

Submission to the Joint Standing Committee on Implementation of the National Redress Scheme

27 February 2023

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About knowmore

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 aim 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.

knowmore is an accredited community legal centre under the National Accreditation Scheme administered by Community Legal Centres Australia.

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 (Royal Commission). 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 (NRS). knowmore also receives funding to deliver financial counselling services to people participating in the NRS, and to work with other services in the NRS support network to support and build their capability. From 1 January 2022, our services were expanded to assist survivors who experienced child sexual abuse in non-institutional settings.

From 1 March 2022, we have been funded to provide legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme). From September 2022, we have also provided some financial counselling services to support Stolen Generations survivors receiving payments under Victoria's Stolen Generations Reparations Package.

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, Perth, Adelaide and Darwin. 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.

knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

Our clients

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

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 31 January 2023, knowmore has received 83,188 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 13,877 clients. More than a third (35%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. About a fifth (18%) 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.

Our experience assisting survivors through the National Redress Scheme

As noted above, our experience assisting survivors through the NRS is extensive.

- From 1 July 2018 to 31 December 2022, we provided legal assistance for clients to lodge 2,384 NRS applications. This represents 11% of all NRS applications made to 30 December 2022.¹
- From 1 July 2018 to 31 December 2022, we provided legal assistance to clients in relation to 2,164 NRS offers.
- From 1 January 2020 to 31 December 2022, we provided legal services including advice and assistance to 1,278 clients of Redress Support Services (RSSs).
- From 1 May 2019 to 31 December 2022, we provided NRS-related financial counselling to 2,067 clients.
- From 1 April 2019 to 31 December 2022, we provided NRS-related support services to 3,230 clients.

Our experience assisting survivors with disability

- From 1 July 2018 to 31 December 2022, we provided NRS-related assistance to 7,079 survivors with disability. This represents more than half of our NRS clients (54%).

Our experience assisting Aboriginal and/or Torres Strait Islander survivors

- From 1 July 2018 to 31 December 2022, we provided legal assistance for Aboriginal and/or Torres Strait Islander clients to lodge 936 NRS applications.
- From 1 July 2018 to 31 December 2022, we provided legal assistance to Aboriginal and/or Torres Strait Islander clients in relation to 786 NRS offers.
- From 1 May 2019 to 31 December 2022, we provided NRS-related financial counselling to 865 Aboriginal and/or Torres Strait Islander clients.

1 As of 30 December 2022, the NRS had received 21,674 applications. See NRS, [National Redress Scheme – Update](#), NRS website, 11 January 2023, accessed 21 February 2023.

- From 1 April 2019 to 31 December 2022, we provided NRS-related support services to 991 Aboriginal and/or Torres Strait Islander clients.
- From 1 January 2019 to 31 December 2022, Aboriginal and Torres Strait Islander Engagement Advisors at knowmore provided NRS-related cultural support to 2,376 clients.

Introduction

On 4 February 2021, the Honourable Linda Burney MP said in parliament, in relation to the National Redress Scheme (NRS):

What we're really calling for here is leadership, national leadership, across the states and territories and a clear commitment from the government to bring the scheme back to what the royal commission recommended ... All of us here owe it to survivors to get this right and not simply say that it is all too hard.²

On 23 June 2021, the then-Labor Opposition called on the Australian Government to 'implement all recommendations of the second year review of the National Redress Scheme'.³ We welcome this recognition of the need to implement reforms to improve the NRS, and welcome the opportunity to assist with this process, including via the present inquiry.

The NRS is essential for holding institutions to account and has now provided redress to more than 10,500 survivors.⁴ For many survivors, the redress they have received from the NRS has been life-changing. Despite this, there remain significant problems with the NRS that are preventing it from consistently delivering redress in accordance with the guiding principles identified by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission). These principles include:

- survivor-focused redress
- 'no wrong door' for survivors in accessing redress
- a trauma-informed and culturally appropriate approach
- regard for the needs of survivors who are experiencing particular vulnerability.⁵

Continuing problems with the NRS are also preventing it from delivering redress in accordance with the general principles of its governing legislation, the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (NRS Act). These principles are similar to those identified by the Royal Commission and include:

- survivor-focused redress
- trauma-informed and culturally appropriate redress
- regard for the needs of survivors who are experiencing particular vulnerability

2 Australian House of Representatives, [Debates](#), 4 February 2021, p 383.

3 L Burney MP, M Dreyfus MP and S Claydon MP, [Child Sexual Abuse Survivors Deserve Better from Morrison Government](#) [media release], 23 June 2021, accessed 21 February 2023.

4 As of 27 January 2023, the NRS had made 10,659 payments. See NRS, [National Redress Scheme – Update](#), NRS website, 2 February 2023, accessed 21 February 2023.

5 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [Redress and civil litigation report](#), September 2015, accessed 21 February 2023, Recommendations 1 and 4, pp 95 and 135.

- avoiding further harm or traumatisation
- protecting the integrity of the NRS.⁶

Similar principles are found in the NRS's Service Charter, which sets out the NRS's commitments for supporting survivors at each stage of their redress journey:

- Survivor-centred: 'We respect your rights and self-agency to make your own decisions.'
- Supportive and safe: 'We support your individual needs and treat your story with care and confidentiality.'
- Inclusive and accessible: 'We explain what things mean in simple and clear language. We make sure you can engage with us and in the process.'
- Transparent and accountable: 'We are open and honest about what you can expect from us and whether we are meeting our commitments.'⁷

This inquiry of the Joint Standing Committee represents effectively the fourth review of the NRS in less than 5 years. There are many recommendations outstanding from the previous reviews that, if implemented, would result in significant improvements to the NRS. While knowmore broadly supports the recommendations made by previous reviews and does not wish to diminish the importance of any of these, we do not repeat all of the recommendations made by previous reviews in this submission. Our recommendations in this submission are tailored to the Terms of Reference for the Committee's current inquiry. We have provided a list of these recommendations below.

Our submission then proceeds in 4 parts:

- First, we summarise the current status of reforms to the NRS, highlighting key areas where we see a lack of reform continuing to have significant adverse impacts on survivors (addressing Terms of Reference 1, 2, 3 and 7).
- Second, we discuss ways of improving the redress process and outcomes for survivors with disability and Aboriginal and/or Torres Strait Islander survivors (addressing Terms of Reference 1, 2 and 3).
- Third, we discuss legal advice and support services (addressing Terms of Reference 4 and 5), including comments about the need for adequate funding, strategies to minimise instances of alleged claim farming and excessive fees, and permanent stays of civil proceedings in child sexual abuse matters.
- Fourth, we demonstrate shortcomings of the protected information provisions in the NRS Act, which compromise the NRS's ability to provide redress in a way that is survivor-focused and trauma-informed.

In light of the extensive work done by previous reviews and the sound recommendations that have been made, the Australian Government and the NRS do not need to wait for the

6 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 10.

7 NRS, [Service Charter for your National Redress Scheme](#), 1 September 2022, accessed 21 February 2023, p 7.

Committee to deliver a report before it begins implementing reforms. Many reforms to the NRS are now overdue and should be implemented as a matter of urgency.

List of recommendations

We have provided a list of our recommendations under 4 headings below, reflecting the general structure of our submission:

- recommendations about areas where a lack of reform continues to have significant adverse impacts on survivors
- recommendations about improving redress for survivors with disability and Aboriginal and/or Torres Strait Islander survivors
- recommendations about legal advice and support services
- recommendations about protected information provisions.

Recommendations about areas where a lack of reform continues to have significant adverse impacts on survivors

These recommendations are discussed further below on pages 14 to 24.

Recommendation 1

The Australian Government, working with state and territory governments, should ensure the full and urgent implementation of all outstanding recommendations of the second year review that seek to improve fairness, consistency and transparency of redress decisions. This includes Recommendations 3.3, 3.4, 3.9, 3.10, 3.11, 3.12, 3.13 and 5.1 of the second year review.

Recommendation 2

The Australian Government should ensure that the NRS's decision-making process is subject to ongoing monitoring and evaluation to assess the effectiveness of reforms and to identify further areas for improvement.

Recommendation 3

The Australian Government should address the inconsistent and unfair treatment of prior payments, including by implementing Recommendations 4.1, 4.3 and 4.5 of the second year review.

Recommendation 4

The Australian Government and state and territory governments should prioritise declaring themselves as funders of last resort for:

1. named institutions that are now defunct and where no link to a parent or government institution can be found
2. named institutions that are willing to join the NRS but do not have the financial means to do so (as per Recommendation 5.2 of the second year review).

Recommendation 5

The Australian Government should expand funder of last resort provisions to ensure that all survivors can access the NRS (as per Recommendation 19 of the second interim report of the former Joint Select Committee).

Recommendations about improving redress for survivors with disability and Aboriginal and/or Torres Strait Islander survivors

These recommendations are discussed further below on pages 25 to 50.

Recommendation 6

The Australian Government should develop and implement a targeted communication and engagement strategy to increase awareness of the NRS and the availability of support services among people with disability (as per Recommendation 7.1 of the second year review).

Recommendation 7

The Australian Government should provide additional funding for support services for survivors with disability, including for knowmore and for specialist services (as per Recommendations 3.7, 7.1 and 7.2 of the second year review).

Recommendation 8

The Australian Government should prioritise the provision of appropriate and ongoing training for all NRS staff, particularly for those working in frontline roles. This training should promote greater understanding and awareness of the diverse experiences of survivors with disability, the barriers they may face in accessing justice and redress, and the importance of making reasonable adjustments to enhance their access to the NRS.

Recommendation 9

The Australian Government should ensure there is greater flexibility within NRS processes to accommodate the individual needs of survivors with disability and ensure that all reasonable adjustments requested by or for survivors with disability are facilitated promptly.

Recommendation 10

The Australian Government should work with all state and territory governments to fully implement Recommendation 4.6 of the second year review, including by providing people with disability lifelong access to trauma-informed redress counselling and counselling services that are appropriate and meet their diverse needs.

Recommendation 11

The Australian Government should fully implement Recommendations 6.9 and 6.10 of the second year review to ensure that the NRS collects and publicly reports on disaggregated data about the experiences of survivors with disability in seeking to access redress and the outcomes received by survivors with disability.

Recommendation 12

The Australian Government should finalise the development and implementation of a comprehensive targeted communication and engagement strategy for Aboriginal and/or Torres Strait Islander peoples as a matter of priority. This strategy should be made publicly available and subject to regular review.

Recommendation 13

The Australian Government should implement Recommendations 3.5, 3.7, 7.1 and 7.2 of the second year review to provide greater access to culturally safe and appropriate Redress Support Services for Aboriginal and/or Torres Strait Islander survivors, including survivors living in regional, rural and remote locations.

Recommendation 14

The NRS should ensure that it complies with survivors' nominee arrangements and not conduct outbound telephone calls with survivors without their nominee being present.

Recommendation 15

The NRS should review the practice of recording telephone calls with survivors as a matter of priority to ensure that its processes are trauma-informed and culturally safe. The NRS should ensure that survivors are given a genuine opportunity to give their informed consent to the recording, and that NRS staff respond appropriately in situations where survivors do not give their consent.

Recommendation 16

The Australian Government should review the NRS's identity requirements, with a view to ensuring that they are more trauma-informed and flexible for survivors experiencing heightened marginalisation, including Aboriginal and/or Torres Strait Islander survivors.

Recommendation 17

The Australian Government should implement Recommendation 6.5 of the second year review to ensure that all NRS staff receive adequate and ongoing cultural awareness training. In addition, NRS staff in key roles, such as IDMs and staff that engage directly with survivors, should receive tailored training to improve their awareness of the historical experiences of Aboriginal and/or Torres Strait Islander survivors of institutional child sexual abuse and the ongoing impacts of that abuse.

Recommendation 18

The Australian Government should allow for survivors in prison to apply for redress, with a single application process for all applicants (as per Recommendation 3.2 of the second year review).

Recommendation 19

The NRS should provide data and explanation as to how the NRS applies the serious criminal convictions provisions in practice and how these provisions impact on survivors experiencing heightened marginalisation.

Recommendation 20

The Australian Government should allow for survivors with serious criminal convictions to apply for redress, with a single application process for all applicants (as per Recommendation 3.2 of the second year review).

Recommendations about legal advice and support services

These recommendations are discussed further below on pages 51 to 64.

Recommendation 21

The Australian Government should provide greater access to survivor support services, including by increasing funding, and funding services that are able to provide tailored and targeted responses to people experiencing vulnerability (as per Recommendation 7.2 of the second year review).

Recommendation 22

The Australian Government must increase knowmore's funding to the levels required to maintain current services and meet increasing demand beyond the current financial year.

Recommendation 23

The Australian Government should implement Recommendation 17 of the second interim report of the former Joint Select Committee as a matter of priority, to protect survivors accessing redress from exploitative practices.

Recommendation 24

The Australian Government and state and territory governments should work together to ensure that nationally consistent laws are enacted to prohibit claim farming in relation to all personal injury claims arising from child sexual abuse. These laws should draw on the laws enacted by the Queensland Government under the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022*.

Recommendation 25

The Committee should seek more information about how the Australian Government and state and territory governments are using permanent stay applications in defending civil claims for child sexual abuse, including:

- how frequently the Australian Government and state and territory governments are making permanent stay applications
- in what circumstances the Australian Government and state and territory governments are making permanent stay applications
- the outcomes of permanent stay applications — for example, whether the application is successful, the application is unsuccessful or the plaintiff withdraws their claim.

Recommendations about protected information provisions

These recommendations are discussed further below on pages 65 to 75.

Recommendation 26

The NRS should make greater use of existing authorisations within the protected information provisions in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to provide significantly more information to survivors, including adequate reasons for the withholding of information if there remains some information that cannot be disclosed.

Recommendation 27

The Australian Government should introduce a legislative requirement for the NRS to give reasons when the NRS withholds information from survivors and provide a right for survivors to seek review of that decision, similar to provisions of the *Freedom of Information Act 1982* (Cth).

In the interim, the NRS should provide reasons for a decision to withhold information from a survivor and a process for survivors to seek review of such decisions, as an operational measure to improve transparency of the NRS's approach to protected information provisions.

Recommendation 28

The Australian Government should limit the information about institutions that is protected to what is reasonable and necessary to maintain the integrity of the NRS, and specifically identify this information in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (as per the conclusion expressed in the second year review).

Recommendation 29

The NRS should make greater use of existing authorisations within the protected information provisions to better comply with its obligation to give reasons for its redress decisions.

Recommendation 30

The Australian Government should amend the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to clarify that the NRS's obligation to provide adequate reasons to survivors for its redress decisions prevails over protected information provisions in the NRS Act to the extent of any inconsistency.

Recommendation 31

The Australian Government should remove the protected status of the Assessment Framework Policy Guidelines and make this document publicly available as a matter of priority (as per Recommendation 3.13 of the second year review).

Recommendation 32

The Australian Government should amend the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to require that:

- the NRS does not share Part 3 of the redress application form with the institution unless and until the survivor requests a direct personal response
- the NRS informs survivors of what specific information it is providing to institutions in the survivor's specific case
- institutions provide minimal protected information to insurers and, where possible, only provide de-identified information to their insurers (consistent with the conclusions expressed in the second year review).

Recommendation 33

The Australian Government should amend the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to implement a general requirement for the NRS and institutions to consult with survivors, and to obtain survivors' genuine and informed consent before disclosing survivors' information. In exceptional circumstances where the law requires information to be disclosed, the NRS Act should require the NRS and institutions to handle the disclosure in a trauma-informed way that minimises the impacts on the survivor. For example, the NRS Act should require the NRS and institutions to take reasonable steps to:

- inform the survivor of what information must be disclosed, who it must be disclosed to and why
- allow the survivor to disclose the information themselves, if this is practicable and the survivor wishes to do so.

Current status of reforms to the National Redress Scheme

This section summarises the current status of reforms to the National Redress Scheme, highlighting key areas where we see a lack of reform continuing to have significant adverse impacts on survivors. It addresses Terms of Reference 1, 2, 3 and 7 of the Committee's inquiry.

The current inquiry of the Joint Standing Committee represents effectively the fourth review of the National Redress Scheme (NRS) in less than 5 years, noting:

1. the inquiry 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 (final report published in April 2019)⁸
2. the inquiry of the former Joint Select Committee on Implementation of the NRS (former Joint Select Committee) (first interim report published in May 2020⁹ and second interim report published in November 2021)¹⁰
3. the second year review of the NRS conducted by independent reviewer Ms Robyn Kruk AO (final report published in June 2021).¹¹

These reviews have played an important role in overseeing the implementation and operation of the NRS and driving improvements. The reviews have made valuable information about the NRS public, provided survivors with opportunities to share their experiences of seeking redress, and made sound recommendations for improving the NRS. knowmore has valued the opportunity to provide submissions and evidence to these reviews, informed by our nation-wide, multidisciplinary work assisting survivors of child sexual abuse to seek redress. We likewise welcome the opportunity to make a submission to the present inquiry.

Unfortunately, however, there is much unfinished business from the previous reviews of the NRS. The previous Australian Government provided an interim response to the second year

8 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, accessed 21 February 2023.

9 Joint Select Committee on Implementation of the National Redress Scheme (Joint Select Committee), [First interim report of the Joint Select Committee on Implementation of the National Redress Scheme](#), May 2020, accessed 21 February 2023.

10 Joint Select Committee on Implementation of the National Redress Scheme (Joint Select Committee), [Second interim report of the Joint Select Committee on Implementation of the National Redress Scheme](#), November 2021, accessed 21 February 2023.

11 R Kruk AO, [Final report: second year review of the National Redress Scheme](#), 26 March 2021, accessed 21 February 2023.

review in June 2021,¹² but did not provide a final response. In October 2022, the current government committed to providing a final response by early 2023.¹³ No final response has been provided to date. There has also been no government response to the second interim report of the former Joint Select Committee.

There are therefore many recommendations outstanding and there is much uncertainty about if and when they will be implemented. We are hearing from our clients a sense of ‘review fatigue’ and frustration about the lack of meaningful improvements. For Aboriginal and/or Torres Strait Islander survivors, this is exacerbated by the limited government action in response to other landmark reports, such as the final report of the Royal Commission into Aboriginal Deaths in Custody (published in 1991)¹⁴ and the Bringing them Home report (published in 1997).¹⁵ We also note the current Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission).

Many survivors continue to wait for reforms to enable them to receive redress. For those survivors who chose to share their experiences with previous reviews, it has been particularly disappointing to see no resulting change. In our experience, survivors feel that many important recommendations for improvement have been made, and meaningful action is now long overdue.

We note that Terms of Reference 1, 2 and 3 direct the present inquiry’s focus towards survivors with disability, and Aboriginal and/or Torres Strait Islander survivors. These groups of survivors often face particular barriers to accessing redress. We would welcome strategies to assist these groups of survivors, as suggested by Term of Reference 3. We explore ways of improving the redress process and outcomes for survivors with disability and Aboriginal and/or Torres Strait Islander survivors on pages 25 to 50 below.

It is also the case that survivors with disability, and Aboriginal and/or Torres Strait Islander survivors, are disproportionately affected by barriers that affect survivors generally. As such, many of the recommendations that remain outstanding from the 3 previous reviews of the NRS would significantly assist survivors with disability, and Aboriginal and/or Torres Strait Islander survivors, if they were implemented.

12 Australian Government, [*Interim Australian Government response to the final report of the second year review of the National Redress Scheme*](#), June 2021, accessed 21 February 2023.

13 [*Ministers’ Redress Scheme Governance Board Communiqué*](#), Department of Social Services website, 12 October 2022, accessed 21 February 2023.

14 Royal Commission into Aboriginal Deaths in Custody, [*Final report*](#), 1991, accessed 21 February 2023. For more information about the limited government action in response to the Royal Commission into Aboriginal Deaths in Custody, see ANTAR, [*Deaths in custody*](#), ANTAR website, 27 October 2022, accessed 21 February 2023.

15 Human Rights and Equal Opportunity Commission, [*Bringing them Home*](#), 1997, accessed 21 February 2023. For more information about the limited government action in response to the Bringing them Home report, see Aboriginal and Torres Strait Islander Healing Foundation, [*Bringing Them Home 20 years on: an action plan for healing \[PDF 13.5MB\]*](#), May 2017, accessed 21 February 2023.

Without diminishing the importance of any of the recommendations that have been made in previous reviews, we wish to highlight 3 key areas where we see the lack of reform continuing to have significant adverse impacts on survivors. These are:

1. the unfairness, inconsistency and lack of transparency in redress decisions
2. the inconsistent and unfair treatment of prior payments
3. non-participating institutions and inadequate funder of last resort arrangements.

Unfairness, inconsistency and lack of transparency in redress decisions

In knowmore's previous submissions to both the former Joint Select Committee and the second year review,¹⁶ we highlighted persistent unfairness, inconsistency and lack of transparency in redress decisions. In our view, these remain some of the most significant, ongoing and systemic shortcomings in the implementation of the NRS that continue to have considerable adverse impacts on our clients and other survivors.

We have consistently raised the following key concerns with the NRS's decision-making process:

1. the lack of transparency surrounding the Assessment Framework Policy Guidelines
2. the lack of procedural fairness for survivors
3. unfairness and inconsistency in the approach taken by Independent Decision Makers (IDMs) to key concepts in the NRS legislation¹⁷ — for example, in assessing 'institutional responsibility' and 'extreme circumstances'
4. ongoing inconsistencies in redress outcomes for survivors
5. the lack of adequate written reasons for redress decisions
6. the lack of transparency and fairness in the internal review process
7. the lack of publicly available information about the NRS's quality assurance and/or quality control framework.

We have also highlighted the impact of these shortcomings on survivors. For example, in our submission to the second year review we stated:

These problems risk undermining a survivor's trust and confidence in the decision-making process and their ability to understand how or why a decision has been made. It is not uncommon for a survivor to experience these problems

16 knowmore, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \[PDF 1,121KB\]](#), 28 April 2020, accessed 21 February 2023, pp 11–15; knowmore, [Submission to the second anniversary review of the National Redress Scheme \[PDF 1,651KB\]](#), 30 September 2020, accessed 21 February 2023, pp 20–41.

17 Specifically, in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) and the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2019* (Cth).

cumulatively. For some, it has impacted their overall perception of the redress process and whether the decision they received was fair, making it difficult to accept the outcome and progress their healing. For others, it has perpetuated the power imbalance they have frequently experienced when engaging with institutions.

In some instances, a lack of transparency and procedural fairness in the decision-making process may also raise concerns about the correctness of a determination. These same shortcomings may prevent survivors from rectifying any error in the decision. For example, without an understanding of the policy framework underpinning the decision and/or the reasons for the decision, it is difficult for survivors to make an informed choice about whether to exercise their right to seek an internal review.¹⁸

In our experience, unfairness, inconsistency and lack of transparency in redress decisions can have particularly adverse impacts on communities of survivors such as care leavers and Stolen Generations survivors. Where survivors who experienced abuse in the same institutional settings receive differing redress decisions, this can be very difficult for survivors to reconcile and can leave survivors feeling deeply upset about the apparent unfairness of the NRS and their inability to obtain what they consider to be proper recognition of their abuse.

knowmore has not been alone in raising serious concerns about unfairness, inconsistency and lack of transparency in redress decisions. According to the second year review:

The Review heard very strong and consistent concerns about the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2019 (Assessment Framework) that related to its adequacy in assessing the severity and impact of abuse, the lack of transparency and inconsistency in its application (including consideration of prior payments) and the lack of reasons being provided for decisions.¹⁹

The second year review made a number of important recommendations to address these concerns, including Recommendations 3.9, 3.13 and 5.1 as set out below.

¹⁸ knowmore, *Submission to the second anniversary review of the NRS*, p 21.

¹⁹ Kruk AO, *Final report*, p 10.

Recommendation 3.9 of the second year review

The Australian Government strengthen consistency and integrity in decision-making through actions including but not limited to:

- a. the Australian Government providing accurate and clear policy guidance to independent decision makers
- b. the Australian Government, as a priority, reviewing and improving the information and training resources provided to independent decision makers
- c. the Australian Government creating the position of a Chief independent decision maker to provide a systemic focus on Scheme integrity, quality assurance and consistency in decision-making
- d. the development of a de-identified case database, available to assist independent decision makers.

Recommendation 3.13 of the second year review

The Australian Government make the Assessment Framework Policy Guidelines publicly available through removal of existing legislative protections to achieve greater transparency in decision-making and consistency with contemporary practices of other government schemes.

Recommendation 5.1 of the second year review

The Australian Government review the process for redress internal review and amend the legislation to:

- a. allow for the provision of additional information with an internal review request
- b. ensure all reviews are to be without prejudice to the original determination (i.e. original payment determination cannot be reduced on review)
- c. publish and make easily accessible an approved mandatory template for review requests.

While we have observed some improvements in the decision-making process since the second year review, our view is that the improvements are limited and generally fail to address the systemic problems in the decision-making process. For example, while the NRS has developed a process for survivors and their nominees to request an IDM's written reasons for a decision, this process introduces further legal barriers and delays for survivors. In our experience, this process also generally results in the provision of heavily redacted written reasons that do little to help survivors understand the reasons for their redress decision (see further discussion below on pages 68 to 72). We are also concerned that survivors who do not have access to legal and support services may have considerable difficulties navigating this process and may never receive the reasons for their redress decision.

Similarly, while we are aware of the introduction of Chief IDM roles within the NRS to promote greater consistency in redress decisions, there is limited information available publicly about these roles and whether they are achieving their intended purpose.

Given these limited improvements and our ongoing concerns, knowmore strongly supports the full and urgent implementation of all outstanding recommendations of the second year review that seek to improve fairness, consistency and transparency of redress decisions. In addition, we believe that ongoing monitoring and evaluation of the decision-making process is required to assess the effectiveness of reforms and to identify further areas for improvement.

Recommendation 1

The Australian Government, working with state and territory governments, should ensure the full and urgent implementation of all outstanding recommendations of the second year review that seek to improve fairness, consistency and transparency of redress decisions. This includes Recommendations 3.3, 3.4, 3.9, 3.10, 3.11, 3.12, 3.13 and 5.1 of the second year review.

Recommendation 2

The Australian Government should ensure that the NRS's decision-making process is subject to ongoing monitoring and evaluation to assess the effectiveness of reforms and to identify further areas for improvement.

Inconsistent and unfair treatment of prior payments

The second year review found that the NRS's treatment of prior payments was a source of 'confusion and significant distress' for survivors.²⁰ In this context, prior payments refer to payments that a survivor has received from a source other than the NRS, such as a civil claim or a victims support scheme. The second year review identified many issues with the NRS's treatment of prior payments, including:

- the NRS deducting prior payments for non-sexual abuse from redress payments²¹
- the inconsistency between the \$5,000 the NRS can pay for related non-sexual abuse, and the sometimes substantially larger prior payments for non-sexual abuse that the NRS deducts²²
- the 'inconsistent messaging [about] and application of the prior payment provisions'²³

20 Kruk AO, *Final report*, p 104.

21 Kruk AO, *Final report*, p 104.

22 Kruk AO, *Final report*, p 105.

23 Kruk AO, *Final report*, p 106.

- the indexation of prior payments²⁴
- the ‘large degree of public misunderstanding about prior payments’²⁵
- the absence of a minimum redress payment, resulting in a nil outcome for some survivors after prior payments are deducted.²⁶

In light of these issues, the second year review made the following recommendations about prior payments.²⁷

Recommendation 4.1 of the second year review

The Australian Government consider the inconsistent application and understanding of the prior payments provisions in the legislation, with specific reference to Stolen Generations payments and:

- a. amend the legislation relating to prior payments for related non-sexual abuse to achieve a fair and transparent outcome for applicants who have received a prior payment
- b. provide clear guidance and policy materials to the public and to independent decision makers on how the provisions are to operate, with a view to consistent application of the provisions.

Recommendation 4.3 of the second year review

To acknowledge the impact of child sexual abuse, the Australian Government provide a minimum monetary redress payment of \$10,000, even where a relevant prior payment would otherwise have reduced the redress payment to a lesser amount.

Recommendation 4.5 of the second year review

The Australian Government remove the indexation of relevant prior payments ... For reasons of equity, any change should be applied retrospectively to 1 July 2018.

These recommendations have not been fully implemented,²⁸ and we continue to see clients receiving inconsistent and unfair outcomes in relation to prior payments. For example, we

24 Kruk AO, *Final report*, p 106.

25 Kruk AO, *Final report*, p 110.

26 Kruk AO, *Final report*, p 115.

27 Kruk AO, *Final report*, p 117.

28 On 17 September 2021, the law was changed so that prior payments would be indexed until the date the person applies for redress, rather than the date that the NRS determines the application. While this is an improvement, it does not fully implement Recommendation 4.5 of the second year review and still results in significant deductions from survivors’ redress payments. There is also a significant inequity that arises from indexing prior payments but not the redress payments available under the NRS. For more information about the indexation of prior payments, see Australian Government, [‘National Redress Guide – Version 1.14’](#), *Guides to Social Policy Law*, Department of Social Services website, 3 January 2023, accessed 21 February 2023, part 10.

see clients having prior payments deducted even when they did not disclose their experience of child sexual abuse, or the severity of that abuse, in obtaining the prior payment. We also see the NRS reaching different conclusions about similar payments and circumstances, typically without adequate reasons for us or our clients to understand why this difference has occurred.

While the inconsistent and unfair treatment of prior payments impacts many survivors, our experience is that it disproportionately impacts Aboriginal and/or Torres Strait Islander survivors. We discuss this further on pages 42 to 44 below.

Recommendation 3

The Australian Government should address the inconsistent and unfair treatment of prior payments, including by implementing Recommendations 4.1, 4.3 and 4.5 of the second year review.

Non-participating institutions and inadequate funder of last resort arrangements

The second year review found that some survivors ‘are unable to access redress because the responsible institution no longer exists and there is no contemporary successor institution, or the responsible institution cannot or will not join the Scheme’.²⁹ While the reasons for non-participation vary, the end result for survivors who experienced child sexual abuse in these institutions is the same — they are unable to access redress.

Many survivors have experienced child sexual abuse in more than one institution. In our experience, this often compounds the issues with non-participating institutions. For example, if any one of the responsible institutions no longer exists or is unable or unwilling to join the NRS, progress of the survivor’s entire application will be delayed and the offer of redress made to the survivor may be reduced.

In light of these problems, the second year review recommended that governments prioritise declaring themselves as funders of last resort for 2 groups of institutions:

1. named institutions that are now defunct and where no link to a parent or government institution can be found
2. named institutions that are willing to join the NRS but do not have the financial means to do so.³⁰

The former Joint Select Committee also recommended that funder of last resort provisions be expanded to ensure that all survivors can access the NRS.³¹

29 Kruk AO, *Final report*, p 106.

30 Kruk AO, *Final report*, Recommendation 5.2, p 169.

31 Joint Select Committee, *Second interim report*, pp 81–87 and 99.

While legislative provisions to expand funder of last resort arrangements were introduced in December 2021,³² they have had limited practical benefits for survivors to date. We are particularly concerned that no funder of last resort declarations have been made for institutions that cannot participate in the NRS, noting that survivors have named at least 26 such institutions.³³ The adverse impact of this on survivors is illustrated in the following experiences of knowmore's clients.

A client where the National Redress Scheme cannot identify a participating institution that it considers responsible

The client is an Aboriginal Elder who experienced child sexual abuse in a particular institution. The client was chosen to attend the institution by their school. Another government body was also involved in organising for children to attend the institution.

knowmore assisted the client to apply to the NRS in May 2021. In November 2022, the NRS told the client that it had made a preliminary finding that the client was ineligible to receive redress. The NRS took the view that neither the school nor the other government body were responsible for what happened to the client. The NRS has also assessed the institution where the abuse happened as unable to join the NRS. Despite this situation, the relevant state government has not made a funder of last resort declaration for the institution.

The client's application has been on hold since November 2022. During this time, the client and knowmore have sought updates from both the institution where the abuse happened and the NRS. No insight has been provided as to what, if anything, is being done to progress the client's application for redress.

The client says they feel worn out by the redress process. They describe the trauma that they have experienced as ongoing — the preliminary finding that they were ineligible to receive redress and the delay in processing their application have only made the trauma worse. The client says they just want closure and an outcome as soon as possible, given their age and their health.

32 Sections 164A, 164B and 164C of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), as inserted by the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Act 2021* (Cth).

33 NRS, [Institutions that are unable to participate in the National Redress Scheme](#), NRS website, n.d., accessed 27 February 2023.

A client whose application is on hold pending funder of last resort declarations for non-participating sporting institutions

knowmore submitted the client's application to the NRS in December 2020.

The NRS advised knowmore in August 2021 that the client's application was on hold due to 2 non-participating sporting institutions.

knowmore was told in February 2022 that one institution, a basketball club, had been assessed as unable to participate in the NRS. knowmore was also told that Basketball Australia is not considered to be a responsible parent organisation.

At this time, the NRS indicated that the basketball club was 'on the list' for discussions about the expanded funder of last resort provisions, but did not provide any information about:

- how long the discussions would take
- the likelihood of a funder of last resort being declared
- how long the client's application would be on hold for.

In October 2022, the NRS told knowmore that the funder of last resort provisions would not apply to smaller sports clubs, and that the client's redress application was unlikely to proceed unless Basketball Australia agrees to take responsibility for the basketball club. Basketball Australia have signalled their intent to join the NRS, but have not yet done so.

The participation status of the other sporting institution has remained unknown. It is likely to be affected by similar issues.

Our client felt very excited when the new funder of last resort provisions were introduced in December 2021, 'like there's finally a beacon of hope'. However, they have been unimpressed by the lack of information about how long they may have to wait. Our client feels there is no understanding of the nature of trauma, because this wait has left them without any closure. It has now been more than a year since the expanded funder of last resort provisions were introduced, without any institution agreeing to take responsibility for funding the client's redress. Our client has described this as 'hugely frustrating' and as not helping with their trauma.

To overcome the ongoing problems with non-participating institutions and to ensure all survivors can access the NRS, we want to see all Australian governments give full effect to Recommendation 5.2 of the second year review and Recommendation 19 of the former Joint Select Committee's second interim report.

Recommendation 4

The Australian Government and state and territory governments should prioritise declaring themselves as funders of last resort for:

1. named institutions that are now defunct and where no link to a parent or government institution can be found
2. named institutions that are willing to join the NRS but do not have the financial means to do so (as per Recommendation 5.2 of the second year review).

Recommendation 5

The Australian Government should expand funder of last resort provisions to ensure that all survivors can access the NRS (as per Recommendation 19 of the second interim report of the former Joint Select Committee).

Improving redress for survivors with disability and Aboriginal and/or Torres Strait Islander survivors

This section discusses ways of improving the redress process and outcomes for survivors with disability, and Aboriginal and/or Torres Strait Islander survivors. It addresses Terms of Reference 1, 2 and 3 of the Committee's inquiry.

Terms of Reference 1, 2 and 3 of the Committee's current inquiry refer to 2 groups of survivors, being persons with disability and First Nations people. We welcome the Committee's focus on these survivors, who experience heightened marginalisation.

In considering the experiences of survivors with disability, knowmore is guided by the Convention on the Rights of Persons with Disabilities, which defines persons with disabilities as including 'those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.³⁴ In considering the experiences of First Nations survivors, we have generally used the terminology of 'Aboriginal and/or Torres Strait Islander peoples' or 'Aboriginal and/or Torres Strait survivors', reflecting advice from knowmore's Aboriginal and Torres Strait Islander Engagement team.

At the outset of this section, we wish to emphasise the importance of adopting an intersectional approach to understanding the experiences of survivors with disability, and Aboriginal and/or Torres Strait Islander survivors. An intersectional approach recognises that social groups are not homogenous or fixed, and that identities can overlap to create compounding experiences of discrimination.³⁵ For example, many of knowmore's Aboriginal and/or Torres Strait Islander clients are also people with disability. They may therefore have experiences that are distinct from Aboriginal and/or Torres Strait Islander survivors who do not have disability, and from survivors with disability who are not Aboriginal and/or Torres Strait Islander peoples. They may face additional barriers to accessing redress that require specific and targeted responses. Survivors with disability, and Aboriginal and/or Torres Strait Islander survivors, may also face barriers to accessing redress linked to marginalisation they experience on a variety of grounds, including sex, race, sexual orientation, gender identity, intersex status or criminal record. Service systems and policy responses that lack flexibility

34 United Nations Department of Economic and Social Affairs, '[Article 1 – Purpose](#)', *Convention on the Rights of Persons with Disabilities*, DESA website, 2006, accessed 21 February 2023.

35 United Nations Network on Racial Discrimination and Protection of Minorities, '[Guidance note on intersectionality, racial discrimination and protection of minorities \[PDF 1,868KB\]](#)', 22 September 2022, accessed 21 February 2023, p 3.

and are not tailored to individual needs can inhibit a survivor's ability to access justice and redress.³⁶

The issues highlighted in this section of our submission are not new — many were foreshadowed by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) and have been repeatedly raised by survivors and support services throughout previous reviews into the National Redress Scheme (NRS). In our view, unless and until these issues are addressed, the NRS will be unable to provide truly equal access to justice³⁷ or consistently deliver redress in a survivor-focused, fair and non-discriminatory manner.

We have discussed above key areas where we see the lack of reform continuing to have significant adverse impacts on survivors (see pages 14 to 24). As noted in that discussion, these issues disproportionately impact Aboriginal and/or Torres Strait Islander survivors and survivors experiencing disability. As such, improvements in these areas are important ways of improving redress for survivors with disability, and Aboriginal and/or Torres Strait Islander survivors.

In the following sections, we make some more specific comments about ways of:

- improving redress for survivors with disability
- improving redress for Aboriginal and/or Torres Strait Islander survivors.

We also provide detailed comments about:

- improving redress for survivors in prison
- improving redress for survivors with serious criminal convictions.

We have included a focus on these issues here as they have a severe disproportionate impact on Aboriginal and/or Torres Strait Islander survivors and survivors with disability (discussed further below on pages 45 to 50).

Improving redress for survivors with disability

The Royal Commission found that children with disability face a significantly increased risk of sexual abuse in institutional settings. The Royal Commission noted that:

36 We note some limited recognition of intersectionality in the NRS's strategic success measures reports, discussed further on pages 33 to 34. See NRS, [Strategic success measures: October 2020](#), 26 November 2020, accessed 21 February 2023, p 9.

37 According to the Law Council of Australia, 'access to justice' concerns '... the link between a person's formal right to seek justice and the person's effective access to the legal system or legal remedies', and 'realising or guaranteeing access to justice means fair and equitable access to legal assistance, as well as access to both formal and informal justice mechanisms without economic, geographic, social, cultural, linguistic or other barriers'. See Law Council of Australia, [The Justice Project: final report](#), August 2018, accessed 21 February 2023, p 48.

- The ‘risk of child sexual abuse of children with disability has been estimated to be around 3 times that of the general population, with some estimates being considerably higher.’³⁸
- ‘Children with disability are also more likely than other children to have experienced repeated incidents of sexual abuse by the time they are 18 years old.’³⁹

According to research commissioned by the Royal Commission, this increased risk is due to a range of factors, including the overrepresentation of children with disability in high-risk institutional settings and the likelihood that they will spend longer periods of time in those settings.⁴⁰

In addition to the increased risk of experiencing institutional child sexual abuse, the Royal Commission found that people with disability face significant barriers that can prevent disclosure and/or inhibit adequate responses to disclosure.⁴¹ As a result, the prevalence and risk of institutional child sexual abuse among people with disability may be much higher than estimated.

These findings are consistent with research commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission), which highlighted that people with disability face an increased risk of violence, abuse and neglect and may also face additional challenges in reporting their abuse.⁴² The risk of abuse may increase for people at risk of heightened marginalisation including women and girls with disability, people with communication disabilities, Aboriginal and/or Torres Strait Islander people with disability, culturally and linguistically diverse people with disability and/or LGBTQI+ people with disability.⁴³

38 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [Report of case study no. 41: institutional responses to allegations of the sexual abuse of children with disability \[PDF 826KB\]](#), May 2017, accessed 21 February 2023, p 17.

39 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [Final report: volume 2, nature and cause](#), December 2017, accessed 21 February 2023, p 91.

40 G Llewellyn, S Wayland and G Hindmarsh, [Disability and child sexual abuse in institutional contexts \[PDF 1,330KB\]](#), research paper for the Royal Commission into Institutional Responses to Child Sexual Abuse, November 2016, accessed 21 February 2023, p 7.

41 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [Final report: volume 4, identifying and disclosing child sexual abuse](#), December 2017, accessed 21 February 2023, p 42.

42 Centre for Evidence and Implementation and Monash University, [Rapid evidence review: violence, abuse, neglect and exploitation of people with disability](#), research report for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 24 August 2021, accessed 21 February 2023, pp 1–3.

43 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Interim report](#), October 2020, accessed 21 February 2023, p 295.

It is also important to note the profound, lasting and cumulative impacts that institutional child sexual abuse can have on all areas of a survivor's life and the links between experiences of childhood abuse and disability acquired later in life.⁴⁴

Given the overrepresentation of people with disability among victims and survivors of institutional child sexual abuse and the increased barriers that people with disability may face in seeking to disclose abuse and access justice, we strongly believe that priority must be given to ensuring that people with disability have equal access to the NRS and that they receive equal treatment throughout the redress process.

In the following sections, we make observations and recommendations about:

- improving awareness of the NRS among people with disability, including through a targeted communication and engagement strategy
- improving the NRS's accessibility and ensuring that reasonable adjustments are made for survivors with disability
- improving the counselling and psychological component of redress for survivors with disability
- improving the availability of data and information about the experiences of applicants with disability.

Improving awareness of the National Redress Scheme

In recommending the establishment of a redress scheme for survivors, the Royal Commission highlighted the need for those who operate the redress scheme to develop a comprehensive communication strategy to ensure that the availability of the scheme was widely publicised and promoted.⁴⁵ In addition, the Royal Commission recognised that particular communication strategies would be required for people who may be more difficult to reach and recommended that the redress scheme consider adopting particular communication strategies for people with disability and people with mental health difficulties (among other survivor groups).⁴⁶

Despite these important recommendations, knowmore is not aware of any targeted communication or engagement strategies that have been delivered by the NRS for survivors with disability. As a result of this lack of promotion, the second year review found that:

44 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [Final report: volume 3, impacts](#), December 2017, accessed 21 February 2023, pp 9–10.

45 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [Redress and civil litigation report](#), September 2015, accessed 21 February 2023, Recommendation 49, p 360. Under section 9 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), the NRS Operator is the Secretary of the Department of Social Services.

46 Royal Commission, *Redress and civil litigation report*, Recommendation 50, p 39.

The Scheme is little known and understood by people with disability and the disability sector [and] does not have a pervasive public profile because it was deliberately under-promoted from the outset.⁴⁷

This problem is exacerbated for survivors with disability who continue to reside in closed settings such as group homes, mental health units and prisons (see further discussion about survivors in prison on pages 45 to 48). The second year review highlighted that survivors residing in these settings remain underrepresented among applicants to the NRS and face additional barriers to accessing the information and support they need throughout the redress process.⁴⁸ The review also raised concerns about the NRS's lack of visibility of applications from survivors living in these settings and urged the Australian Government to give 'serious consideration' to addressing the barriers they face in accessing redress under the NRS.⁴⁹

knowmore and Redress Support Services (RSSs) that specialise in supporting people with disability continue to work to address the lack of awareness of the NRS among people with disability. However, we cannot bridge this gap alone. Our capacity to do so is limited by several factors including current funding levels (discussed below on pages 51 to 57), the small number of funded RSSs that specialise in supporting people with disability, and the lack of any of these services in some jurisdictions. Services also face difficulties in accessing some communities and institutional settings where survivors with disability are likely to reside.

We believe that lack of awareness of the NRS among people with disability is a significant problem that requires leadership and action from the Australian Government. We strongly support the government, through the Department of Social Services, working in partnership with survivors, knowmore and RSSs to develop and deliver a targeted communication and engagement strategy for survivors with disability as was originally recommended by the Royal Commission and subsequently recommended by the second year review.⁵⁰ In our view, this should be an urgent priority for the government.

Before this strategy is released, it is essential to ensure that survivors with disability throughout Australia have effective access to appropriate legal and support services that can assist them throughout the redress process. The Australian Government should therefore implement the second year review's recommendations for additional funding to improve the availability, quality, scope and geographic spread of support services for survivors with disability.⁵¹ In our view, this should include increased and targeted funding for knowmore and specialist RSSs to address existing gaps in support for survivors with disability.

47 Kruk AO, *Final report*, p 54.

48 Kruk AO, *Final report* p 70.

49 Kruk AO, *Final report*, p 70.

50 Kruk AO, *Final report*, Recommendation 7.1, p 228.

51 See, in particular, Recommendation 3.7 (p 15), part c of Recommendation 7.1 (p 17) and Recommendation 7.2 (p 17) in Kruk AO, *Final report*.

Recommendation 6

The Australian Government should develop and implement a targeted communication and engagement strategy to increase awareness of the NRS and the availability of support services among people with disability (as per Recommendation 7.1 of the second year review).

Recommendation 7

The Australian Government should provide additional funding for support services for survivors with disability, including for knowmore and for specialist services (as per Recommendations 3.7, 7.1 and 7.2 of the second year review).

Improving accessibility and ensuring that reasonable adjustments are made

Article 13 of the Convention on the Rights of Persons with Disabilities requires governments to ensure effective access to justice for persons with disabilities on an equal basis with others. This includes through ‘the provision of procedural and age-appropriate accommodations’.⁵² Article 13 also requires governments to promote appropriate training for people working in the justice sector.⁵³ These obligations apply in the context of the NRS, as one of the main legal mechanisms for providing access to justice for survivors of institutional child sexual abuse.

In knowmore’s view, the NRS is not currently meeting these obligations. Based on feedback we have received from our staff, our clients with disability and other support services, we are particularly concerned that:

- The NRS’s current processes do not facilitate effective access for survivors with disability.
- Some frontline NRS staff demonstrate a lack of understanding of the experiences and needs of survivors with disability.
- Where survivors face specific barriers during the redress process, the NRS lacks the flexibility to meet their individual needs.
- Reasonable adjustments requested by survivors with disability and/or their supporters and nominees are not being granted by the NRS, thereby preventing survivors with disability from accessing redress on an equal basis with other survivors.

Unfortunately, these problems seem to be systemic, impacting all stages of the redress process. For example:

52 United Nations Department of Economic and Social Affairs, ‘[Article 13 – Access to justice](#)’, *Convention on the Rights of Persons with Disabilities*, DESA website, 2006, accessed 21 February 2023, subarticle 13(1).

53 United Nations Department of Economic and Social Affairs, ‘Article 13 – Access to justice’, subarticle 13(2).

- Some of our clients with low levels of vision or literacy have had difficulties completing the complex application form.
- Some clients have found the requirement for a written signature to be very challenging due to chronic conditions such as Parkinson's disease or arthritis.
- Clients with hearing loss or who identify as deaf have raised concerns about the NRS's insistence on communicating with them via telephone and the NRS's apparent inability to change their processes to facilitate other methods of communication including through the use of Auslan interpreters.

The impacts of these shortcomings are illustrated in the below experiences of one of knowmore's clients.

A client whose communication needs were not accommodated by the National Redress Scheme

The client is a deaf person and Auslan user. The client requested that the NRS make reasonable adjustments to meet their communication needs, including that the NRS communicate with them via video, rather than telephone, so that they can be supported by an Auslan interpreter.

The NRS was unwilling to accommodate this request. The only explanation provided was that NRS policy prohibits staff members from being identified and therefore they were unable to offer video appointments. Unfortunately, the NRS failed to demonstrate any flexibility and did not provide alternative options to facilitate the client's participation in the redress process.

As a result, the client was left with no option other than to participate in an initial outbound acknowledgement call (OAC) via telephone. Further, despite being aware of the client's communication needs, the NRS called the client without using the National Relay Service. The client, being anxious for the call to go ahead as planned, agreed to continue the call with the assistance of their partner rather than for it to be rescheduled.

In our view, this was inappropriate as it meant that the client was unable to communicate independently with NRS staff. During the call, we also observed that NRS staff showed a general lack of awareness and sensitivity to the client's circumstances. For example, the client was frequently asked to communicate verbally.

The client was left feeling deeply dissatisfied with the inability and unwillingness of the NRS to meet their communication needs.

In our view, not making reasonable adjustments for survivors with disability is wholly inconsistent with the NRS's general principles. It is also inconsistent with Australia's Disability Strategy 2021–2031, which recognises that 'governments have obligations to provide services to all citizens and are responsible for making reasonable adjustments to accommodate people with disability so they can access and use those systems and

services.’⁵⁴ Further, Policy Priority 5 of Australia’s Disability Strategy focuses on providing equal access to justice for people with disability and recognises that:

*Effective access to justice for people with disability requires consideration of individual needs. Without this there can be no equitable or equal participation. This requires appropriate strategies, including aids, equipment, and accessible legal information and advice to facilitate equal and effective participation in all legal proceedings ...*⁵⁵

knowmore strongly supports reforms to the NRS to ensure that survivors with disability have equal access to redress and are treated equally throughout the redress process. We particularly support:

- NRS staff receiving appropriate and targeted training to promote greater understanding of the diverse experiences and needs of survivors with disability
- reforms to NRS processes to enhance flexibility for survivors with disability
- reforms to the NRS to ensure that all reasonable adjustments requested by survivors are facilitated in a timely manner.

Recommendation 8

The Australian Government should prioritise the provision of appropriate and ongoing training for all NRS staff, particularly for those working in frontline roles. This training should promote greater understanding and awareness of the diverse experiences of survivors with disability, the barriers they may face in accessing justice and redress, and the importance of making reasonable adjustments to enhance their access to the NRS.

Recommendation 9

The Australian Government should ensure there is greater flexibility within NRS processes to accommodate the individual needs of survivors with disability and ensure that all reasonable adjustments requested by or for survivors with disability are facilitated promptly.

Improving the counselling and psychological care component of redress

In knowmore’s submission to the second year review, we noted that survivors with disability may experience additional barriers in accessing suitable and tailored support and treatment options under the counselling and psychological component of redress.⁵⁶ In our experience, barriers to accessing appropriate therapeutic treatment and support are particularly

54 Department of Social Services (DSS), [Australia’s Disability Strategy 2021–2031](#), DSS, 2021, accessed 21 February 2023, p 37.

55 DSS, [Australia’s Disability Strategy 2021–2031](#), p 17.

56 knowmore, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \[PDF 1,121KB\]](#), 28 April 2020, accessed 21 February 2023, p 48.

exacerbated for survivors with disability who require reasonable adjustments to access those services, and for survivors with disability residing in regional, rural and remote locations.

The National Service Standards for the Provision of State and/or Territory Based Counselling and Psychological Care (National Service Standards) guide the provision of counselling and psychological care in jurisdictions that have undertaken to deliver this component of redress.⁵⁷ Under the National Service Standards, governments have committed, among other things, to ‘be culturally appropriate and consider the diversity of the survivor such as needs related to disability, gender, sexuality and language.’⁵⁸ However, we are aware of instances where this has not occurred in practice. We therefore remain concerned that states and territories with responsibility for implementing this component of redress are not meeting the diverse and unique healing and support needs of survivors with disability.

Recommendation 4.6 of the second year review called on the Australian Government to undertake a range of actions to improve the equity, scope and quality of counselling support for survivors generally. In our view, the full and effective implementation of this recommendation would help to address ongoing shortcomings in the delivery of the counselling and psychological component of redress for survivors with disability, and we urge the Australian Government to work with the state and territory governments on it.

Recommendation 10

The Australian Government should work with all state and territory governments to fully implement Recommendation 4.6 of the second year review, including by providing people with disability lifelong access to trauma-informed redress counselling and counselling services that are appropriate and meet their diverse needs.

Improving the availability of data and information about the experiences of applicants with disability

Term of Reference 2 of the Committee’s current inquiry refers to the availability of data and information relating to applicants with disability. knowmore notes that there is a significant lack of publicly available data and information relating to the experiences of survivors with disability applying to the NRS. For example, the monthly updates published by the NRS do not include any information specific to survivors with disability.

In April 2020, the Ministers’ Redress Scheme Governance Board agreed to a set of ‘strategic success measures’ and committed to publishing a report on these measures every 6 months. Despite this process being adopted to improve the performance and transparency of the NRS for survivors, only 2 reports have ever been published, with the most recent published data being current to 31 March 2021. In addition, the data and information that has been

57 [Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse](#), 1 February 2023, accessed 21 February 2023, Schedule C.

58 [Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse](#), Schedule C, standard 10.

published in the 2 reports is very limited and does not provide any meaningful insights into the experiences of survivors with disability in accessing the NRS or the outcomes survivors with disability have received.⁵⁹

The second year review also raised concerns about the quality and availability of data relating to applicants with disability. For example, the review found that the NRS ‘does not collect information on the number of applications made in relation to abuse occurring in government-funded disability group homes’.⁶⁰ The review also commented that:

*While data suggests that there is a high uptake of applicants identifying as living with disability, the Review believes that this is potentially misleading due to confusion about terminology.*⁶¹

In our view, it is impossible to truly assess the extent to which the NRS provides equal access to redress for survivors with disability without accurate and publicly available information about the number of people with disability who have applied for redress, their experiences with the redress process, and the outcomes they have received. We therefore urge the Australian Government to implement Recommendations 6.9 and 6.10 second year review, which aim to improve the quality and availability of data captured and published by the NRS.

Recommendation 11

The Australian Government should fully implement Recommendations 6.9 and 6.10 of the second year review to ensure that the NRS collects and publicly reports on disaggregated data about the experiences of survivors with disability in seeking to access redress and the outcomes received by survivors with disability.

Improving redress for Aboriginal and/or Torres Strait Islander survivors

The Royal Commission helped to shed light on the overrepresentation of Aboriginal and/or Torres Strait Islander peoples among victims and survivors of institutional child sexual abuse, as well the significant and disproportionate impacts of abuse on Aboriginal and/or Torres Strait Islander peoples, families and communities. The Royal Commission found that Aboriginal and/or Torres Strait Islander people:

- are ‘... more likely to encounter circumstances that increase their risk of [child sexual] abuse in institutions, reduce their ability to disclose or report abuse and, if

59 NRS, [Strategic success measures: October 2020](#), 26 November 2020, accessed 21 February 2023.

60 Kruk AO, *Final report*, p 209.

61 Kruk AO, *Final report*, pp 40 and 209.

they did disclose or report, reduce their chances of receiving an adequate response'⁶²

- remain '... significantly over-represented in some high-risk institutional contexts due to a range of historical, social and economic factors, including colonisation'⁶³
- may experience increased barriers to disclosing child sexual abuse due to 'structural factors or experiences of systemic racism and discrimination' within justice and legal systems, which may be reinforced by 'contemporary experiences of systemic injustice and racism ...'⁶⁴
- face '... a heavier burden of cumulative harm due to a range of historical and contemporary factors';⁶⁵ the ripple effects of this cumulative harm continue to have collective and intergenerational impacts, 'perpetuating cycles of disadvantage and trauma'.⁶⁶

These findings are consistent with the experiences of many of knowmore's Aboriginal and/or Torres Strait Islander clients. In describing the impacts of childhood abuse on Aboriginal and/or Torres Strait Islander survivors, one of knowmore's Senior Aboriginal and Torres Strait Islander Engagement Advisors stated:

Some survivors are severely impacted physically, socially, psychologically, emotionally by their abuse. The despair, the fear, the anger, the mental health issues associated with their experiences and being a person with disability — ... some people have not been told their rights and obligations about other services that can help them ... For some people, just going into an office is confronting just because of the intergenerational trauma and trust aspects and the relationship between Aboriginal and non-Aboriginal people. Some people have an ingrained fear and won't access services.

Given the overrepresentation of Aboriginal and/or Torres Strait Islander peoples among victims and survivors of institutional child sexual abuse, the profound impacts that abuse can have on their lives, and the increased barriers they may face in seeking to disclose abuse and access justice, we strongly believe that priority must be given to ensuring that Aboriginal and/or Torres Strait Islander peoples have equal access to the NRS and that they receive equal treatment throughout the redress process.

In the following sections, we make observations and recommendations about:

- improving awareness of the NRS among Aboriginal and/or Torres Strait Islander survivors, including through a targeted communication and engagement strategy

62 Royal Commission, *Final report: volume 2*, p 3. We note that these observations were also made in relation to children with disability and children from culturally and linguistically diverse backgrounds.

63 Royal Commission, *Final report: volume 2*, p 17.

64 Royal Commission, *Final report: volume 4*, p 44.

65 Royal Commission, *Final report: volume 3*, p 9.

66 Royal Commission, *Final report: volume 3*, p 12.

- improving access to culturally safe and appropriate support for Aboriginal and/or Torres Strait Islander survivors
- improving cultural safety within NRS processes
- improving knowledge of the experiences of Aboriginal and/or Torres Strait Islander survivors among NRS staff
- addressing the inconsistent and unfair treatment of prior payments received by Aboriginal and/or Torres Strait Islander survivors
- improving the counselling and psychological component of redress for Aboriginal and/or Torres Strait Islander survivors.

The observations and recommendations we make below are informed by the experiences of our Aboriginal and/or Torres Strait Islander clients who have sought to access redress under the NRS, as well as the experiences of our Aboriginal and Torres Strait Islander Engagement team, who lead knowmore's work with Aboriginal and/or Torres Strait Islander survivors alongside our Elder in Residence, Auntie Glendra Stubbs.⁶⁷

Improving awareness of the National Redress Scheme

As discussed above on pages 28 to 30, the Royal Commission highlighted the need for those who operate the redress scheme to develop a comprehensive communication strategy for all survivors, as well as a particular communication strategy for Aboriginal and/or Torres Strait Islander survivors. While we acknowledge that some communications work has been progressed, for example, on the development of materials and information about the NRS for Aboriginal and/or Torres Strait Islander people, this work is limited in scope and, as the second year review found, has not had a significant impact in raising awareness about the NRS.

One of knowmore's Aboriginal and Torres Strait Islander Engagement Advisors described the extent of this problem and the impact on survivors in the following way:

Quite often we go to places and they've never heard about the NRS. We have to use a lot of our time explaining the NRS, which limits the time available to talk about what support knowmore can provide. This is particularly a problem in regional, rural and remote areas.

The second year review, like the Royal Commission, recommended that the Australian Government fund a targeted communication strategy for Aboriginal and/or Torres Strait Islander peoples.⁶⁸ As the NRS is nearing its halfway point, it is critical that such a strategy is progressed and delivered.

knowmore urges the Australian Government to finalise the development and implementation of a comprehensive targeted communication and engagement strategy for Aboriginal and/or Torres Strait Islander peoples as a matter of priority. It is important to

⁶⁷ For more information about knowmore's Aboriginal and Torres Strait Islander Engagement team see knowmore, [Aboriginal and Torres Strait Islander support](#), n.d., accessed 21 February 2023.

⁶⁸ Kruk AO, *Final report*, Recommendation 7.1, p 228.

ensure as part of this that Aboriginal and/or Torres Strait Islander peoples are given information about the NRS and their legal rights in their own languages.

Recommendation 12

The Australian Government should finalise the development and implementation of a comprehensive targeted communication and engagement strategy for Aboriginal and/or Torres Strait Islander peoples as a matter of priority. This strategy should be made publicly available and subject to regular review.

Improving access to culturally safe and appropriate support

knowmore remains concerned about the lack of access to RSSs for some Aboriginal and/or Torres Strait Islander survivors. Aboriginal and/or Torres Strait Islander survivors living in regional, rural and remote locations, as well as Aboriginal and/or Torres Strait Islander survivors with disability, are particularly disadvantaged due to the lack of local and culturally safe and appropriate services available to them. The second year review also recognised the lack of access to culturally safe and appropriate support services for many Aboriginal and/or Torres Strait Islander survivors, and noted that this can not only impact a survivor's ability and willingness to apply for redress, but can also contribute to ongoing trauma.⁶⁹

The second year review made a number of important recommendations to ensure that all survivors have access to experienced, culturally appropriate and trauma-informed support services. knowmore endorses these recommendations and urges the Australian Government to implement them as a matter of priority to improve the experiences of Aboriginal and/or Torres Strait Islander survivors seeking to access the NRS.

Recommendation 13

The Australian Government should implement Recommendations 3.5, 3.7, 7.1 and 7.2 of the second year review to provide greater access to culturally safe and appropriate Redress Support Services for Aboriginal and/or Torres Strait Islander survivors, including survivors living in regional, rural and remote locations.

Improving cultural safety within National Redress Scheme processes

In knowmore's submission to the former Joint Select Committee on Implementation of the NRS (former Joint Select Committee), we raised concerns about the lack of cultural safety within NRS processes and the further harm and trauma this can cause to Aboriginal and/or Torres Strait Islander survivors.⁷⁰ We continue to hold these concerns, particularly in relation to:

69 Kruk AO, *Final report*, pp 207–209.

70 knowmore, *Submission to the Joint Select Committee on Implementation of the National Redress Scheme*, pp 16–19.

- the lack of cultural safety in the NRS's nominee process
- the lack of cultural safety in the NRS's practice of recording telephone calls and
- the lack of cultural safety and flexibility in the NRS's identity requirements.

Nominee process

In our experience, it is not uncommon for NRS staff to contact survivors without their nominee being aware or being present on the telephone call. This practice can be distressing for survivors and can be particularly harmful for Aboriginal and/or Torres Strait Islander survivors who require cultural support to engage with government institutions and to revisit their experiences of childhood sexual abuse and trauma. One of knowmore's Aboriginal and Torres Strait Islander Engagement Advisors highlighted some particularly harmful impacts:

Clients with complex needs as well as having significant mental illness have self-presented to hospital after being contacted by the NRS without us, even though numerous notes have been made on the NRS system to flag that we are to be on the calls with them. Direct phone calls to clients still occur. It escalates and the clients end up going back and appearing at the mental health hospitals and getting admitted. It's easily avoidable if we are on the calls.

Being contacted by NRS staff without their nominee can also be particularly problematic for survivors who require support to understand the purpose of the telephone calls and the information being sought from them, as well as how the information they provide may impact their redress determination. knowmore wants to see the NRS put an end to this practice to ensure that its engagement with Aboriginal and/or Torres Strait Islander survivors is trauma-informed, culturally safe and survivor-focused.

Recommendation 14

The NRS should ensure that it complies with survivors' nominee arrangements and not conduct outbound telephone calls with survivors without their nominee being present.

Recording telephone calls

knowmore's Aboriginal and Torres Strait Islander Engagement team have raised significant concerns about the NRS's practice of recording telephone calls with survivors. In their view:

- There is a lack of understanding of and sensitivity to the deeply personal information that survivors are being asked to share with the NRS, as well as the feelings of distress and shame survivors may experience as a result of discussing their abuse.
- There is a lack of transparency and accountability about how the NRS uses the information provided by survivors during telephone calls, who has access to the information and how long the information is stored for. This can be particularly distressing for Aboriginal and/or Torres Strait Islander survivors who live in close-knit communities and who have heightened concerns around confidentiality.

- The process inappropriately assumes that survivors will consent to the recording. Survivors are not provided with a genuine opportunity to understand the purpose of the recording, to discuss their concerns or to provide informed consent.
- The NRS lacks appropriate processes to deal with situations where a survivor does not consent to the recording. In our experience, NRS staff tend to abruptly end the call if a survivor does not consent to the recording, presumably because they need to use a different telephone line or system. We have also observed that some NRS staff do not deal with these situations in a trauma-informed manner, which can leave survivors feeling guilty for not consenting to the recording.
- The practice of recording telephone calls causes further harm and trauma to survivors whose experiences of child sexual abuse involved being recorded without their consent (for example, having their photographs taken).
- The adverse impacts of this practice may be particularly heightened for Aboriginal and/or Torres Strait Islander survivors who engage with the NRS without support. For example, while we can assist our clients to navigate this process and support them to make an informed choice, those without support may be surprised and distressed to hear that the telephone call will be recorded and may not feel confident to decline to give consent to the recording.

It is our firm view that the NRS's current practice of routinely recording telephone calls with survivors is neither trauma-informed nor culturally safe and risks causing further harm to survivors. It may also heighten survivors' feelings of distrust towards the NRS and impact their willingness to engage with the redress process. We recommend that the NRS review its practice as a matter of priority to ensure that it is trauma-informed and culturally safe. The NRS needs to ensure as part of this that NRS staff give survivors a genuine opportunity to consent to the recording, and respond appropriately in situations where survivors do not consent.

Recommendation 15

The NRS should review the practice of recording telephone calls with survivors as a matter of priority to ensure that its processes are trauma-informed and culturally safe. The NRS should ensure that survivors are given a genuine opportunity to give their informed consent to the recording, and that NRS staff respond appropriately in situations where survivors do not give their consent.

Identity requirements

We are concerned about the NRS's strict identity requirements and the disproportionately negative impact they have on Aboriginal and/or Torres Strait Islander survivors, particularly for survivors who do not have identity documents such as birth certificates or Centrelink Customer Reference Numbers (CRNs). In these situations, the NRS requires survivors to visit a specialised Centrelink office. For many survivors, this is at best problematic, and at worst, impossible. Centrelink offices are limited in regional, rural and remote areas and accessing them can be particularly problematic for survivors with disability and survivors with limited

transport options. knowmore's clients have also reported that Centrelink staff do not always have a good understanding of the NRS and its identity requirements, which has led to mistakes. Survivors living in close-knit communities have also been hesitant to visit local Centrelink offices due to heightened concerns around confidentiality and feelings of shame they may experience. These problems can all act as additional barriers to some Aboriginal and/or Torres Strait Islander peoples accessing the NRS.

To address these problems, we recommend that the Australian Government review the NRS's identity requirements, with a view to ensuring they are more trauma-informed and flexible for survivors experiencing heightened marginalisation.

Recommendation 16

The Australian Government should review the NRS's identity requirements, with a view to ensuring that they are more trauma-informed and flexible for survivors experiencing heightened marginalisation, including Aboriginal and/or Torres Strait Islander survivors.

Improving knowledge of the experiences of Aboriginal and/or Torres Strait Islander survivors among National Redress Scheme staff

The Royal Commission acknowledged the unique circumstances and needs of Aboriginal and/or Torres Strait Islander survivors, emphasising the importance of cultural awareness and safety in the redress scheme's design and operation. As noted at the beginning of our submission (see page 6), the Royal Commission recommended general principles for redress. These included that:

*All redress should be offered, assessed and provided having appropriate regard to what is known about the nature and impact of child sexual abuse, and institutional child sexual abuse in particular, and to the cultural needs of survivors. All of those involved in redress, particularly those who might interact with survivors or make decisions affecting survivors, should have a proper understanding of these issues and any necessary training.*⁷¹

While these principles have been incorporated into the NRS's general principles, our experience is that there continues to be a lack of knowledge and understanding of the experiences of Aboriginal and/or Torres Strait Islander survivors among NRS staff. This particularly includes a lack of knowledge and understanding of the historical circumstances and experiences of survivors of the Stolen Generations. These deficiencies are especially concerning among staff in key roles such as frontline staff engaging with Aboriginal and/or Torres Strait Islander survivors and delivering their redress outcomes, and Independent Decision Makers (IDMs) who are responsible for

71 Royal Commission, *Redress and civil litigation report*, Recommendation 4, p 10.

making decisions about whether Aboriginal and/or Torres Strait Islander survivors are eligible to receive redress.

In knowmore's submission to the former Joint Select Committee, we highlighted the impact of this problem on Aboriginal and/or Torres Strait Islander survivors. In particular, we raised concerns that survivors were receiving unjust outcomes as a result of cultural considerations and the unique experiences of Aboriginal and/or Torres Strait Islander survivors not being adequately or consistently taken into account by IDMs. This is further demonstrated below in the discussion of ongoing concerns about the treatment of relevant prior payments for survivors of the Stolen Generations (see pages 42 to 44). We also continue to see considerable unfairness and inconsistency in the assessment of 'institutional responsibility' in applications made by Aboriginal and/or Torres Strait Islander survivors, particularly in relation to child sexual abuse that occurred on historic missions and reserves or in situations involving more informal or private care arrangements.

There may be several factors contributing to this lack of understanding and awareness, including a lack of Aboriginal and/or Torres Strait Islander representation among NRS staff and a lack of ongoing and tailored training. We think training is likely to be particularly important. According to the Law Council of Australia:

A history of marginalisation and discriminatory justice responses has affected Aboriginal and Torres Strait Islander peoples' confidence in the justice system. Many are now reluctant to engage with it. To address existing distrust, and to bridge cultural and communication divides, ongoing, regular cultural competence training — informed and led by Aboriginal and Torres Strait Islander people and organisations — is required across the justice sector.⁷²

The second year review also recognised the need for greater cultural awareness training among NRS staff and recommended that 'the Australian Government mandate and regularly audit and report on the participation of all staff in clinically designed and delivered training programs that include modules on trauma-informed and culturally safe practices ...'⁷³ While we endorse this recommendation, we also believe that NRS staff in key roles, including IDMs and staff that engage directly with survivors, should receive tailored training to improve their awareness of the historical experiences of Aboriginal and/or Torres Strait Islander survivors of institutional child sexual abuse and the ongoing impacts of that abuse.

Recommendation 17

The Australian Government should implement Recommendation 6.5 of the second year review to ensure that all NRS staff receive adequate and ongoing cultural awareness training. In addition, NRS staff in key roles, such as IDMs and staff that engage directly with survivors, should receive tailored training to improve their awareness of the historical experiences of Aboriginal and/or Torres Strait Islander survivors of institutional child sexual abuse and the ongoing impacts of that abuse.

72 Law Council of Australia, *The Justice Project*, p 25.

73 Kruk AO, *Final report*, Recommendation 6.5, p 183.

Addressing the inconsistent and unfair treatment of prior payments

On pages 19 to 21 above, we discussed the unfair and inconsistent treatment of prior payments, and how this impacts many survivors. In our experience, this issue has a disproportionate impact on Aboriginal and/or Torres Strait Islander survivors. This was confirmed by the second year review, which noted that Aboriginal and/or Torres Strait Islander applicants to the NRS were more likely to have their redress payments reduced by prior payments — applicants who identified as Aboriginal and/or Torres Strait Islander represented 29.5% of applicants with an offer of redress, but 34.4% of applicants whose final offer was reduced by prior payments. This included Aboriginal and/or Torres Strait Islander applicants who had received a Stolen Generations payment.⁷⁴

Under rule 26 of the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (NRS Rules), the NRS should distinguish between 2 types of Stolen Generations payments:

1. payments that relate solely to the harm caused by the forced removal of Aboriginal and/or Torres Strait Islander children — these payments do not include a component for sexual abuse, are not relevant prior payments under rule 26 of the NRS Rules and should not be deducted from a survivor's redress payment
2. payments that also include a component for sexual abuse — in this case, the NRS may legally deduct the component for sexual abuse from the survivor's redress payment.

This is consistent with the analysis of Stolen Generations payments provided by the second year review.⁷⁵ However, despite rule 26 and the analysis provided by the second year review, we continue to hear of IDMs indexing and deducting both types of Stolen Generations payments from survivors' redress offers, either partially or in full. As noted earlier (see page 18), the NRS often does not provide adequate reasons for survivors to understand why this has occurred. For Stolen Generations payments that include a component for sexual abuse, it is often unclear to us how the NRS has calculated this component. We often hear criticism that the NRS deducting Stolen Generations payments from survivors' redress payments does not adequately recognise the individual and communal harm caused by both the forced removal and the various forms of abuse that occurred.⁷⁶

The inconsistency and unfairness in the NRS's treatment of Stolen Generations payments can be demonstrated by comparing the following 2 case studies. knowmore provided these case studies to the second year review in 2020⁷⁷ — we continue to see unfairness and inconsistency of the nature illustrated by these case studies.

⁷⁴ Kruk AO, *Final report*, p 221.

⁷⁵ Kruk AO, *Final report*, p 106.

⁷⁶ For more information about the individual and communal harm caused by forced removal, see Human Rights and Equal Opportunity Commission, *Bringing them Home*, 1997, accessed 21 February 2023, pp 154–201.

⁷⁷ knowmore, *Submission to the second anniversary review of the NRS [PDF 1,651KB]*, 30 September 2020, accessed 21 February 2023, pp 38–39.

An Aboriginal client and member of the Stolen Generations whose relevant prior payment was apportioned and only partly deducted

The client is an Aboriginal person and a member of the Stolen Generations. The client experienced institutional child sexual abuse in foster care while they were in the care of a state government.

The client had previously participated in civil proceedings, as part of a Stolen Generations group action. As a result of the group action, the client received a payment.

That payment was awarded to the client in recognition of the impact of unjust historical policies of forcible removal of children on the basis of their Aboriginality. It was not intended to provide reparations for institutional child sexual abuse.

During the civil proceedings, the client had disclosed some of the child sexual abuse they had experienced. However, the client did not disclose the severity of that abuse. knowmore assisted the client to apply for redress, and made submissions in support of the application contending that the above payment should not be deemed a relevant prior payment for this reason.

The client was found eligible for redress and received an offer of over \$100,000, which they accepted. In this case it would seem that the IDM apportioned the prior payment, finding only part of it to constitute a relevant prior payment.

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

The client is an elderly Aboriginal person and a member of the Stolen Generations. The client experienced institutional child sexual abuse in a residential home while they were under the care of a state government.

The client had previously participated in civil proceedings, as part of a Stolen Generations group action. As a result of the group action, the client received a payment.

This prior payment was awarded in recognition of the impact of unjust historical policies of forcible removal of children on the basis of their Aboriginality. It was not intended to provide reparations for institutional child sexual abuse.

During the civil proceedings the client did not disclose any details of the sexual abuse they had experienced. The client was only later able to disclose their experiences of institutional child sexual abuse with the support of an Aboriginal Engagement Advisor and a lawyer at knowmore. knowmore made submissions that the prior payment should be disregarded in its entirety for this reason.

continued on next page

The client was found eligible for redress but received no offer of a monetary payment. In this instance, the NRS found the entirety of the prior payment to be relevant, applied indexation, and deducted the full amount from their redress offer. The client was not provided with adequate written reasons explaining how their application was determined.

The redress outcome has caused significant distress to this client, who has been left without a clear understanding of how or why the decision was made, as well as a feeling that they have been treated differently to other Stolen Generations survivors.

As noted on page 20 above, the second year review made recommendations to address the inconsistent and unfair treatment of prior payments, 'with specific reference to Stolen Generations payments'.⁷⁸ The Australian Government should implement these recommendations from the second year review.

Improving the counselling and psychological component of redress

In knowmore's submission to the second year review, we highlighted ongoing inadequacies and inconsistencies in the counselling and psychological care component of redress for Aboriginal and/or Torres Strait Islander survivors.⁷⁹ In particular, we raised concerns about:

- the general lack of culturally appropriate services for Aboriginal and/or Torres Strait Islander survivors in most states and territories
- the inappropriate focus on providing culturally competent services within a Western healing framework that is not always relevant to Aboriginal and Torres Strait Islander survivors and
- the inadequate recognition of and funding for cultural healing modalities such as healing circles, family work, community-focused healing and connection to culture.

As explained on page 33, the National Service Standards govern the provision of counselling and psychological care in jurisdictions that have undertaken to deliver this component of redress. According to the National Service Standards, the guiding principles for counselling and psychological care services include that they are 'collaborative, available, accessible, high quality and inclusive of Aboriginal and Torres Strait Islander healing approaches'.⁸⁰ Further, jurisdictions are required to commit to a set of service standards that relevantly include:

- 'Provide access ... for all survivors entitled to redress under the Scheme, including [those living in] rural, regional and remote areas.'

78 Kruk AO, *Final report*, p 117.

79 knowmore, *Submission to the second anniversary review of the National Redress Scheme*, pp 41–52.

80 *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse*, Schedule C.

- '[Take into account] the preferences of the survivor ... when developing a plan for their care.'
- 'Be culturally appropriate and consider the diversity of the survivor such as needs related to disability, gender, sexuality and language.'
- 'Provide culturally appropriate [counselling and psychological care] for Aboriginal and Torres Strait Islander survivors.'⁸¹

Despite these obligations, there continues to be a lack of culturally safe and appropriate healing and therapeutic treatment services and modalities for Aboriginal and/or Torres Strait Islander survivors under the NRS. As a result, some Aboriginal and/or Torres Strait Islander survivors continue to be unable to obtain the full benefits of their redress outcome or begin their healing journey.

We reiterate the urgent need for the Australian Government and state and territory governments to fully implement Recommendation 4.6 of the second year review, as discussed on pages 32 to 33. Doing so would address our above concerns and ensure that Aboriginal and/or Torres Strait Islander survivors have lifelong access to trauma-informed and culturally appropriate redress counselling and to Aboriginal and Torres Strait Islander healing approaches.

Improving redress for survivors in prison

The treatment of survivors in prison under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (NRS Act) has a severe, disproportionate impact on survivors with disability, and Aboriginal and/or Torres Strait Islander survivors. This reflects the over-representation of survivors, people with disability and Aboriginal and/or Torres Strait Islander people in prison.⁸²

The second year review expressed 'significant and immediate concern' for people in prison,⁸³ noting that people in prison face additional barriers to accessing redress.⁸⁴ These barriers include, as discussed further below:

- the general rule that people 'in gaol' cannot apply for redress
- the broad definition of who is in gaol
- the requirement for the NRS to seek advice from Attorneys-General about exceptional circumstances.

81 *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse*, Schedule C, standards 4, 5, 10 and 11.

82 Royal Commission, *Final report: volume 3*, p 144; Law Council of Australia, *The Justice Project*, p 20.

83 Kruk AO, *Final report*, p 11.

84 Kruk AO, *Final report*, pp 65–66.

The second year review recommended that people in prison be allowed to apply for redress, with a single application process for all applicants.⁸⁵ In our view, the Australian Government should implement this recommendation.

Recommendation 18

The Australian Government should allow for survivors in prison to apply for redress, with a single application process for all applicants (as per Recommendation 3.2 of the second year review).

We note that many survivors in prison also have serious criminal convictions. We make comments about improving redress for survivors with serious criminal convictions on pages 48 to 50.

General rule that people in gaol cannot apply for redress

Under section 20 of the NRS Act, a person in gaol cannot apply for redress, unless there are exceptional circumstances. As the second year review observed, this is in contrast to the Royal Commission's recommendations.⁸⁶ We note, in particular, the Royal Commission's recommendation that a process for redress 'must provide equal access and equal treatment for survivors'.⁸⁷

In contrast to the exclusionary approach taken by section 20 of the NRS Act, the Royal Commission held private sessions with 713 survivors in prison. This represents 10% of the survivors that participated in a private session. Of the 713 survivors in prison, 32% indicated that they were Aboriginal and/or Torres Strait Islander survivors, and 5% told the Commissioner they were a person with disability when they were sexually abused.⁸⁸

Definition of who is in gaol

Section 20 of the NRS Act adopts a broad definition of who in gaol and therefore generally unable to apply for redress.⁸⁹ For example, a person is considered to be in gaol if they are detained 'under sentence for conviction' in any place.⁹⁰ This includes survivors who have never received a prison sentence — for example, survivors detained at home.

85 Kruk AO, *Final report*, Recommendation 3.2, p 75.

86 Kruk AO, *Final report*, p 11.

87 Royal Commission, *Redress and civil litigation report*, Recommendation 1, p 95.

88 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Final report: volume 5, private sessions*, December 2017, accessed 21 February 2023, p 241.

89 Paragraph 20(1)(d) of the NRS Act adopts the definition of who is considered to be 'in gaol' from subsection 23(5) of the *Social Security Act 1991* (Cth).

90 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), paragraph 20(1)(d); *Social Security Act 1991* (Cth), paragraph 23(5)(a).

The definition of who is in gaol also includes survivors who are in custody ‘pending trial or sentencing for an offence’.⁹¹ This includes survivors who have never been — and may never be — convicted of any crime. It also includes survivors who have never been — and may never be — sentenced to a term of detention. Given 37% of people in Australia’s prisons have not received a sentence,⁹² there is likely to be a significant number of unsentenced survivors who are denied or delayed access to redress by the broad definition of who is in gaol. Further, Aboriginal and/or Torres Strait Islander peoples in prison are more likely to be unsentenced,⁹³ indicating that this issue disproportionately affects Aboriginal and/or Torres Strait Islander survivors.

Requirement for the National Redress Scheme to seek advice from Attorneys-General about exceptional circumstances

As noted on page 46 above, a person in gaol can argue that there are exceptional circumstances that justify their application being made.⁹⁴ Generally speaking, the NRS cannot simply decide that there are exceptional circumstances and allow the application to proceed. Under rule 14 of the NRS Rules, the NRS must first seek advice from the Attorney-General of the state or territory in which the person is in gaol. If the abuse happened in another state or territory, the NRS must also seek advice from the Attorney-General of the state or territory in which the abuse took place.⁹⁵ There are exceptions to the requirement for the NRS to seek advice from Attorneys-General about exceptional circumstances.⁹⁶

We see inconsistencies in when the NRS considers exceptional circumstances to exist for people seeking to apply for redress while they are in gaol. The lack of transparency discussed on pages 16 to 19 above makes it difficult to pinpoint the cause of these inconsistencies. However, we hold concerns that these inconsistencies may be linked to differences in the advice provided by different Attorneys-General and/or inconsistencies in how this advice is treated by the NRS.⁹⁷ If nothing else, the requirement for the NRS to seek advice from Attorneys-General has contributed to a perception among some survivors that a decisive factor is who the relevant Attorneys-General are. This has negative implications for the reputation of the NRS.

91 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), paragraph 20(1)(d); *Social Security Act 1991* (Cth), paragraph 23(5)(b).

92 Australian Bureau of Statistics, [Corrective Services, Australia](#), ABS website, 24 November 2022, accessed 21 February 2023.

93 Australian Bureau of Statistics, *Corrective Services, Australia*.

94 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), subsection 20(2).

95 National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (Cth), rule 14.

96 Under subrule 14(2) of the NRS Rules, the NRS does not have to seek advice from Attorneys-General about exceptional circumstances if the survivor is very ill or expected to remain in gaol beyond the end of the NRS.

97 See Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, [Witness statement of Warren Strange \[PDF 876KB\]](#), 28 April 2022, accessed 21 February 2023, p 11.

We note that a general principle of the NRS, under section 10 of the NRS Act, is that ‘Redress should be assessed, offered and provided in a way that protects the integrity of the scheme’.⁹⁸ In light of this principle, we consider that the NRS should not only treat similar cases in a similar way, but also be seen to do this. Survivors should have confidence that they will not be treated differently by the NRS simply because of:

- which state or territory they are detained in
- which state or territory they were abused in
- who the Attorneys-General of those states or territories are.

This is consistent with the Royal Commission’s recommendation that a process for redress ‘must provide equal access and equal treatment for survivors’. That recommendation specifically noted that the location in which a survivor was abused should not affect their access to, or treatment while seeking, redress.⁹⁹

We recommended above (see page 46) that the Australian Government should allow for survivors in prison to apply for redress, with a single application process for all applicants (as per Recommendation 3.2 of the second year review). If implemented, this would avoid the need for the NRS to seek advice from Attorneys-General about exceptional circumstances and increase consistency in decision-making for survivors in prison.

Improving redress for survivors with serious criminal convictions

Under section 63 of the NRS Act, a person is considered to have a serious criminal conviction if they have been sentenced to imprisonment for 5 years or longer for an offence.¹⁰⁰ The default position for a survivor with a serious criminal conviction is that they are not entitled to redress.¹⁰¹ If a survivor with a serious criminal conviction wishes to apply for redress, the NRS requires the survivor to complete a ‘special assessment process’.¹⁰² As part of this process, the NRS must seek advice from relevant Attorneys-General.¹⁰³ A survivor with a serious criminal conviction can only access redress if the NRS is satisfied that it would not ‘bring the scheme into disrepute’ or ‘adversely affect public confidence in, or support for, the scheme’.¹⁰⁴ These represent significant barriers to accessing redress for survivors with

98 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), subsection 10(5).

99 Royal Commission, *Redress and civil litigation report*, p 95.

100 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), paragraph 63(1)(b).

101 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), subsection 63(2).

102 NRS, [Serious Criminal Convictions](#), NRS website, n.d., accessed 21 February 2023.

103 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), subsections 65(3)–(4).

104 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), subsection 65(5).

serious criminal convictions, in contrast to the Royal Commission's recommendation for 'equal access and equal treatment for survivors'.¹⁰⁵

These barriers affect both survivors who are presently in prison and survivors who have been released. The second year review observed the cumulative effect of barriers for survivors who are presently in prison with a serious criminal conviction:

*Survivors permitted to make an application from gaol under exceptional circumstances who have a serious criminal conviction must also complete [the special assessment] process. In tandem these constitute a significant bar discouraging applicants and deterring other potentially eligible applicants from applying.*¹⁰⁶

We see inconsistencies in how the NRS treats survivors with serious criminal convictions and repeat our above concerns that this may be linked to differences in the advice provided by different Attorneys-General and/or inconsistencies in how this advice is treated by the NRS (see discussion on pages 47 to 48).

An analysis of knowmore's data in October 2022 found that we had assisted 63 survivors with serious criminal convictions whose special assessment process had been finalised by the NRS. For just over a fifth (21%) of these survivors, the result of the special assessment process was that they continued to be prevented from accessing redress. Our data suggests that a significant number of survivors are being prevented from accessing redress by the serious criminal convictions provisions of the NRS Act. We would welcome further data and explanation from the NRS as to how the NRS applies the serious criminal convictions provisions in practice and how these provisions impact on survivors experiencing heightened marginalisation.

Recommendation 19

The NRS should provide data and explanation as to how the NRS applies the serious criminal convictions provisions in practice and how these provisions impact on survivors experiencing heightened marginalisation.

The analysis of knowmore's data further showed that Aboriginal and/or Torres Strait Islander survivors are disproportionately affected by the serious criminal convictions provisions. Aboriginal and/or Torres Strait Islander survivors were significantly over-represented, both among clients with a finalised special assessment process for a serious criminal conviction (40%) and among clients who were prevented from accessing redress as a result of that process (62%).

We were especially concerned to see that more than two-thirds (68%) of Aboriginal and/or Torres Strait Islander clients with a finalised special assessment process had been abused in youth justice institutions. This highlights a deeply troubling dynamic, whereby governments disproportionately place Aboriginal and/or Torres Strait Islander children in youth

¹⁰⁵ Royal Commission, *Redress and civil litigation report*, Recommendation 1, p 95.

¹⁰⁶ Kruk AO, *Final report*, p 66.

detention,¹⁰⁷ where children are at heightened risk of being sexually abused,¹⁰⁸ only to later prevent many of those same Aboriginal and/or Torres Strait Islander people from accessing redress due to a serious criminal conviction. This dynamic presents links between colonisation, overincarceration, child sexual abuse and inadequate redress that disproportionately affect Aboriginal and/or Torres Strait Islander survivors.¹⁰⁹

The second year review recommended that people with serious criminal convictions should be allowed to apply for redress, with a single application process for all applicants.¹¹⁰ In our view, the Australian Government should implement this recommendation.

Recommendation 20

The Australian Government should allow for survivors with serious criminal convictions to apply for redress, with a single application process for all applicants (as per Recommendation 3.2 of the second year review).

107 46% of young people in detention aged 10 to 17 years are Aboriginal and/or Torres Strait Islander peoples. See Australian Institute of Health and Welfare, [Youth justice in Australia: 2020–21](#), AIHW, 2022, accessed 21 February 2023, p 44.

108 The Royal Commission found that 15.2% of Aboriginal and/or Torres Strait Islander survivors were abused in youth detention (see Royal Commission, *Final report: volume 5*, p 400, table P.13). For more information about the heightened risk of child sexual abuse in youth detention, see Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [Final report: volume 15, contemporary detention environments](#), December 2017, accessed 21 February 2023, p 66.

109 There is a similarly troubling dynamic, whereby governments disproportionately place Aboriginal and/or Torres Strait Islander children in out-of-home care, where children are at heightened risk of being sexually abused (see Royal Commission, *Final report: volume 5*, p 400, table P.13), only to later prevent many of those same Aboriginal and/or Torres Strait Islander people from accessing redress. This then highlights the links between colonisation, forced removal, institutionalisation, child sexual abuse and inadequate redress that disproportionately affect Aboriginal and/or Torres Strait Islander survivors.

110 Kruk AO, *Final report*, Recommendation 3.5, p 75.

Legal advice and support services

This section discusses legal advice and support services, including comments about the need for adequate funding, strategies to minimise instances of alleged claim farming and excessive fees, and permanent stays of civil proceedings in child sexual abuse matters. It addresses Terms of Reference 4 and 5 of the Committee's inquiry.

In seeking to discuss legal advice and support services for survivors, we note that the second year review often used the phrase 'support services' as an umbrella term, covering legal support, non-legal support and Redress Support Services. Redress Support Service (RSS) has a specific meaning within the context of the National Redress Scheme (NRS) — it refers to particular organisations that are 'contracted to provide a range of services to survivors before, during and after they apply for redress'.¹¹¹ knowmore provides both legal and non-legal support services, but is not generally classified as an RSS.¹¹² RSSs generally provide non-legal support, although some RSSs also provide legal support. knowmore also has a dedicated team that provides legal support to RSSs and their clients.

The second year review made detailed comments about support services that are relevant to legal support, non-legal support and RSSs.¹¹³ We note, in particular, the second year review's comments that 'the survivor experience with support services is generally positive'¹¹⁴ and that 'appropriate, targeted supports and interventions appear to strengthen a survivor's application, reduce processing times and creates less trauma for survivors'.¹¹⁵ We also note consistent feedback from the NRS that applications from survivors who receive assistance from knowmore or the RSSs in preparing their applications are generally of a higher quality and contain all necessary information. This in turn facilitates quicker and informed determinations, and better outcomes for the applicants.

The second year review also expressed several concerns about support services. These included that:

- Support services often have long wait times.¹¹⁶
- Support services have limited geographic spread.¹¹⁷
- There is a lack of support services that are culturally appropriate and safe.¹¹⁸

111 R Kruk AO, [Final report: second year review of the National Redress Scheme](#), 26 March 2021, accessed 21 February 2023, p 144.

112 NRS, [National Redress Support Services](#), NRS website, n.d., accessed 21 February 2023.

113 See Kruk AO, *Final report*, pp 207–228.

114 Kruk AO, *Final report*, p 207.

115 Kruk AO, *Final report*, p 209.

116 Kruk AO, *Final report*, p 209.

117 Kruk AO, *Final report*, pp 209 and 214.

118 Kruk AO, *Final report*, p 208.

- There are barriers to the accessibility of support services,¹¹⁹ including for survivors with disability.¹²⁰

These concerns identified by the second year review are also concerns that survivors have raised with us about support services.

While the specific factors contributing to such issues may vary between situations and organisations, a significant factor of widespread concern is inadequate funding for support services. The second year review recognised that it ‘takes time, effort and skill’ to provide trauma-informed and culturally safe support to survivors.¹²¹ Support services need adequate funding to recruit, train and retain staff with appropriate skills, and to allow staff adequate time with each survivor to provide appropriate support. In doing this work, there is a heightened risk of vicarious trauma and burnout for staff, which organisations must be resourced to manage.¹²²

The second year review made the following recommendation relevant to legal support, non-legal support and RSSs.¹²³

Recommendation 7.2 of the second year review

The Australian Government provide greater access to survivor support services and interventions including:

- a. Additional funding to improve the quality, scope and geographic spread of appropriately skilled and relevant support services. This should include financial counselling.
- b. The commissioning of an external impact evaluation of all existing support services to ensure they are trauma-informed and survivor focused.
- c. The funding of services that are able to provide tailored and targeted responses, including outreach, to vulnerable individuals and cohorts.

knowmore supports the improved funding for support services contemplated by Recommendation 7.2 of the second year review. We make further comments below about:

- knowmore as a multidisciplinary support service
- legal advice for survivors and their advocates, including strategies to minimise instances of alleged claim farming and excessive fees, and permanent stays of civil proceedings in child sexual abuse matters.

119 Kruk AO, *Final report*, p 209.

120 Kruk AO, *Final report*, pp 215–217.

121 Kruk AO, *Final report*, p 208.

122 See Kruk AO, *Final report*, pp 174–178.

123 Kruk AO, *Final report*, p 228.

Recommendation 21

The Australian Government should provide greater access to survivor support services, including by increasing funding, and funding services that are able to provide tailored and targeted responses to people experiencing vulnerability (as per Recommendation 7.2 of the second year review).

knowmore as a multidisciplinary support service

As detailed on page 3, knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. We have a unique service delivery model, bringing together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

In his 2022 book, *Monetary redress for abuse in state care*, Dr Stephen Winter commented that:

*Survivors need support when preparing and submitting redress applications; they need help through (often protracted) assessment processes, assistance when they receive payments, and afterwards. Large numbers of survivors will have 'low levels of education and varying literacy skills, high levels of mental health issues and a reduced capacity to cope with delays and frustrations' ... The resulting difficulties make good support necessary to survivors and to the effectiveness of any redress programme. Support work is not ancillary, it is part of redress.*¹²⁴

Dr Winter noted the effectiveness of knowmore's service model in meeting these needs:

A community law initiative in Australia offers a promising model for holistic practice. Originally developed to help survivors work with the McClellan Commission (2013–2017), knowmore was well-positioned to support applicants when the NRS began in 2018. Services are free to survivors because knowmore receives block funding from Australian governments. Block funding limits cost-building incentives: because knowmore staff are salaried (and not fee-for-service), they do not profit from individual claims. More importantly, knowmore trains legal professionals to work with survivors. That includes training in Indigenous cultures and workshops on trauma-informed practices (AU Interview 5). As a result, knowmore's lawyers are redress experts with a personal and professional ethos that prioritises the survivors' well-being. And, of course, knowmore's funding structure and ethos limits the prospect of gross malpractice.

knowmore's holistic practice offers counselling and financial advice alongside legal services. It can be difficult to talk about injurious experiences with a lawyer. Some survivors will be difficult clients — they will miss meetings, fail to provide

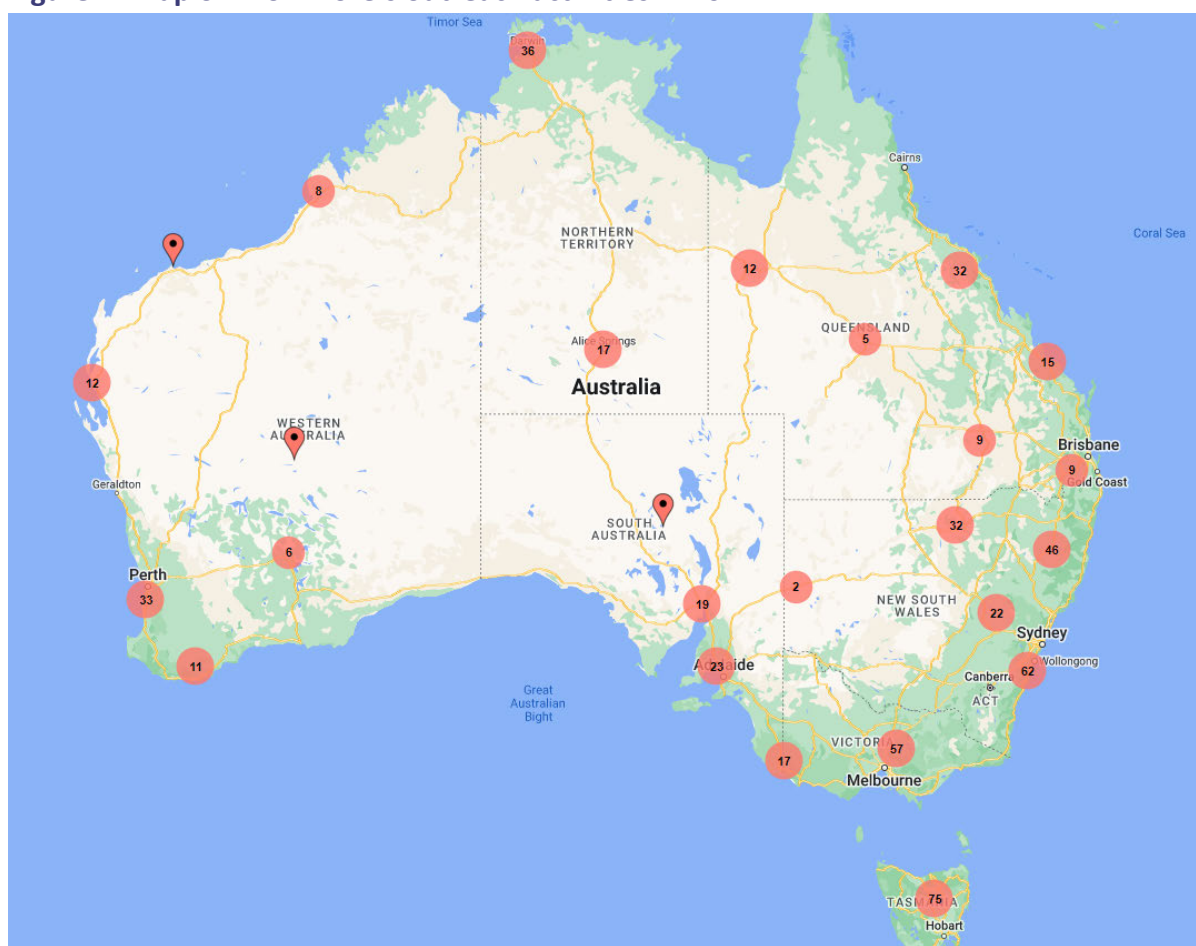
¹²⁴ S Winter, [*Monetary redress for abuse in state care*](#), Cambridge University Press, 2022, part III, section 12.1.

*evidence, or have problems managing their emotions. Trauma-informed training can help lawyers learn how to get information from clients effectively in ways that make survivors feel safe and supported (AU Interview 10). At knowmore, lawyers and counsellors collaborate to promote survivor-focussed practice.*¹²⁵

At the time of the second year review, knowmore had offices in Brisbane, Sydney, Melbourne and Perth. We have since opened offices in Adelaide and Darwin. We provide support by phone to survivors in all parts of Australia and have increased our outreach to regional, rural and remote areas as COVID-19 restrictions have eased. From 1 July 2018 to 31 December 2022, knowmore conducted 1,297 outreach activities.

The map in Figure 1 below highlights the broad geographical spread of knowmore's outreach activities in 2022. Locations on the map are grouped together in clusters — for example, the number 75 on Tasmania indicates that knowmore conducted 75 outreach activities across Tasmania in 2022, not 75 outreach activities in one part of Tasmania.

Figure 1: Map of knowmore's outreach activities in 2022



As noted on page 4, knowmore has provided legal assistance for clients to lodge 2,384 NRS applications, representing about 11% of all applications received by the NRS. This is a

¹²⁵ S Winter, *Monetary redress for abuse in state care*, part III, section 12.3.

significant increase from the 714 applicants (7.8% of all applicants) reported in the second year review on 26 March 2021.¹²⁶

knowmore's NRS-related support services are all facing increasing demand, and additional funding will be required if knowmore is to meet that demand and not reduce our important services to our clients, who experience severe vulnerability and marginalisation. This is particularly the situation with our NRS-related legal support services funding, which is currently at levels well below the first 3 years of funding,¹²⁷ and further reduces markedly across the life of the current funding agreement.¹²⁸

In contrast, NRS application numbers have increased significantly in the last 2 years and particularly in the last 12 months.¹²⁹ knowmore's service data reflects the NRS's trends of an increasing demand for services. Client intakes relating to our NRS work rose by 18% in the most recent reporting period (1 July 2022 to 31 December 2022) and phone calls to our national 1800 line increased by 7%.

The issue of inadequate resources to respond to increasing NRS applications has been reported in the media.¹³⁰ While the increase in NRS applications led the Australian Government to decide in November 2022 to invest a further \$15 million in the NRS to help ensure its capacity to respond to the increased demand, this funding was only directed to fund NRS staff, Independent Decision Makers (IDMs) and the NRS's operational costs.¹³¹ No additional funding was provided to recognise the accompanying demands on the NRS's support services.

The chart in Figure 2 below depicts knowmore's funding levels for our NRS-related legal support services compared to NRS application data (application numbers) and knowmore client data (client intakes). The application and client numbers for the financial year 2022–23 are projections based on the data available for the first 6 months.

126 See Kruk AO, *Final report*, p 210.

127 That is, from the 2018–19 financial year until the 2020–21 financial year. See knowmore, *Pre-budget submission FY2023–24*, 27 January 2023, p 3. A copy of the pre-budget submission is included in the Appendix.

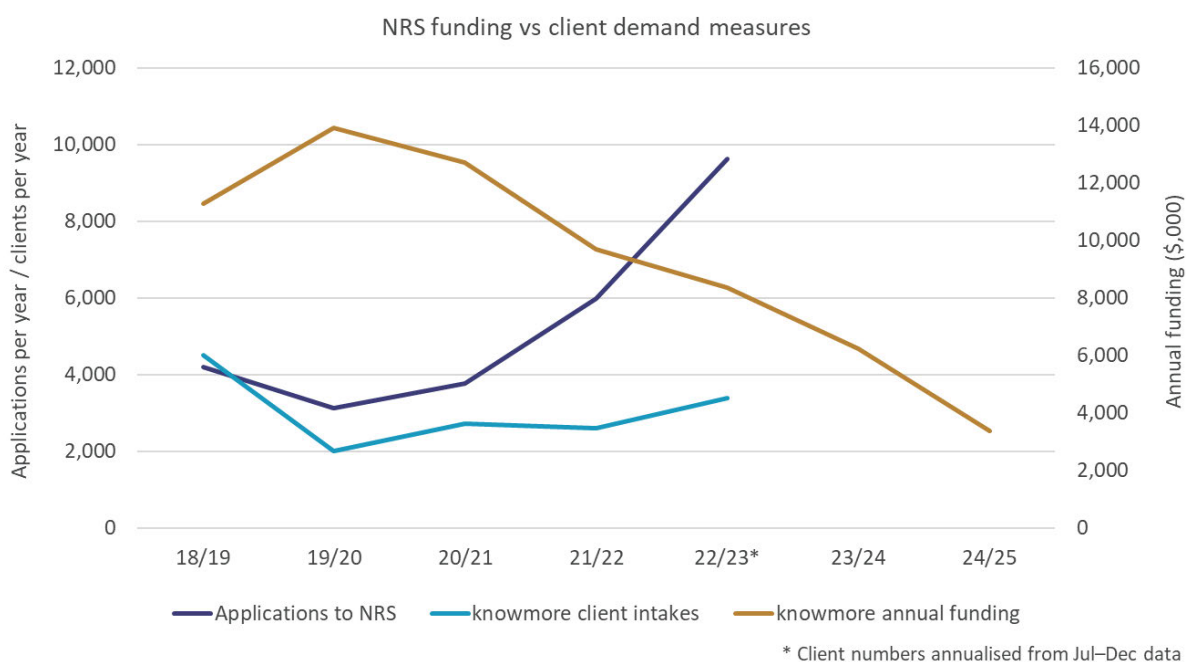
128 That is, from the 2021–22 financial year until 2025–26 financial year. See knowmore, *Pre-budget submission FY2023–24*, p 3.

129 knowmore, *Pre-budget submission FY2023–24*, p 5.

130 See, for example, C Knaus, '[Concerns for victim-survivors of child abuse as redress scheme is deluged with claims](#)', *The Guardian*, 10 January 2023, accessed 21 February 2023.

131 Hon A Rishworth MP, '[\\$15 million boost for National Redress Scheme](#)' [media release], 9 November 2022, accessed 21 February 2023.

Figure 2: Chart depicting knowmore’s funding levels for our NRS-related legal support services compared to NRS application data and knowmore client data



knowmore also has NRS-related funding agreements to provide specialist financial counselling services to survivors participating in the NRS and to support RSSs. These funding agreements conclude at the end of the next financial year (2023–24). Further funding will obviously be required for knowmore to continue to deliver these services in future.

knowmore has made a pre-budget submission to the Australian Government for the financial year 2023–24. We refer the Committee to this submission, a copy of which is included in the Appendix, for detailed information about knowmore’s current funding,¹³² and the additional funding required for us to maintain current services and meet increasing demand beyond the current financial year.¹³³

Recommendation 22

The Australian Government must increase knowmore’s funding to the levels required to maintain current services and meet increasing demand beyond the current financial year.

Legal advice for survivors and their advocates

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) highlighted the importance of suitable legal support for survivors as part of the

¹³² knowmore, *Pre-budget submission FY2023–24*, pp 2–4.

¹³³ knowmore, *Pre-budget submission FY2023–24*, pp 8–9.

redress process.¹³⁴ This has also been highlighted by every report of every major review of the NRS.¹³⁵ As the former Joint Select Committee on Implementation of the NRS (former Joint Select Committee) articulated:

Survivors require access to personalised and culturally appropriate legal advice that can assist them to understand:

- *how the NRS operates and if they are eligible;*
- *the differences between pursuing redress or civil options;*
- *which option may be suitable for their circumstances;*
- *how to complete an application form;*
- *the obligations of accepting an offer; and*
- *considering any offer received.*¹³⁶

The second year review also noted the importance of suitable legal support in addressing ‘opportunistic legal practices and coercive behaviour’, discussed further on pages 57 to 62 below.¹³⁷

We have made comments above about support services generally, including legal support services (see pages 51 to 53), and about knowmore as a multidisciplinary support service (see pages 53 to 56). These comments highlight the need for the Australian Government to increase funding for support services, including knowmore. We make further comments below about:

- strategies to minimise instances of alleged claim farming and excessive fees
- permanent stays of civil proceedings in child sexual abuse matters.

Strategies to minimise instances of alleged claim farming and excessive fees

The predatory and exploitative practices of some private law firms and claim farming businesses targeting survivors of institutional child sexual abuse are well documented. Since

134 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [Redress and civil litigation report](#), September 2015, accessed 21 February 2023, p 361.

135 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, accessed 21 February 2023, p xvii; Joint Select Committee on Implementation of the National Redress Scheme (Joint Select Committee), [First interim report of the Joint Select Committee on Implementation of the National Redress Scheme](#), May 2020, accessed 21 February 2023, pp 52–53; Joint Select Committee on Implementation of the National Redress Scheme (Joint Select Committee), [Second interim report of the Joint Select Committee on Implementation of the National Redress Scheme](#), November 2021, accessed 21 February 2023, pp 67–69 and 74; Kruk AO, *Final report*, pp 207–208.

136 Joint Select Committee, *Second interim report*, p 67.

137 Kruk AO, *Final report*, p 208.

April 2020, knowmore has sought to highlight these practices and the impact of them on our clients and other survivors, including in our advocacy to previous reviews of the NRS and in advocacy at the state and territory level.¹³⁸

We have not been alone in raising serious concerns about these harmful practices — they have also been highlighted by other services supporting survivors including some RSSs,¹³⁹ by eminent practitioners and researchers,¹⁴⁰ and by survivors themselves including through the media.¹⁴¹

We continue to receive regular reports of these practices from our clients and RSSs. We are particularly concerned by reports of:

- survivors having distressing experiences of being cold called, being subjected to harassment, intimidation and high-pressure tactics, and being asked to sign legal documents they do not understand
- survivors not being informed about the availability of free legal support and RSSs and being charged excessive fees for NRS applications — for example, we have recently heard of some private law firms proposing to charge survivors between \$10,000 and \$30,000 to assist with NRS applications
- survivors paying for services that are not of an acceptable professional standard and are not delivered in a trauma-informed or culturally safe manner
- survivors feeling that they are being used by people seeking to profit from their pain

138 We refer the Committee to our previous detailed comments on this issue. See, for example, knowmore, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \[PDF 1,121KB\]](#), 28 April 2020, accessed 21 February 2023, pp 32–33; knowmore, [Supplementary submission to the Joint Select Committee on Implementation of the National Redress Scheme \[PDF 883KB\]](#), 29 May 2020, accessed 21 February 2023; knowmore, [Submission to the second anniversary review of the NRS \[PDF 1,651KB\]](#), 30 September 2020, accessed 21 February 2023, pp 52–56; knowmore, [Personal Injuries Proceedings and Other Legislation Amendment Bill 2022: Submission to the Legal Affairs and Safety Committee \[PDF 1,102KB\]](#), 22 April 2022, accessed 21 February 2023; Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, [Witness statement of Warren Strange \[PDF 876KB\]](#), 28 April 2022, accessed 21 February 2023, pp 27–28.

139 See, for example, evidence given by Mrs Silvia Skinner from Beyond Brave (Bravehearts Foundation). Joint Select Committee on Implementation of the National Redress Scheme, [Official Committee Hansard \[PDF 603KB\]](#), 6 April 2020, accessed 21 February 2023, pp 26 and 30; Joint Select Committee on Implementation of the National Redress Scheme, [Official Committee Hansard \[PDF 422KB\]](#), 16 August 2021, accessed 21 February 2023, pp 13–15.

140 See, for example, Professor P Parkinson AM, [Re National Redress Scheme — Background Briefing report \[PDF 1,109KB\]](#) [letter to Senator Dean Smith], 22 June 2020, accessed 21 February 2023; Professor K Daly and J Davis, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \[PDF 4.5MB\]](#), 29 October 2020, accessed 21 February 2023, pp 6–7.

141 See, for example, J Story Carter, [‘Money for trauma’](#), ABC News, updated 25 September 2020, accessed 21 February 2023.

- claim farmers and some private law firms seemingly becoming more active in institutional settings such as prisons, where survivors experience increased circumstances of vulnerability
- claim farmers and some private law firms targeting survivors experiencing heightened marginalisation, including Aboriginal and/or Torres Strait Islander survivors living in regional, rural and remote communities and survivors with low literacy skills
- claim farmers and some private law firms seemingly becoming more active throughout Australia, including most recently in Tasmania, the Northern Territory, South Australia and Western Australia.

In our view, the exploitative practices of some private law firms and claim farming businesses remains one of the most serious and ongoing problems impacting survivors, undermining their ability to make informed decisions about accessing justice and often eroding the value of the redress or compensation payment they are entitled to. Despite this, there has been a lack of coordinated action to combat these practices and to protect survivors from exploitation. We believe it is well past time for governments to take decisive action.

The following sections outline some specific strategies to address exploitative practices, first in relation to the NRS, and second in relation to civil claims.

Strategies to address exploitative practices in relation to the NRS

In knowmore's submission to the second year review, we recommended specific strategies to address the exploitative practices of some private law firms and claim farming businesses and to protect survivors trying to access redress through the NRS.¹⁴² These strategies are closely reflected in Recommendation 17 of the former Joint Select Committee's second interim report.¹⁴³

142 knowmore, *Submission to the second anniversary review of the National Redress Scheme*, pp 52–56.

143 Joint Select Committee, *Second interim report*, see Recommendation 17 and pp 69–73.

Recommendation 17 of the second interim report of the former Joint Select Committee

The Committee recommends that the Minister's Redress Scheme Governance Board prioritise preventing the exploitation of survivors by private law firms and works to immediately implement the following measures:

- Make it unlawful for lawyers to charge contingency fees for services delivered with respect to National Redress Scheme applications;
- Impose a legal obligation on lawyers to advise a potential client of the availability of free services (knowmore and the Redress Support Services), and to certify such advice has been provided, before executing a costs agreement for a National Redress Scheme application;
- Considering a cap on fees that lawyers can charge for services delivered with respect to National Redress Scheme applications;
- Make it an offence for any person to:
 - contact a person without their consent and solicit or induce them to make a National Redress Scheme application; or
 - give or receive any money or other benefit in exchange for a referral to make a National Redress Scheme application;
- Establish a set of expected practice standards for lawyers and survivor advocates providing services with respect to National Redress Scheme applications; and
- Establish a specific complaints process within the National Redress Scheme to deal with concerns about the conduct of lawyers and representatives from survivor advocacy businesses.

In our view, the full implementation of this recommendation is essential to protecting survivors, and the integrity of the NRS.

We note the view of the Department of Social Services that many of the reforms we have identified — and that are reflected in the former Joint Select Committee's Recommendation 17 — 'fall within the remit of state and territory governments rather than the Federal Government'.¹⁴⁴ While it is true that some of these reforms would likely require legislative change in the states and territories (see also the further discussion below regarding civil

¹⁴⁴ Joint Select Committee, *Second interim report*, p 72.

claims), the NRS is a national scheme and a national solution is required; it cannot be left to the states and territories to progress what would likely become piecemeal reforms.¹⁴⁵

It is essential that the Australian Government, as the administrator of the NRS, takes the lead in progressing a coordinated, national response. We strongly support the former Joint Select Committee's calls for the Australian Government to use the Ministers' Redress Scheme Governance Board to work with the state and territory governments to consider reforms,¹⁴⁶ and urge the Board to do so as a priority.

Recommendation 23

The Australian Government should implement Recommendation 17 of the second interim report of the former Joint Select Committee as a matter of priority, to protect survivors accessing redress from exploitative practices.

Strategies to address exploitative practices in relation to civil claims

As well as strategies to address exploitative practices that occur in the context of the NRS, we also wish to highlight the urgent need for a national response to exploitative practices that occur in the context of civil claims. This is particularly important given the number of survivors who turn to civil proceedings as a means of seeking justice for the harm they experienced as children. It is also the case that exploitative practices in relation to the NRS often go hand in hand with exploitative practices in relation to civil claims, as survivors explore their different options for redress and compensation. Implementing strategies to address one but not the other will therefore be inherently limited.

knowmore commends the Queensland Government for its leadership in introducing legislative reforms to prohibit claim farming and undesirable cost agreements in relation to all personal injury claims, including those arising from institutional child sexual abuse.¹⁴⁷ However, while these reforms have already had a positive impact in Queensland — we are hearing fewer reports of exploitative practices in Queensland since the new laws commenced — we are concerned that claim farmers and private law firms engaging in exploitative practices will simply move their business elsewhere. We are also concerned that survivors throughout Australia do not have equal protection under the law.

¹⁴⁵ We highlighted the limitations of regulation through existing state- and territory-based bodies such as the law societies and legal services commissions in our May 2020 submission to the former Joint Select Committee. See knowmore, *Supplementary submission to the Joint Select Committee on Implementation of the National Redress Scheme*, p 6. We also note similar comments from Professor Kathleen Daly and Juliet Davis, including their recommendation for 'a national regulatory framework ... to deter illegal activity and breaches of legal misconduct with respect to the NRS'. See Professor K Daly and J Davis, *Submission to the Joint Select Committee on Implementation of the National Redress Scheme*, Recommendation 13, p 7.

¹⁴⁶ Joint Select Committee, *Second Interim report*, p 73.

¹⁴⁷ See the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022* (Qld) and Hon S Fentiman, [Personal injury claims farming now banned in Queensland](#) [media release], 22 June 2022, accessed 21 February 2023.

knowmore therefore strongly encourages the Australian Government and state and territory governments to work together to ensure that nationally consistent laws, based on those introduced in Queensland, are introduced in all Australian jurisdictions.

Recommendation 24

The Australian Government and state and territory governments should work together to ensure that nationally consistent laws are enacted to prohibit claim farming in relation to all personal injury claims arising from child sexual abuse. These laws should draw on the laws enacted by the Queensland Government under the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022*.

Permanent stays of civil proceedings in child sexual abuse matters

We note the Committee's interest in hearing more about a potential increase in permanent stays of civil proceedings in child sexual abuse matters and a potential increase in NRS applications as a result of permanent stays.¹⁴⁸ As the Committee notes, this is 'a move away from the intent of the [Royal] Commission's recommendation'¹⁴⁹ — in particular, the recommendation that state and territory governments remove limitation periods for personal injury claims for institutional child sexual abuse.¹⁵⁰ We note that the removal of limitation periods — which has now occurred in all states and territories¹⁵¹ — was intended to recognise both the long time that many survivors take to disclose their abuse (23.9 years on average) and the impacts of child sexual abuse,¹⁵² and to allow civil claims to be determined on their merits.¹⁵³

It is difficult to say with certainty what impact permanent stays are having in this context, as a survivor's decision to seek redress or civil compensation is deeply personal, and there are many factors that may influence a survivor's choice between the 2 options. These factors may include:

148 Joint Standing Committee on Implementation of the National Redress Scheme (Joint Standing Committee), [Discussion paper: inquiry into the operation of the National Redress Scheme \[PDF 252KB\]](#), December 2022, accessed 21 February 2023, p 4.

149 Joint Standing Committee, *Discussion paper*, p 4.

150 Royal Commission, *Redress and civil litigation report*, Recommendation 85, p 459.

151 *Limitation Act 1985* (ACT), section 21C; *Limitation Act 1969* (NSW), section 6A; *Limitation Act 1981* (NT), section 5A; *Limitation of Actions Act 1974* (Qld), section 11A; *Limitation of Actions Act 1936* (SA), section 3A; *Limitation Act 1974* (Tas), section 5B; *Limitation of Actions Act 1958* (Vic), section 27P; *Limitation Act 2005* (WA), section 6A.

152 The decision whether to disclose, and the time taken to disclose, is different for every survivor. Male survivors take 25.7 years on average to disclose, while female survivors take 20.6 years on average to disclose. Some survivors never disclose. Disclosure is a process — many survivors will need time between their first disclosure and their decision to seek redress or compensation. See Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [Final report: volume 4, identifying and disclosing child sexual abuse](#), December 2017, accessed 21 February 2023, p 30.

153 Royal Commission, *Redress and civil litigation report*, p 456–457.

- different application/claim processes
- different legal tests
- different supports available to help with the process
- different impacts on other supports, such as Centrelink payments
- different costs/costs risks
- different outcomes available.¹⁵⁴

Some clients have been referred to knowmore after receiving advice from a civil lawyer that a permanent stay is likely to be granted if they seek civil compensation and that they would have better prospects pursuing redress. This highlights that it is not necessary for a permanent stay order to be made to deter a survivor from seeking civil compensation — a survivor's knowledge that a permanent stay order is likely to be made can also be a deterrent.

As many survivors experienced child sexual abuse in government institutions (32% of survivors who spoke with the Royal Commission in private sessions),¹⁵⁵ the current litigation practices of Australian governments have potentially wide-reaching implications for survivors. We note on this point that the Australian Government and state and territory governments have model litigant obligations relevant to the conduct of civil litigation, including specific guiding principles in relation to child sexual abuse claims.¹⁵⁶ In light of these factors, we are especially concerned to ensure that governments are not overusing or misusing permanent stay applications.

Given the potential implications of government litigation practices, we suggest that it would be particularly useful for the Committee's inquiry for the Committee to seek more information from governments about how they are using permanent stay applications in defending civil claims for child sexual abuse. In particular, we would suggest seeking more information about:

- how frequently the Australian Government and state and territory governments are making permanent stay applications
- in what circumstances the Australian Government and state and territory governments are making permanent stay applications

154 For more information about the factors that may influence a survivor's choice between redress or civil compensation, see knowmore, [Civil claim or National Redress Scheme \[PDF 202KB\]](#), July 2021, accessed 21 February 2023.

155 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [Final report: volume 2, nature and cause](#), December 2017, accessed 21 February 2023, pp 109–110.

156 See, for example, NSW Government, [M2016-03-Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse](#), NSW Government website, 29 June 2016, accessed 21 February 2023; Queensland Government, [Model litigant principles](#), Department of Justice and Attorney-General website, 21 March 2019, accessed 21 February 2023.

- the outcomes of permanent stay applications — for example, whether the application is successful, the application is unsuccessful or the plaintiff withdraws their claim.

Recommendation 25

The Committee should seek more information about how the Australian Government and state and territory governments are using permanent stay applications in defending civil claims for child sexual abuse, including:

- how frequently the Australian Government and state and territory governments are making permanent stay applications
- in what circumstances the Australian Government and state and territory governments are making permanent stay applications
- the outcomes of permanent stay applications — for example, whether the application is successful, the application is unsuccessful or the plaintiff withdraws their claim.

Protected information provisions

This section demonstrates shortcomings of the protected information provisions in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*, which compromise the National Redress Scheme's ability to provide redress in a way that is survivor-focused and trauma-informed. It addresses Term of Reference 6 of the Committee's inquiry.

'Protected information' is defined by section 92 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (NRS Act) and summarised as follows by the Australian Government's National Redress Guide:

Broadly speaking, protected information is any information about a person or institution obtained by the Scheme for the purposes of the Scheme and that is, or was, held in the Scheme's records. Protected information includes:

- *a person's application for redress*
- *a person's offer for redress*
- *a response from a participating institution to a request for information.*

If the Scheme does not hold information about a person or institution this fact itself is protected information under the legislation.¹⁵⁷

Under section 99 of the NRS Act, it is an offence to access, record, disclose or use protected information unless authorised or required by the NRS Act.¹⁵⁸ The main authorisations are set out in section 93 of the NRS Act and summarised as follows by the National Redress Guide:

A person is authorised to obtain, make a record of, disclose or use protected information:

- *if it is for the purposes of the scheme*
- *if the person believes on reasonable grounds that it necessary to prevent or lessen a serious threat to an individual's life, health or safety*
- *if there is expressed or implied consent of the person or institution to which the information relates, or*
- *to produce information in an aggregated form that does not disclose, either directly or indirectly, information about a person or institution.¹⁵⁹*

157 Australian Government, '[National Redress Guide – Version 1.14](#)', *Guides to Social Policy Law*, Department of Social Services website, 3 January 2023, accessed 21 February 2023, part 6.1.

158 Sections 100 and 101 of the NRS Act provide for 2 related offences: soliciting disclosure of protected information and offering to disclose protected information.

159 Australian Government, '[National Redress Guide – Version 1.14](#)', part 6.1. Additional authorisations are set out in sections 94 to 98 and 105 to 106 of the NRS Act.

It is also an offence, under section 104 of the NRS Act, to obtain, record, disclose or use information contained in the National Redress Scheme's (NRS's) Assessment Framework Policy Guidelines. This refers to guidelines made by the Minister for Social Services under section 33 of the NRS Act, which play a significant role in the NRS's decision-making.¹⁶⁰

We consider that the protected information provisions of the NRS Act have significant shortcomings that compromise the NRS's ability to provide redress in a way that is survivor-focused and trauma-informed. We make comments below on the following issues:

- a lack of transparency in the NRS's approach to protected information provisions
- survivors' concerns that protected information provisions enable secrecy by the NRS and institutions
- inadequate protections for survivors' information.

Lack of transparency in the National Redress Scheme's approach

We have made comments above about the lack of transparency in the NRS's decision-making process (see pages 16 to 19). Protected information provisions play a significant role in this lack of transparency, as discussed below on pages 68 to 72. In addition, we see a lack of transparency in the NRS's approach to the protected information provisions themselves. The NRS often withholds significant information from knowmore and knowmore's clients without providing adequate reasons for us to understand why the information has been withheld.

We appreciate the challenges for the NRS in explaining why information has been withheld without also disclosing the information. We recognise that the requirements of procedural fairness can be flexible for protected information.¹⁶¹ At the same time, we are concerned that this flexibility presently tilts too far in favour of withholding information from survivors, denying survivors the ability to understand why information has been withheld, to seek legal advice about the withholding of information or to challenge the decision to withhold information.

We made detailed comments about the NRS's approach to protected information provisions in our submission to the second year review.¹⁶² These include comments about how, in our view, the protected information provisions of the NRS Act permit the NRS to disclose significantly more information to survivors than the NRS presently does:

For example, the NRS Act permits the disclosure of protected information 'for the purposes of the scheme'. The provision of natural justice to survivors should be

160 R Kruk AO, [Final report: second year review of the National Redress Scheme](#), 26 March 2021, accessed 21 February 2023, pp 94–95.

161 Administrative Review Council, [Best practice guide 2 — natural justice](#), ARC, August 2007, accessed 21 February 2023, p 9.

162 See, for example, knowmore, [Submission to the second anniversary review of the National Redress Scheme \[PDF 1,651KB\]](#), 30 September 2020, accessed 21 February 2023, pp 24–32.

considered to fall within the ordinary operation of the Scheme and to be permitted by this exception. Alternatively, the NRS Act permits the disclosure of protected information ‘with the express or implied consent of the person or institution to which the information relates’. IDMs [Independent Decision Makers] should therefore consider whether the express or implied consent of the person or institution to which the information relates can be obtained in order to afford natural justice to survivors. Further, in interpreting this provision, IDMs should consider whether information provided by an institution about a survivor, such as a survivor’s institutional records, can be considered to ‘relate’ to the survivor and therefore, whether the survivor’s consent can be implied.¹⁶³

We would welcome the NRS making greater use of these authorisations to provide significantly more information to survivors, including adequate reasons for the withholding of information if there remains some information that cannot be disclosed.

Recommendation 26

The NRS should make greater use of existing authorisations within the protected information provisions in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to provide significantly more information to survivors, including adequate reasons for the withholding of information if there remains some information that cannot be disclosed.

We note that the *Freedom of Information Act 1982* (Cth) (FOI Act) requires the decision-maker to give reasons if the decision-maker refuses to grant access to a document in response to a freedom of information request.¹⁶⁴ The FOI Act also provides pathways for an applicant to seek review of an access refusal decision.¹⁶⁵ We consider that the Australian Government should implement a similar legislative requirement for the NRS to give reasons when the NRS uses protected information provisions to withhold information from survivors and provide a similar right for survivors to seek review of a decision to withhold information. In the interim, the NRS should provide reasons for a decision to withhold information from a survivor and a process for survivors to seek review of such decisions, as an operational measure to improve transparency of the NRS’s approach to protected information provisions.

¹⁶³ See, for example, knowmore, *Submission to the second anniversary review of the National Redress Scheme*, p 26.

¹⁶⁴ *Freedom of Information Act 1982* (Cth), subsection 26(1).

¹⁶⁵ *Freedom of Information Act 1982* (Cth), parts VI, VII, VIIA.

Recommendation 27

The Australian Government should introduce a legislative requirement for the NRS to give reasons when the NRS withholds information from survivors and provide a right for survivors to seek review of that decision, similar to provisions of the *Freedom of Information Act 1982* (Cth).

In the interim, the NRS should provide reasons for a decision to withhold information from a survivor and a process for survivors to seek review of such decisions, as an operational measure to improve transparency of the NRS's approach to protected information provisions.

The lack of transparency in the NRS's approach to protected information provisions makes it difficult for us to determine when a problem has been caused by the protected information provisions themselves, and when a problem has been caused by the NRS's interpretation or application of the provisions. While Recommendation 27 above would help to clarify this, we also consider that the protected information provisions of the NRS Act can themselves be improved. We make recommendations to this effect below (see pages 68 to 75).

Survivors' concerns about secrecy by the National Redress Scheme and institutions

The second year review noted 'the perception of survivors that the protected information provisions are a form of secrecy'.¹⁶⁶ This is referring to the NRS's use of protected information provisions to withhold information from survivors (as discussed on pages 72 to 75 below, the second year review also recognised survivors' concerns about the NRS sharing their information and concluded that, generally speaking, the sharing of applicant information should be more closely protected').¹⁶⁷

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) highlighted how secrecy within institutions and prioritising the reputation of institutions above children contributed to both child sexual abuse within institutions¹⁶⁸ and poor institutional responses.¹⁶⁹ From the perspective of many of our clients, the NRS's use of protected information provisions to withhold information from survivors replicates this and can be a re-traumatising experience.¹⁷⁰

166 Kruk AO, *Final report*, pp 99–100.

167 Kruk AO, *Final report*, pp 98–100.

168 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [*Final report: volume 2, nature and cause*](#), December 2017, accessed 21 February 2023, pp 109–110.

169 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [*Final report: volume 4, identifying and disclosing child sexual abuse*](#), December 2017, accessed 21 February 2023, pp 146–147.

170 See Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), [*Final report: volume 3, impacts*](#), December 2017, accessed 21 February 2023, pp 181–183.

While the withholding of information from survivors creates problems in relation to many parts of the redress process, we are particularly concerned by:

- the excessive withholding of information provided by institutions
- the excessive withholding of information in reasons for redress decisions
- the withholding of the Assessment Framework Policy Guidelines.

Excessive withholding of information provided by institutions

The second year review recognised that the protection of information provided by institutions is excessive.¹⁷¹ This is consistent with our experience. It is particularly difficult for us and our clients to obtain access to information that institutions have provided to the NRS.

The withholding of information provided by institutions interferes with our ability to advise clients of their prospects of receiving a redress offer and the likely amount of any offer, impacting survivors' ability to make informed choices about their redress and compensation options. It denies survivors a meaningful opportunity to respond to any adverse information that could influence the redress decision, contrary to the requirements of procedural fairness.¹⁷² It also worsens the existing power imbalance between survivors and institutions — while information provided by survivors is often disclosed to institutions, the same is not equally true in reverse.

The second year review concluded:

*Only where it is reasonable and necessary to maintain the integrity of the Scheme should institutional information attract the protection of legislation. Further, institutional information that is to be protected should be specifically identified in the legislation.*¹⁷³

In our view, the Australian Government should amend the NRS Act in response to this conclusion.

Recommendation 28

The Australian Government should limit the information about institutions that is protected to what is reasonable and necessary to maintain the integrity of the NRS, and specifically identify this information in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (as per the conclusion expressed in the second year review).

171 Kruk AO, *Final report*, p 100.

172 Administrative Review Council, *Best practice guide 2 — natural justice*, pp 6–7.

173 Kruk AO, *Final report*, p 100.

Excessive withholding of information in reasons

The second year review found that the ‘level of detail provided in decisions to applicants is not sufficient to allow applicants to make an informed decision to seek review’.¹⁷⁴ Our clients routinely experience this issue, which is exacerbated by the NRS’s use of protected information provisions. We commonly receive reasons for a decision that are heavily redacted, as noted on page 18, and where the basis for these redactions is often unclear. For example, we often receive reasons that redact information that we or our clients have provided to the NRS. This is confusing and highlights a broader tendency for the NRS to excessively withhold information from survivors.

We note that giving reasons is not only a principle of best practice decision-making,¹⁷⁵ but also a legislative requirement for the NRS’s redress decisions.¹⁷⁶ As indicated above on pages 66 to 67, we consider that the NRS could make greater use of existing authorisations within the protected information provisions to provide significantly more information to survivors and better comply with its obligation to give reasons for redress decisions.

Recommendation 29

The NRS should make greater use of existing authorisations within the protected information provisions to better comply with its obligation to give reasons for its redress decisions.

Given that the withholding of information in reasons remains a significant and continuing problem,¹⁷⁷ we would welcome legislative clarification that the obligation to provide adequate reasons to survivors for its redress decisions prevails over protected information provisions in the NRS to the extent of any inconsistency.

Recommendation 30

The Australian Government should amend the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to clarify that the NRS’s obligation to provide adequate reasons to survivors for its redress decisions prevails over protected information provisions in the NRS Act to the extent of any inconsistency.

174 Kruk AO, *Final report*, p 152.

175 Administrative Review Council, [Best practice guide 4 — reasons](#), ARC, August 2007, accessed 21 February 2023, p 1.

176 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 34.

177 We note that we raised this matter in our submissions to the second year review and the inquiry of the former Joint Select Committee in 2020. See knowmore, *Submission to the second anniversary review of the National Redress Scheme*, pp 27–29; knowmore, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \[PDF 1,121KB\]](#), 28 April 2020, accessed 21 February 2023, pp 12 and 23.

Withholding of the Assessment Framework Policy Guidelines

knowmore made detailed comments in our submission to the second year review about the need for the Australian Government to remove the protected status of the NRS's Assessment Framework Policy Guidelines and publish this document.¹⁷⁸ In summary, we highlighted the following concerns:

Denying survivors access to the policy framework that underpins the assessment of their redress application directly impacts their ability to understand how and why their redress decision was made. This is particularly problematic for survivors who receive an adverse and/or unexpected redress outcome.

*It also makes it very challenging for knowmore and redress support services to provide advice and support to survivors when we are not able to determine whether the decision they received is fair or consistent with the Scheme's legislative and policy framework. This is exacerbated by the fact that some key terms in the assessment framework are ambiguously defined, as well as by the apparent inconsistencies in the application of the assessment framework by some independent decision-makers (IDMs).*¹⁷⁹

The second year review has heightened our concerns about the withholding of the Assessment Framework Policy Guidelines. While the independent reviewer was 'unable to publicly discuss or disclose the specific contents' of the Guidelines, the second year review did express concern that the Guidelines create 'more stringent criteria and a higher threshold for the IDM to be satisfied that extreme circumstances apply than is contained in the Assessment Framework itself'. The second year review reported that this problem with the Assessment Framework Policy Guidelines was contributing to inconsistency in redress outcomes and lower redress payments for some survivors than what they should be receiving.¹⁸⁰

This illustrates the real-world impact of the protected status of the Assessment Framework Policy Guidelines. Without access to the Guidelines, we cannot identify if and where the Guidelines differ from the law, or advise our clients when an incorrect decision has been made due to improper reliance on the Guidelines. The result, which we see regularly, is inconsistency and unfairness in the redress outcomes received by survivors.

Consistent with the submissions of knowmore and other stakeholders to the second year review, the review recommended that the Australian Government remove the protected status of the Assessment Framework Policy Guidelines and make this document publicly available.¹⁸¹ We consider that the Australian Government should implement this recommendation as a matter of priority.

¹⁷⁸ knowmore, *Submission to the second anniversary review of the National Redress Scheme*, pp 22–24.

¹⁷⁹ knowmore, *Submission to the second anniversary review of the National Redress Scheme*, p 22.

¹⁸⁰ Kruk AO, *Final report*, p 94.

¹⁸¹ Kruk AO, *Final report*, Recommendation 3.13, p 96.

Recommendation 31

The Australian Government should remove the protected status of the Assessment Framework Policy Guidelines and make this document publicly available as a matter of priority (as per Recommendation 3.13 of the second year review).

Inadequate protections for survivors' information

The Royal Commission noted the 'multiple, intertwined barriers' to disclosing child sexual abuse that most survivors face.¹⁸² A significant barrier faced by many survivors is a 'fear that a disclosure will not be kept confidential'.¹⁸³ As the Royal Commission explained, survivors:

*... may fear if they disclose the abuse, they may lose cultural support or be ostracised by their social networks and broader community. Issues around confidentiality may be particularly relevant for children in out-of-home care and schools, and for those in small, rural or remote communities, or minority cultural groups.*¹⁸⁴

In light of this, we are deeply concerned by ongoing privacy breaches in relation to survivors' information. In March 2021, the second year review reported that the Department of Social Services had notified the Office of the Australian Information Commissioner of 13 eligible data breaches by the NRS, 'all of which amounted to unauthorised disclosures of personal and protected information under the Act'.¹⁸⁵

The second year review also reported that:

*The Scheme has also provided a request for information containing protected information to the wrong institution on 98 occasions between 2018 and 2021. This resulted in information about an applicant being inadvertently provided to the incorrect recipient.*¹⁸⁶

The former Joint Select Committee on Implementation of the NRS sought updated information about privacy breaches from the Department of Social Services in September 2021, but the department did not provide a response before the committee's second interim report was published in November 2021.¹⁸⁷

In our experience, there remain ongoing issues with survivors' information being inappropriately disclosed to institutions, perpetrators and other people. These issues

182 Royal Commission, *Final report: volume 4*, p 77.

183 Royal Commission, *Final report: volume 4*, p 85.

184 Royal Commission, *Final report: volume 4*, p 85.

185 Kruk AO, *Final report*, p 99.

186 Kruk AO, *Final report*, p 99.

187 Joint Select Committee on Implementation of the National Redress Scheme (Joint Select Committee), [Second interim report of the Joint Select Committee on Implementation of the National Redress Scheme](#), November 2021, accessed 21 February 2023, p 15.

include inappropriate disclosures by both the NRS and institutions, and relate both to the information disclosed and the manner in which the disclosure is handled. For example, we continue to see cases in which:

- survivors' information is disclosed without a clear reason for the disclosure
- more information than necessary is disclosed
- information is disclosed without consulting with the survivor, or without seeking the survivor's genuine and informed consent
- survivors are not given clear or timely information about who their information has been shared with or why.

knowmore is aware of one particular case in which there are concerns that information provided by a survivor as part of the redress process has ultimately been shared with a state-based law enforcement agency, which has then used this information to pursue the survivor for payment of a debt. If this has occurred, this is a completely inappropriate use of information provided by survivors as part of a process intended to provide redress for child sexual abuse. It is re-traumatising for survivors and likely to worsen the difficulties that many survivors have in trusting government institutions.¹⁸⁸ Tuart Place has made detailed comments about this particular matter in its submission to the present inquiry and we refer the Committee to Tuart Place's submission for further information.

These ongoing issues illustrate inadequate protections for survivors' information under the NRS Act, and in the practices of the NRS and institutions. The second year review highlighted some of our key concerns about the inadequate protections for survivors' information:

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

*knowmore is very concerned that institutions may disclose a survivor's personal information to a perpetrator without their informed consent. There are many reasons why survivors of institutional child sexual abuse may not want their identity or the description of the abuse they experienced to be disclosed to the perpetrator, including that it may put them at further risk of harm from the perpetrator. It may also be re-traumatising for survivors who are reminded of the feelings of powerlessness they experienced as children towards the perpetrator or the institution.*¹⁸⁹

It is disappointing and distressing for our clients that these problems continue to occur. The second year review made detailed conclusions about how protections for survivors' information should be improved.¹⁹⁰ These included that:

188 Royal Commission, *Final report: volume 3*, pp 138–140.

189 Kruk AO, *Final report*, p 99; knowmore, *Submission to the Joint Select Committee on Implementation of the National Redress Scheme*, p 33.

190 Kruk AO, *Final report*, p 100.

- Part 3 of the redress application form, which asks the survivor about the impact of the abuse, ‘should not be shared with the institution unless and until the survivor requests a direct personal response’.
- Survivors ‘should be made specifically aware of what information is being provided to institutions’.
- Institutions ‘should provide minimal protected information to insurers’ and, where possible, only provide de-identified information to their insurers.¹⁹¹

In our view, the Australian Government should amend the NRS Act to explicitly require the NRS and institutions to comply with these principles.

Recommendation 32

The Australian Government should amend the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to require that:

- the NRS does not share Part 3 of the redress application form with the institution unless and until the survivor requests a direct personal response
- the NRS informs survivors of what specific information it is providing to institutions in the survivor’s specific case
- institutions provide minimal protected information to insurers and, where possible, only provide de-identified information to their insurers (consistent with the conclusions expressed in the second year review).

In addition, we consider that the Australian Government should amend the NRS Act to implement a general requirement for the NRS and institutions to consult with survivors, and to obtain survivors’ genuine and informed consent, before disclosing survivors’ information. We recognise that there may be exceptional circumstances where the law requires information to be disclosed — for example, for child safety purposes.¹⁹² In these circumstances, the NRS Act should require the NRS and institutions to handle the disclosure in a trauma-informed way that minimises the impacts on the survivor. For example, the NRS Act should require the NRS and institutions to take reasonable steps to:

- inform the survivor of what information must be disclosed, who it must be disclosed to and why

¹⁹¹ Kruk AO, *Final report*, p 100.

¹⁹² Section 94 of the NRS Act allows the NRS to disclose protected information to a relevant government institution if the NRS is satisfied that the disclosure is reasonably necessary for the enforcement of the criminal law, or the safety and wellbeing of children. All states and territories have mandatory reporting laws that require particular people to report child safety concerns in particular circumstances. The requirements are different in each state and territory — see, for example, section 26 of the Northern Territory’s *Care and Protection of Children Act 2007* and section 124B of Western Australia’s *Children and Community Services Act 2004*.

- allow the survivor to disclose the information themselves, if this is practicable and the survivor wishes to do so.

Recommendation 33

The Australian Government should amend the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to implement a general requirement for the NRS and institutions to consult with survivors, and to obtain survivors' genuine and informed consent before disclosing survivors' information. In exceptional circumstances where the law requires information to be disclosed, the NRS Act should require the NRS and institutions to handle the disclosure in a trauma-informed way that minimises the impacts on the survivor. For example, the NRS Act should require the NRS and institutions to take reasonable steps to:

- inform the survivor of what information must be disclosed, who it must be disclosed to and why
- allow the survivor to disclose the information themselves, if this is practicable and the survivor wishes to do so.

Conclusion

knowmore continues to strongly support an independent National Redress Scheme (NRS) for survivors of institutional child sexual abuse. Our experience assisting thousands of survivors to investigate their options for redress has shown that, for many, the ability to obtain redress through the NRS is essential and life-changing.

Nonetheless, there remain significant problems that are preventing the NRS from consistently delivering redress to survivors in the way that was envisaged by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) and the Australian Parliament. Many of these problems are not new — the Royal Commission warned of them and they have been repeatedly raised in previous reviews of the NRS. Many survivors are feeling fatigue and frustration as a result of experiencing review after review without many meaningful improvements to the NRS.

In this submission, we have highlighted the following:

- key areas where we see a lack of reform continuing to have significant adverse impacts on survivors
- the need to improve the redress process and outcomes for survivors with disability and Aboriginal and/or Torres Strait Islander survivors
- the need for adequate future funding for our service, and other support services, that recognises increasing demand levels and the complex support needs of survivors applying to the NRS
- the need to implement strategies to minimise instances of alleged claim farming and excessive fees
- shortcomings of the protected information provisions in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*, which compromise the NRS's ability to provide redress in a way that is survivor-focused and trauma-informed.

We have also made a number of recommendations to address these problems, and to ensure that the NRS delivers redress in a way that is survivor-focused, trauma-informed and culturally safe. To return to the words of the Honourable Linda Burney MP:

*All of us here owe it to survivors to get this right and not simply say that it is all too hard.*¹⁹³

193 Australian House of Representatives, [Debates](#), 4 February 2021, p 383.

Appendix: knowmore's pre-budget submission FY2023–24

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27 January 2023

Budget Policy Division

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Langton Cres

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By Email: PreBudgetSubmissions@treasury.gov.au

Dear Colleagues

Pre-budget submission FY2023_24

In order to inform 2023 Budget planning, we present a pre-budget submission relating to the work of knowmore legal service, which is largely funded at present through various Commonwealth grants, as described below.

This submission primarily relates to the future funding of our work supporting survivors and victims of institutional child sexual abuse to access their redress options, including those engaging with the National Redress Scheme (the NRS).

About knowmore

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 aim 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 acknowledges the Traditional Owners of the lands and waters across Australia upon which we live and work. We pay our deep respects to Elders past and present for their ongoing leadership and advocacy.

knowmore Legal Service Limited | ABN 34 639 490 912 | ACN 639 490 912. knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

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 NRS. knowmore also receives funding to deliver financial counselling services to people participating in the NRS, and to work with other services in the NRS support network to support and build their capability.

From 23 December 2022, our services were expanded to assist survivors who experienced child sexual abuse in non-institutional settings.

From 1 March 2022, we have also been funded to provide legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme). From 2022, knowmore also received some funding from the State Government of Victoria to provide some services (mainly financial counselling) to support Stole Generations survivors accessing the Victorian Stolen Generations Reparations Package.

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, Perth, Adelaide and Darwin. 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.

knowmore's activities are largely funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency. Further details of these grants are set out below.

Our clients

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

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 31 December 2022, knowmore has received 80,933 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 13,567 clients. More than a third (37%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. About a fifth (18%) 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.

Our Commonwealth funding

The information below describes our Commonwealth grant funding under the five relevant activities.

Legal Support Services for Survivors Engaging with the National Redress Scheme

From 1 July 2018 when the NRS commenced, knowmore was funded through the Attorney-General's Department to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under NRS.

knowmore's first funding agreement for these services was for three years, from FY2018_19 to FY2020_21. Total funding for the three years was \$37.931m (excl. GST). That funding was distributed over the life of the agreement (which was varied in 2019) as follows:

Financial year	Amount (excluding GST)
2018-19	\$11,278,000
2019-20	\$13,929,000
2020-21	\$12,724,000

At the conclusion of the term of this funding agreement, an amount of \$3,561,479 remained, and approval was given for knowmore to roll-over these unexpended funds for continued use in the Activity. The Activity period under this first funding agreement was extended to 30 June 2024 to facilitate this.

The second funding agreement for this Activity commenced on 1 July 2022, and is for five years. Total funding under this agreement is \$36.633m, excluding GST. The break down by Financial Year is as follows:

Financial year	Amount (excluding GST)
2021-22	\$9,692,000
2022-23	\$8,959,000
2023-24	\$8,361,000
2024-25	\$6,254,000
2025-26	\$3,367,000

As noted above, the unexpended funds of \$3,561,479 are being used for this Activity across the financial years FY2021_22 through FY2023_24.

It can be seen that funding for this Activity is presently well below initial funding levels, and is planned to further taper considerably across coming years.

Redress Support Services Capability Activity

From 2 January 2020, knowmore has been funded to provide training, support and guidance to workers at Redress Support Services so they can better support people applying to the NRS. This program aims to improve the quality of applications presented to the NRS so that processing can be timely and less re-working is required, delivering a better experience for clients being assisted.

The activity period for this funding agreement runs from 2 January 2020 until 30 June 2024. Total grant funding is \$5.14m (excluding GST); annual funding has varied significantly over the agreement term, averaging \$1.14m annually, and will be \$1.15M for FY2023_24. This

funding is inclusive of \$350k annually, which knowmore administers on behalf of other services.

This funding is administered by the Department of Social Services (DSS).

Financial Capability Activity

From 1 June 2021, knowmore has been funded to provide specialist financial counselling services to victims and survivors participating in the NRS, helping them to build their financial wellbeing, financial capability and the ability to effectively manage a lump sum redress payment. knowmore also works to build the capability of Redress Support Services and Financial Counsellors to provide appropriate advice and referrals to participants in the NRS to manage their redress payment.

The activity period for this funding agreement runs from 1 June 2021 until 30 June 2024. Total grant funding is \$4.5m (excluding GST), broken down with initial funding of \$1.5m for the first year (FY2020_21) and \$1.0m per year for the next three financial years.

This funding is also administered by the DSS.

Legal Support Services for Victims and Survivors of Non-Institutional Child Sexual Abuse

From 23 December 2022, knowmore has been funded to provide legal assistance to survivors who experienced child sexual abuse in non-institutional settings.

The funding agreement for this Activity runs from 23 December 2022 until 30 June 2025. Total funding under this Grant is \$12.670m, excluding GST. Funding per financial year for each of the four years is similar; ranging from between \$3.217m to \$3.107m per year, (excl. GST).

This funding is administered by the Attorney-General's Department.

Support Services for the Territories Stolen Generations Redress Scheme

From 1 March 2022, knowmore has been funded to provide legal support services and financial counselling services to eligible applicants, and their descendants, for the Territories Redress Scheme. The project period under this funding agreement runs from 1 March 2022 until 30 June 2026, and total funding available is \$9.360m, excluding GST.

This funding is administered through the National Indigenous Australians Agency.

Our Submission

Our 2023 pre-budget submission relates to the first three funded Activities noted above, which all involve services we provide for survivors of institutional child sexual abuse who are accessing their redress options, including under the NRS.

The RSS Capability and Financial Capability Activities' funding agreements conclude at the end of the next financial year and further funding will obviously be required for knowmore to continue to deliver these services in the future.

Our NRS related support services are all facing increasing demand, as explained below, and additional funding will be required if knowmore is to meet that demand and not reduce its important services to this highly vulnerable client group. This is particularly the situation with our NRS legal support services funding which, as noted above, is currently at levels well below the first three years of funding, and further reduces markedly across the life of the current funding agreement.

We note that at this time we are not making any funding submissions in relation to our non-institutional child sexual abuse support services, or our services for the Territories Redress Scheme (save for requesting funding indexation). Both of these programs are in their initial years and building momentum. It may be that with the passage of further time and rising awareness of these services, we will make future budget submissions; however, at this time the allocated funding is adequate to support service demands and delivery. We do note that future funding for these programs is not indexed.

The National Redress Scheme

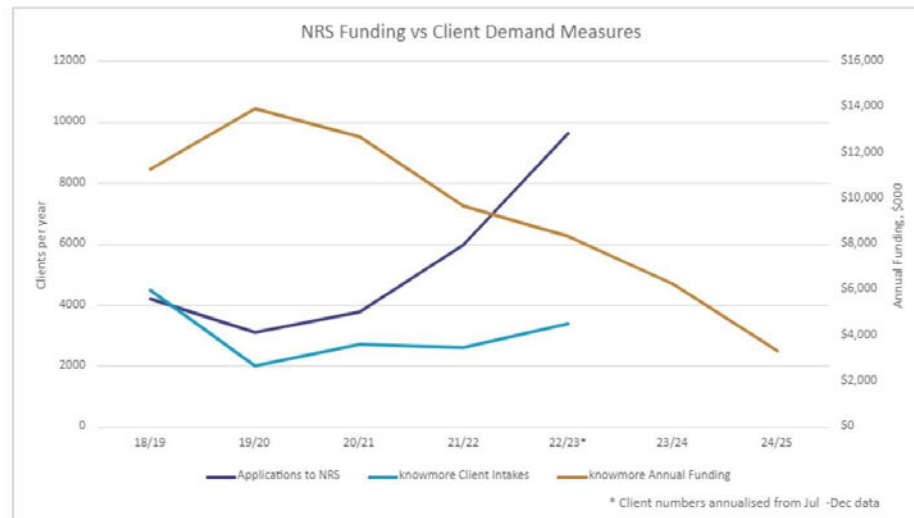
We understand that our current funding for our NRS related services is based, understandably, on initial estimates and assumptions around survivor take-up rates for the NRS and support services. The following points are taken from a review of the report produced by Finity Consulting (actuarial advisers) for the Royal Commission — [National Redress Scheme Participant and Cost Estimates, July 2015](#). This report accompanied the Royal Commission's 2015 Redress and Civil Litigation Report (see below).

- The tapering of knowmore's funding is consistent with the estimated patterns of NRS applications and payments indicated in the Finity Consulting report (see section 10 Payment Pattern at pp. 57 and 58). The estimated patterns, based on the experience of the Irish Residential Institution Redress Scheme (the Irish Redress scheme), included an assumption that the majority of redress applications and payments would be made in the first 5 years of the scheme (see text immediately under Figure 10.1, and Figure 10.2, which was incorporated into the Royal Commission's [Redress and Civil Litigation report](#) at p. 331).
- However, the actual experience of the NRS in its first 4.5 years of operation has been markedly different.
 - Application numbers have increased significantly in the last two years, and particularly the last 12 months. The table below reflects application data reported by DSS in its Annual Reports on the NRS:

Time period	No. of applications
1 July 2018 to 30 June 2019	4,200
1 July 2019 to 30 June 2020	3,127
1 July 2020 to 30 June 2021	3,773
1 July 2021 to 30 June 2022	5,987
	Total = 17,087

Data reported by the NRS through its regular [monthly updates](#) reflects that by 30 December 2022 21,674 applications had been received; i.e. over 4,500 applications had been received in a period of slightly over six months to the end of 2022. See also *The Guardian* article from 10 January 2023, '[Concerns for victim-survivors of child abuse as redress scheme is deluged with claims](#)').

The chart below depicts knowmore's funding levels for our legal support services Activity, and NRS application and knowmore's client data (noting the application and client figures for FY2022_23 are projections based on the data available for the first six months):



- As of 30 December 2022, 21,674 applications have been received by the NRS and 10,453 payments have been made. Using the Royal Commission's estimate of 60,000 survivors being eligible for claims under a National Redress Scheme means that only 17% of eligible survivors have applied to and have been paid by the NRS so far.
- We do note (and see below) that Finity stated that it was '*not possible to estimate the volume of participants... of a National Redress Scheme with any certainty*'. Further analysis in Finity's report presented 'a range of participants between 40,000 and 80,000' (see 5.4 Adopted National Participants on p. 37). Using the lower estimate indicates that so far only 26% of eligible survivors have applied to the Scheme and received a payment; using the higher estimate indicates that so far only 13% of eligible survivors have applied to the Scheme and received a payment.)
- This is perhaps not surprising, given:
 - The noted limitations of the original Finity estimates, particularly:

- The 'very limited information' available 'to make an estimate of the pattern of reporting to a National Redress Scheme, given the Australian Redress Schemes considered [the Qld ex gratia scheme, Redress WA, and the Tasmanian Abuse in Care ex gratia Scheme] were open for relatively short windows of time' (see second paragraph on p. 57).
- The caveat that 'considerable judgment' was applied in determining the estimated reporting pattern from the Irish redress scheme (see text immediately above Figure 10.1 on p. 57)
- Problems with the Scheme that have likely delayed applications from many survivors - for example, delays in institutions joining the Scheme; lengthier than expected assessment timeframes; the original requirement for applications to be accompanied by a statutory declaration; and elements of the Scheme's design that remain unsatisfactory to survivors (e.g. the lower than recommended maximum payment, eligibility restrictions, and others). As the Finity report noted (see first paragraph on p. 66):

It is not possible to estimate the volume of participants and costs of a National Redress Scheme with any certainty. Actual outcomes are heavily dependent on a broad range of largely unknown factors including the number of institutional child sexual abuse victims, the number that will participate in a National Redress Scheme and the severity of abuse experienced by victims and the impact that this has had. The outcomes for a Scheme will also be impacted by the details of the Scheme itself including the eligibility criteria, the administrative processes adopted, the level of evidence required and the monetary payments available...

- Given the large gap between the number of applications received by the Scheme to date (21,674) and the estimated total number of eligible survivors (60,000), it is reasonable to expect that application numbers will remain high for some time.
- It is also reasonable to expect that application numbers will further increase as the closing date of the Scheme draws near, noting the experience of other redress schemes.
 - The Finity Consulting report noted that a very large percentage of applications to the Irish redress scheme, which was initially open for 3 years, were made towards the end of the scheme (see 5.1.4 Late Reporting on p. 30):
 - 14,500 applications [were] received before the initial scheme closure date... with 6,000 of these applications [i.e. 41%] received in the six weeks prior to the closure date.
 - A further 2,800 late applications [were] received over the next six years of which 2,200 were accepted into the scheme...; more than half of the late applications were received in the year before final close-off.

- Stephen Winter (in [Chapter 9, Monetary Redress for Abuse in State Care](#)) has reported that ‘Redress WA and Queensland Redress also experienced late surges that over-loaded their processing capacities, leading to delays and consequential procedural changes to expedite the administrative process.’ He further noted that:

Deadlines also encourage incomplete applications. Canada’s Personal Credits [part of the Indian Residential Schools Settlement Agreement], Redress WA, and [the Irish redress scheme] all received large numbers of unfinished applications in the last few months. Managing those incomplete applications added to delays and processing expenses, which, in turn, damaged the programmes’ reputation, while spikes in application numbers overwhelmed records searching and survivor support services, leading to further delays. These delays damaged survivors’ well-being and caused higher burn-out rates among staff, aggravating staffing problems. [emphasis added].

knowmore’s service data, as reported in our six-monthly Activity Work Plan Progress Reports for our relevant Activities, reflects the NRS trends of an increasing demand for services. Client intakes relating to our NRS work rose by 18% in the most recent reporting period (1 July to 31 December 2022), and phone calls to our national 1800 line increased by 7.4%,

We also note that 84% of the clients completing intake since 1 July 2018 are clients who did not engage with our service during the Royal Commission, reflecting significant numbers of victims and survivors who are coming forward, often for the first time, to seek assistance with their legal options and support.

Our current NRS Activity funding levels will be insufficient for us to both maintain current services, and to meet increasing demand, beyond the current financial year.

Additional funding sought

At this time, we are seeking:

- Increased funding for our NRS legal support related services for FY2023_24 and future years of the current agreement, in order to maintain existing services and manage current demand levels. This funding will need to be at similar levels to that provided during our first funding agreement for the first three years of the operation of the NRS, i.e. \$12.5m annually.
- An increase in funding for our Financial Capability Activity, to recurrent funding of \$2m per year, from FY2023_24, and further funding for our Financial Capability Activity beyond the expiration of the current funding agreement Activity period on 30 June 2024.
- With the recent expansion of the number of RSS, we seek an increase to recurrent funding of \$1.5m per year for the continuation of our Redress Support Services Capability Activity, and further funding for this Activity beyond the expiration of the current funding agreement Activity period on 30 June 2024.

- Indexation of funding across our programs. We note that Community Legal Centres Australia has addressed indexation in its pre-budget submission, noting the impacts for the community legal sector and suggesting a 4.6% increase in funding to assist CLCs to absorb the impacts of inflation, particularly in relation to the recruitment and retention of employees in a very tight employment market.

Thank you for consideration of our pre-budget submission. We are of course able to provide further information if required to support our submission.

Yours faithfully

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Image inspired by original artwork by Ngunawal man Dean Bell, depicting knowmore's connection to the towns, cities, missions and settlements within Australia.

knowmore acknowledges the Traditional Owners of the lands and waters across Australia upon which we live and work. We pay our deep respects to Elders past and present for their ongoing leadership and advocacy.

knowmore Legal Service Limited | ABN 34 639 490 912 | ACN 639 490 912. knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.