

Our Ref: LH:NH

11 August 2023

Dr David Honey MLA
Chair
Community Development and Justice Standing Committee
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Via email: lacdjsc@parliament.wa.gov.au

Dear Dr Honey,

Submission to the inquiry into the options available to survivors of institutional child sexual abuse in Western Australia who are seeking justice

Thank you for the invitation to make a submission to the Community Development and Justice Standing Committee's inquiry into the options available to survivors of institutional child sexual abuse in Western Australia who are seeking justice.

Please find knowmore's submission attached. We have no concerns about our submission being published.

Should we be able to provide any further information to assist the Committee, I can be contacted on [REDACTED] or at [REDACTED] Alternatively, Lauren

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.

Hancock, Manager Law Reform and Advocacy, can be contacted on [REDACTED] or at [REDACTED]

Yours sincerely,

[REDACTED]

NICK HUDSON

Acting Chief Executive Officer

ENCL.

- knowmore submission to the inquiry into the options available to survivors of institutional child sexual abuse in Western Australia who are seeking justice

Inquiry into the options available to survivors of institutional child sexual abuse in Western Australia who are seeking justice

Submission to the
Community Development
and Justice Standing
Committee

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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

From 2013 to 2018, our service assisted people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). From 1 July 2018, knowmore has delivered 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 delivers financial counselling services to people participating in the NRS, and works with other services in the NRS support network to support and build their capability. Since January 2022, knowmore has also been assisting survivors who experienced child sexual abuse in non-institutional settings. knowmore provides referrals to private lawyers to assist survivors with civil litigation.

From 1 March 2022, knowmore has been providing 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 30 June 2023, knowmore has received 92,477 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 15,497 clients. Almost 2 in 5 clients (37%) identify as Aboriginal and/or Torres Strait Islander peoples. About 1 in 6 clients (16%) 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 clients in Western Australia

knowmore has a significant client base in Western Australia — 17% of our clients reside in the state. We therefore have a strong interest in improving justice options for survivors of institutional child sexual abuse in Western Australia.

Introduction

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) highlighted that child sexual abuse has been widespread in Australian institutions, affecting ‘countless thousands’ of children and occurring ‘in almost every type of institution where children reside or attend for educational, recreational, sporting, religious or cultural activities’.¹ Almost 8,000 survivors shared their experiences with the Royal Commission in private sessions, identifying almost 3,500 institutions where child sexual abuse occurred.² In private sessions between May 2013 and May 2017, this included 245 institutions in Western Australia, or about 8% of institutions identified in private sessions during that time period.³ In that same time period, the Royal Commission held private sessions with 154 survivors who had experienced child sexual abuse in institutions managed by the Western Australian Government.⁴

The Royal Commission made 409 recommendations to ‘better protect children against child sexual abuse and alleviate the impact of abuse on children when it occurs’.⁵ The majority of recommendations were directed at governments, including the Western Australian Government,⁶ and 99 were specifically directed at improving survivors’ options for redress and compensation.⁷

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- 1 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report: preface and executive summary*, December 2017, accessed 7 August 2023, pp 1 and 5, <www.childabuseroyalcommission.gov.au/preface-and-executive-summary>.
 - 2 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final information update*, December 2017, accessed 7 August 2023, p 1, <www.childabuseroyalcommission.gov.au/sites/default/files/final_information_update.pdf>.
 - 3 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Final report: volume 2, nature and cause*, December 2017, accessed 7 August 2023, p 279, table A.1, <www.childabuseroyalcommission.gov.au/nature-and-cause>.
 - 4 Royal Commission, *Final report: volume 2*, p 112, table 2.10.
 - 5 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report recommendations*, December 2017, accessed 7 August 2023, <www.childabuseroyalcommission.gov.au/recommendations>.
 - 6 The Western Australian Government has identified that it has responsibility for 310 recommendations. See Government of Western Australia (Department of Communities), *Creating a safer WA for children and young people: 2021 progress report on Western Australia’s implementation of the Royal Commission into Institutional Responses to Child Sexual Abuse*, April 2022, accessed 7 August 2023, p 6, <www.wa.gov.au/government/publications/2021-progress-report-safer-wa-children-and-young-people>.
 - 7 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Redress and civil litigation report*, September 2015, accessed 7 August 2023, <www.childabuseroyalcommission.gov.au/redress-and-civil-litigation>.

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In making its recommendations, the Royal Commission identified some guiding principles for providing redress to survivors that are particularly relevant to the Committee's current inquiry. The Royal Commission commented that:

Although these principles may seem obvious, it seems to us to be worth stating them, particularly given that we have heard enough to know that they have not always been applied in the past.⁸

The Royal Commission's guiding 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.⁹

In knowmore's view, these guiding principles are generally sound, and are relevant when considering all redress and compensation options for survivors of institutional child sexual abuse who are seeking justice.

Depending on the circumstances, a survivor in Western Australia may have a range of redress and compensation options. These may include civil compensation, the National Redress Scheme (NRS) or Criminal Injuries Compensation.¹⁰ Some survivors in Western Australia have received a redress payment in the past under Redress WA, which ran from 2008 to 2011.¹¹

A survivor's decision to seek redress or compensation is deeply personal, and there are many factors that may influence a survivor's choice between options. These factors may include:

- different application or claim processes
- different eligibility criteria or legal tests
- different supports available to help with the process
- different impacts on other supports, such as Centrelink payments
- different costs or costs risks

8 Royal Commission, *Redress and civil litigation report*, p 132.

9 Royal Commission, *Redress and civil litigation report*, Recommendations 1 and 4, pp 95 and 135.

10 A survivor may also be eligible for a redress scheme provided by an institution where abuse occurred, or for a compensation or restitution order against a perpetrator as part of a criminal law process. See knowmore, *Can I get compensation? Western Australia*, June 2022, accessed 7 August 2023, <knowmore.org.au/wp-content/uploads/2019/02/Can-I-get-compensation-WA.pdf>.

11 Finity Consulting, *National Redress Scheme participant and cost estimates: Royal Commission into Institutional Responses to Child Sexual Abuse*, July 2015, accessed 7 August 2023, p 29, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/national-redress-scheme-participant-and-cost-estimates-report.pdf>.

- different outcomes available.¹²

An important consideration for many survivors is the potential interaction between options. These interactions can be complex and can have significant implications for the amount of redress or compensation that a survivor ultimately receives. For example, a survivor who accepts an NRS offer cannot later make a civil claim against the same institution or official for abuse within the scope of the NRS.¹³ However, the same is not true in reverse — a survivor who receives civil compensation may remain eligible for the NRS, although the civil payment is likely to be deducted from the NRS payment that the survivor would have otherwise received (see discussion on pages 43 to 44). Survivors often require multidisciplinary support to navigate the potential interactions between options, and avoid re-traumatisation and cultural harm in seeking redress or compensation.

As a nation-wide community legal centre for victims and survivors of child abuse, we have unique insights into issues affecting survivors in Western Australia who are seeking justice. Our submission responds to each of the Committee's Terms of Reference and proceeds in 4 parts:

- First, we discuss current issues relating to civil litigation reforms in Western Australia following the Royal Commission (addressing Term of Reference 1 of the Committee's inquiry).
- Second, we outline the role of the Western Australian Government in relation to the NRS and highlight key issues with the NRS relevant to Western Australia (addressing Term of Reference 2 of the Committee's inquiry).
- Third, we discuss the resourcing and provision of legal and other support for survivors who are seeking justice, focusing particularly on redress given our role in assisting survivors with the NRS (addressing Term of Reference 3 of the Committee's inquiry).
- Fourth, we provide comments about other justice options for survivors of institutional child sexual abuse in Western Australia, drawing particularly on lessons from other jurisdictions (addressing Term of Reference 4 of the Committee's inquiry).

List of recommendations

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

- recommendations about civil litigation

12 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*, May 2023, accessed 7 August 2023 <knowmore.org.au/wp-content/uploads/2020/05/Civil-claim-or-National-Redress-Scheme.pdf>.

13 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 43.

- recommendations about the NRS
- recommendations about services to support survivors
- recommendations about other justice options.

Recommendations about civil litigation

These recommendations are discussed further on pages 14 to 34.

Recommendation 1

The Western Australian Government should introduce legislation to:

- remove limitation periods for all child abuse claims, where child abuse includes both sexual abuse or serious physical abuse, and related/connected psychological abuse
- in proceedings for child abuse claims against unincorporated institutions, enable the court to nominate an associated trust of the institution as the proper defendant if the institution fails to identify a proper defendant who can satisfy any liability.

Recommendation 2

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

- how frequently the government and other institutions are making permanent stay applications
- in what circumstances the government and other institutions 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.

Recommendation 3

The Western Australian Government should enact laws 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* (Qld).

Recommendation 4

The Western Australian Government should work collaboratively with other Australian governments to implement Recommendation 17 of the second interim report of the former Joint Select Committee on Implementation of the National Redress Scheme as a matter of priority, to protect survivors accessing redress from exploitative practices.

Recommendation 5

The Western Australian Government should finalise its implementation of the Royal Commission's duty of institutions recommendations, by enacting legislative provisions that are consistent with those in other states and territories in terms of:

- establishing a duty of care with a reverse onus of proof
- making organisations vicariously liable for child abuse perpetrated by their employees and people akin to employees (for example, contractors, volunteers and religious ministers), when certain conditions are met.

Recommendations about the National Redress Scheme

These recommendations are discussed further on pages 35 to 61.

Recommendation 6

As an overarching recommendation, the Western Australian Government should work collaboratively with other Australian governments to implement recommendations made by previous reviews of the National Redress Scheme. In particular, the recommendations that already have the agreement of all Australian Governments should be swiftly implemented.

Recommendation 7

The Western Australian Government should work collaboratively with other Australian governments to ensure the full and urgent implementation of all outstanding recommendations of the second year review of the National Redress Scheme that seek to improve fairness, consistency and transparency of redress decisions. These include Recommendations 3.3, 3.4, 3.9, 3.10, 3.11, 3.12, 3.12 and 5.1 of the second year review.

Recommendation 8

The Western Australian Government should work with the National Redress Scheme (NRS) to ensure that the government's responsibility for private care arrangements is properly recognised within the NRS. This should include the development of clear, public guidance that confirms this recognition, to assist survivors in considering their redress and compensation options.

Recommendation 9

The Western Australian Government should work collaboratively with other Australian governments to address the inconsistent and unfair treatment of prior payments, including by fully implementing Recommendations 4.1, 4.3 and 4.5 of the second year review of the National Redress Scheme.

Recommendation 10

The Western Australian Government should work collaboratively with other Australian governments to 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 of the National Redress Scheme).

Recommendation 11

The Western Australian Government should work collaboratively with other Australian governments to implement Recommendation 6.5 of the second year review of the National Redress Scheme (NRS) to ensure that all NRS staff receive adequate and ongoing cultural awareness training. In addition, NRS staff in key roles, such as decision-makers 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 12

The Western Australian Government should work with the Department of Social Services to ensure that survivors in Western Australia do not experience reduced operating hours in relation to the National Redress Scheme.

Recommendation 13

The Western Australian Government should work collaboratively with other Australian governments to improve promotion of the National Redress Scheme (NRS), consistent with Recommendations 49 to 50 of the Royal Commission and Recommendation 7.1 of the second year review of the NRS.

Recommendation 14

The Western Australian Government should work collaboratively with other Australian Governments to ensure that the National Redress Scheme's proof of identity requirements are more trauma-informed and flexible for survivors.

Recommendation 15

The Western Australian Government should work collaboratively with other Australian governments to reduce barriers to accessing redress for survivors in prison. This includes implementing the announced reform to allow survivors in prison to apply for redress and ensuring the adequate resourcing of support services for survivors in prison.

Recommendation 16

The Western Australian Government should work collaboratively with other Australian governments to implement amendments to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) to give all survivors the option of receiving counselling and psychological care under either the service provision approach or the lump sum approach.

Recommendation 17

The Western Australian Government should work collaboratively with other Australian governments to implement the recommendation from the second year review of the National Redress Scheme to improve the counselling and psychological care component of redress (Recommendation 4.6). In particular, the Western Australian Government should prioritise steps that can be implemented at the state level — for example, increasing the availability of counselling services in rural, regional and remote parts of Western Australia.

Recommendation 18

The Western Australian Government should prioritise declaring itself as a funder of last resort for institutions in Western Australia that are unable to participate in the National Redress Scheme (NRS) (as per Recommendation 5.2 of the second year review of the NRS).

Recommendation 19

The Western Australian Government should monitor institutional participation in the National Redress Scheme (NRS) on an ongoing basis to encourage institutions in Western Australia to promptly join the NRS, and to ensure that appropriate action is taken in relation to institutions that cannot join or refuse to join the NRS.

Recommendation 20

The Western Australian Government should work collaboratively with other Australian governments to allow 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 of the National Redress Scheme).

Recommendation 21

The Western Australian Government should work collaboratively with other Australian governments to provide greater transparency in relation to the advice provided by Attorneys-General about survivors with serious criminal convictions and how this advice is treated by the National Redress Scheme. This should include providing reasons for special assessment decisions.

Recommendations about services to support survivors

This recommendation is discussed further on pages 62 to 67.

Recommendation 22

The Western Australian Government should give greater consideration to the support needs of survivors of institutional child sexual abuse in Western Australia who are seeking justice, and provide greater resourcing for appropriate support services.

Recommendations about other justice options

These recommendations are discussed further on pages 68 to 74.

Recommendation 23

The Western Australian Government should work collaboratively with other Australian governments to improve consistency between victims support schemes, based on national best practice.

Recommendation 24

The Western Australian Government should commission an independent review of Criminal Injuries Compensation with a view to offering improved support to victims and survivors of crime, including victims and survivors of child sexual abuse.

Recommendation 25

The Western Australian Government should establish a redress scheme for Stolen Generations survivors in Western Australia, drawing on the lessons learned from comparable schemes in other states and territories.

Civil litigation

This section discusses current issues relating to civil litigation reforms in Western Australia following the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission). It addresses Term of Reference 1 of the Committee's inquiry.

The Royal Commission found that many survivors of institutional child sexual abuse faced significant, often insurmountable, barriers to pursuing civil claims against the institutions responsible for their abuse. These barriers especially included:

- limitation periods for bringing child sexual abuse actions that failed to reflect the significant length of time it takes many survivors to disclose their abuse¹⁴
- difficulties for survivors and their legal representatives in identifying a proper defendant to sue, especially for unincorporated institutions like faith-based organisations¹⁵
- challenges to establishing that an institution was liable for the deliberate criminal conduct of another person given the state of the law in Australia.¹⁶

Overall, the Royal Commission concluded that civil litigation was not an effective way for survivors to obtain compensation to address or alleviate the impacts institutional child sexual abuse had had on them.¹⁷

In light of its findings, the Royal Commission made 15 recommendations to state and territory governments to make civil litigation a more effective way for survivors of institutional child sexual abuse to hold institutions to account and obtain compensation. There were:

- 4 recommendations to remove limitation periods for institutional child sexual abuse claims (see further discussion on pages 15 to 19)¹⁸
- 5 recommendations to impose new statutory duties on institutions in relation to child sexual abuse (see further discussion on pages 30 to 34)¹⁹
- 2 recommendations to help survivors pursue civil litigation against unincorporated institutions (see further discussion on pages 15 to 19)²⁰

14 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Redress and civil litigation report*, September 2015, accessed 7 August 2023, pp 434–459, <www.childabuseroyalcommission.gov.au/redress-and-civil-litigation>.

15 Royal Commission, *Redress and civil litigation report*, pp 496–511.

16 Royal Commission, *Redress and civil litigation report*, pp 460–495.

17 Royal Commission, *Redress and civil litigation report*, pp 92–93.

18 Royal Commission, *Redress and civil litigation report*, Recommendations 85 to 88, p 459.

19 Royal Commission, *Redress and civil litigation report*, Recommendations 89 to 93, p 495.

20 Royal Commission, *Redress and civil litigation report*, Recommendations 94 and 95, p 511.

- 4 recommendations to ensure that government institutions have specific, publicly available guidelines for responding to child sexual abuse claims, designed to minimise re-traumatisation for survivors (see further discussion on page 22).²¹

Western Australia's primary response to the Royal Commission's civil litigation recommendations has been the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* (Civil Liability Legislation Amendment Act). We provide some comments on the impact of the Civil Liability Legislation Amendment Act below. These comments are focused mainly on the extent to which the Act implemented relevant recommendations from the Royal Commission and how Western Australia's provisions compare to those elsewhere in Australia (pages 16 to 19). As noted on page 3, we refer clients to private lawyers for assistance with civil litigation and so do not have detailed insights into the day-to-day impact of the Civil Liability Legislation Amendment Act on the experiences of survivors pursuing civil claims. Nevertheless, 2 specific issues — institutions seeking permanent stays, and survivors being subjected to claim farming and exploitative practices — have come to our attention and we discuss these further below (pages 19 to 30).

We conclude by highlighting that Western Australia still has further work to do to respond to the Royal Commission's civil litigation recommendations, by implementing outstanding reforms regarding the duty of institutions (pages 30 to 34).

Impact of the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018*

The Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 was introduced into the Legislative Assembly on 22 November 2017 and passed the Legislative Council on 29 March 2018. Key provisions meant that, when the Civil Liability Legislation Amendment Act commenced on 1 July 2018:

- Limitation periods were removed for civil claims relating to child sexual abuse,²² consistent with Recommendations 85 to 88 from the Royal Commission.
- Survivors could commence civil claims against institutions in the name of their current office holders, and those office holders could meet any liabilities to survivors from the assets held by or for the institution or office holder.²³ These provisions were intended to address the difficulties the Royal Commission found survivors often had in identifying a proper defendant in proceedings against unincorporated institutions, as reflected in Recommendation 94.

21 Royal Commission, *Redress and civil litigation report*, Recommendations 96 to 99, p 524.

22 *Limitation Act 2005* (WA), section 6A, as inserted by section 10 of the Civil Liability Legislation Amendment Act.

23 *Civil Liability Act 2002* (WA), part 2A, division 2, as inserted by section 5 of the Civil Liability Legislation Amendment Act.

We continue to strongly support the implementation of the Royal Commission's civil litigation recommendations by state and territory governments,²⁴ and we acknowledge the Western Australian Government in responding to some of these recommendations through the Civil Liability Legislation Amendment Act.

We further commend the government for including some other important provisions in the Civil Liability Legislation Amendment Act. We especially support the provisions in section 12 that enable courts to, in certain circumstances, set aside previous settlement agreements made between survivors and institutions.²⁵ These 'setting aside provisions' recognise that the previous operation of limitation periods meant that many survivors had accepted completely inadequate settlement payments from institutions in the past, while also giving up their right to seek further compensation. knowmore has dealt with many clients who received less than \$20,000 from the institution in which they were abused, despite having suffered prolonged sexual and other abuse as a child and experiencing life-long negative impacts as a result. Western Australia's setting aside provisions are therefore an important complement to the removal of limitation periods, ensuring that survivors who had previously accepted a settlement from an institution are not at a disadvantage and can seek fair and just compensation in the same way as other survivors now that limitation periods have been removed. We acknowledge Western Australia in being one of the first jurisdictions to introduce such reforms.

We also support the provisions in section 5 of the Act that place a cap on the legal fees that may be charged by a law firm acting for a survivor in a child sexual abuse matter.²⁶ As we discuss on pages 22 to 30, some law firms will target survivors of institutional child sexual abuse with exploitative and unethical practices, and we welcome any provisions that can help ensure survivors' legal costs are kept to a minimum.

Given the above, the Civil Liability Legislation Amendment Act has undoubtedly provided survivors of child sexual abuse in Western Australia with new and improved avenues 'to pursue justice, healing and recognition' through civil litigation.²⁷ However, legislative reforms in other jurisdictions in response to the Royal Commission's recommendations regarding limitation periods and unincorporated institutions have gone even further in making civil litigation more accessible for survivors. This has happened in 2 ways.

24 See knowmore, *Advancing civil litigation reforms*, knowmore website, n.d., accessed 7 August 2023, <knowmore.org.au/leading-change/civil-litigation/>.

25 *Limitation Act 2005* (WA), section 92.

26 *Civil Liability Act 2002* (WA), section 15L.

27 Government of Western Australia, *Royal Commission into Institutional Responses to Child Sexual Abuse: 2018 progress report*, December 2018, accessed 7 August 2023, p 23, <www.wa.gov.au/government/publications/progress-report-royal-commission-institutional-responses-child-sexual-abuse-2018>.

First, every other state and territory has removed limitation periods for child abuse claims broadly, not just child sexual abuse claims (see Table 1 on the next page).²⁸ Setting aside provisions like those in the *Limitation Act 2005* (WA) (section 92) and provisions to enable survivors to commence proceedings against unincorporated institutions like those in the *Civil Liability Act 2002* (WA) (part 2A, division 2) have also been extended to all types of child abuse claims in relevant jurisdictions.²⁹ For survivors of institutional child sexual abuse, these extended reforms are an important acknowledgement of the reality that many survivors also endured significant physical and emotional abuse. This was demonstrated in the Royal Commission's report on Christian Brothers institutions in Western Australia,³⁰ and noted by then Premier McGowan in his apology speech:

*Case Study 11, concerning Christian Brothers institutions at Castledare, Clontarf, Tardun and Bindoon make for harrowing reading ... Allegations of sexual abuse against 16 named Brothers at one or more of the institutions ... A concerted campaign of physical and emotional intimidation, keeping children in a state of 'constant terror' to conceal that sexual abuse.*³¹

The extended reforms in other jurisdictions also give long overdue recognition to those people who experienced non-sexual abuse as children and ensure that all survivors of child abuse are treated equally before the law. We note on this point that, although the Royal Commission was limited by its terms of reference to making recommendations about child sexual abuse, it too expressed support for extending its recommended civil litigation reforms to child abuse more broadly.³²

28 *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), sections 27O and 27P.

29 For setting aside provisions, see *Civil Law (Wrongs) Act 2002* (ACT), parts 8A.1 and 8A.3; *Civil Liability Act 2002* (NSW), part 1C; *Limitation Act 1981* (NT), sections 53–54; *Limitation of Actions Act 1974* (Qld), section 48; *Civil Liability Act 1936* (SA), part 7B; *Limitation Act 1974* (Tas), section 5C; *Limitation of Actions Act 1958* (Vic), sections 27QA, 27QD and 27QE. For provisions relating to proceedings against unincorporated institutions, see *Civil Law (Wrongs) Act 2002* (ACT), parts 8A.1 and 8A.2; *Civil Liability Act 2002* (NSW), part 1B; *Civil Liability Act 2003* (Qld), part 2A; *Civil Liability Act 1936* (SA), part 7A; *Civil Liability Act 2002* (Tas), part 10C; *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic), section 3.

30 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Report of case study no. 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School*, December 2014, accessed 7 August 2023, <www.childabuseroyalcommission.gov.au/case-studies/case-study-11-christian-brothers>.

31 Hon M McGowan MLA, *Royal Commission response and apology*, speech made to the Legislative Assembly, 27 June 2018, accessed 7 August 2023, p 5, <www.wa.gov.au/government/publications/apology-speech-premier-mcgowan-the-royal-commission-institutional-responses-child-sexual-abuse>.

32 Royal Commission, *Redress and civil litigation report*, p 492.

Table 1: Removal of limitation periods for child abuse claims in other jurisdictions

Jurisdiction	Date limitation periods for child abuse claims removed	Definition of child abuse
Australian Capital Territory	10 December 2022	physical abuse or sexual abuse
New South Wales	17 March 2016	sexual abuse; serious physical abuse; or any other abuse (connected abuse) perpetrated in connection with sexual abuse or serious physical abuse
Northern Territory	15 June 2017	sexual abuse; serious physical abuse; or psychological abuse that arises from sexual abuse or serious physical abuse
Queensland	2 March 2020	sexual abuse or serious physical abuse of the child; or psychological abuse of the child perpetrated in connection with sexual abuse or serious physical abuse of the child
South Australia	1 February 2019	sexual abuse; serious physical abuse; psychological abuse related to sexual abuse or serious physical abuse
Tasmania	1 July 2018	sexual abuse; serious physical abuse; any psychological abuse that arises from the sexual abuse or the serious physical abuse
Victoria	1 July 2015	physical abuse or sexual abuse; or psychological abuse that arises out of physical abuse or sexual abuse

Second, most other jurisdictions have introduced provisions that empower the court, in a proceeding against an unincorporated institution, to nominate an associated trust of the institution to be the proper defendant in certain circumstances.³³ These provisions go further than those in Western Australia and better reflect the intent of the Royal Commission's recommendation to ensure that liabilities owed to survivors by institutions can be met from the assets of associated property trusts.

As a result of these further reforms, survivors of child abuse in other jurisdictions currently have greater scope to access civil litigation than survivors in Western Australia do. To

33 *Civil Law (Wrongs) Act 2002* (ACT), section 114E; *Civil Liability Act 2002* (NSW), section 6N; *Civil Liability Act 2003* (Qld), section 33H; *Civil Liability Act 1936* (SA), section 50J; *Civil Liability Act 2002* (Tas), section 49P; *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic), section 8.

address these inequalities, we strongly support further reforms in Western Australia that are consistent with the developments in other jurisdictions. We specifically support:

- Limitation periods being removed for all types of child abuse claims. We support child abuse being defined broadly, as in other jurisdictions, to include both sexual abuse and serious physical abuse, and related/connected psychological abuse. We support changes to ensure that Western Australia's other civil litigation reforms also apply to child abuse claims broadly.
- Strengthening the provisions in the Civil Liability Act relating to proceedings against unincorporated institutions, by enabling the court to nominate an associated trust as the proper defendant to a proceeding if the institution fails to identify a proper defendant who can satisfy any liability. The comparable provisions in other jurisdictions provide a suitable model for this.

We consider these changes essential for increasing legislative consistency with other jurisdictions and ensuring that survivors of child abuse in Western Australia have the same opportunity to obtain justice through civil litigation as survivors elsewhere in Australia.

Recommendation 1

The Western Australian Government should introduce legislation to:

- remove limitation periods for all child abuse claims, where child abuse includes both sexual abuse or serious physical abuse, and related/connected psychological abuse
- in proceedings for child abuse claims against unincorporated institutions, enable the court to nominate an associated trust of the institution as the proper defendant if the institution fails to identify a proper defendant who can satisfy any liability.

As noted earlier, we do not have detailed insights into the day-to-day impact of the Civil Liability Legislation Amendment Act on the experiences of survivors pursuing civil litigation. However, 2 specific issues have come to our attention in assisting survivors:

- concerns that institutions are increasingly seeking permanent stays of proceedings in child sexual abuse matters
- concerns that survivors of institutional child sexual abuse are being subjected to claim farming and exploitative practices by some law firms and 'survivor advocacy' businesses.

We discuss these issues below.

Permanent stays

Over recent months, survivors and other stakeholders have expressed concerns that institutions across Australia are increasingly seeking permanent stays of proceedings in child sexual abuse matters. We are particularly aware of this as part of our engagement with the

Australian Parliament's Joint Standing Committee on Implementation of the National Redress Scheme (Joint Standing Committee),³⁴ which is examining whether permanent stays may be leading to an increased number of applications to the National Redress Scheme (NRS).³⁵

The Joint Standing Committee has described the potential increase in permanent stays as 'a move away from the intent of the [Royal] Commission's recommendation[s]' to remove limitation periods.³⁶ Survivors and lawyers in a recent report by ABC's *Four Corners* likewise expressed the view that permanent stays were effectively a legal 'loophole' that were being used by institutions to deny survivors justice and avoid paying compensation.³⁷

It makes me question why taxpayers spent \$370 million on a Royal Commission when we are almost what seems to be in pre-Royal Commission days. I find it offensive on a moral basis that a technical, legal argument is able to take precedent over what should happen. We want to have a trial. We're not saying we've won yet, but you've got to give someone the opportunity to have a trial because that is part of the healing and that is part of having the ability to stand up for the little girl or the little boy that they're there for. — Alessandra Pettit, Stacks Goudkamp Lawyers

... The Scouts, you know, they said to the Royal Commission that they were going to treat victims of sexual abuse with consideration and mindfulness that litigation can be traumatising. They said they were going to consider meeting legitimate claims without litigation. They're not doing that. That's not what they're doing here. Instead, they're revictimising me. They're treating me with unspeakable cruelty. And it hurts. — Matt Barker, survivor

Money. You can't get any more basic than money. They're having to pay out big dollars now in many claims, and they're getting scared. Basically. They're getting scared. — Judy Courtin, Judy Courtin Legal, when asked about the primary motivation for institutions seeking permanent stays

34 See <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Standing>.

35 Joint Standing Committee on Implementation of the National Redress Scheme (Joint Standing Committee), *Discussion paper: inquiry into the operation of the National Redress Scheme*, December 2022, accessed 7 August 2023, p 4, <www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/Redress/Discussion_Paper.pdf?la=en&hash=1A2BCBB438073FC812357721191ADDB94B51AAB1>

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

37 ABC News, 'Hiding behind tombstones: the new legal tactics blocking justice for survivors', *Four Corners*, reported by Louise Milligan, 29 May 2023, accessed 7 August 2023, <www.abc.net.au/news/2023-05-29/hiding-behind-tombstones-the-new-legal-tactics/102407572>. See also L Milligan, M Fallon and J Longbottom (Four Corners), 'The extraordinary legal tactics institutions are using to fight compensation claims by abuse victims', *ABC News*, 29 May 2023, accessed 7 August 2023, <www.abc.net.au/news/2023-05-29/legal-tactics-to-fight-abuse-compensation-claims-four-corners/102392184>.

Overall, there is a sense among survivors and some lawyers that permanent stays are now being used by institutions as leverage in the same way that limitation periods were before they were removed. knowmore has seen some of the effects of this firsthand, with some clients 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 prevent 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 to pursuing a civil claim.

Given the above concerns, a number of survivors and other stakeholders are now calling for legislative reforms.³⁸

Parliament must, must remove this obscenity off the statute books because that denies hundreds and hundreds of innocent victims, their right to due process. Whilst affording known paedophile criminals, sanctuary in the grave. — Ted Kawicki, survivor

Obviously when the law is misfiring, when the common law in this case is misfiring, and it's not providing just outcomes, that's when you need parliaments to step up. That's what parliaments were asked to do by the Royal Commission. And it's exactly the same now. This is history repeating. — David Shoebridge, NSW Greens Senator

... My client is calling upon the Attorneys-General to look into this law again and rectify it to go back to what the Royal Commission wanted it to be. Victim-orientated. Survivor-orientated. To support them. Not the institutions once again allowing the abusers to slip through the fingers of justice. — Peter Karp, Karp O'Neill Lawyers

As a first step, we would suggest that the Committee gives further consideration to how permanent stays are being used by the Western Australian Government and other key Western Australian institutions (for example, the Christian Brothers).³⁹ This could include seeking more information from the government and other institutions about how frequently they are making permanent stay applications, in what circumstances they are making permanent stay applications, and the outcomes of permanent stay applications — for example, whether the application is successful, the application is unsuccessful or the plaintiff withdraws their claim.

We particularly note that, given a large number of survivors in Western Australia experienced institutional child sexual abuse in government institutions,⁴⁰ the current

38 See ABC News, 'Hiding behind tombstones'.

39 One of the Royal Commission's detailed case studies focused on residences operated by the Christian Brothers (the Congregation of Christian Brothers) in Western Australia. See Royal Commission, *Report of case study no. 11*.

40 As an indication of this, the Royal Commission estimated that 36% of claims for redress in Western Australia (2,300 claims) would be government claims. See Royal Commission, *Redress and civil litigation report*, p 313, table 21.

litigation practices of the government have potential wide-reaching implications for survivors in Western Australia. We note also that the Western Australian Government has model litigant obligations relevant to the conduct of civil litigation, including specific guiding principles in relation to child sexual abuse claims.⁴¹ In light of these factors, we think it is especially important to ensure that the government is not overusing or misusing permanent stay applications.

Recommendation 2

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

- how frequently the government and other institutions are making permanent stay applications
- in what circumstances the government and other institutions 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.

Claim farming and exploitative practices

Making civil litigation more accessible for survivors of institutional child sexual abuse has naturally led to more survivors requiring and seeking legal advice and other support to navigate their options. Obviously, we strongly support survivors having such assistance and being able to decide who they turn to for it. However, a trauma-informed approach demands that survivors are empowered to make informed decisions about their legal options and who assists them, and are not harassed, intimidated, deceived or taken advantage of when seeking assistance with their compensation and redress options.

Unfortunately, we know that some survivors of institutional child sexual abuse are being subjected to exploitative and unethical practices by some law firms and ‘survivor advocacy’ businesses in relation to claims for compensation and redress. We are particularly concerned about a practice sometimes referred to as ‘claim farming’, which is where someone (a ‘claim farmer’) contacts a survivor without their permission and encourages them to make a claim for compensation. The claim farmer usually then gives the survivor’s name and details to a law firm, which pays the claim farmer for the survivor’s information.

Over the last 4 years, knowmore has received numerous reports about claim farming and related practices across Australia, including in Western Australia. These practices are

41 *Western Australia Government whole of government guiding principles for responding to civil litigation involving child sexual abuse*, May 2018, accessed 7 August 2023, <www.department.justice.wa.gov.au/files/child-sexual-abuse/guiding-principal-child-sexual-abuse.pdf>.

reportedly being engaged in by a number of law firms and survivor advocacy businesses — businesses that purport to offer a range of support services to victims and survivors of institutional abuse, but are principally focused on seeking out survivors and referring them to associated law firms to pursue compensation claims. Such referrals in turn result in the law firm paying the claim farmer what is in effect a referral fee, as explained further below.

We are particularly concerned by reports of:

- Survivors being cold called to pursue compensation claims because of their experience of childhood sexual abuse. Many of our clients have described distressing experiences of being unexpectedly contacted by law firms and survivor advocacy businesses, including in person, by mail and by phone.
- Law firms effectively paying survivor advocacy businesses referral fees for introducing survivor clients and passing on preliminary information. These businesses typically provide limited services and/or undertake work that would ordinarily be undertaken by the law firm itself (for example, preparing statements), but charge significant additional fees that are ultimately paid for by the survivor.
- Survivors paying for services that are not of an acceptable professional standard and are not delivered in a trauma-informed or culturally safe manner.
- Law firms and survivor advocacy businesses targeting particularly vulnerable survivors in prisons, Aboriginal communities and other places where large numbers of survivors of institutional child abuse are likely to be present.

We have written extensively about these practices in a number of previous submissions. These include:

- our February 2023 submission to the Joint Standing Committee⁴²
- our April 2022 submission on Queensland's Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 (Queensland PIPOLA Bill)⁴³
- our September 2020 submission to the second anniversary review of the NRS⁴⁴

42 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme* [submission 14], 27 February 2023, accessed 7 August 2023, pp 57–62, <[www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Stand ing/Redress47/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Stand_ing/Redress47/Submissions)>.

43 knowmore, *Submission on Queensland's Personal Injuries Proceedings and Other Legislation Amendment Bill 2022* [submission 12], 22 April 2022, accessed 7 August 2023, <www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=170&id=4161>.

44 knowmore, *Submission to the second anniversary review of the National Redress Scheme*, 30 September 2020, accessed 7 August 2023, pp 52–56, <knowmore.org.au/wp-content/uploads/2020/10/Submission-Second-anniversary-review-of-the-National-Redress-Scheme-30-September-2020.pdf>.

- our May 2020 submission to the former Joint Select Committee on Implementation of the NRS.⁴⁵

These submissions describe the nature of claim farming and other exploitative practices we have concerns about; the role of survivor advocacy businesses and their relationships with law firms; and the adverse impacts on survivors. We refer the Committee to these submissions for an understanding of claim farming practices generally; our April 2022 submission on the Queensland PIPOLA Bill is the most detailed in this regard.

We discuss specific concerns in Western Australia in the following section.

Concerns in Western Australia

When considering the Western Australian context, it is important to recognise that jurisdictional boundaries obviously do not limit the capacity of interstate law firms and survivor advocacy businesses to engage in claim farming and other exploitative practices in Western Australia. Concerns about the conduct of law firms and survivor advocacy businesses in other jurisdictions may therefore have implications for Western Australia too.

We know, for example, that 2 of the businesses we referred to in our submission on the Queensland PIPOLA Bill have previously promoted their work across all states. Concerns about one of these business's activities in Western Australia have been raised with us as recently as July 2023.

Similarly, we have been advised of the names of 10 different law firms that knowmore clients nationally have been put into contact with by survivor advocacy businesses. Of these firms, 2 firms have offices in Western Australia and 1 other firm is known to be active in Western Australia even though they are based on the east coast.

knowmore holds particular concerns about the practices of this interstate law firm, which has been the subject of numerous reports from survivors and other stakeholders in Western Australia over the last 10 months. Concerns have especially been raised with us about the law firm targeting Aboriginal survivors through public information sessions/community events and providing misleading information to survivors about their compensation and redress options. This includes the law firm reportedly:

- telling survivors who have accepted an offer of redress from the NRS that the survivor can make another application and/or that they can get the survivor additional compensation (when, as noted on page 7, a survivor who accepts an NRS offer cannot later make a civil claim against the same institution or official for abuse within the scope of the NRS)

45 knowmore, *Supplementary submission to the Joint Select Committee on Implementation of the National Redress Scheme: exploitative practices of some law firms and 'survivor advocacy' businesses* [submission 20.1], 29 May 2020, accessed 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/National_Redress_Scheme/NationalRedressScheme/Submissions>.

- promising survivors they can apply for a Western Australian Stolen Generations redress scheme (which, as discussed later on pages 72 to 74, does not currently exist)
- claiming that law firms can achieve better results from the NRS than free support services like knowmore and the Redress Support Services (when, in fact, survivors who receive support from knowmore or a Redress Support Service reportedly receive higher redress payment amounts on average than survivors who receive support from other legal services).⁴⁶

A costs agreement recently received from the law firm by a survivor in Western Australia, which knowmore has seen, made reference to a survivor advocacy business — the agreement referred to the business being engaged to ‘obtain [the survivor’s] statement and investigate the matter’, for a cost of approximately \$6,000. This was to be paid for by a funder at a total cost of more than \$9,500 and treated as a disbursement and deducted from the survivor’s settlement. Such billing practices may disguise claim farming arrangements and ultimately prevent survivors from receiving a fair and equitable share of an award of damages or settlement funds.⁴⁷

Need for legislative reform in Western Australia

In 2022, knowmore voiced its strong support for the legislative reforms introduced into the Queensland Parliament to stop claim farming for all personal injury claims in Queensland.⁴⁸ As a result of amendments contained in the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022* (Queensland PIPOLA Act):

- it is an offence in Queensland for a person to give or receive (or agree to give or receive or allow or cause someone else to give or receive) consideration for a claim referral or potential claim referral⁴⁹
- it is an offence in Queensland for a person to personally approach or contact another person and solicit or induce them to make a claim⁵⁰

46 National Redress Scheme, *Legal support* [fact sheet], 6 January 2021, accessed 7 August 2023, p 3, <www.nationalredress.gov.au/document/1291>.

47 See page 2 of the Explanatory Notes to the Queensland PIPOLA Bill, available at <documents.parliament.qld.gov.au/tp/2022/5722T477-1BE3.pdf>.

48 See knowmore, *Submission on Queensland’s Personal Injuries Proceedings and Other Legislation Amendment Bill 2022*, and Legal Affairs and Safety Committee, *Public hearing — inquiry into the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022: transcript of proceedings*, Queensland Parliament, 4 May 2022, accessed 7 August 2023, pp 24–27, <documents.parliament.qld.gov.au/com/LASC-C96E/PIPOLAB202-1753/Public%20hearing%20-%204%20May%202022.pdf>.

49 *Personal Injuries Proceeding Act 2002* (Qld), section 71.

50 *Personal Injuries Proceeding Act 2002* (Qld), section 71B.

- legal practitioners are required to provide law practice certificates at certain stages of a claim to confirm their compliance with the above provisions.⁵¹

The Queensland PIPOLA Act also introduced provisions to stop law firms from engaging in undesirable costs agreement practices,⁵² including classifying fees payable to survivor advocacy businesses as disbursements (see discussion above).

Anecdotally, we have been hearing fewer reports of claim farming activity in Queensland since provisions of the Queensland PIPOLA Act commenced in July 2022. Beyond Brave, a national Redress Support Service for survivors engaging with the NRS, has also recently expressed ‘cautious optimism’ about the impact of Queensland’s legislative reforms.⁵³ Overall, the initial signs in Queensland are encouraging and highlight the potential value of similar reforms in Western Australia for reducing claim farming activity and related practices in the state.⁵⁴

We are concerned, however, that the changes in Queensland are leading those people engaging in claim farming and related practices to focus their activities in other jurisdictions. Certainly, we have been hearing more reports of concerning practices in Western Australia (and other jurisdictions) over the last 12 months. We are therefore concerned that survivors in Western Australia (and other jurisdictions) will remain particularly vulnerable to claim farming and other exploitative practices until effective legislation is implemented to combat the problem. Beyond Brave has recently made similar observations:

Beyond Brave remains concerned about the exploitative behaviour of some Personal Injury law firms and survivor advocate groups. We are aware that survivor advocate groups have shifted their focus away from Queensland and are now targeting vulnerable communities in the Northern Territory, New South Wales and Western Australia, where such laws do not exist and there is a lack of knowledge about the [National Redress Scheme].⁵⁵

We note that Western Australia currently has some anti-touting provisions,⁵⁶ but our view is that these provisions are not sufficient to stop law firms and survivor advocacy businesses

51 *Personal Injuries Proceeding Act 2002* (Qld), chapter 2, part 1, division 1AA.

52 *Legal Profession Act 2007* (Qld), section 347.

53 Bravehearts Foundation (Beyond Brave), *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme: inquiry into the operation of the National Redress Scheme* [submission 16], 27 February 2023, accessed 7 August 2023, p 5, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Stand_ing/Redress47/Submissions>.

54 We note that the *Motor Accident Insurance and Other Legislation Amendment Act 2019* (Qld), on which the Queensland PIPOLA Act was based, has also reportedly been effective in reducing claim farming activity in Queensland in relation to compulsory third party (CTP) insurance claims. See Hon S Fentiman, *Personal injury claims farming now banned in Queensland* [media release], 22 June 2022, accessed 7 August 2023, <statements.qld.gov.au/statements/95475>.

55 Bravehearts Foundation (Beyond Brave), *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 5–6.

56 *Civil Liability Act 2002* (WA), part 3.

from engaging in claim farming and related practices. We note in particular that similar provisions exist in Queensland,⁵⁷ where it was deemed necessary to introduce specific anti-claim farming legislation as outlined above. Significant limitations of the existing anti-touting provisions in the Civil Liability Act include that:

- They do not address all aspects of claim farming. In particular, the offences in section 19 are targeted narrowly at practices a) proximate to incidents causing personal injury and b) by people whose employment presents opportunities for claim farming. The references in the original explanatory notes to ‘accident’ rather than ‘incident’⁵⁸ highlight the intent of these provisions to address ‘ambulance chasing’ type behaviour rather than the kind of widespread claim farming we are seeing targeted at survivors of child abuse, where non-legal businesses are now specialising in this type of work.
- The penalties for non-compliance are inadequate. The maximum penalty in Western Australia is only \$10,000, which is significantly lower than the maximum penalty for the equivalent offences in Queensland (300 penalty units, or \$46,440).

We believe the approach that has been taken in Queensland provides a suitable model for addressing these shortcomings. We would therefore urge Western Australia to progress legislative reforms consistent with those in the Queensland PIPOLA Act as a matter of priority.

We note that nationally consistent laws in all jurisdictions have also been publicly supported by People With Disability Australia (PWDA),⁵⁹ as a national Redress Support Service for survivors engaging with the NRS, and Beyond Abuse,⁶⁰ a Tasmanian-based charity providing support and advocacy for survivors (see text box on the next page).

57 *Personal Injuries Proceedings Act 2002* (Qld), sections 67 and 68.

58 Explanatory Memorandum to the Civil Liability Bill 2002 (WA), pp 5–6, <[www.parliament.wa.gov.au/Parliament/Bills.nsf/56617A2E1A0D89C748256C15000BD0AB/\\$File/EM-Bill138.pdf](http://www.parliament.wa.gov.au/Parliament/Bills.nsf/56617A2E1A0D89C748256C15000BD0AB/$File/EM-Bill138.pdf)>.

59 People with Disability Australia, *Redress matters to address: a submission to the Joint Standing Committee on Implementation of the National Redress Scheme* [submission 13], February 2023, accessed 7 August 2023, p 5, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme/Standing/Redress47/Submissions>.

60 Beyond Abuse, *Claim farming*, Beyond Abuse website, 2023, accessed 7 August 2023, <beyondabuse.org.au/claim-farming/>.

Support from other services for nationally consistent laws to stop claim farming

People with Disability Australia:

A major problem is that different states and territories have different laws concerning fees and claim-farming. PWDA believes greater consistency of laws and related standards across all states and territories would minimise these issues.

Beyond Abuse:

Queensland has introduced sensible legislation (Personal Injuries Proceedings and Other Legislation Amendment Bill 2022) to outlaw claim farming in relation to victims of child abuse. The legislation is properly based on the same legislation which stamped out claim farming in relation to motor vehicle collisions.

Beyond Abuse supports the Queensland bill and calls upon all Australian Governments to pass similar legislation in their State and Territory.

We agree with these comments. A legislative approach that is consistent with Queensland's will ensure that Western Australia does not become a preferred target for claim farmers and that survivors in Western Australia are protected from predatory and exploitative practices.

Recommendation 3

The Western Australian Government should enact laws 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* (Qld).

Need for reform in relation to the National Redress Scheme

As well as state-based legislative reform to address exploitative practices that occur in the context of civil claims for compensation, we also wish to highlight the urgent need for Western Australia to support a national response to exploitative practices that occur in the context of the NRS. While the focus in this part of our submission is on civil litigation, the concerns we have identified above (see pages 24 to 25) show that exploitative practices in relation to civil claims often go hand in hand with exploitative practices in relation to the NRS, as survivors explore their different options for compensation and redress. Implementing strategies to address one but not the other will therefore be inherently limited.

We call on the Western Australian Government to work with the Australian Government and other state and territory governments to implement reforms recommended by the

former Joint Select Committee on Implementation of the NRS (see text box below)⁶¹ as a matter of priority.

Recommendation 17 of the second interim report of the former Joint Select Committee on Implementation of the National Redress Scheme

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.

knowmore has been advocating for these reforms since 2020⁶² and we believe it is well past time for governments to take decisive action. In our view, the full implementation of this recommendation is essential to protecting survivors, and the integrity of the NRS.

61 Joint Select Committee on Implementation of the National Redress Scheme, *Second interim report of the Joint Select Committee on Implementation of the National Redress Scheme*, November 2021, accessed 7 August 2023, see Recommendation 17 and pp 69–73, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/National_Redress_Scheme/NationalRedressScheme/Second_Interim_Report>.

62 See knowmore, *Supplementary submission to the Joint Select Committee on Implementation of the National Redress Scheme*, pp 6–8 and knowmore, *Submission to the second anniversary review of the National Redress Scheme*, pp 53–55.

Recommendation 4

The Western Australian Government should work collaboratively with other Australian governments to implement Recommendation 17 of the second interim report of the former Joint Select Committee on Implementation of the National Redress Scheme as a matter of priority, to protect survivors accessing redress from exploitative practices.

We discuss other issues with the NRS in the section starting on page 35.

Outstanding reforms regarding the duty of institutions

While the Civil Liability Legislation Amendment Act contained a number of valuable reforms, there is still more to be done to make civil litigation more accessible for survivors of institutional child sexual abuse in Western Australia.

The explanatory memorandum to the Civil Liability Legislation Amendment Bill referred to the amendments in that Bill as ‘the first stage of legislative reform in Western Australia’ responding to recommendations in the Royal Commission’s Redress and Civil Litigation report.⁶³ However, there has been no further legislative reform since the Civil Liability Legislation Amendment Act commenced, meaning there are still civil litigation recommendations from the Royal Commission that have not been implemented in Western Australia. Specifically, the 5 recommendations the Royal Commission made to make institutions liable for child sexual abuse (see text box below) have not yet been implemented by the government.⁶⁴

The Royal Commission’s ‘duty of institutions’ recommendations

Recommendation 89

State and territory governments should introduce legislation to impose a non-delegable duty on certain institutions for institutional child sexual abuse despite it being the deliberate criminal act of a person associated with the institution.

Recommendation 90

The non-delegable duty should apply to institutions that operate the following facilities or provide the following services and be owed to children who are in the care, supervision or control of the institution in relation to the relevant facility or service:

63 Explanatory Memorandum to the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 (WA), p 1.

64 See Royal Commission, *Redress and civil litigation report*, pp 460–495.

- a. residential facilities for children, including residential out-of-home care facilities and juvenile detention centres but not including foster care or kinship care
- b. day and boarding schools and early childhood education and care services, including long day care, family day care, outside school hours services and preschool programs
- c. disability services for children
- d. health services for children
- e. any other facility operated for profit which provides services for children that involve the facility having the care, supervision or control of children for a period of time but not including foster care or kinship care
- f. any facilities or services operated or provided by religious organisations, including activities or services provided by religious leaders, officers or personnel of religious organisations but not including foster care or kinship care.

Recommendation 91

Irrespective of whether state and territory parliaments legislate to impose a non-delegable duty upon institutions, state and territory governments should introduce legislation to make institutions liable for institutional child sexual abuse by persons associated with the institution unless the institution proves it took reasonable steps to prevent the abuse. The ‘reverse onus’ should be imposed on all institutions, including those institutions in respect of which we do not recommend a non-delegable duty be imposed.

Recommendation 92

For the purposes of both the non-delegable duty and the imposition of liability with a reverse onus of proof, the persons associated with the institution should include the institution’s officers, office holders, employees, agents, volunteers and contractors. For religious organisations, persons associated with the institution also include religious leaders, officers and personnel of the religious organisation.

Recommendation 93

State and territory governments should ensure that the non-delegable duty and the imposition of liability with a reverse onus of proof apply prospectively and not retrospectively.

It is not clear if or when these recommendations will be implemented in Western Australia. We note that in December 2018, the Department of Justice released a discussion paper and invited stakeholder feedback to inform the government’s further consideration of these recommendations.⁶⁵ knowmore made a submission in response to that discussion paper, expressing its strong support for the Royal Commission’s recommended reforms and urging

65 Government of Western Australia (Department of Justice), *Discussion paper — duty of institutions – recommendations 90–93*, December 2018, accessed 7 August 2023, <department.justice.wa.gov.au/C/child-abuse-discussion-paper.aspx>.

the government to progress them quickly.⁶⁶ In November 2019, knowmore wrote to the Attorney-General, noting legislative developments in other jurisdictions (see further discussion below) and seeking an update on the status of Western Australia's work on the duty of institutions recommendations. The Attorney-General advised knowmore in January 2020 that 'further tranches of legislation will be introduced with appropriate regard to stakeholder views and legislative developments in other jurisdictions'. It is not clear what progress has been made since then — the most recent implementation progress report published by the government, from April 2022, stated that the Department of Justice was still 'providing advice to WA Government in consideration of recent reforms in other jurisdictions relating to civil liability and the feedback collected throughout [the 2018] consultation'.⁶⁷

The 5 recommendations the Royal Commission made about the duty of institutions are important ones. First, the recommendations were designed to ensure that victims and survivors of institutional child sexual abuse had a clear path to accessing compensation. This recognises the difficulties survivors have had in holding institutions to account in the past, and seeks to ensure that civil claims are a more accessible option for survivors in the future.⁶⁸ Second, and perhaps even more importantly, implementing the recommendations should make institutions safer for children. As the Royal Commission stated:

*... our recommendations on the duty of institutions, if implemented, should change the behaviour of institutions and encourage the prevention of institutional child sexual abuse in the future. As we discuss in Chapter 15, legal duties are important for defining the standard of care that the community requires of institutions. Changes to the content of the duty owed by institutions do more than provide an additional or more certain avenue for victims of abuse to seek compensation after institutional child sexual abuse has occurred; they are critical measures for preventing institutional child sexual abuse occurring in the first place.*⁶⁹

All other states have enacted significant legislative reforms in response to the Royal Commission's recommendations (see Table 2 on the next page). Specifically:

- All states have introduced provisions to the effect that institutions must take reasonable steps to prevent a person associated with the institution from abusing a child for whom the institution has responsibility. If a person associated with the institution does abuse a child in these circumstances, the institution will be taken to

66 knowmore, *Submission on civil litigation recommendations and the duty of institutions in Western Australia*, March 2019, accessed 7 August 2023, <knowmore.org.au/wp-content/uploads/2020/11/submission-duty-of-institutions-wa.pdf>.

67 Government of Western Australia (Department of Communities), *Creating a safer WA for children and young people: 2021 progress report on Western Australia's implementation of the Royal Commission into Institutional Responses to Child Sexual Abuse*, April 2022, accessed 7 August 2023, p 28, <www.wa.gov.au/government/publications/2021-progress-report-safer-wa-children-and-young-people>.

68 Royal Commission, *Redress and civil litigation report*.

69 Royal Commission, *Redress and civil litigation report*, p 433.

have breached its duty of care unless it can prove that it took reasonable steps to prevent the abuse (duty of care with a reverse onus of proof).⁷⁰ These provisions implement Recommendations 91 to 93.

- New South Wales, Tasmania and South Australia have all introduced provisions to make organisations vicariously liable for child abuse perpetrated by their employees and people akin to employees (for example, contractors, volunteers and religious ministers), when certain conditions are met.⁷¹ While vicarious liability is not the same as the non-delegable duty in Recommendations 89 and 90, it is similar in that it 'is a strict form of liability that enables institutions to be held liable for institutional child abuse despite it being the deliberate criminal act of a person associated with the institution'.⁷² This approach gives both survivors and institutions more certainty about institutions' legal responsibilities.

Notably, all of these reforms go further than the Royal Commission's recommendations in applying to physical abuse as well as sexual abuse (see discussion of knowmore's support for a broad definition of child abuse on pages 17 to 19).

Table 2: Legislative reforms in other states in response to the Royal Commission's duty of institutions recommendations

State	Legislation	Commencement date
New South Wales	<i>Civil Liability Act 2002</i> (NSW) — part 1B, divisions 2 and 3	26 October 2018
Queensland	<i>Civil Liability Act 2003</i> (Qld) — chapter 2, part 2A, division 2	2 March 2020
South Australia	<i>Civil Liability Act 1936</i> (SA) — part 7A, divisions 2 and 3	1 August 2022
Tasmania	<i>Civil Liability Act 2002</i> (Tas) — part 10C, divisions 2 and 3	1 May 2020
Victoria	<i>Wrongs Act 1958</i> (Vic) — part XIII	1 July 2017

These legislative developments mean that Western Australia is now significantly out of step with most other Australian jurisdictions. As a result, survivors of institutional child abuse in Western Australia continue to have a more limited ability to access justice when compared to survivors in other states, and institutions in Western Australia do not have the same

70 *Civil Liability Act 2002* (NSW), Part 1B, Division 2; *Civil Liability Act 2003* (Qld), Chapter 2, Part 2A, Division 2; *Civil Liability Act 1936* (SA), Part 7A, Division 2; *Civil Liability Act 2002* (Tas), Part 10C, Division 2; *Wrongs Act 1958* (Vic), Part XIII.

71 *Civil Liability Act 2002* (NSW), Part 1B, Division 3; *Civil Liability Act 1936* (SA), Part 7A, Division 3; *Civil Liability Act 2002* (Tas), Part 10C, Division 3.

72 New South Wales Government, *NSW Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse*, June 2018, accessed 7 August 2023, p 80, <www.nsw.gov.au/sites/default/files/2020-10/NSW-Government-response-to-the-Royal-Commission-into-Institutional-Responses-to-Child-Sexual-Abuse-June-2018_0.pdf>.

powerful incentives to take steps to protect children from harm. We therefore submit that legislative reforms consistent with those in the other states should be progressed in Western Australia as a matter of priority. More than 7 years have now passed since the Royal Commission made its recommendations and there should be no further delay in introducing relevant amendments.

Recommendation 5

The Western Australian Government should finalise its implementation of the Royal Commission's duty of institutions recommendations, by enacting legislative provisions that are consistent with those in other states and territories in terms of:

- establishing a duty of care with a reverse onus of proof
- making organisations vicariously liable for child abuse perpetrated by their employees and people akin to employees (for example, contractors, volunteers and religious ministers), when certain conditions are met.

National Redress Scheme

This section outlines the role of the Western Australian Government in relation to the National Redress Scheme (NRS) and highlights key issues with the NRS relevant to Western Australia. It addresses Term of Reference 2 of the Committee's inquiry.

Australian governments established the NRS in response to recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), following detailed consideration of the issues in the Royal Commission's *Redress and civil litigation report*. In explaining the need for redress, the Royal Commission noted that child sexual abuse often has severe impacts and that it was not feasible for many survivors to seek civil compensation (see further discussion on page 14 above).⁷³ Holding institutions accountable was an important feature of the NRS's design.⁷⁴ In relation to governments, the Royal Commission added:

*Governments may also have an additional level of responsibility because of their roles as regulators of institutions and government policies that encouraged or required the placement of children in institutions.*⁷⁵

The NRS generally offers eligible survivors:

- a redress payment of up to \$150,000 — the average payment is about \$88,000⁷⁶
- counselling and psychological care
- a direct personal response from the institution(s) responsible for the abuse.

Like all state and territory governments, the Western Australian Government has several important roles in relation to the NRS, engaging the government's responsibility for, and creating opportunities for the government to positively influence, the operation of the NRS and its impact on survivors. The roles of the Western Australian Government include:

73 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Redress and civil litigation report*, September 2015, accessed 7 August 2023, pp 91–92, <www.childabuseroyalcommission.gov.au/redress-and-civil-litigation>.

74 Royal Commission, *Redress and civil litigation report*, p 248.

75 Royal Commission, *Redress and civil litigation report*, p 248.

76 Department of Social Services, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme* [submission 9], February 2023, accessed 7 August 2023, Attachment A, p 2, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Standing/Redress47/Submissions>.

- as a party to the intergovernmental agreement underlying the NRS,⁷⁷ which provides the Western Australian Government with an ongoing role in relation to the governance of the NRS
- as a respondent institution for redress applications in relation to government institutions⁷⁸
- as a funder of last resort in relation to certain defunct institutions⁷⁹
- through the Attorney-General of Western Australia providing advice for the special assessment of applicants with serious criminal convictions⁸⁰
- as the government of the state where many survivors live and require support, including counselling and psychological care provided under the NRS.

We make comments below about:

- survivors' experiences of the NRS, focusing on issues with the NRS that have a particularly significant impact on survivors in Western Australia
- institutional responses to the NRS in Western Australia.

Survivors' experiences of the National Redress Scheme

The NRS has now provided redress to more than 11,795 survivors.⁸¹ 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. As noted on page 6, these principles include:

- survivor-focused redress

77 *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse*, 1 February 2023, accessed 7 August 2023, <www.dss.gov.au/national-redress-scheme-information-for-institutions/intergovernmental-agreement-on-the-national-redress-scheme-for-institutional-child-sexual-abuse>.

78 *National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018* (Cth), section 8D.

79 In the context of the NRS, 'funder of last resort' refers to an arrangement where an Australian government agrees to pay a non-government institution's share of redress, where that non-government institution is defunct or unable to join the NRS. The Western Australian Government is the funder of last resort for 32 separate defunct institutions. See further discussion on pages 57 to 58.

80 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 63.

81 As of 14 July 2023, the NRS had made 12,145 payments. See National Redress Scheme (NRS), *National Redress Scheme – Update*, NRS website, 18 July 2023, accessed 7 August 2023, <www.nationalredress.gov.au/about/updates/1646>.

- ‘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.⁸²

Similar principles are found in the NRS’s governing legislation, the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (NRS Act),⁸³ and in the NRS’s Service Charter.⁸⁴

There have been 3 major reviews of the NRS in the past 5 years:

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)⁸⁵
2. the inquiry of the former Joint Select Committee on Implementation of the NRS (former Joint Select Committee) (first interim report published in May 2020⁸⁶ and second interim report published in November 2021)⁸⁷
3. the second year review of the NRS conducted by independent reviewer Ms Robyn Kruk AO (final report published in June 2021).⁸⁸

There are many recommendations outstanding from these reviews that, if implemented, would result in significant improvements to the NRS. Further, there is a current inquiry into

82 Royal Commission, *Redress and civil litigation report*, Recommendations 1 and 4, pp 95 and 135.

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

84 National Redress Scheme, *Service Charter for your National Redress Scheme*, 1 September 2022, accessed 7 August 2023, p 7, <www.nationalredress.gov.au/document/1526>.

85 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 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Royal_Commission_into_Institutional_Responses_to_Child_Sexual_Abuse/RoyalCommissionChildAbuse/Report>.

86 Joint Select Committee on Implementation of the National Redress Scheme, *First interim report of the Joint Select Committee on Implementation of the National Redress Scheme*, May 2020, accessed 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/National_Redress_Scheme/NationalRedressScheme/Interim_Report> .

87 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 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/National_Redress_Scheme/NationalRedressScheme/Second_Interim_Report>.

88 R Kruk AO, *Final report: second year review of the National Redress Scheme*, 26 March 2021, accessed 7 August 2023, <www.nationalredress.gov.au/document/1386>.

the operation of the NRS,⁸⁹ to which knowmore has made detailed submissions with further recommendations.⁹⁰

knowmore broadly supports the recommendations made by the previous reviews. As an overarching recommendation, we consider that the Western Australian Government should work collaboratively with other Australian governments to implement these recommendations. We note, in particular, that all governments have agreed to implement a number of improvements in response to the second year review.⁹¹ Given the agreement of all governments, we hope that these recommendations will be swiftly implemented.

Recommendation 6

As an overarching recommendation, the Western Australian Government should work collaboratively with other Australian governments to implement recommendations made by previous reviews of the National Redress Scheme. In particular, the recommendations that already have the agreement of all Australian Governments should be swiftly implemented.

While knowmore does not wish to diminish the importance of any of the recommendations made by previous reviews, we do not repeat all of these recommendations in this submission. Rather, we focus on a number of key issues that are particularly relevant to Western Australia. We first make some general comments about unfairness, inconsistency and lack of transparency in redress decisions. These issues affect many aspects of the NRS's operation and have considerable adverse impacts on survivors in all states and territories, including in Western Australia. We then make comments about the following issues that, in our experience, have a particularly significant impact on survivors in Western Australia:

- the NRS's treatment of private care arrangements

89 Joint Standing Committee on Implementation of the National Redress Scheme, *Inquiry into the operation of the National Redress Scheme*, Parliament of Australia website, accessed 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Standing/Redress47>.

90 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme* [submission 14], 27 February 2023, accessed 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Stand ing/Redress47/Submissions>; knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme* [submission 14.1], 28 April 2023, accessed 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Standing/Redress47/Submissions>; knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services* [submission 14.2], 3 July 2023, accessed 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Standing/Redress47/Submissions>.

91 Australian Government, *The Australian Government response to the final report of the second year review of the National Redress Scheme*, 4 May 2023, accessed 7 August 2023, <www.nationalredress.gov.au/document/1626>.

- inconsistent and unfair treatment of prior payments
- gaps in survivor support services in Western Australia
- lack of cultural safety in the NRS
- NRS operating hours
- inadequate promotion of the NRS
- issues with identity requirements
- barriers for survivors in prison
- counselling and psychological services under the NRS.

Many of these issues are interrelated, and have a cumulative effect on the safety and accessibility of the NRS for survivors in Western Australia.

While many survivors in Western Australia are impacted by these issues, they tend to have a disproportionate impact on survivors who experience heightened marginalisation — for example, Aboriginal and/or Torres Strait Islander survivors, and survivors with disability.⁹² We note on this point that Western Australia is the jurisdiction where knowmore assists the highest proportion of Aboriginal and/or Torres Strait Islander clients. Since the start of the NRS in July 2018:

- 30% of Aboriginal and/or Torres Strait Islander clients assisted by knowmore with NRS-related matters have been in Western Australia
- 66% of knowmore’s NRS-related clients in Western Australia have been Aboriginal and/or Torres Strait Islander peoples.

Unfairness, inconsistency and lack of transparency in redress decisions

In knowmore’s submissions to major reviews of the NRS, we have repeatedly highlighted issues of unfairness, inconsistency and lack of transparency in redress decisions.⁹³ In our view, these remain some of the most significant shortcomings in the implementation of the NRS, affecting survivors in all states and territories, including Western Australia.

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

92 See knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 25–50.

93 See, for example, knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 16.

1. the secrecy surrounding the Assessment Framework Policy Guidelines, which play a significant role in the NRS's decision-making, but are not publicly available⁹⁴
2. the lack of procedural fairness for survivors
3. unfairness and inconsistency in the approach taken by NRS decision-makers to key concepts in the NRS legislation⁹⁵ — 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 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.*⁹⁶

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

94 knowmore, *Submission to the second anniversary review of the National Redress Scheme*, 30 September 2020, accessed 7 August 2023, pp 24–32, <knowmore.org.au/wp-content/uploads/2020/11/submission-second-anniversary-review-of-the-national-redress-scheme-cth.pdf>; knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 71–72.

95 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).

96 knowmore, *Submission to the second anniversary review of the National Redress Scheme*, p 21.

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.⁹⁷

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, the NRS has developed a process for survivors to request written reasons for a decision. However, in our experience, this process often results in heavily redacted written reasons that do little to help survivors understand the reasons for their redress decision.⁹⁸

Given the 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. These include Recommendations 3.3, 3.4, 3.9, 3.10, 3.11, 3.12, 3.13 and 5.1 of the second year review.

Recommendation 7

The Western Australian Government should work collaboratively with other Australian governments to ensure the full and urgent implementation of all outstanding recommendations of the second year review of the National Redress Scheme that seek to improve fairness, consistency and transparency of redress decisions. These include Recommendations 3.3, 3.4, 3.9, 3.10, 3.11, 3.12, 3.13 and 5.1 of the second year review.

The National Redress Scheme's treatment of private care arrangements

A key eligibility criterion for redress is that an institution is responsible for the abuse.⁹⁹ For survivors who experienced child sexual abuse in out-of-home care, the responsible

⁹⁷ Kruk AO, *Final report*, p 10.

⁹⁸ For further discussion of this issue, see knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 68–70.

⁹⁹ *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 13(1)(d).

institution is typically an institution that the child was placed in and/or the government of the state or territory that placed the child in out-of-home care. This situation enables many survivors who experienced child sexual abuse in out-of-home care to access redress (assuming they meet the other eligibility criteria).

The situation is more complicated in Western Australia due to a practice of the Western Australian Government of placing children in private care arrangements. In this context, private care arrangements refer to the government placing a child into a non-institutional care arrangement (for example, with a family member) without bringing the child under state guardianship or obtaining formal court orders for the arrangement. While similar practices may have occurred in other states and territories, our experience is that survivors in Western Australia are most affected by this issue. The issue especially impacts Aboriginal and/or Torres Strait Islander survivors in Western Australia.

In our experience, if an NRS decision-maker identifies a private arrangement, they will almost certainly find the applicant ineligible for redress, regardless of any other eligibility factors. For example, we have seen the NRS find applicants ineligible for redress in cases where the Western Australian Government had ongoing involvement in the child's care, including in cases where the government was paying the child's carers for the arrangement. This approach denies access to redress for survivors in situations where there is a significant degree of institutional responsibility held by the government.

As highlighted above on pages 39 to 41, we often do not receive adequate written reasons from the NRS to understand or explain to survivors how decisions about private care arrangements align with the legal and policy framework for redress. In particular, it is unclear to us why so much weight is placed on the legal characterisation of the care arrangement, as opposed to other factors for determining when an institution is responsible for abuse in section 15 of the NRS Act. To survivors who experienced child sexual abuse in a private care arrangement, it appears that they are being treated differently to other survivors in out-of-home care and denied access to redress based on a technicality.

It is not only survivors who experienced child sexual abuse in private care arrangements who are affected by the issue. In our experience, many survivors who experienced child sexual abuse in out-of-home care know that the Western Australian Government was involved in their placement, but do not know what the legal characterisation of that placement was. We often cannot give a survivor complete advice about this issue unless we request a survivor's care records (which can take upwards of 12 months to be processed) or are provided with information by the NRS after lodging the survivor's application.

This means that even survivors who ultimately found not to have been in a private care arrangement face significant uncertainty as to their eligibility for redress, with no safe pathway for resolving the issue. To get an answer, survivors often have to go through the long and distressing process of having an application with uncertain prospects assessed by the NRS. For survivors who go through this process, only to be told that the NRS does not consider the Western Australian Government responsible for what happened to them, it is often a re-traumatising experience.

In knowmore's view, the NRS's treatment of private care arrangements fails to appropriately recognise the responsibility of the Western Australian Government. We

recommend that the government work with the NRS to ensure that the government's responsibility for private care arrangements is properly recognised within the NRS. This should include the development of clear, public guidance that confirms this recognition, to assist survivors in considering their redress and compensation options.

Recommendation 8

The Western Australian Government should work with the National Redress Scheme (NRS) to ensure that the government's responsibility for private care arrangements is properly recognised within the NRS. This should include the development of clear, public guidance that confirms this recognition, to assist survivors in considering their redress and compensation options.

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.¹⁰⁰ 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 Redress WA.¹⁰¹ 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 payments¹⁰²
- 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 deducts¹⁰³
- the 'inconsistent messaging [about] and application of the prior payment provisions'¹⁰⁴
- the indexation of prior payments, which reduces survivors' redress payments¹⁰⁵
- the 'large degree of public misunderstanding about prior payments'¹⁰⁶

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

101 Redress WA ran from 2008 to 2011. It was 'open to adults who, as children, were abused in State care in a residential setting before 1 March 2006'. See Finity Consulting, *National Redress Scheme participant and cost estimates: Royal Commission into Institutional Responses to Child Sexual Abuse*, July 2015, accessed 7 August 2023, p 29, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/national_redress_scheme_participant_and_cost_estimates_report.pdf>.

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

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

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

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

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

- the absence of a minimum redress payment, resulting in a nil outcome for some survivors after prior payments are deducted¹⁰⁷
- the disproportionate impact of the NRS's treatment of prior payments on Aboriginal and/or Torres Strait Islander survivors.¹⁰⁸

In light of these issues, the second year review made several recommendations to address the inconsistent and unfair treatment of prior payments.¹⁰⁹ These recommendations have not been fully implemented¹¹⁰ and the Australian Government did not commit to fully implementing these recommendations in its response to the second year review.¹¹¹

We continue to see clients receiving inconsistent and unfair outcomes in relation to prior payments. In our experience, particular issues arise in relation to the treatment of Redress WA payments. This is linked to differences in the types of abuse covered by Redress WA payments and NRS payments — whereas Redress WA payments covered child abuse broadly,¹¹² NRS payments only cover child sexual abuse. These differences contribute to the problematic treatment of Redress WA payments by the NRS. For example, we see clients having Redress WA payments deducted from their NRS payments even when the client did not disclose their experience of child sexual abuse, or the severity of that abuse, in obtaining the Redress WA 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.

In knowmore's view, the Western Australian Government should work collaboratively with other Australian governments to address the inconsistent and unfair treatment of prior payments, including by fully implementing Recommendations 4.1, 4.3 and 4.5 of the second year review.

Recommendation 9

The Western Australian Government should work collaboratively with other Australian governments to address the inconsistent and unfair treatment of prior payments, including by fully implementing Recommendations 4.1, 4.3 and 4.5 of the second year review of the National Redress Scheme.

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

108 Kruk AO, *Final report*, p 221.

109 Kruk AO, *Final report*, Recommendations 4.1 to 4.5, p 117.

110 For further discussion of the recommendations to address the inconsistent and unfair treatment of prior payments, see knowmore, *Submission to the Joint Select Committee on Implementation of the National Redress Scheme* [submission 20], April 2020, accessed 7 August 2023, pp 19–21 and 42–44, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/National_Redress_Scheme/NationalRedressScheme/Submissions>.

111 Australian Government, *Australian Government response*, pp 14–16.

112 Finity Consulting, p 29.

Gaps in survivor support services in Western Australia

The relevant support services for survivors seeking redress include legal support, non-legal support and Redress Support Services. Redress Support Service (RSS) has a specific meaning within the context of the 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’.¹¹³

The second year review made detailed comments about support services that are relevant to legal support, non-legal support and RSSs.¹¹⁴ We note, in particular, the second year review’s comments that ‘the survivor experience with support services is generally positive’¹¹⁵ and that ‘appropriate, targeted supports and interventions appear to strengthen a survivor’s application, reduce processing times and creates less trauma for survivors’.¹¹⁶ We also note consistent feedback from the NRS that applications from survivors who receive assistance from knowmore or RSSs in preparing their applications are generally of a higher quality. This in turn facilitates quicker and more informed determinations, and better outcomes for survivors.

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

- Support services often have long wait times.¹¹⁷
- Support services have limited geographic spread.¹¹⁸
- There is a lack of support services that are culturally appropriate and safe.¹¹⁹
- There are barriers to the accessibility of support services,¹²⁰ including for survivors with disability.¹²¹

In our experience, these issues with support services have a disproportionate impact on survivors in Western Australia. For example, despite Western Australia’s large land area and dispersed population, there are only 8 RSSs in Western Australia.¹²² This compares to 15 RSSs in New South Wales.¹²³ RSSs in Western Australia often work across huge geographical

113 Kruk AO, *Final report*, p 144.

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

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

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

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

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

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

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

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

122 National Redress Scheme, *Western Australia Redress Support Services*, NRS website, n.d., accessed 7 August 2023, <www.nationalredress.gov.au/support/explore/wa-redress-support-services>.

123 National Redress Scheme, *NSW Redress Support Services*, NRS website, n.d., accessed 7 August 2023, <www.nationalredress.gov.au/support/explore/nsw-redress-support-services>.

areas, with limited overlap between services. It is not uncommon that an RSS in Western Australia will be unable to assist a survivor due, for example, to a conflict of interest, capacity constraints or reasons of cultural safety. When this happens, appropriate referral options are often limited or non-existent. Similar limitations and challenges exist for other survivor support services in Western Australia.

The second year review made the following recommendation relevant to legal support, non-legal support and RSSs.¹²⁴

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.

In its response to the second year review, the Australian Government supported this recommendation.¹²⁵ knowmore supports the improved funding for support services contemplated by Recommendation 7.2 of the second year review.

Recommendation 10

The Western Australian Government should work collaboratively with other Australian governments to 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 of the National Redress Scheme).

Lack of cultural safety in the National Redress Scheme

The Royal Commission acknowledged the unique circumstances and needs of Aboriginal and/or Torres Strait Islander survivors, emphasising the importance of cultural awareness and safety in the redress scheme's design and operation. As noted above on pages 36 to 37, the Royal Commission recommended guiding principles for redress. These included that:

¹²⁴ Kruk AO, *Final report*, p 228.

¹²⁵ Australian Government, *Australian Government response*, p 26.

*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.*¹²⁶

While these principles have been incorporated into the general principles that should guide the NRS,¹²⁷ 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 NRS decision-makers who are responsible for 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.¹²⁸ 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 NRS decision-makers. 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 private care arrangements (see pages 41 to 43 above). This lack of understanding and awareness has a disproportionate impact on survivors in Western Australia — as noted above on page 39, Western Australia is the jurisdiction where knowmore assists the highest proportion of Aboriginal and/or Torres Strait Islander clients.

There may be several factors contributing to issues with the NRS's cultural safety, including a lack of Aboriginal and/or Torres Strait Islander representation among NRS staff and a lack of ongoing and tailored training. 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

¹²⁶ Royal Commission, *Redress and civil litigation report*, Recommendation 4, p 10.

¹²⁷ *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 10.

¹²⁸ knowmore, *Submission to the Joint Select Committee on Implementation of the National Redress Scheme*, pp 16–19.

*competence training — informed and led by Aboriginal and Torres Strait Islander people and organisations — is required across the justice sector.*¹²⁹

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 ...’¹³⁰ While we endorse this recommendation, we also believe that NRS staff in key roles, including decision-makers 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 11

The Western Australian Government should work collaboratively with other Australian governments to implement Recommendation 6.5 of the second year review of the National Redress Scheme (NRS) to ensure that all NRS staff receive adequate and ongoing cultural awareness training. In addition, NRS staff in key roles, such as decision-makers 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.

National Redress Scheme operating hours

The NRS’s operating hours are 8am to 5pm, Australian Eastern Time. If survivors or support services call the NRS outside of these hours, the call will not be answered and will go to voicemail (which may or may not be promptly returned). This means that, when clocks are set to standard time, survivors in Western Australia have 2 hours less service each day compared to the eastern jurisdictions. When clocks are set to daylight saving time, survivors in Western Australia have 3 hours less service each day compared to the eastern jurisdictions (2 hours less service than Queensland, which does not use daylight saving time).

A difference of 2 to 3 hours each day is significant and amounts to part-time access to the NRS for survivors in Western Australia. It means different treatment of survivors based on where they live. This issue is exacerbated by calls to the NRS frequently going to voicemail even during operating hours, further limiting the hours in the day in which it is possible to speak with a person at the NRS and contributing to delays in progressing redress

129 Law Council of Australia, *The Justice Project: final report*, August 2018, accessed 7 August 2023, p 25, <lawcouncil.au/justice-project/final-report>.

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

applications.¹³¹ These barriers have a cumulative effect, limiting the scale at which support services can provide assistance and ultimately limiting access to redress for survivors in Western Australia.

At a public hearing on 12 April 2023, the Department of Social Services was asked questions about the reduced service for survivors in Western Australia. The Department indicated in response that it was looking into options to provide more coverage.¹³² In our view, this issue should be promptly addressed — for example, by making some staff available after 5pm, Australian Eastern Time, to answers calls from states and territories on different time zones. It is unclear to us what the barrier is to implementing a change of this nature.

Recommendation 12

The Western Australian Government should work with the Department of Social Services to ensure that survivors in Western Australia do not experience reduced operating hours in relation to the National Redress Scheme.

Inadequate promotion of the National Redress Scheme

The Royal Commission estimated that 60,000 eligible survivors would make a claim for redress.¹³³ As of 14 July 2023, the NRS had received 28,341 applications and provided redress to 12,145 survivors.¹³⁴ The NRS commenced on 1 July 2018 and will stop accepting applications on 30 June 2027. This indicates that, although we are beyond the halfway point for the NRS, only about 20% of eligible survivors have applied for redress and had their eligibility recognised by the NRS.

The NRS is therefore not presently on-track to meet the Royal Commission's estimate of 60,000 eligible survivors making a claim for redress before the NRS ends. Further, the Royal Commission recommended that the redress scheme have no fixed closing date.¹³⁵ We are concerned that, if present arrangements continue, many eligible survivors are likely to miss out on redress.

While several factors contribute to this, a significant factor is the 'non-advertising and non-promotion' of the NRS observed by the second year review.¹³⁶ Despite the fact that the NRS

131 For further discussion of delays in progressing redress applications, see knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, 28 April 2023, pp 2–4.

132 Joint Standing Committee on Implementation of the National Redress Scheme, *Public hearing — inquiry into the operation of the National Redress Scheme: transcript*, 12 April 2023, accessed 7 August 2023, p 21, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme/Standing/Redress47/Public_Hearings>.

133 Royal Commission, *Redress and civil litigation report*, p 22.

134 NRS, *National Redress Scheme – Update*, 18 July 2023.

135 Royal Commission, *Redress and civil litigation report*, Recommendation 48, pp 38–39.

136 Kruk AO, p 172.

is beyond the halfway point, many survivors are not aware that the NRS exists or that they may be eligible for redress. We continue to speak with survivors who first learn of the NRS from us, particularly when we conduct outreach activities in rural, regional and remote areas.

In our experience, the inadequate promotion of the NRS disproportionately impacts survivors in Western Australia — in particular, survivors in rural, regional and remote Western Australia and Aboriginal and/or Torres Strait Islander survivors in Western Australia. We note the significant overlap between these groups of survivors and the importance of a trauma-informed and culturally safe approach to promoting the NRS.

The second year review recommended that the Australian Government promptly improve communication and engagement with the NRS, including by funding ‘specific strategies to reach vulnerable people; Aboriginal and Torres Strait Islander people; people with disability; regional, remote and culturally and linguistically diverse communities’ (Recommendation 7.1).¹³⁷ This is broadly consistent with the Royal Commission’s recommendations to widely publicise and promote the redress scheme, with particular consideration for ‘people who might be more difficult to reach’ (Recommendations 49 to 50).¹³⁸ We consider improved promotion of the NRS vital to ensuring that survivors in Western Australia know about their right to redress.

Recommendation 13

The Western Australian Government should work collaboratively with other Australian governments to improve promotion of the National Redress Scheme (NRS), consistent with Recommendations 49 to 50 of the Royal Commission and Recommendation 7.1 of the second year review of the NRS.

Issues with identity requirements

The NRS has strict requirements in relation to proof of identity, requiring many survivors to bring original documents to a Services Australia (Centrelink) office to be witnessed by a staff member and verified with the issuing authority.¹³⁹ Survivors who do not have identity documents, such as birth certificates, are required to attend a specialised Services Australia office. For many survivors, this is at best problematic, and at worst, impossible.

Services Australia offices are limited in rural, regional and remote Western Australia, and accessing them can be particularly problematic for survivors with disability and survivors with limited transport options. knowmore’s clients have also reported that Services

137 Kruk AO, Recommendation 7.1, p 228.

138 Royal Commission, *Redress and civil litigation report*, Recommendations 49–50, p 39.

139 Australian Government, ‘National Redress Guide – Version 1.15’, *Guides to Social Policy Law*, Department of Social Services website, 3 July 2023, accessed 7 August 2023, part 2.1 <guides.dss.gov.au/national-redress-guide>; National Redress Scheme, *Application for Redress [form]*, accessed 7 August 2023, p 7, <www.nationalredress.gov.au/sites/default/files/documents/2022-03/NRS001_2201.pdf>.

Australia staff do not always have a good understanding of the NRS and its identity requirements. This can lead to errors and further delays in an already cumbersome process. It can also contribute to inappropriate situations, such as survivors being asked to disclose the sensitive fact that they are making an NRS application in a Services Australia office. Survivors living in close-knit communities are often hesitant to visit local Services Australia offices due to heightened concerns around confidentiality and feelings of shame they may experience. These problems tend to have a disproportionate impact on Aboriginal and/or Torres Strait Islander survivors.

To address these problems, we recommend that the Western Australian Government work collaboratively with other Australian Governments to ensure that the NRS's proof of identity requirements are more trauma-informed and flexible for survivors.

Recommendation 14

The Western Australian Government should work collaboratively with other Australian Governments to ensure that the National Redress Scheme's proof of identity requirements are more trauma-informed and flexible for survivors.

Barriers for survivors in prison

The second year review expressed 'significant and immediate concern' for survivors in prison,¹⁴⁰ noting that people in prison face additional barriers to accessing redress.¹⁴¹ We provide a detailed discussion of these barriers in our submission to the Joint Standing Committee,¹⁴² which we do not repeat in full here. Our comments here focus on some of the most significant aspects of the problem for survivors in prison in Western Australia. We note that many survivors in prison also have serious criminal convictions. We make comments about the Western Australian Attorney-General's response to survivors with serious criminal convictions on pages 59 to 61.

While survivors in prison in all states and territories face additional barriers to accessing redress, the issue has a disproportionate impact on survivors in Western Australia. In May 2022, the Justice Reform Initiative reported that Western Australia's imprisonment rate was 'the second highest in the country at 324 persons imprisoned per 100,000 adults — significantly higher than the Australian average of 210'.¹⁴³ The number of people in prison in

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

141 Kruk AO, *Final report*, pp 65–66.

142 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 45–48.

143 Justice Reform Initiative, *State of incarceration: insights into imprisonment in Western Australia*, May 2022, accessed 7 August 2023, p 7, <assets.nationbuilder.com/justicereforminitiative/pages/350/attachments/original/1679869591/JRI_Insights_WA-2.pdf?1679869591>.

Western Australia increased significantly — by 39% — in the 10-year period between 2011–12 and 2020–21.¹⁴⁴

One of the most significant barriers for survivors in prison is the general rule that people in prison cannot apply for redress, unless there are exceptional circumstances.¹⁴⁵ As the second year review observed, this is in contrast to the Royal Commission’s recommendations.¹⁴⁶ We note, in particular, the Royal Commission’s recommendation that a process for redress ‘must provide equal access and equal treatment for survivors’.¹⁴⁷ The second year review recommended that people in prison be allowed to apply for redress, with a single application process for all applicants.¹⁴⁸

In the Australian Government response to the second year review on 4 May 2023, the Australian Government announced that:

*... all governments have agreed to make changes that will remove the restriction on people in gaol applying to the Scheme ... The Australian Government is working with state and territory partners to ensure that people in gaol are adequately supported in applying to the Scheme and to ensure appropriate survivor privacy and safety.*¹⁴⁹

knowmore welcomes this announced reform, which will remove a significant barrier to accessing redress for survivors in prison. As noted above on page 38, we hope that Australian governments will work collaboratively to swiftly implement this reform. At the same time, we note that many survivors will be directly affected by this reform.¹⁵⁰ It is to be expected that many survivors will both require and seek assistance from support services, including knowmore, as a result.¹⁵¹ The announced reform therefore points to a pressing need for Australian governments to work collaboratively to ensure the adequate resourcing of support services for survivors in prison, including in Western Australia.

144 Justice Reform Initiative, *State of incarceration*, p 5.

145 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 20.

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

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

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

149 Australian Government, *Australian Government response*, p 6.

150 While it is not possible to identify the precise number of survivors who will be affected by the announced reform, indicative data suggests that the number is likely to be very significant. See knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, 3 July 2023, pp 9–13.

151 See knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, 3 July 2023, pp 8–9.

Recommendation 15

The Western Australian Government should work collaboratively with other Australian governments to reduce barriers to accessing redress for survivors in prison. This includes implementing the announced reform to allow survivors in prison to apply for redress and ensuring the adequate resourcing of support services for survivors in prison.

Counselling and psychological care under the National Redress Scheme

As noted above on page 35, the NRS generally offers eligible survivors access to counselling and psychological care. This was recommended by the Royal Commission,¹⁵² which noted the need for counselling and psychological care in light of the mental health impacts of child sexual abuse,¹⁵³ and set out principles for providing counselling and psychological care for survivors.¹⁵⁴

In our experience, many survivors place great value on access to counselling and psychological care as part of their healing, although there are ongoing issues with the availability, accessibility, flexibility, quality and coordination of the care provided under the NRS. We made detailed comments about these issues in our submission to the second year review of the NRS and do not repeat these here.¹⁵⁵ In this submission, we comment on recent changes in Western Australia's approach to providing counselling and psychological care under the NRS, and on some significant limitations in the provision of the counselling and psychological care component in Western Australia.

The specific arrangements for accessing counselling and psychological care under the NRS are determined by state and territory governments,¹⁵⁶ and have changed over time. Before 1 January 2023, the Western Australian Government provided survivors in Western Australia with access to counselling and psychological care via a lump sum payment of \$5,000 (the lump sum approach). From 1 January 2023, the Western Australian Government

152 Royal Commission, *Redress and civil litigation report*, Recommendation 2, p 9.

153 Royal Commission, *Redress and civil litigation report*, pp 178–181.

154 Royal Commission, *Redress and civil litigation report*, Recommendation 9, pp 14 –15 and pp 184–194.

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

156 See National Redress Scheme, *Counselling arrangements in your State or territory*, NRS website, n.d., accessed 7 August 2023, <www.nationalredress.gov.au/counselling-arrangements>.

has paid service providers directly to provide up to 20 hours of counselling and psychological care to survivors (the service provision approach).¹⁵⁷

knowmore has assisted survivors to access both of these approaches in different states and territories. While the diversity of arrangements and survivors' circumstances makes it impossible to provide comprehensive comparisons, our experience enables us to make some high-level observations about how the 2 approaches have generally worked in practice. In our experience, both the service provision approach and the lump sum approach have shown relative strengths and weaknesses. Strengths associated with the service provision approach have included:

- greater support to identify suitable service providers, and to arrange and attend appointments
- greater certainty of how much counselling and psychological care is available
- a potentially greater amount of counselling and psychological care for survivors who have experienced non-penetrative sexual abuse (and would therefore receive a lump sum payment of less than \$5,000).¹⁵⁸

Relative weaknesses of the service provision approach have included:

- a potentially lesser amount of counselling and psychological care for survivors who experienced penetrative sexual abuse (and would therefore receive a lump sum payment of \$5,000)¹⁵⁹ — in many cases, \$5,000 can pay for more than 20 hours of counselling and psychological care support
- less flexibility as to the services survivors can access, which can disrupt existing relationships with service providers, and limit access to cultural healing practices and other forms of support
- barriers to access for clients who move to a different state or territory after accepting their redress offer
- lower uptake of the offer, as compared with the lump sum approach.¹⁶⁰

157 Government of Western Australia, *WA changes to improve access to Redress counselling* [media release], 16 December 2022, accessed 7 August 2023, <www.wa.gov.au/government/announcements/wa-changes-improve-access-redress-counselling>; Government of Western Australia (Office of the Commissioner for Victims of Crime Redress Coordination Unit), *Counselling and psychological care explained: information for redress applicants in Western Australia*, December 2022, accessed 7 August 2023, <www.wa.gov.au/system/files/2022-12/Redress-information-sheet.pdf>.

158 *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Cth), section 6.

159 *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Cth), section 6.

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

The second year review noted that many survivors wanted more flexibility in accessing counselling and psychological care under the NRS.¹⁶¹ In our view, an effective way to achieve this would be to give survivors in all jurisdictions the option of receiving counselling and psychological care under either the service provision approach or the lump sum approach. Our submission to the second year review recommended that the NRS Act be amended to implement this.¹⁶² We consider that the Western Australian Government should work collaboratively with other Australian governments to implement the required amendments.

Recommendation 16

The Western Australian Government should work collaboratively with other Australian governments to implement amendments to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) to give all survivors the option of receiving counselling and psychological care under either the service provision approach or the lump sum approach.

Beyond differences between the service provision and the lump sum approach, the second year review noted significant limitations in the provision of counselling and psychological care under the NRS,¹⁶³ including significant inconsistencies in the support available depending on where survivors happen to live.¹⁶⁴ While we acknowledge that limitations with the counselling and psychological care component of redress affect survivors in all states and territories, our experience suggests that the following are some of the most significant for survivors in Western Australia:

- the 20-hour cap on how much counselling and psychological care can be received under the NRS,¹⁶⁵ which does not provide lifelong access, contrary to the Royal Commission's recommendation¹⁶⁶
- limited or non-existent services in rural, regional and remote parts of Western Australia
- a lack of culturally appropriate services for Aboriginal and/or Torres Strait Islander survivors.

161 Kruk AO, *Final report*, p 126,

162 knowmore, *Submission to the second anniversary review of the National Redress Scheme*, Recommendation 26, p 50.

163 Kruk AO, *Final report*, pp 118–133.

164 Kruk AO, *Final report*, pp 128–130.

165 Government of Western Australia (Office of the Commissioner for Victims of Crime Redress Coordination Unit), *Counselling and psychological care explained*.

166 Royal Commission, *Redress and civil litigation report*, Recommendation 9, p 196.

The second year review made the following recommendation to improve the counselling and psychological care component of redress.¹⁶⁷

Recommendation 4.6 of the second year review

The Australian Government undertake the following actions to improve the equity, scope and quality of counselling support:

- a. All survivors have lifelong access to trauma informed redress counselling.
- b. Access to redress counselling should not be determined by the state or territory in which the abuse occurred or where the survivor resides.
- c. The Australian Government should work with state and territory governments to review the current support services and counselling models to ensure survivors receive seamless support.
- d. The Australian Government should work with state and territory governments to ensure that counselling services are culturally appropriate, including Aboriginal and Torres Strait Islander healing approaches, and meet the diversity of survivors' needs, such as to disability, gender, sexuality and language, consistent with the requirements of the national service standards.
- e. The national services standards should be amended to provide access to counselling for families of survivors.

In its response to the second year review, the Australian Government supported this recommendation and noted that:

*All governments are committed to ensuring applicants can access the support available to them, no matter where the abuse occurred or where the survivor resides.*¹⁶⁸

In knowmore's view, the Western Australian Government should work collaboratively with other Australian governments to implement this recommendation. In particular, the government should prioritise steps that can be implemented at the state level — for example, increasing the availability of counselling services in rural, regional and remote parts of Western Australia.

167 Kruk AO, *Final report*, p 133.

168 Australian Government, *Australian Government response*, p 17.

Recommendation 17

The Western Australian Government should work collaboratively with other Australian governments to implement the recommendation from the second year review of the National Redress Scheme to improve the counselling and psychological care component of redress (Recommendation 4.6). In particular, the Western Australian Government should prioritise steps that can be implemented at the state level — for example, increasing the availability of counselling services in rural, regional and remote parts of Western Australia.

Institutional responses to the National Redress Scheme

We make comments below about the following aspects of institutional responses to the NRS in Western Australia:

- the participation of institutions in the NRS
- the Western Australian Government's response via the Attorney-General to survivors with serious criminal convictions.

Participation of institutions in the National Redress Scheme

Across Australia, there remain many institutions where child sexual abuse occurred that are not participating in the NRS. 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. In light of these problems, the second year review recommended that governments prioritise declaring themselves as funders of last resort for 2 groups of non-participating 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.¹⁶⁹

As of August 2023, Western Australia's level of institutional participation is a relative strength of the state's involvement in the NRS:

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

- The Western Australian Government referred powers to the Australian Government for the NRS Act on 5 December 2018 and first declared Western Australian government institutions to be participating in the NRS on 1 January 2019.¹⁷⁰
- By our count, 130 non-government institutions in Western Australia are participating in the NRS.¹⁷¹
- The Western Australian Government has agreed to be a funder of last resort for 32 separate defunct institutions.¹⁷²
- The NRS website does not identify any institutions in Western Australia that have refused to join after being named in a redress application.¹⁷³

Despite these relative strengths, survivors in Western Australia continue to be affected by issues with non-participating institutions and inadequate funder of last resort arrangements. For example, there are 3 institutions operating in Western Australia that are unable to participate in the NRS,¹⁷⁴ for which the Western Australian Government has not yet stepped in as a funder of last resort. We consider that the Western Australian Government should prioritise declaring itself as a funder of last resort for these institutions, as per Recommendation 5.2 of the second year review.

Recommendation 18

The Western Australian Government should prioritise declaring itself as a funder of last resort for institutions in Western Australia that are unable to participate in the National Redress Scheme (NRS) (as per Recommendation 5.2 of the second year review of the NRS).

We also consider that the Western Australian Government should monitor institutional participation in the NRS on an ongoing basis to encourage institutions in Western Australia

170 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: correction to table 2.1*, n.d., accessed 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Royal_Commission_into_Institutional_Responses_to_Child_Sexual_Abuse/RoyalCommissionChildAbuse/Report>.

171 National Redress Scheme, *Institutions that have joined the Scheme: Western Australia*, NRS website, n.d., accessed 7 August 2023, <www.nationalredress.gov.au/institutions/joined-scheme/wa>.

172 *National Redress Scheme for Institutional Child Sexual Abuse (Funders of Last Resort) Declaration 2019* (Cth), section 5.

173 National Redress Scheme, *Institutions that have not joined or signified their intent to join the Scheme*, NRS website, n.d., accessed 7 August 2023, <www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined>.

174 National Redress Scheme, *Institutions that are unable to participate in the National Redress Scheme*, NRS website, n.d., accessed 7 August 2023, <www.nationalredress.gov.au/institutions/institutions-unable-join>.

to promptly join the NRS, and to ensure that appropriate action is taken in relation to institutions that cannot join or refuse to join the NRS.

Recommendation 19

The Western Australian Government should monitor institutional participation in the National Redress Scheme (NRS) on an ongoing basis to encourage institutions in Western Australia to promptly join the NRS, and to ensure that appropriate action is taken in relation to institutions that cannot join or refuse to join the NRS.

Response of the Attorney-General to survivors with serious criminal convictions

As noted above on pages 35 and 36, the Western Australian Government has several important roles in relation to the NRS, including through the Attorney-General of Western Australia providing advice for the special assessment of applicants with serious criminal convictions.¹⁷⁵ 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.¹⁷⁶ The default position for a survivor with a serious criminal conviction is that they are not entitled to redress.¹⁷⁷ If a survivor with a serious criminal conviction wishes to apply for redress, the NRS requires the survivor to complete a 'special assessment process'.¹⁷⁸ As part of this process, the NRS must seek advice from relevant Attorneys-General.¹⁷⁹ 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'.¹⁸⁰ These represent significant barriers to accessing redress for survivors with serious criminal convictions, in contrast to the Royal Commission's recommendation for 'equal access and equal treatment for survivors'.¹⁸¹

We discussed inconsistencies in the NRS's decision-making on pages 39 to 41 above. We see significant inconsistencies in how the NRS treats survivors with serious criminal convictions. While the lack of transparency makes it difficult to pinpoint the cause of these inconsistencies, we hold concerns that they may be linked to differences in the advice provided by different Attorneys-General and/or inconsistencies in how this advice is treated

175 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 63.

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

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

178 *National Redress Scheme, Serious Criminal Convictions*, NRS website, n.d., accessed 7 August 2023, <www.nationalredress.gov.au/applying/who-can-apply/convictions>.

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

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

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

by the NRS.¹⁸² For example, the NRS Act requires the NRS to give greater weight to any advice provided by the Attorney-General in the jurisdiction where the person was abused than to any other matter,¹⁸³ but it is not clear whether this always happens in practice.

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.¹⁸⁴ In addition to removing a barrier to redress, this would remove the need for the NRS to seek advice from Attorneys-General about serious criminal convictions and increase consistency in the NRS's decision-making.

It is disappointing that Australian governments have not committed to fully implement this recommendation.¹⁸⁵ In our view, this recommendation should be implemented.

Recommendation 20

The Western Australian Government should work collaboratively with other Australian governments to allow 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 of the National Redress Scheme).

In the interim, knowmore would welcome greater transparency in relation to the advice provided by Attorneys-General about survivors with serious criminal convictions and how this advice is treated by the NRS. This would assist us to advise survivors with serious criminal convictions about their prospects in seeking redress, allow survivors to better understand the reasons for special assessment decisions, and provide greater procedural fairness for survivors with serious criminal convictions.¹⁸⁶

182 See Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, *Witness statement of Warren Strange*, 28 April 2022, accessed 7 August 2023, p 11, <www.commissionofinquiry.tas.gov.au/_data/assets/pdf_file/0008/660572/Statement-of-Warren-Strange,-Chief-Executive-Officer,-knowmore-Legal-Service,-28-April-2022.pdf>.

183 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), subsection 63(7).

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

185 Australian Government, *Australian Government response*, p 6.

186 For further discussion about improving redress for survivors with serious criminal convictions, see knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 48–50.

Recommendation 21

The Western Australian Government should work collaboratively with other Australian governments to provide greater transparency in relation to the advice provided by Attorneys-General about survivors with serious criminal convictions and how this advice is treated by the National Redress Scheme. This should include providing reasons for special assessment decisions.

Services to support survivors

This section discusses the resourcing and provision of legal and other support for survivors who are seeking justice, focusing particularly on redress given our role in assisting survivors with the National Redress Scheme (NRS). It addresses Term of Reference 3 of the Committee's inquiry.

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) highlighted the importance of suitable legal support for survivors to navigate their justice options. This is particularly reflected in the Royal Commission's recommendation for a legal advice and referral service for survivors,¹⁸⁷ as we deliver at knowmore. The importance of legal support for survivors considering redress has also been highlighted by every report of every major review of the NRS (see page 37). As the former Joint Select Committee on Implementation of the NRS 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.*¹⁸⁸

The second year review of the NRS also noted the importance of suitable legal support in addressing 'opportunistic legal practices and coercive behaviour',¹⁸⁹ as discussed above on pages 22 to 30.

We have also discussed on pages 45 to 46 above the value of non-legal support and Redress Support Services for survivors seeking redress, and the need for these to be properly funded (see Recommendation 10).

187 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report: volume 9, advocacy, support and therapeutic treatment services*, December 2017, accessed 7 August 2023, Recommendation 9.4, p 176, <www.childabuseroyalcommission.gov.au/advocacy-support-and-therapeutic-treatment-services>.

188 Joint Select Committee on Implementation of the National Redress Scheme, *Second interim report of the Joint Select Committee on Implementation of the National Redress Scheme*, November 2021, accessed 7 August 2023, p 67, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/National_Redress_Scheme/NationalRedressScheme/Second_Interim_Report>.

189 R Kruk AO, *Final report: second year review of the National Redress Scheme*, 26 March 2021, accessed 7 August 2023, p 208, <www.nationalredress.gov.au/document/1386>.

Without adequate legal and other support, many survivors in Western Australia will experience injustice and re-traumatisation as they navigate their justice options. On the other hand, effective support that helps survivors to obtain justice has wide reaching benefits, from the individual to the state level. Survivors frequently tell us that they use their redress outcomes to help address the impacts of their abuse.¹⁹⁰ For example, some survivors are able to use their redress payments to establish a stable housing situation, in turn providing them with a basis to pursue education or employment opportunities that have otherwise been blocked for them. Other survivors benefit from the counselling and psychological component of redress, improving their mental health and relationships and experiencing positive flow-on effects across their lives. These outcomes clearly have important benefits — for survivors and their families, for government, and for the Western Australian community more broadly.¹⁹¹

We provide further comments below about the resourcing and provision of services to support survivors in seeking redress, consistent with the focus of our service as outlined on page 3. We provide more information about our multidisciplinary service delivery model, before highlighting the significant resourcing and demand challenges we are currently facing in relation to our NRS-related services.

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

¹⁹⁰ For a detailed discussion of the impacts of institutional child sexual abuse, see Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Final report: volume 3, impacts*, December 2017, accessed 7 August 2023, <www.childabuseroyalcommission.gov.au/impacts>.

¹⁹¹ This is consistent with the Royal Commission's observations about who experiences the impacts of child sexual abuse. See Royal Commission, *Final report: volume 3*, pp 202–234.

*effectiveness of any redress programme. Support work is not ancillary, it is part of redress.*¹⁹²

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 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.*¹⁹³

We agree that our service model has important strengths for survivors navigating their redress and compensation options.

knowmore's current resourcing and demand challenges

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,¹⁹⁴ which is

192 S Winter, *Monetary redress for abuse in state care*, Cambridge University Press, November 2022, accessed 7 August 2023, part III, section 12.1, <www.cambridge.org/core/books/monetary-redress-for-abuse-in-state-care/57AB2994831FFC5AA3B827DC40EE74AF>.

193 Winter, *Monetary redress for abuse in state care*, part III, section 12.3

194 As noted on page 3, knowmore also receives funding to provide specialist financial counselling services to survivors participating in the NRS and to support Redress Support Services.

currently at levels well below the first 3 years of funding,¹⁹⁵ and further reduces markedly across the life of the current funding agreement.¹⁹⁶

In contrast, NRS application numbers have increased significantly in the last 2 years and particularly in the last 12 months.¹⁹⁷ We noted in a January 2023 submission to the Federal Treasury that over 4,500 applications had been received in a period of slightly over 6 months to the end of 2022.¹⁹⁸ This increasing trend has continued and accelerated in 2023 — in slightly over 6 months to 14 July 2023, over 6,600 applications have been received.¹⁹⁹ This equates to a record number of applications received by the NRS in the 2022–23 financial year — about 11,000, which is almost double the previous record of 5,987 in 2021–22.²⁰⁰

The chart in Figure 1 on the next page 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).

195 That is, from the 2018–19 financial year until the 2020–21 financial year. See knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme* [submission 14], 27 February 2023, accessed 7 August 2023, p 80, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Stand ing/Redress47/Submissions>.

196 That is, from the 2021–22 financial year until the 2025–26 financial year. See knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 80.

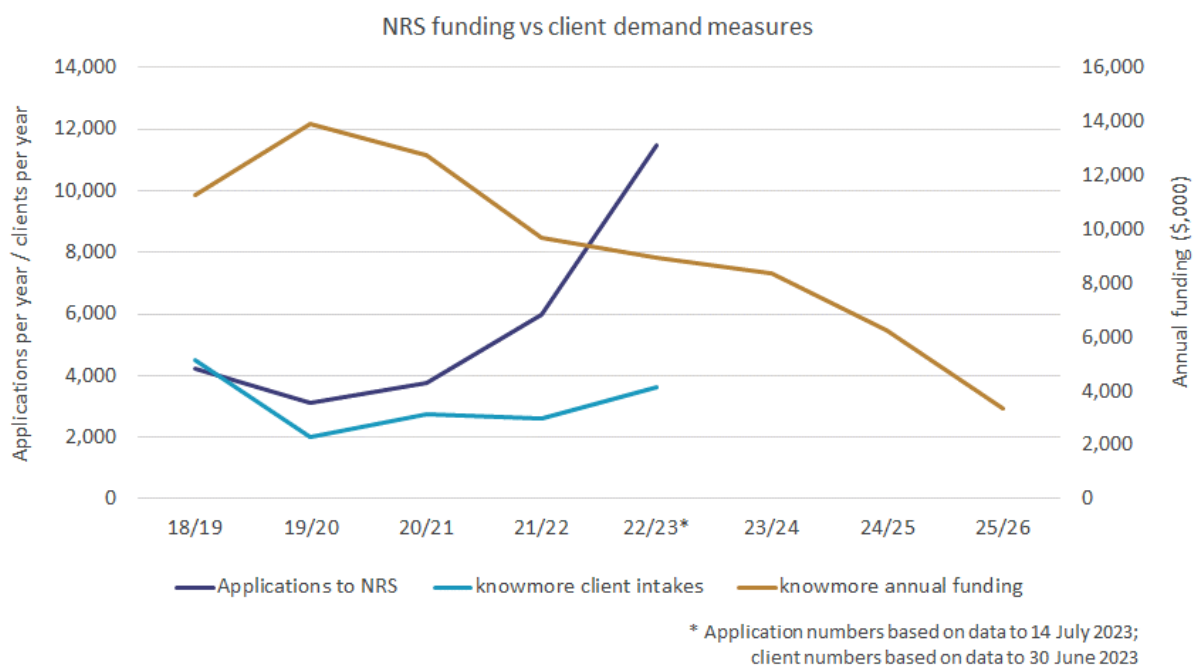
197 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 82.

198 See knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 83.

199 The NRS had received 21,674 applications as of 30 December 2022 and 28,341 applications as of 14 July 2023. See the NRS’s regular updates dated 11 January 2023 and 18 July 2023, available at <www.nationalredress.gov.au/about/updates>.

200 Department of Social Services, *Annual report 2021–22*, October 2022, accessed 7 August 2023, p 85, table 2.2.4, <www.dss.gov.au/publications-articles-corporate-publications-annual-reports/departments-social-services-annual-report-2021-22>.

Figure 1: Chart depicting knowmore’s funding levels for our NRS-related legal support services compared to NRS application data and knowmore client data



This shows an increasing trend in knowmore client intakes over time, and particularly since July 2021. A significant percentage of these intakes continue to be for clients in Western Australia — as noted on page 4, 17% of our clients reside in Western Australia. If the demand for our services continues to exceed our resourcing, we expect that a significant number of survivors in Western Australia will be unable to access the legal support they need to navigate their options.

We expect these challenges will only increase when some reforms announced by the Australian Government in its response to the second year review of the NRS commence. We particularly note reforms that will expand access to the NRS for survivors by:

- removing the restriction on survivors applying from gaol, as discussed on page 52 above²⁰¹
- enabling former child migrants who are not Australian citizens or permanent residents to apply for redress²⁰²
- allowing finalised applications to be reassessed in cases where a non-participating institution identified in an application later joins the NRS, or where a government later agrees to be the funder of last resort for the institution.²⁰³

201 Australian Government, *The Australian Government response to the final report of the second year review of the National Redress Scheme*, 4 May 2023, accessed 7 August 2023, p 6, <www.nationalredress.gov.au/document/1626>.

202 Australian Government, *Australian Government response*, p 5.

203 Australian Government, *Australian Government response*, p 4.

As we noted earlier, many survivors will be directly affected by these reforms, and it is to be expected that they will both require and seek assistance from support services as a result. This will have significant resourcing implications for knowmore and other support services, as discussed in detail in our most recent submission to the Joint Standing Committee on Implementation of the NRS.²⁰⁴

Our above comments highlight the need for increased funding for knowmore and other support services to ensure survivors can access the support they need to obtain redress. We reiterate our recommendation above for the Western Australian Government to work collaboratively with other Australian governments to provide greater access to survivor support services in the context of the NRS (see Recommendation 10 on page 46). This must include increasing knowmore's funding to the levels required to maintain current services and meet increasing demand in this financial year and beyond, as well as ensuring the adequate resourcing of knowmore and other support services when announced reforms that expand survivors' access to the NRS are implemented (see also Recommendation 15 on page 53).

More generally, we would encourage the Western Australian Government to give greater consideration to the support needs of survivors in Western Australia who are seeking justice, and to provide greater resourcing for appropriate support services.

Recommendation 22

The Western Australian Government should give greater consideration to the support needs of survivors of institutional child sexual abuse in Western Australia who are seeking justice, and provide greater resourcing for appropriate support services.

204 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services* [submission 14.2], 3 July 2023, accessed 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Standing/Redress47/Submissions>.

Other justice options

This section provides comments about other justice options for survivors of institutional child sexual abuse in Western Australia, drawing particularly on lessons from other jurisdictions. It addresses Term of Reference 4 of the Committee's inquiry.

As discussed in the introduction to our submission (pages 6 to 7), survivors of institutional child sexual abuse sometimes have justice options beyond civil compensation and the National Redress Scheme (NRS). For survivors in Western Australia, one such option is Criminal Injuries Compensation. We discuss Criminal Injuries Compensation below, and highlight the need for a considered review of the scheme.

We also discuss below the unique needs and experiences of survivors of institutional child sexual abuse who are also survivors of the Stolen Generations. In our view, this highlights the need for a Stolen Generations redress scheme in Western Australia, as another avenue for survivors to access justice.

Criminal Injuries Compensation

Each Australian state and territory has a government-based scheme that provides support to victims and survivors of crime. We use 'victims support' as a general term for these schemes, although the name varies between states and territories. In Western Australia, the victims support scheme is called Criminal Injuries Compensation.

Criminal Injuries Compensation is an option for survivors of institutional child sexual abuse who are not eligible for the NRS.²⁰⁵ This may, for example, include:

- survivors who experienced child sexual abuse in an institution that is not participating in the NRS (see discussion on pages 57 to 58)
- survivors who experienced child sexual abuse in a participating institution, but the NRS was not satisfied that the participating institution was responsible for the abuse (see discussion on pages 41 to 43)
- survivors who experienced abuse after the NRS started.²⁰⁶

Further, the NRS will stop accepting applications on 30 June 2027. From this date, Criminal Injuries Compensation will play a greater role in supporting survivors of institutional child sexual abuse. It is important that Criminal Injuries Compensation is equipped to provide survivor-focused, trauma-informed and culturally safe support to survivors.

While beyond the scope of the Committee's inquiry, it is worth noting that Criminal Injuries Compensation is also relevant to victims and survivors of other crimes. This includes

205 *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018* (WA), section 14.

206 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 14.

knowmore's clients who have experienced non-institutional child sexual abuse — for example, child sexual abuse within families.

While we acknowledge that Criminal Injuries Compensation must consider the needs of victims of crime beyond our specific client group, we also consider that Criminal Injuries Compensation must work in a survivor-focused, trauma-informed and culturally safe way for survivors of institutional child sexual abuse. We believe that the experiences of survivors of child abuse are likely to be shared by victims of many other crimes, particularly violent crimes, and that improvements to better support victims and survivors of child abuse are likely to have significant benefits for other victims too. Below, we make some brief, general comments about victims support, informed by our perspective as a nation-wide service. We then outline relative strengths and weaknesses of Criminal Injuries Compensation compared to victims support schemes in other states and territories, and some other issues with Criminal Injuries Compensation.

General comments about victims support

knowmore's perspective on victims support is informed by our experience as a nation-wide service, assisting survivors with victims support matters in all Australian states and territories. A striking feature of victims support, from a nation-wide perspective, is the significant inconsistencies between victims support schemes in different states and territories. These inconsistencies affect almost every aspect of victims support, including the types of support available, the maximum amount of payments, the eligibility criteria, the application process, interaction with other support options, and review options. There is no good reason for this level of inconsistency between states and territories. It results in significantly different experiences and outcomes for survivors, depending on where they live, and creates difficulties for survivors who have experienced abuse in more than one state or territory.

In knowmore's view, the Western Australian Government should work collaboratively with other Australian governments to improve consistency between victims support schemes, based on national best practice.

Recommendation 23

The Western Australian Government should work collaboratively with other Australian governments to improve consistency between victims support schemes, based on national best practice.

Relative strengths, relative weaknesses and other issues with Criminal Injuries Compensation

Based on our experience and observation, relative strengths of Criminal Injuries Compensation compared to victims support schemes in other states and territories include:

- a relatively high degree of rigour in the decision-making process
- relatively high quality reasons for decisions

- the perpetrator does not need to be charged with an offence for the survivor to receive compensation.²⁰⁷

Based on our experience and observation, relative weaknesses of Criminal Injuries Compensation compared to victims support schemes in other states and territories include:

- a process that is relatively inaccessible to survivors without legal support
- a 3-year time limit from when the crime occurred, which is not automatically extended for survivors of child sexual abuse — we note that a Department of Justice Review of Criminal Injuries Compensation (Review) recommended removing this time limit²⁰⁸
- survivors must generally report the crime to the police²⁰⁹
- survivors may be asked to attend a hearing²¹⁰
- survivors can be required to pursue other options before applying for Criminal Injuries Compensation²¹¹ — this limits a survivor's ability to choose the most suitable option for them and, in our experience, can result in survivors being required to pursue inappropriate options.

Other issues with Criminal Injuries Compensation are as follows.

- Payments for survivors of child sexual abuse are inadequate. The maximum payment of \$75,000 is half the maximum payment under the NRS (and significantly less than the average NRS payment),²¹² and the Review noted concerns about the inadequacy of payments.²¹³

207 Women's Legal Service WA, *Criminal Injuries Compensation application information: a guide for potential applicants*, 20 March 2023, accessed 7 August 2023, p 5, <www.wlswa.org.au/wp-content/uploads/2020/03/20200320-WLSWA-CIC-Booklet.pdf>.

208 Government of Western Australia (Department of Justice), *Report on the findings of the review of the Criminal Injuries Compensation Scheme in Western Australia: final*, November 2019, accessed 7 August 2023, p 37, <[www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/4013095a635e6b4de55bc20f4825850b00306861/\\$file/3095.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/4013095a635e6b4de55bc20f4825850b00306861/$file/3095.pdf)>.

209 *Criminal Injuries Compensation Act 2003* (WA), section 38; Legal Aid Western Australia, *Compensation for victims of crime*, 30 March 2022, accessed 7 August 2023, p 1, <www.legalaid.wa.gov.au/sites/default/files/inline-files/Compensation_victims_of_crime.pdf>.

210 *Criminal Injuries Compensation Act 2003* (WA), section 24.

211 *Criminal Injuries Compensation Act 2003* (WA), section 21; *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018* (WA), section 14.

212 As noted on page 35, the maximum payment under the NRS is \$150,000 and the average payment is about \$88,000. See Department of Social Services, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme* [submission 9], February 2023, attachment A, p 2, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Standing/Redress47/Submissions>.

213 Government of Western Australia (Department of Justice), *Report on the findings of the review of the Criminal Injuries Compensation Scheme in Western Australia*, p 7.

- Survivors who experienced abuse before 22 January 1971 are not eligible for compensation.²¹⁴
- The maximum payment amount varies depending on when the offence was committed and can be completely inadequate — for example, \$2,000 for an indictable offence committed before 17 October 1976.²¹⁵
- Survivors are only eligible for compensation if the abuse they experienced was an offence under the law at the time. This is problematic as the criminal law has often failed to adequately recognise or respond to child sexual abuse.²¹⁶
- There must be evidence of injury or loss,²¹⁷ and considerable detail or documentation may be required.²¹⁸
- There is inadequate support for family members of survivors, who may have experienced grooming²¹⁹ and are often deeply affected by the abuse.²²⁰
- Perpetrators may be told about the application and provided with documents.²²¹
- Criminal Injuries Compensation does not provide counselling and psychological care, although it may provide compensation for costs of this nature.²²²
- There are delays in processing applications; we note the Review’s finding that ‘the current scheme is not considered to be timely because it can take up to 12 months for victims to receive an award of compensation’.²²³

214 *Criminal Injuries Compensation Act 2003* (WA), section 8.

215 *Criminal Injuries Compensation Act 2003* (WA), section 31.

216 This is reflected in the Royal Commission’s extensive recommendations for reform of the criminal legal system. See Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal justice report: executive summary and parts I–II*, December 2017, accessed 7 August 2023, pp 114–137 <www.childabuseroyalcommission.gov.au/criminal-justice>.

217 *Criminal Injuries Compensation Act 2003* (WA), section 30.

218 Women’s Legal Service WA, *Criminal Injuries Compensation application information*, pp 8–11.

219 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report: volume 2, nature and cause*, December 2017, accessed 7 August 2023, pp 43–44, <www.childabuseroyalcommission.gov.au/nature-and-cause>.

220 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report: volume 3, impacts*, December 2017, accessed 7 August 2023, p 203, <www.childabuseroyalcommission.gov.au/impacts> .

221 Office of Criminal Injuries Compensation, *Application Process*, OCIC website, 29 September 2020, accessed 7 August 2023, <cict.justice.wa.gov.au/A/application_process.aspx>.

222 Women’s Legal Service WA, *Criminal Injuries Compensation application information*, pp 5–6.

223 Government of Western Australia (Department of Justice), *Report on the findings of the review of the Criminal Injuries Compensation Scheme in Western Australia*, p 7.

- There is inadequate support for survivors in navigating the process, and particularly limited access to multidisciplinary support, linked to inadequate government funding for support services.

In our view, these significant, ongoing issues highlight the need for a considered review of Criminal Injuries Compensation in Western Australia.

Recommendation 24

The Western Australian Government should commission an independent review of Criminal Injuries Compensation with a view to offering improved support to victims and survivors of crime, including victims and survivors of child sexual abuse.

Need for a Stolen Generations redress scheme in Western Australia

In considering alternative options to provide justice and compensation to survivors and their families under Term of Reference 4, knowmore urges the Committee to address the unique experiences and needs of Aboriginal and/or Torres Strait Islander survivors who are also survivors of the Stolen Generations.

The landmark *Bringing them Home* report highlighted the disproportionate rates at which Stolen Generations survivors experienced institutional child sexual abuse.²²⁴ That report concluded that ‘children in every placement were vulnerable to sexual abuse and exploitation.’²²⁵ It found that almost 1 in 10 boys and more than 1 in 10 girls reported being sexually abused in children’s institutions,²²⁶ and 1 in 10 boys and 3 in 10 girls reported being sexually abused in foster placements.²²⁷ The report observed that the actual rates of institutional child sexual abuse among Stolen Generations survivors were likely to be much higher than these estimates, noting that ‘witnesses were not asked whether they had had this experience and that there are many reasons, personal and procedural, for deciding against volunteering the information’.²²⁸

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) similarly found that many survivors of institutional child sexual abuse were also survivors of the Stolen Generations. The Royal Commission described survivors’ experiences and the impacts of these in the following terms:

224 Human Rights and Equal Opportunity Commission, *Bringing them Home*, 1997, accessed 7 August 2023, <humanrights.gov.au/our-work/bringing-them-home-report-1997>.

225 Human Rights and Equal Opportunity Commission, p 140.

226 Human Rights and Equal Opportunity Commission, p 141.

227 Human Rights and Equal Opportunity Commission, p 142.

228 Human Rights and Equal Opportunity Commission, p 140.

*Many Aboriginal and Torres Strait Islander survivors told Commissioners they had been forcibly removed from their families. They were ‘part of the Stolen Generations’ and described lives marked by racism, hardship, poverty, violence and abuse, and the impacts of collective and intergenerational trauma. They described how they, their families and their communities carry the ongoing legacy of being forcibly removed from their land, their family and their culture. Many spoke about the experiences of Aboriginal and Torres Strait Islander peoples more broadly, describing the sexual abuse as just one of the many forms of violence inflicted upon Aboriginal and Torres Strait Islander communities since colonisation.*²²⁹

We think it is important to recognise that, for survivors from the Stolen Generations, their experiences of institutional child sexual abuse are a significant and harrowing part of their story, but they are only one part. As the Royal Commission identified, Stolen Generations survivors experienced many different forms of violence, harm and trauma as a result of their forced removal.

Unfortunately, past and present redress schemes for survivors of institutional child sexual abuse in Western Australia have not adequately recognised, or provided appropriate redress for, the entirety of the harm and trauma caused to Stolen Generations survivors. For example, the Redress WA scheme did not compensate survivors for being forcibly removed from their families, and the context of them being taken into care was not considered.²³⁰ Similarly, the NRS does not provide recognition or redress for forced removal or experiences of violence and trauma beyond institutional child sexual abuse (and some related non-sexual abuse). In knowmore’s view, there are also several shortcomings in the implementation of the NRS that adversely impact the ability of Stolen Generations survivors to access the redress they deserve.²³¹

knowmore strongly believes that all Stolen Generations survivors should be able to access redress for the cumulative and ongoing harm and trauma they have experienced as a result of being forcibly removed from their families, communities and cultures. Today, Western Australia remains 1 of only 2 jurisdictions that is yet to establish a redress scheme for Stolen

229 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report: volume 5, private sessions*, December 2017, accessed 7 August 2023, p 136, <www.childabuseroyalcommission.gov.au/final-report-private-sessions>.

230 Government of Western Australia (Department for Communities), *Redress WA final report*, n.d., accessed 7 August 2023, p 10, <www.childabuseroyalcommission.gov.au/sites/default/files/STAT.0243.001.0246.pdf>.

231 See, for example, knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme* [submission 14], 27 February 2023, accessed 7 August 2023, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Stand ing/Redress47/Submissions>.

Generations survivors.²³² Western Australia's inaction in this regard has created and perpetuates significant inequality and unfairness between Stolen Generations survivors across Australia, many of whom are also survivors of institutional child sexual abuse.

We note that in May 2022, Bringing Them Home WA, Yokai Healing our Spirit and the Kimberley Stolen Generation Aboriginal Corporation launched a petition calling on the Parliament of Western Australia to conduct an inquiry with a view to supporting the establishment of a compensation or reparations scheme in Western Australia for Stolen Generations survivors.²³³ The petition marked the 25th anniversary of the Bringing them Home report and highlighted the unfinished business from that report for Stolen Generations survivors in Western Australia. The petition was tabled in the Legislative Council on 17 November 2022 by the Hon. Brad Pettitt MLC, with over 1,300 signatures.²³⁴

knowmore strongly supports the establishment of a redress scheme for Stolen Generations survivors in Western Australia. In our view, this is an essential step in supporting the truth-telling, justice and healing journeys of many survivors and their descendants.

Recommendation 25

The Western Australian Government should establish a redress scheme for Stolen Generations survivors in Western Australia, drawing on the lessons learned from comparable schemes in other states and territories.

232 Western Australia and Queensland are the only jurisdictions that have not established a redress scheme specifically for Stolen Generations survivors. See, for example, Z Kirkup, 'WA, QLD's feet-dragging on Stolen Generations compo casts shadow over entire country', *National Indigenous Times*, 30 June 2022, accessed 7 August 2023, <nit.com.au/30-06-2022/3202/wa-qlds-feet-dragging-on-stolen-generations-compo-casts-shadow-over-entire-country>, and T Stayner, "'Time's up": Queensland and WA urged to launch their own reparations for Stolen Generations survivors', *SBS News*, 5 August 2021, accessed 7 August 2023, <www.sbs.com.au/news/article/times-up-queensland-and-wa-urged-to-launch-their-own-reparations-for-stolen-generations-survivors/hgmb9qo26>.

233 'Stolen Generations Compensation', e-Petition for the Legislative Council, posting date 25 May 2022, accessed 7 August 2023, <[www.parliament.wa.gov.au/Parliament/LCePetitions.nsf/\(\\$All\)/2646DDB54629EEBF4825884D000A9AA8?opendocument](https://www.parliament.wa.gov.au/Parliament/LCePetitions.nsf/($All)/2646DDB54629EEBF4825884D000A9AA8?opendocument)>. See also T Zaunmayr, 'Fresh petition urges WA to follow other states with Stolen Generations compo scheme', *National Indigenous Times*, 26 May 2022, accessed 7 August 2023, <nit.com.au/26-05-2022/3152/fresh-petition-urges-wa-to-follow-other-states-with-stolen-generations-compo-scheme>.

234 Bringing them Home WA and Yokai Healing Our Spirit, *Media Release: Petition for Stolen Generations Compensation Tabled in State Parliament*, 17 November 2022, accessed 7 August 2023, <bringingthemhomewa.com/2022/11/21/media-release-petition-for-stolen-generations-compensation-tabled-in-state-parliament/>; E Ruben, 'Petition for Stolen Generations redress tabled in WA Parliament', *National Indigenous Times*, 18 November 2022, accessed 7 August 2023, <nit.com.au/18-11-2022/4336/petition-for-stolen-generations-redress-tabled-in-wa-parliament>.

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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.

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