory laws. These orders are generally only made when there are serious concerns for a person's welfare and/or their ability to manage their own affairs.

Where a financial management order is in place, it may be appropriate for a person's redress and/or counselling and psychological services payment to be made to the appointed administrator, such as the public trustee or guardian. These administrators are generally obliged to act in the survivor's best interests and to protect them from abuse and exploitation.<sup>30</sup>

We support the drafting of items 43 and 45 that clarify that the provisions only apply to an administrator who has been formally appointed by a court, tribunal board or other entity according to the laws of the relevant jurisdiction. This will ensure that a survivor's payments cannot be made to another person, such as a family member or a friend, who is not legally authorised to manage their financial affairs. This measure will help to protect survivors from the risk of financial abuse. We also support paragraph (b) of both items, which ensures that payments will only be made to an administrator where the Scheme Operator forms the view that it is appropriate in the circumstances. Although no further guidance is provided as to the factors that the Scheme Operator may consider in exercising this discretion, we would hope that the Scheme Operator will consider factors such as:

- the individual circumstances of the survivor;
- the importance of ensuring that the survivor is able to benefit, to the maximum extent possible, from redress; and
- any relevant information provided by their nominee.

#### **Part 6 – Due date for funding contributions**

The proposed amendments in Schedule 1, Part 6 of the Bill allow for greater flexibility regarding the date by which responsible institutions are required to pay their funding contributions under the Scheme. knowmore understands that the proposed amendments will not affect how or when redress is provided to survivors under the Scheme. According to the second reading speech "importantly, allowing a due date extension for institutions will not delay the redress payment to the applicant, which is made by the scheme and then later invoiced to the responsible institution".<sup>31</sup> In light of this, we do not have any further comments on the proposed amendments.

#### **Part 7 – Disclosure to encourage institutions to participate in the scheme**

knowmore is strongly supportive of measures that are designed to encourage institutions to participate in the National Redress Scheme and to join the Scheme before the 31 December 2020 deadline. As we explained in our recent submission to the second anniversary review of the National Redress Scheme:

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<sup>30</sup> See for example, NSW Trustee and Guardian Act 2009, section 39(g), <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2009-049#ch.4-pt.4.1> (as at 21 October 2020).

<sup>31</sup> Australian Parliament, Hansard, House of Representatives, 8 October 2020, National Redress Scheme for institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020 (the Hon. Trevor Mark Evans MP).

*The non-participation of over 170 institutions more than two years after the NRS commenced remains a major concern. It means that the Scheme is fundamentally inaccessible to many survivors and, as such, provides no access to justice for those survivors.*<sup>32</sup>

It is clear that the non-participation of many institutions, including institutions that were named by the Royal Commission, has had a significant impact on the wellbeing of many survivors and has contributed to the lower than expected number of survivors who have applied for redress.<sup>33</sup>

The proposed amendments in Schedule 1, Part 7 of the Bill will permit the Scheme Operator to disclose protected information about a non-participating institution for the purpose of encouraging that institution to join the Scheme.<sup>34</sup> According to the Explanatory Memorandum to the Bill, the proposed amendments are intended to be used to:

*... facilitate engagement with and between States, Territories and non-government institutions such as peak bodies, and support proactive engagement to encourage institutions to participate in the Scheme. This will be of particular benefit in the lead up to the 31 December 2020 deadline for institutions to be declared participating institutions and in the event the Minister extends this timeframe by prescribing a later date.*<sup>35</sup>

We support the proposed amendments. While engagement undertaken for the purposes of encouraging institutions to join the Scheme is likely to be captured by the existing exemption that permits disclosure of protected information in the public interest,<sup>36</sup> the proposed amendment removes any doubt about this.

While the proposed amendments will help to facilitate engagement between the Scheme, governments and institutions, there is indication that they might also be used to provide greater transparency to survivors about the participation status of institutions. As we have highlighted previously, there is a significant lack of transparency regarding non-participating institutions, including the status of any engagement or negotiations with the institution, as well as the institution's reasons for not joining the Scheme or delaying joining the Scheme.<sup>37</sup> Further, despite the Australian Government's commitment to publicly name institutions that have not joined the Scheme, only six non-participating institutions have been named to date.<sup>38</sup> We urge all governments to adopt further measures, as a matter of urgency, that will facilitate greater transparency for survivors regarding the participation status of institutions.<sup>39</sup>

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<sup>32</sup> knowmore, *Submission to the second anniversary review of the National Redress Scheme*, 30 September 2020, p. 10.

<sup>33</sup> Ibid, p. 11.

<sup>34</sup> National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Schedule 1, Part 7, item 49.

<sup>35</sup> National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Explanatory Memorandum, p. 10.

<sup>36</sup> Section 95(1) of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 states that the Scheme Operator "may disclose protected information that was provided to, or obtained by, an officer of the scheme for the purposes of the scheme if: (a) the Operator certifies that the disclosure is necessary in the public interest in a particular case or class of cases and the disclosure is to such persons and for such purposes as the Operator determines...".

<sup>37</sup> knowmore, *Submission to the second anniversary review of the National Redress Scheme*, 30 September 2020, pp. 12-14.

<sup>38</sup> We note that two of these institutions have since joined the Scheme.

<sup>39</sup> See knowmore, *Submission to the second anniversary review of the National Redress Scheme*, 30 September 2020 for a detailed analysis of this issues and recommendations for improvement.

## Conclusion

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As detailed above, knowmore is supportive of the aims of the Bill. We have raised some issues as to how some of the proposed amendments will be implemented in practice, particularly the amendments in Schedule 1, Part 1 of the Bill.

We are pleased to see that pursuant to the Scheme's governance arrangements, agreement has been reached with all states and territories upon the amendments proposed in the Bill. In this submission, and in knowmore's recent submissions to the second anniversary review of the Scheme and the Joint Select Committee, we have identified a range of important additional legislative, policy and procedural reforms that need to be introduced in order to ensure the National Redress Scheme better delivers justice for all survivors. We would urge that all governments work towards the implementation of those reforms with a similar spirit of co-operation and appropriate urgency.

We do not have any concerns with this submission being published.

**Brisbane**

Level 20, 144 Edward St  
Brisbane QLD 4000  
t 07 3218 4500

**Melbourne**

Level 15, 607 Bourke St  
Melbourne VIC 3000  
t 03 8663 7400

**Perth**

Level 5, 5 Mill St  
Perth WA 6000  
t 08 6117 7244

**Sydney**

Level 7, 26 College St  
Sydney NSW 2000  
t 02 8267 7400

knowmore Legal Service Limited ABN 34 639 490 912 ACN 639 490 912.

knowmore acknowledges the Traditional Owners of the lands across Australia upon which we live and work. We pay our deep respect to Elders past, present and emerging.