

knowmore
free legal help for survivors

Supplementary
submission to the
Joint Standing
Committee on
Implementation of the
National Redress
Scheme
Seventh year of the
National Redress Scheme

26 July 2024

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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.

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 (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 2022, knowmore has also been assisting survivors who experienced child sexual abuse in non-institutional settings, and providing legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme).

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane, 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 2024, knowmore has received 118,162 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 19,008 clients. Almost 2 in 5 clients (39%) identify as Aboriginal and/or Torres Strait Islander peoples. More than 1 in 8 clients (13%) are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

Introduction

On 1 July 2024, we entered the seventh year of the National Redress Scheme (NRS). The NRS has now provided redress to more than 15,800 survivors.¹ While there have been significant reforms to the NRS since it started on 1 July 2018, the overall pace of reform has been slow, given the time-limited nature of the NRS. We are particularly concerned that the recent amendments to the NRS's governing legislation (NRS Act)² leave much unfinished business from previous reviews of the NRS. As a result, the NRS continues to be affected by significant problems that prevent it from consistently delivering redress in a way that is survivor-focused, trauma-informed and culturally safe. Given the legislated deadline for redress applications on 30 June 2027 and the legislated end of the NRS on 1 July 2028, we are concerned that the clock is ticking on many vital reforms.

This supplementary submission proceeds in 3 parts:

- First, we provide an update about funding for the redress support system (including knowmore) following the release of the 2024–25 federal budget (budget) in May 2024.³ This addresses term of reference 5(b) of the Committee's current inquiry.
- Second, we provide an update about the current status of reforms to the NRS, including comments about the recent change to allow survivors in prison to apply for redress, without having to demonstrate exceptional circumstances. This addresses all terms of reference of the Committee's current inquiry.
- Third, we raise our concern about the NRS's capacity to deliver redress to all eligible victims and survivors before the legislated end of the NRS on 1 July 2028 (acknowledging that the NRS has its own resourcing limitations that may impact on its capacity). This addresses term of reference 7 of the Committee's current inquiry.

We particularly wish to highlight the need for the Australian Government to:

- provide an enduring resolution to the funding issues that we have previously raised with the Committee in the form of secure, adequate funding for knowmore beyond the 2024–25 financial year (see pages 8 to 9)
- lead work with state and territory governments to remove barriers to accessing redress and support for survivors in prison (see pages 23 to 30).

We note that these issues are interconnected, as many of the barriers to accessing redress and support for survivors in prison also have significant resourcing implications for support services, including knowmore.

1 National Redress Scheme, *National Redress Scheme – update*, 16 July 2024, accessed 24 July 2024, <www.nationalredress.gov.au/about/updates/1971>.

2 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) (NRS Act).

3 See Australian Government, *Budget 2024–25*, 14 May 2024, accessed 15 July 2024, <budget.gov.au/>.

List of recommendations

Recommendation 1

The Australian Government should provide secure and adequate funding for survivor support services, including knowmore, so that we can continue to provide survivors with the support they need. In particular, knowmore's NRS-related legal support services funding must match the demand for this service and be secure until at least the legislated end of the NRS on 1 July 2028.

Recommendation 2

The Australian Government should lead work with the state and territory governments to implement recommendations made by previous reviews of the National Redress Scheme. This must include greater transparency about if and how recommendations have been implemented.

Recommendation 3

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

Recommendation 4

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

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

Recommendation 5

The Australian Government should lead work with state and territory governments to remove barriers to accessing redress and support for survivors in prison.

Recommendation 6

The Joint Standing Committee on Implementation of the National Redress Scheme should consider further inquiry into the barriers to accessing redress and support for survivors in prison, noting that these barriers disproportionately affect survivors with disability and Aboriginal and/or Torres Strait Islander survivors (addressing terms of reference 1, 2 and 3 of the Committee's current inquiry).

Recommendation 7

The Australian Government should allow all survivors with serious criminal convictions to apply for redress, without additional requirements such as the special assessment process or the additional information form.

Recommendation 8

The Australian Government should amend the National Redress Scheme Act to ensure that:

- a survivor's redress payment cannot be reduced as a result of an internal review
- there is no adverse impact for a survivor if they choose not to provide new information in response to a request from the National Redress Scheme as part of the review process.

Recommendation 9

The Australian Government and the National Redress Scheme should implement the 8 recommendations from our primary submission to the Committee about improving how the use of information works in relation to the National Redress Scheme (recommendation 26–33 of our primary submission to the Committee).

Recommendation 10

The National Redress Scheme should ensure that the new process to allow some finalised applications to be re-assessed is implemented in a way that is survivor-focused, trauma-informed and culturally safe, noting the importance of adequate support for survivors.

Recommendation 11

The Australian Government, working with state and territory governments, should implement further reform to the National Redress Scheme to ensure that survivors are not unfairly disadvantaged by the single application restriction. In particular, the Australian Government should make further amendments to the National Redress Scheme Act to ensure that the re-assessment process applies to all survivors who are affected by a change in circumstances after their redress application is finalised.

Recommendation 12

The National Redress Scheme should adopt a formal practice of revoking a redress decision when requested by a survivor who received an ineligible outcome in circumstances where at least one relevant non-participating institution later joins the National Redress Scheme or is later covered by a government under the National Redress Scheme's funder of last resort arrangements.

The Australian Government should provide a clear commitment to this approach via an amendment to the National Redress Guide and/or the National Redress Scheme Rules, pending legislative reform to broaden the application of the re-assessment process.

Recommendation 13

The Australian Government, working with state and territory governments, should immediately prioritise planning for the legislated end of the National Redress Scheme, in partnership with survivors and survivor support services.

Recommendation 14

The Joint Standing Committee on Implementation of the National Redress Scheme should consider further inquiry into planning for the legislated end of the National Redress Scheme, well in advance of the eighth year review of the National Redress Scheme.

Update about funding for the redress support system

The 2024–25 federal budget (budget) has committed an additional \$33.3 million over 4 years ‘to support applicants of the [NRS] who submit incomplete applications to improve the efficiency of the Scheme and to better support survivors of institutional child sexual abuse through the application process’.⁴ Of this \$33.3 million:

- The budget has committed \$26.1 million over 4 years for Redress Support Services (RSSs).⁵ The Minister for Social Services (Minister) has stated that this will provide ‘a new targeted support service that will assist survivors to submit complete applications to the National Redress Scheme’.⁶
- The budget has committed \$7.2 million to knowmore for the 2024–25 financial year.⁷

The Minister has also referred to ‘a further \$2.16 million ... to support applicants in gaol and for dedicated and culturally safe support services, particularly for regional and remote applicants’.⁸

knowmore welcomes the allocation of additional funding to the redress support system, including our service. We thank Committee members for your assistance in highlighting the need for this funding.

The additional funding allocated to knowmore reverses the 25% reduction in NRS-related legal support services funding that we had anticipated and provides a temporary increase for the 2024–25 financial year. This will enable us to maintain current service levels and assist survivors in prison in accordance with our current casework guidelines for the 2024–25 financial year.⁹

Unfortunately, the budget has not allocated knowmore any additional NRS-related legal support services funding for the following 2 financial years (2025–26 and 2026–27). This means that knowmore now faces a reduction in our NRS-related legal support services funding of almost \$10.1 million or about 75% in less than 12 months’ time. In other words,

4 Australian Government, *Budget 2024–25: budget paper no. 2, budget measures*, 14 May 2024, p 174, <budget.gov.au/content/bp2/download/bp2_2024-25.pdf>.

5 Australian Government, *Budget 2024–25: budget paper no. 2, budget measures*, p 174.

6 Amanda Rishworth MP, *Strengthening support for redress applicants*, 24 May 2024, accessed 15 July 2024, <ministers.dss.gov.au/media-releases/14791>.

7 Australian Government, *Budget 2024–25: budget paper no. 2, budget measures*, p 174.

8 Amanda Rishworth MP, *Strengthening support for redress applicants*.

9 See knowmore, *Response to question on notice and additional information*, 29 April 2024, pp 2–3, <www.aph.gov.au/DocumentStore.ashx?id=57fe3fb2-d477-453e-afa9-02a55b425445&subId=734313>.

the issues that we have previously raised with the Committee about the adequacy and security of our funding have not received an enduring resolution.

knowmore undertook significant funding advocacy to maintain current service levels for survivors and avoid a devastating reduction in funding in the 2024–25 financial year. It is not sustainable for us to do this level of funding advocacy each year. Our NRS-related legal support services funding must match the demand for this service, which:

- is well above what was projected by modelling for this stage of the NRS¹⁰
- has been increasing¹¹
- is likely to surge just before the legislated deadline for applications on 30 June 2027, with flow-on effects for the final year of the NRS (see discussion on pages 43 to 44).

This funding must be secure until at least the legislated end of the NRS on 1 July 2028, as we will continue to have clients with pending applications who will need our ongoing support.

We also note that survivors who experienced institutional child sexual abuse after 30 June 2018 are not eligible for the NRS,¹² highlighting a significant and growing number of survivors of institutional child sexual abuse whose needs are not met by the NRS-related legal support services funding and not adequately met by any of knowmore's funding streams.¹³

While ever there are survivors who need us, we should be here to provide support. This requires the Australian Government to provide us with secure and adequate funding.

We would be grateful for the ongoing assistance of Committee members in raising these issues with the Australian Government.

Recommendation 1

The Australian Government should provide secure and adequate funding for survivor support services, including knowmore, so that we can continue to provide survivors with the support they need. In particular, knowmore's NRS-related legal support services funding must match the demand for this service and be secure until at least the legislated end of the NRS on 1 July 2028.

10 knowmore, *Pre-budget submission FY2024–25*, 22 January 2024, p 2, <consult.treasury.gov.au/pre-budget-submissions/2024-25/view/sbm2d690746636601b3e7d4b>.

11 knowmore, *Pre-budget submission FY2024–25*, p 2.

12 NRS Act, section 14(1)(c).

13 See knowmore, *Submission to the National Legal Assistance Partnership Review*, 20 November 2023, p 4, <knowmore.org.au/wp-content/uploads/2024/01/submission-national-legal-assistance-partnership-review-cth.pdf>.

Current status of reforms to the National Redress Scheme

As we discussed at the Committee's public hearing on 8 April 2024,¹⁴ the Australian Government has recently made amendments to the NRS Act.¹⁵ These amendments passed the Australian Parliament on 20 March 2024¹⁶ and partly commenced on 4 April 2024.¹⁷ The rest of the amendments are due to commence before the end of September 2024.¹⁸

While knowmore supported many of the amendments, we also expressed some concerns,¹⁹ which we elaborate on below. We first make some general comments about the current status of reforms to the NRS, noting that the recent amendments to the NRS Act leave much unfinished business from previous reviews of the NRS. We then make specific comments about the following parts of the recent amendments:

- allowing survivors in prison to apply for redress, without having to demonstrate exceptional circumstances
- changes to the redress application process for survivors with serious criminal convictions – that is, survivors who have been sentenced to imprisonment for 5 years or longer for an offence²⁰
- changes to the review process for redress decisions
- changes to when protected information under the NRS Act can be disclosed

14 Joint Standing Committee on Implementation of the National Redress Scheme, *Inquiry into the operation of the National Redress Scheme: transcript*, 8 April 2024, p 2, <parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/27914/toc_pdf/Implementation%20of%20the%20National%20Redress%20Scheme%E2%80%9494Joint%20Committee%202024%2004%2008%20Official.pdf;fileType=application%2Fpdf#search=%22committees/commjnt/27914/0000%22>.

15 *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2024* (Cth) (NRS Amendment Act).

16 Australian Parliament, *National Redress Scheme for Institutional Child Sexual Abuse Amendment Bill 2023*, accessed 15 July 2024, <www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7106>.

17 NRS Amendment Act, section 2(1).

18 NRS Amendment Act, section 2(1).

19 See knowmore, *Proposed new law for the National Redress Scheme*, 18 December 2023, <knowmore.org.au/proposed-new-law-for-the-national-redress-scheme/>; knowmore, *Urgent funding needed for services supporting child sexual abuse survivors*, 22 March 2024, <knowmore.org.au/media-release-urgent-funding-needed-for-services-supporting-child-sexual-abuse-survivors/>; knowmore, *A new law for the National Redress Scheme*, 12 April 2024, <knowmore.org.au/a-new-law-for-the-national-redress-scheme/>.

20 NRS Act, section 63(1).

- a new process to allow some finalised redress decisions to be re-assessed (the re-assessment process).

General comments about the current status of reforms to the National Redress Scheme

As noted on page 10, knowmore supported many of the recent amendments to the NRS Act. In particular, we supported:

- allowing survivors in prison to apply for redress, without having to demonstrate exceptional circumstances
- clarifying that the NRS can give applicants certain information about non-participating institutions
- allowing some finalised applications to be re-assessed if an institution later joins the NRS.²¹

In our view, these are important steps towards improving survivors' experience of seeking redress. Many of the recent amendments address issues that knowmore has highlighted for many years. For example, we highlighted the injustice of excluding some survivors in prison from the redress scheme in our submission in February 2018 on a predecessor to the bill that became the NRS Act.²²

However, the recent amendments to the NRS Act leave much unfinished business from the 3 previous reviews of the NRS, noted in our primary submission to the Committee on 27 February 2023 (our primary submission to the Committee).²³ In that submission, we commented:

*We are hearing from our clients a sense of 'review fatigue' and frustration about the lack of meaningful improvements ... Many survivors continue to wait for reforms to enable them to receive redress ... In our experience, survivors feel that many important recommendations for improvement have been made, and meaningful action is now long overdue.*²⁴

In many respects and for many survivors, this statement remains true and is worsened by the fact that a further 16 months have now passed with many sound recommendations

21 See knowmore, *Proposed new law for the National Redress Scheme*.

22 See, for example, knowmore, *Submission on the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and related Bill*, 2 February 2018, p 4, <knowmore.org.au/wp-content/uploads/2018/06/Commonwealth-Redress-Scheme-for-institutional-Child-Sexual-Abuse-Bill-and-other-bill-Submission.pdf>.

23 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, 27 February 2023, p 14, <knowmore.org.au/wp-content/uploads/2023/03/submission-joint-standing-committee-on-implementation-of-the-national-redress-scheme-cth.pdf>.

24 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 15.

remaining unimplemented. These include recommendations that the Australian Government expressed support for in May 2023 in its final response to the second year review – for example, combining the recognition of sexual abuse payment and the impact of sexual abuse payment to recognise that child sexual abuse impacts the life of every survivor.²⁵

The Australian Government has also said it supports recommendations where, due to ongoing issues with transparency,²⁶ it is not clear if and how the recommendations have been fully implemented. These include recommendations to:

- strengthen consistency and integrity in decision-making²⁷
- improve redress for survivors who experienced child sexual abuse in a medical setting²⁸
- improve the treatment of prior payments received by survivors, including Stolen Generations payments²⁹
- improve counselling support³⁰
- improve direct personal responses.³¹

Our clients continue to face barriers to accessing redress and to experience harm and re-traumatisation as a result of inadequate action on these recommendations and others.

knowmore broadly supports the recommendations made by the previous reviews of the NRS.³² We consider that the Australian Government should lead work with the state and territory governments to implement these recommendations. This must include greater transparency about if and how recommendations have been implemented.

25 Australian Government, *The Australian Government response to the Final Report of the Second Year Review of the National Redress Scheme (Response to the second year review)*, 4 May 2023, pp 11–12, <www.nationalredress.gov.au/document/1626>.

26 See generally knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 16–19 and 66–72.

27 Australian Government, *Response to the second year review*, pp 10–11.

28 Australian Government, *Response to the second year review*, p 6.

29 Australian Government, *Response to the second year review*, p 14.

30 Australian Government, *Response to the second year review*, p 17.

31 Australian Government, *Response to the second year review*, p 18.

32 See knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 14–24; knowmore, *Submission to the Australian Law Reform Commission's inquiry into justice responses to sexual violence*, 7 June 2024, pp 37–39, <knowmore.org.au/wp-content/uploads/2024/06/submission-justice-responses-to-sexual-violence-cth.pdf>.

Recommendation 2

The Australian Government should lead work with the state and territory governments to implement recommendations made by previous reviews of the National Redress Scheme. This must include greater transparency about if and how recommendations have been implemented.

Without diminishing the importance of any of the recommendations that have been made in previous reviews, we provide updated information below about 2 areas raised in our primary submission to the Committee that remain of significant, ongoing concern for survivors:

1. the unfairness, inconsistency and lack of transparency in redress decisions
2. non-participating institutions and inadequate funder of last resort arrangements.

Unfairness, inconsistency and lack of transparency in redress decisions

In our primary submission to the Committee, we noted that persistent unfairness, inconsistency and lack of transparency in redress decisions ‘remain some of the most significant, ongoing and systemic shortcomings in the implementation of the NRS that continue to have considerable adverse impacts on our clients and other survivors’.³³ We have observed limited improvement in these aspects of the NRS since making our primary submission to the Committee in February 2023.

We have been especially concerned by recent redress decisions that do not reflect an understanding of the legal standard of proof for deciding that a person is eligible for redress – namely, that it is reasonably likely that the person is eligible.³⁴ The NRS Act states that ‘reasonable likelihood’ means that ‘the chance of the person being eligible is real, is not fanciful or remote and is more than merely plausible’.³⁵ This was the standard of proof recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) and is a lower standard of proof than is typically used in civil litigation (proof on the balance of probabilities) or in a criminal trial (proof beyond reasonable doubt).³⁶

The second year review made the following observations about the NRS’s application of the reasonable likelihood standard:

33 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 16.

34 NRS Act, section 12(b).

35 NRS Act, section 6, definition of ‘reasonable likelihood’.

36 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Redress and civil litigation report*, September 2015, p 41, recommendation 57, <www.childabuseroyalcommission.gov.au/redress-and-civil-litigation>.

Understanding memory, and the distinctive features of traumatic memory, is crucial for all [NRS decision-makers] making determinations on an applicant's eligibility for redress.

The Scheme must accommodate the way unreported childhood memories are disclosed in adulthood, as most people who have been sexually abused as children do not disclose until they are adults.

...

Current determinations appear to reflect a misunderstanding of trauma and memory. They indicate that the Royal Commission's guidance had been erroneously interpreted and determinations appear to be inconsistent with the burden of proof of 'reasonable likelihood'.³⁷

Despite this guidance from the second year review, we have seen recent decisions that the client is not eligible for redress on the apparent basis that the client has not disclosed specific details about the abuse or disproved other possible versions of events. Due to ongoing issues with the quality and transparency of the NRS's written reasons,³⁸ it is often difficult for us to understand the precise basis of these decisions and we struggle to reconcile these decisions with the reasonable likelihood standard.

We have also seen recent redress decisions that do not reflect an understanding of the nature of child sexual abuse. The Royal Commission noted that there are commonly held myths and misconceptions about child sexual abuse – for example, that delayed disclosure is evidence of lying or that perpetrators can be easily identified.³⁹ In the broader context of sexual violence, these are sometimes called rape myths.⁴⁰ For our clients, myths and misconceptions about child sexual abuse often recall fears or experiences of a negative response to disclosure, such as not being believed.⁴¹ It can be retraumatising for our clients to see such myths and misconceptions in written reasons from the NRS.

The impact of these issues is illustrated by the following experiences of one of knowmore's clients.

37 Robyn Kruk AO, *Final report: second year review of the National Redress Scheme*, 26 March 2021, p 263, <www.nationalredress.gov.au/document/1386>.

38 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 18–19.

39 See, for example, Royal Commission, *Final report: volume 2, nature and cause*, December 2017, pp 126 and 256, <www.childabuseroyalcommission.gov.au/nature-and-cause>.

40 Office of the Commissioner for Victims of Crime (Western Australia), *Improving experiences for victim-survivors: review of criminal justice system responses to sexual offending, discussion paper 1*, accessed 16 July 2024, pp 13–15, <www.wa.gov.au/media/40127/download?inline>.

41 See generally Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, December 2017, pp 80–92, <www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse>.

A client who the NRS found ineligible for redress with comments about details not being provided

The client experienced extreme sexual and physical abuse, perpetrated by a teacher at the client's school, over a period of more than 2 years.

The client self-lodged an application for redress in January 2023. In December 2023, an NRS decision-maker determined that the client was ineligible for redress on the basis that the institution did not have records of their attendance. knowmore assisted the client to make a successful application to revoke the ineligible decision, providing proof of attendance. In May 2024, an NRS decision-maker again determined that the client was ineligible for redress on the basis that the reasonable likelihood standard was not met.

The decision-maker reached this conclusion despite accepting that the client recalled experiencing abuse as a student and the impact this had on the client. The decision-maker also noted that the client was enrolled at the relevant school and that the teacher was employed during the relevant period of time.

In the statement of reasons, the decision-maker made comments that do not reflect an understanding of the nature of child sexual abuse or the reasonable likelihood standard of proof. For example, the decision-maker commented that details were not provided as to why the client continued to encounter the teacher and that if the abuse had happened as described, it is likely that other students and teachers would have been aware of the abuse. This approach shows a complete lack of understanding of the typically hidden and predatory nature of child sexual abuse.

The client says that they have been re-traumatised by the decisions the NRS has made. They say that they feel the NRS doesn't understand child sexual abuse or care about survivors.

The client is terminally ill and has considered whether they want to spend their last days worrying about these matters, but the client does not want other survivors to have the same experience of the NRS.

We repeat the recommendation from our primary submission to the Committee that the Australian Government, working with state and territory governments, should ensure the full and urgent implementation of all outstanding recommendations of the second year review that seek to improve fairness, consistency and transparency of redress decisions. This includes recommendations 3.3, 3.4, 3.9, 3.10, 3.11, 3.12, 3.13 and 5.1 of the second year review.⁴²

42 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 19, recommendation 1.

Recommendation 3

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

We note that the Australian Government has said it supports many of these recommendations.⁴³ However, the persistent unfairness, inconsistency and lack of transparency in redress decisions raises significant concerns about if and how these recommendations have been fully implemented. As recommended on page 13, the Australian Government must provide greater transparency about the implementation of review recommendations.

We note that recommendation 5.1 includes ensuring that redress payments cannot be reduced as a result of the internal review process.⁴⁴ We make further comments about this on pages 33 to 35.

Non-participating institutions and inadequate funder of last resort arrangements

We made detailed comments in our primary submission to the Committee about non-participating institutions and inadequate funder of last resort arrangements.⁴⁵ In particular, we commented:

*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.*⁴⁶

We also noted, in our supplementary submission on the resourcing of knowmore and other support services on 3 July 2023 (our supplementary submission on resourcing), that since the start of the NRS, there has consistently been a large number of applications that identify institutions that are not already participating in the NRS.⁴⁷

43 The Australian Government has said it supports recommendations 3.3, 3.9, 3.10 and 5.1 and supports in part recommendation 3.11. See Australian Government, *Response to the second year review*, pp 7, 10–11 and 19.

44 Robyn Kruk AO, *Final report*, p 159, recommendation 5.1.

45 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 21–24.

46 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 21.

47 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, 3 July 2023, p 15, <knowmore.org.au/wp-content/uploads/2023/07/submission-joint-standing-committee-on-implementation-of-the-national-redress-scheme-resourcing-of-knowmore-and-other-support-services-cth.pdf>.

While additional institutions have joined the NRS and additional funder of last resort arrangements have been made, the overall number of institutions covered by the NRS has decreased since our primary submission to the Committee in February 2023.⁴⁸ This is likely to be due to the withdrawal of ACS Mutual (which represented a significant number of institutions) from the NRS on 30 June 2023.⁴⁹

In our primary submission to the Committee, we expressed particular concern that no funder of last resort arrangements had been made for institutions that cannot participate in the NRS, noting that survivors had named at least 26 such institutions at the time.⁵⁰ Survivors have now named at least 40 such institutions – funder of last resort arrangements have only been made for one of these 40 institutions.⁵¹

In our submission to the Committee's predecessor on 28 April 2020, we also noted the inadequacy of institutions waiting to be named in redress applications before joining the NRS:

*The Royal Commission reviewed allegations of sexual abuse in more than 4,000 institutions. Although the overwhelming majority of these institutions were not specifically named by the Royal Commission, it cannot be a surprise to these institutions that they are now being named in redress applications (or are likely to be named in future applications).*⁵²

Our experience remains that many of our clients are unable to access redress, receive reduced redress payments and experience significant delays and anxiety due to non-participating institutions and inadequate funder of last resort arrangements.

The ongoing impact of non-participating institutions and inadequate funder of last resort arrangements is illustrated by the following experiences of one of knowmore's clients.

48 See National Redress Scheme, *National Redress Scheme – update*, 2 February 2023, <www.nationalredress.gov.au/about/updates/1606>; National Redress Scheme, *National Redress Scheme – update*, 18 June 2024, <www.nationalredress.gov.au/about/updates/1961>.

49 See National Redress Scheme, *National Redress Scheme – update*, 18 July 2023, <www.nationalredress.gov.au/about/updates/1646>.

50 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 22.

51 There is a funder of last resort arrangement for the Society for Providing Services for Neglected and Needy Children in New South Wales. See National Redress Scheme, *Institutions that are unable to participate in the National Redress Scheme*, accessed 16 July 2024, <www.nationalredress.gov.au/institutions/institutions-unable-join>; *National Redress Scheme for Institutional Child Sexual Abuse (Fundors of Last Resort) Declaration 2019* (Cth), schedule 1, item 90 and schedule 2, item 96.

52 knowmore, *Submission to the Joint Select Committee on Implementation of the National Redress Scheme*, 28 April 2020, p 6, <knowmore.org.au/wp-content/uploads/2020/11/submission-joint-select-committee-on-implementation-of-the-national-redress-scheme-cth.pdf>.

A client whose experience we shared in February 2023 who continues to wait for redress

In our primary submission to the Committee in February 2023, we shared the experience of one of our clients, who had been waiting for redress for more than 2 years due to non-participating institutions and inadequate funder of last resort arrangements. A further year and 4 months have now passed and this same client is still waiting for redress.

The client had previously been told that their redress application was unlikely to proceed unless Basketball Australia joined the NRS and agreed to take responsibility for the basketball clubs where the client experienced child sexual abuse. Basketball Australia has still not joined the NRS and no Australian government has made a relevant funder of last resort declaration. In a recent conversation with the NRS, the NRS said that even if Basketball Australia joins the NRS, Basketball Australia may not take responsibility for the 2 basketball clubs, leaving the client without redress.

The client has said, 'I feel like these organisations pretend to care about kids, but it's all superficial because I'm not getting any justice.'

We repeat the recommendation from our primary submission to the Committee that the Australian Government and state and territory governments should prioritise declaring themselves as funders of last resort for:

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

We note that the Australian Government has said it supports this recommendation.⁵³

We make further comments about the new process to allow some finalised applications to be re-assessed on pages 37 to 40 below.

Recommendation 4

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

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

53 Australian Government, *Response to the second year review*, p 20.

Allowing survivors in prison to apply for redress

knowmore welcomed the recent amendments to the NRS Act to allow survivors in prison to apply for redress, without having to demonstrate exceptional circumstances.⁵⁴ As we noted in our primary submission to the Committee, the previous rule (that a person in prison could not apply for redress, unless there were exceptional circumstances):

- was exclusionary
- contradicted recommendations from the Royal Commission (for equal access to redress and equal treatment of survivors) and the second year review (which recommended that people in prison be allowed to apply for redress, with a single application process for all applicants)
- had a severe, disproportionate impact on survivors with disability and Aboriginal and/or Torres Strait Islander survivors, reflecting the over-representation of survivors with disability and Aboriginal and/or Torres Strait Islander survivors in prison.⁵⁵

Further, as highlighted by our supplementary submission on resourcing:

- We estimate that there are many thousands of survivors in prison who are now eligible to apply for redress.⁵⁶
- Survivors in prison include some of the most marginalised people in Australia and often have additional or more complex support needs.⁵⁷
- While supporting survivors in prison is unquestionably important, our experience is that the prison environment presents many unique barriers to providing support that require additional resources to overcome.⁵⁸

As noted on page 8 above, the additional funding allocated to knowmore in the budget will enable us to assist survivors in prison in accordance with our current casework guidelines for the 2024–25 financial year, but not beyond 2024–25.

In our Royal Commission-related work, knowmore assisted many survivors in prison. We have continued to assist survivors in prison in our NRS-related work since 1 July 2018 – we have noted particularly significant demand for our service from survivors in prison for at least the past 12 months, predating the recent change to allow survivors in prison to apply

54 knowmore, *Proposed new law for the National Redress Scheme*; knowmore, *Urgent funding needed for services supporting child sexual abuse survivors*; knowmore, *A new law for the National Redress Scheme*.

55 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 45–46.

56 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, pp 9–11. See also knowmore, *Urgent funding needed for services supporting child sexual abuse survivors*.

57 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, pp 11–13.

58 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, p 13.

for redress, without having to demonstrate exceptional circumstances (although we note that the Australian Government announced this change in May 2023).⁵⁹ We anticipate a further, significant increase in demand for our service from survivors in prison following the launch on 22 July 2024 of a referral pilot, whereby the NRS will refer survivors in prison to knowmore for legal advice and related support. This links to broader concerns that we hold about the increasing pressure on the NRS and survivor support services as we approach the legislated deadline for redress applications on 30 June 2027 and the legislated end of the NRS on 1 July 2028 (see the related discussion on pages 41 to 44).

Noting the recent change to the NRS Act to allow survivors in prison to apply for redress, without having to demonstrate exceptional circumstances, we first make some general comments about the experiences of survivors in prison. We then make further comments about specific barriers to accessing redress and support for survivors in prison, building on our preliminary comments about these barriers in our supplementary submission on resourcing.⁶⁰

General comments about the experiences of survivors in prison

As we noted in our supplementary submission on resourcing, people in prison are significantly more likely than people in the general population to have experienced child sexual abuse.⁶¹ While recognising that ‘the vast majority of child sexual abuse victims did not go on to commit crimes’, the Royal Commission also identified ‘common patterns in the lives of those survivors who were involved in criminal behaviour’, with the criminal behaviour clearly reflecting the impacts of the abuse.⁶²

knowmore is generally concerned by laws, policies and practices that do not adequately recognise the impacts of child sexual abuse and contribute to the overincarceration of survivors, including survivors with disability and Aboriginal and/or Torres Strait Islander survivors. While these issues are broader than our work, they intersect with our work in significant ways. For example, knowmore has advocated:

- for adequate support services for survivors in the community, addressing the impacts of child sexual abuse⁶³
- for better protection of survivors’ human rights broadly, including rights to health, housing, social security, employment and prompt redress⁶⁴

59 Australian Government, *Response to the second year review*, pp 5–6.

60 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, p 13.

61 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, p 9.

62 Royal Commission, *Final report: volume 3, impacts*, December 2017, pp 144–146, <www.childabuseroyalcommission.gov.au/impacts>.

63 See, for example, knowmore, *Submission to the Australian Law Reform Commission’s inquiry into justice responses to sexual violence*, pp 14–18.

64 See, for example, knowmore, *knowmore supports an Australian Charter of Human Rights*, 7 November 2023, <knowmore.org.au/knowmore-supports-an-australian-charter-of-human-rights/>.

- for better recognition of the right to self-determination for Aboriginal and/or Torres Strait Islander peoples,⁶⁵ noting the important role of self-determination in Closing the Gap,⁶⁶ including in relation to justice targets⁶⁷
- against punitive responses to offending by children, which bring children into unnecessary contact with the criminal legal system⁶⁸
- for courts to recognise a survivor's experience of child sexual abuse as a significant mitigating factor when sentencing a survivor and against mandatory sentencing laws that prevent this from happening⁶⁹
- for improved monitoring of prison environments, recognising the rights and needs of children and survivors in prison.⁷⁰

Prisons are obviously not survivor-focused, trauma-informed or culturally safe environments. They are environments in which people, including survivors, often experience violations of their human rights.

We do not know the full extent to which human rights violations occur in Australian prisons. We are concerned that the United Nations (UN) Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment suspended its visit to Australia on 22 October 2022, noting that:

... it had been prevented from visiting several places of detention, had experienced difficulties in carrying out a full visit at other locations and had not

65 See, for example, knowmore, *knowmore's statement in support of the Voice to Parliament*, 4 September 2023, <knowmore.org.au/knowmores-statement-in-support-of-the-voice-to-parliament/>.

66 Closing the Gap, *National Agreement on Closing the Gap: priority reform one – formal partnerships and shared decision-making*, July 2020, paragraph 32(c)(v), <www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/one>.

67 Closing the Gap, *Closing the Gap targets and outcomes*, accessed 15 July 2024, targets 10–11, <www.closingthegap.gov.au/national-agreement/targets>.

68 See, for example, knowmore, *Submission to the inquiry into youth justice reform in Queensland*, 9 January 2024, pp 14–15, <knowmore.org.au/wp-content/uploads/2024/01/submission-inquiry-into-youth-justice-reform-qld.pdf> .

69 See, for example, knowmore, *Submission on Queensland's serious violent offences (SVO) scheme*, 13 January 2022, p 17, <knowmore.org.au/wp-content/uploads/2022/04/submission-serious-violent-offences-svo-scheme-qld.pdf>.

70 See, for example, knowmore, *Submission on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022*, 11 January 2023, p 5, <knowmore.org.au/wp-content/uploads/2023/01/submission-monitoring-of-places-of-detention-opcat-bill-2022-qld.pdf>.

*been given all the relevant information and documentation that it had requested.*⁷¹

The UN Committee against Torture subsequently raised significant concerns about the treatment of people in Australian prisons, including concerns about increasing deaths in custody,⁷² prolonged and indefinite solitary confinement, abusive strip-searches, excessive use of restraints and inadequate health care (especially mental health care).⁷³ We note that deaths in custody remain an appalling injustice against Aboriginal and/or Torres Strait Islander peoples.⁷⁴

The Australian Human Rights Commission (AHRC) recently adopted the following observation from Victoria's Cultural Review of the Adult Custodial Corrections System, confirming that 'it is equally applicable across all Australian jurisdictions':

*While much has changed in corrections environments in the last few decades, they remain, in part, places that are influenced by a punitive orientation and that can be devastatingly unsafe both for the staff who work there and the people in custody who live there.*⁷⁵

The AHRC also commented that:

*Prisons impose rigid rules and absolute obedience enforced by authority figures; allow only controlled and supervised access to family, services and support networks; and create environments in which criticism and belittling of prisoners is normalised.*⁷⁶

Similarly, the Royal Commission noted the following research findings about trauma-informed care for survivors in prison:

Prisons are challenging settings for trauma informed care. Prisons are designed to house perpetrators, not victims. Inmates arrive shackled and are crammed into overcrowded housing units; lights are on all night, loudspeakers blare without warning and privacy is severely limited. Security staff is focused on maintaining order and must assume each inmate is potentially violent. The

71 United Nations Committee against Torture, *Concluding observations on the sixth periodic report of Australia*, 5 December 2022, p 13, paragraph 43, <tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fCO%2fAUS%2fCO%2f6&Lang=en>.

72 United Nations Committee against Torture, *Concluding observations on the sixth periodic report of Australia*, p 11, paragraph 35.

73 United Nations Committee against Torture, *Concluding observations on the sixth periodic report of Australia*, p 9, paragraph 31.

74 See, for example, ANTA, *Deaths in custody*, 12 December 2023, accessed 15 July 2024, <antar.org.au/issues/justice/deaths-custody/>.

75 Australian Human Rights Commission, *Current issues in prison management: submission to the United Nations Special Rapporteur on Torture*, 16 November 2023, p 3, <humanrights.gov.au/sites/default/files/16.11.23_submission_to_the_united_nations_special_rapporteur_on_torture_002_0.pdf>.

76 Australian Human Rights Commission, *Current issues in prison management: submission to the United Nations Special Rapporteur on Torture*, p 3.

*correctional environment is full of unavoidable triggers, such as pat-downs and strip searches, frequent discipline from authority figures and restricted movement ... This is likely to increase trauma-related behaviours and symptoms that can be difficult for prison staff to manage ...*⁷⁷

Prisons are also culturally unsafe environments. As noted in our primary submission to the Committee:

*[There is] a deeply troubling dynamic, whereby governments disproportionately place Aboriginal and/or Torres Strait Islander children in youth detention, where children are at heightened risk of being sexually abused, only to later prevent many of those same Aboriginal and/or Torres Strait Islander people from accessing redress ... This dynamic presents links between colonisation, overincarceration, child sexual abuse and inadequate redress that disproportionately affect Aboriginal and/or Torres Strait Islander survivors.*⁷⁸

These are the environments in which survivors in prison attempt to seek access to redress and support.

Barriers to accessing redress and support for survivors in prison

As noted on page 19, our supplementary submission on resourcing made preliminary comments about barriers to accessing redress and support for survivors in prison. These preliminary comments focused on the ‘barriers to providing support that require additional resources [for knowmore and other support services] to overcome’.⁷⁹

Our comments below expand significantly on our preliminary comments, reflecting further aspects of our experience assisting survivors in prison. We make comments about the following barriers to accessing redress and support for survivors in prison:

- inconsistencies between prisons
- inadequate processes for facilitating survivors’ access to support services
- inadequate counselling and psychological support
- barriers to confidentiality
- misinformation about the NRS
- claim farming and related practices
- issues with identity requirements
- issues with bank accounts
- the heightened risk of experiencing financial abuse

77 Royal Commission, *Final report: volume 9, advocacy, support and therapeutic treatment services*, December 2017, p 129, <www.childabuseroyalcommission.gov.au/advocacy-support-and-therapeutic-treatment-services>.

78 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 49–50.

79 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, p 13.

- inadequate support for survivors in prison upon release.

In addition, we note that the serious criminal convictions provisions of the NRS Act remain a significant barrier to redress and continue to disproportionately affect survivors in prison (see discussion on pages 31 to 32).

The cumulative impact of these barriers to accessing redress and support for survivors in prison is immense and illustrated by a case study of our experience providing NRS-related legal assistance to survivors in a particular prison (see pages 29 to 30).

We recommend that the Australian Government lead work with state and territory governments to remove barriers to accessing redress and support for survivors in prison. We consider that it is particularly important to maximise nation-wide consistency between prisons, so as to remove logistical barriers to services providing support (see further discussion about inconsistencies between prisons below).

Recommendation 5

The Australian Government should lead work with state and territory governments to remove barriers to accessing redress and support for survivors in prison.

We also respectfully suggest that the issue would merit further inquiry by the Committee, noting that the issue disproportionately affects survivors with disability and Aboriginal and/or Torres Strait Islander survivors (addressing terms of reference 1, 2 and 3 of the Committee's current inquiry). We would welcome the opportunity to contribute to any inquiry of this nature.

Recommendation 6

The Joint Standing Committee on Implementation of the National Redress Scheme should consider further inquiry into the barriers to accessing redress and support for survivors in prison, noting that these barriers disproportionately affect survivors with disability and Aboriginal and/or Torres Strait Islander survivors (addressing terms of reference 1, 2 and 3 of the Committee's current inquiry).

Inconsistencies between prisons

A striking feature of Australian prisons, from a nation-wide perspective, is the significant inconsistencies between prisons. These inconsistencies are apparent across jurisdictions and even between different prisons within the one jurisdiction. They affect almost every aspect of how prisons work, including whether they are publicly or privately managed, the process for booking appointments (see page 25), the support available to survivors in prison (see pages 25 to 26), the degree of confidentiality available (see page 26) and the process for accessing a bank account (see page 28).

The significant inconsistencies between prisons result in significantly different experiences for survivors in prison and create challenges for services in providing support. There is no one process that will work for all prisons within any one state or territory, let alone across the continent.

Inadequate processes for accessing support services

Australian prisons generally have inadequate processes for facilitating survivors' access to support services, including knowmore. In our experience, these are some of the most significant barriers to accessing redress and support for survivors in prison, with significant resourcing implications for knowmore and other support services (detailed in our supplementary submission on resourcing).⁸⁰

As noted in our supplementary submission on resourcing, we are generally unable to 'simply and confidentially call a survivor in prison on the phone, communicate by email or hold an in-person appointment without significant planning and engaging the co-operation of relevant prison authorities'.⁸¹ The significant inconsistencies in processes for booking appointments (noted on page 24 above) adds to the planning and resources required, limiting the scale at which support services can provide assistance to survivors in prison.

There are some prison processes and practices that no amount of planning by support services can overcome. For example, we noted in our supplementary submission on resourcing that we experience difficulties and delays linked to prison lockdowns, which may lead to appointments being cancelled without notice and needing to be rebooked.⁸² Some prisons go into lockdown frequently, requiring the one appointment with a client to be rebooked many times over. This is not survivor-focused or trauma-informed and can lead to significant delays in providing legal advice and related support to a survivor in prison.

In addition, our clients in prison are often moved from one prison to another, without us being informed in a timely manner. We sometimes only learn on the day of an appointment that an appointment cannot proceed because the client is no longer at the particular prison we booked the appointment with. We also often experience significant difficulties in locating clients who have been moved from one prison to another. Prisons will often not tell us where the client has been moved to, or in some cases, that the client has been moved at all. As a result, we are sometimes unable to make further contact with clients, unless and until the client contacts us themselves. All of this leads to further risks and delays for survivors in prison.

It is unacceptable that it is so difficult for survivors in prison to access legal advice and related support. The inadequate process for facilitating survivors' access to these services threatens to significantly undermine the implementation of the recent change to allow survivors in prison to apply for redress, without needing to demonstrate exceptional circumstances.

Inadequate counselling and psychological support

As highlighted on pages 22 to 23, the prison environment is not conducive to healing from trauma and is itself often retraumatising for survivors of institutional child sexual abuse. The

80 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, pp 9–13.

81 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, p 13.

82 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, p 13.

Royal Commission noted that many survivors in prison received inadequate counselling and psychological support.⁸³ This is consistent with what survivors tell us about their experience of counselling and psychological support in prison.

In addition, we face significant barriers to providing survivors in prison with counselling and social work support during and after legal appointments. For example, some prisons only allow us to conduct one-on-one phone calls with clients, preventing us from providing counselling and social work support during a legal appointment. After an appointment with us, clients are often returned to their prison cell without support, or in some cases, placed in solitary confinement. In this context, we share the UN Committee against Torture's concerns about suicide as an ongoing cause of deaths in custody.⁸⁴

Our comments above are also relevant to cultural support for Aboriginal and/or Torres Strait Islander survivors. As noted on page 22, deaths in custody remain an appalling injustice against Aboriginal and/or Torres Strait Islander peoples.

Barriers to confidentiality

Survivors in prison experience significant barriers to communicating confidentially with support services, including knowmore and Redress Support Services (RSSs). For example:

- Many Australian prisons have limited confidential space for a survivor to attend an appointment and limited staff resources for facilitating a survivor's access to any confidential spaces. On many occasions, prisons have placed our clients in non-confidential places (such as hallways) for appointments with knowmore, with the result that we are unable to proceed with the appointment and need to re-schedule.
- Many Australian jurisdictions have inadequate protections for the confidentiality of mail for survivors in prison, including an absence of clear legislative protections in some jurisdictions to prevent prison staff from opening legal correspondence.⁸⁵
- Survivors in prison often have no secure, confidential place to store confidential documents, such as a legal advice letter from knowmore or a redress application.
- While some communications between clients and lawyers have particular confidentiality protections,⁸⁶ these protections generally do not apply to all communications with knowmore and generally do not apply to communications with RSSs.

83 Royal Commission, *Final report: volume 5, private sessions*, December 2017, pp 276–277, <www.childabuseroyalcommission.gov.au/final-report-private-sessions>; Royal Commission, *Final report: volume 9, advocacy, support and therapeutic treatment services*, pp 126–130.

84 United Nations Committee against Torture, *Concluding observations on the sixth periodic report of Australia*, p 11, paragraph 35.

85 See generally Murray Buchanan, *Censorship of Mail in Australia Prisons*, 15 July 2020, p 12–14, <law.uq.edu.au/files/60202/REP_PBC_MsP_Censorship_Mail_FIN_20200715.pdf>; knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: resourcing of knowmore and other support services*, p 13.

86 These confidentiality protections are called 'legal professional privilege' under common law and 'client legal privilege' under the uniform evidence law. See *Model Uniform Evidence Bill (Cth)*, sections 118–119.

Misinformation about the National Redress Scheme

There appears to be significant misinformation about the NRS circulating within Australian prisons. In particular, since the recent amendments to the NRS Act, we have received an increase in queries from people in prison who have received misinformation that the NRS provides redress for abuse or harm broadly, rather than institutional child sexual abuse specifically. This has resourcing implications for knowmore and other support services – for example, we may need to conduct a client intake and legal appointment to assess that a client is not eligible for the NRS and to give this advice and a referral.

In our view, the spread of misinformation about the NRS in Australian prisons is linked to inadequate support for survivors in prison generally (see the discussion on pages 25 to 26). We are also concerned that it may be connected with an increase in claim farming and related practices in Australian prisons (see further discussion below).

Claim farming and related practices

Claim farming and related practices were widespread in Australian prisons, even before the recent amendments to the NRS Act. We are hearing reports that suggest that, since the recent amendments, these practices have increased in Australian prisons. We note that, while the Queensland Government has passed a law to address claim farming in the context of civil claims⁸⁷ and the South Australian Government is considering a similar law,⁸⁸ there has been a lack of meaningful, nation-wide action to address claim farming in the context of the NRS.⁸⁹ In relation to survivors in prison specifically, we are not aware of any meaningful, systemic action across the prison system to address the growing problem of claim farming in prisons.

Noting that appropriate support is a powerful measure to combat claim farming and related practices, we are particularly concerned about the impacts of these practices on survivors in prison who are not receiving assistance from knowmore or an RSS.

Issues with identity requirements

As noted in our primary submission to the Committee, the NRS has strict requirements in relation to proof of identity.⁹⁰ Many survivors in prison do not have the required identity

87 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 61–62.

88 South Australian Government, *Moves to outlaw predatory claim farming of SA's most vulnerable*, 14 May 2024, <www.premier.sa.gov.au/media-releases/news-items/moves-to-outlaw-predatory-claim-farming-of-sas-most-vulnerable>.

89 For further discussion about strategies to address exploitative practices in relation to the NRS, see *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 59–61; knowmore, *Response to question on notice and additional information*, pp 1–2.

90 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 39–40. See also knowmore, *Submission on the options available to survivors of institutional child sexual abuse in Western Australia who are seeking justice*, 11 August 2023, pp 50–51, <knowmore.org.au/wp-content/uploads/2023/11/submission-inquiry-into-the-options-available-to-survivors-of-institutional-child-sexual-abuse-seeking-justice-wa.pdf>.

documents or at least do not have ready access to these documents in prison. This can lead to significant logistical difficulties and delays in progressing a redress application for a survivor in prison. It can also lead to issues with bank accounts (see further discussion below).

Issues with bank accounts

Many survivors in prison do not have a bank account and so cannot receive a redress payment as payments can only be deposited in a person's own bank account. Further, many survivors in prison experience significant barriers to opening a bank account or keeping a bank account open. As noted above, many survivors in prison do not have ready access to identity documents. As with redress applications, this can lead to significant logistical difficulties and delays for a survivor attempting to open a bank account.⁹¹ We have also assisted survivors in prison who have had their banks close their accounts without their consent and, in some cases, without their knowledge.

Even when a survivor in prison has a current bank account, there can be significant barriers to accessing money in the account, including a redress payment. There are significant inconsistencies between prisons as to the process for accessing money in a bank account, how much money a survivor in prison can access at any one point in time and how often a survivor in prison can make transfers. The effect of this is that many survivors in prison experience significant barriers to accessing their redress payment and do not receive the full benefit of the payment.

The heightened risk of experiencing financial abuse

As noted above, many survivors in prison experience significant barriers to accessing and controlling their own money. In order to overcome these barriers, or otherwise for convenience, many survivors in prison provide trusted people outside prison with significant access to and control over their money. This may be done formally (for example, through powers of attorney) or informally (for example, by giving a trusted person direct access to their bank account). Perpetrators of financial abuse may exploit this situation.

We have assisted clients in circumstances where people close to them have perceived the redress payment as a windfall, failing to appropriately recognise the purpose of the payment and feeling an inappropriate sense of entitlement to a share of the payment. In our experience, these circumstances carry a heightened risk of financial abuse, particularly for survivors in prison.

Inadequate support for survivors in prison upon release

The Royal Commission highlighted that there is often inadequate support for survivors in prison upon release.⁹² While this is a broad problem, related to the inadequate support for

91 For more information about opening a bank account in prison, see Australian Banking Association, *Assisting customers in prison with their banking*, 10 April 2024, p 1, <www.ausbanking.org.au/wp-content/uploads/2024/06/ABA-Customers-in-Prison-factsheet.pdf>.

92 Royal Commission, *Final report: volume 5, private sessions*, p 277; Royal Commission, *Final report: volume 9, advocacy, support and therapeutic treatment services*, pp 130–131.

survivors in Australian society in general, we particularly see the following impacts in our work assisting survivors who have been in prison:

- Due to inadequate housing support, survivors in prison are often released into insecure housing and homelessness.⁹³ This undermines an important basis of healing for survivors,⁹⁴ creates further barriers to accessing redress and support and places survivors who have been in prison at increased risk of recriminalisation and reimprisonment.⁹⁵
- Due to the liquid assets waiting period for social security payments, many survivors who have received a redress payment in prison must wait 13 weeks to receive certain social security payments (such as JobSeeker) upon release.⁹⁶ As a result, these survivors are forced to use their redress payment for their basic needs, rather than healing, which also undermines the recognition and justice-making purposes of the redress payment.⁹⁷
- There is generally inadequate support for survivors in prison to remain connected with services upon release. We are often given no way to contact a client in prison when they are released, causing us to lose contact with the client, unless and until the client contacts us themselves.

The cumulative impact of barriers for survivors in prison

As noted on page 24, the cumulative impact of the barriers to accessing redress and support for survivors in prison is immense. This is illustrated by the following case study of our experience providing NRS-related legal assistance to survivors in a particular prison. While the case study reflects our experience of one particular prison, many of the issues highlighted by this case study are widespread across many Australian prisons.

93 Royal Commission, *Final report: volume 5, private sessions*, p 277. See also Royal Commission, *Final report: volume 3, impacts*, pp 155–156.

94 See generally Royal Commission, *Redress and civil litigation report*, p 93; Australian Senate (Community Affairs References Committee), *The worsening rental crisis in Australia: final report*, December 2023, p 162, paragraph 5.100, <www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Worsening_rentalcrisis/Final_Report>.

95 See, for example, Law Council of Australia, *The justice project: final report, part 1, people who are homeless*, August 2018, pp 21–22, <lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%20%28Part%201%29.pdf>.

96 See generally Australian Government, *Social security guide: liquid assets test waiting period*, 20 March 2024, accessed 16 July 2024, <guides.dss.gov.au/social-security-guide/3/1/2/20>.

97 Royal Commission, *Redress and civil litigation report*, pp 224–225.

knowmore's experience providing legal assistance to survivors in a particular prison

knowmore provides NRS-related legal assistance to many survivors in a particular prison.

Different prisons have different requirements that knowmore staff must meet before the staff member can make a phone call to a client in prison. This prison requires each knowmore staff member to provide a formal letter outlining their qualifications, providing their reason for wanting to speak with people in prison and providing a copy of current photo ID. Prison staff will sometimes ask a knowmore staff member who has already provided this letter to provide the same letter multiple times.

Prison staff do not always reply to requests to book appointments with our clients in prison, causing delays in booking appointments and requiring us to follow up on the requests.

The prison requires us to call the duty officer just before the appointment and generally will not move the client to a meeting room until this call has happened. However, when we attempt to call the duty officer before the appointment, the phone line is often engaged, delaying the start of the appointment.

The prison goes into lockdown at least several times a week at the time of day when legal appointments are scheduled. When this happens, we experience further delays, sometimes having to re-schedule the appointment to another day (where we may face the same issues again).

Clients in this prison are sometimes moved to another prison without us being informed in a timely manner.

Clients tell us that there is very little counselling and psychological support available to them in this prison. There is also limited access to rehabilitation programs, delaying clients' release from prison once they become eligible for parole. Aboriginal and/or Torres Strait Islander clients report that the environment is culturally unsafe and that they have experienced racist acts and comments from prison staff.

Clients in this prison have no secure, confidential place to store confidential documents. Prison staff frequently search clients' cells, placing the security and confidentiality of documents at further risk.

Many clients in this prison do not have identity documents that meet the NRS's requirements. They generally do not receive assistance from prison staff to obtain standard identity documents, creating further delays and complications in progressing their redress applications.

We are aware of organised claim farming and related practices happening in this prison.

Changes to the application process for survivors with serious criminal convictions

We made detailed comments in our primary submission to the Committee about improving redress for survivors with serious criminal convictions.⁹⁸ As noted on page 10, this refers to survivors who have been sentenced to imprisonment for 5 years or longer for an offence.⁹⁹ In summary, we noted that the serious criminal convictions provisions in the NRS Act:

- create significant barriers to and prevent a significant number of survivors from accessing redress
- contradict recommendations from both the Royal Commission and the second year review
- affect both survivors who are presently in prison and survivors who have been released
- contribute to unfairness, inconsistency and lack of transparency in the operation of the NRS (see discussion on pages 13 to 16 above)
- disproportionately affect Aboriginal and/or Torres Strait Islander survivors (noting terms of reference 1, 2 and 3 of the Committee's inquiry).¹⁰⁰

In light of these issues, we recommended that the Australian Government should 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).¹⁰¹

The recent amendments to the NRS Act have changed the application process for survivors with serious criminal convictions. Before the amendments, all survivors with serious criminal convictions were required to complete a 'special assessment process' if they wished to apply for redress. The special assessment process involves the NRS seeking advice from relevant Attorneys-General and requires that 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'.¹⁰²

Following the recent amendments, survivors with serious criminal convictions are only required to go through the special assessment process if the serious criminal conviction was for one of the following types of offences:

- unlawful killing

98 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 48–50.

99 NRS Act, section 63(1).

100 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 48–50.

101 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 50, recommendation 20.

102 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 48.

- a sexual offence
- a terrorism offence.¹⁰³

In addition, the NRS may require a survivor with a serious criminal conviction to go through the special assessment process if the NRS determines that there are exceptional circumstances that make it likely that providing redress to the survivor may ‘bring the scheme into disrepute or adversely affect public confidence in, or support for, the scheme’.¹⁰⁴

These changes are likely to significantly reduce the number of survivors with a serious criminal conviction who have to undergo a special assessment process before they can be considered for redress. While this is a step forward, it falls significantly short of our recommendation in our primary submission to the Committee and recommendation 3.2 of the second year review. Many survivors are still required to go through the special assessment process, involving all the issues outlined on page 31 above.

Further, the NRS still requires all survivors with a serious criminal conviction to complete an additional information form if they wish to apply for redress.¹⁰⁵ The form asks survivors to consent to a Nationally Coordinated Criminal History Check and provide information about their serious criminal conviction(s) and their rehabilitation.¹⁰⁶ Many of our clients with a serious criminal conviction feel treated with suspicion and judged by the additional information form. This includes many clients who will ultimately not have to undergo the special assessment process and many survivors who will ultimately receive redress.

As noted on page 24, the serious criminal convictions provisions remain a significant barrier to accessing redress for many survivors in prison, limiting the effectiveness of the recent change to allow survivors in prison to apply for redress, without having to demonstrate exceptional circumstances.

We recommend that the Australian Government allow all survivors with serious criminal convictions to apply for redress, without additional requirements such as the special assessment process or the additional information form.

Recommendation 7

The Australian Government should allow all survivors with serious criminal convictions to apply for redress, without additional requirements such as the special assessment process or the additional information form.

103 NRS Act, section 63(2)(a).

104 NRS Act, sections 63(2)(b) and 63(2B).

105 National Redress Scheme, *Serious criminal convictions additional information form*, accessed 16 July 2024, p 1, <www.nationalredress.gov.au/sites/default/files/documents/2024-04/serious-criminal-conviction-additional-information-form-printable.pdf>.

106 National Redress Scheme, *Serious criminal convictions additional information form*, pp 7–8.

Changes to the review process for redress decisions

As noted on page 15, the second year review made many recommendations to improve the fairness, consistency and transparency of redress decisions. These included a significant recommendation to improve the internal review process for redress decisions (recommendation 5.1), which we have extracted below.¹⁰⁷

Recommendation 5.1 of the second year review

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

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

The Australian Government has said it supports this recommendation.¹⁰⁸ However, the Australian Government has only implemented the recommendation in part, as we discuss further below.

The recent amendments to the NRS Act:

- allow survivors to provide new information with their review application¹⁰⁹
- allow the NRS to request new information as part of the review process¹¹⁰
- provide some protection against the NRS reducing a redress payment as a result of the review.¹¹¹

knowmore welcomes the change to allow survivors to provide new information with their review application. knowmore has long advocated for this change, noting the need for survivors to be able to effectively challenge the NRS's initial redress decisions.¹¹² However, we are concerned that, following the recent amendments:

107 Robyn Kruk AO, *Final report*, p 159, recommendation 5.1.

108 Australian Government, *Response to the second year review*, p 19.

109 NRS Act, section 73(3).

110 NRS Act, section 75A.

111 NRS Act, section 75(4).

112 knowmore, *Submission to the Joint Select Committee on Implementation of the National Redress Scheme*, pp 21–23; knowmore, *Submission to the second anniversary review of the National Redress Scheme*, 30 September 2020, pp 29–32, <knowmore.org.au/wp-content/uploads/2020/11/submission-second-anniversary-review-of-the-national-redress-scheme-cth.pdf>.

- the NRS can still reduce a redress payment as a result of the review process in some circumstances, including as a result of new information –¹¹³ for example, as a result of new information about a prior payment¹¹⁴
- there are few limits on the NRS’s ability to request new information as part of the review process¹¹⁵
- the NRS is not required to complete the review until the requested information is provided¹¹⁶
- the NRS has said they may choose to revoke a redress offer as a result of new information, rather than completing a review –¹¹⁷ we are concerned that this denies survivors the right to have their offer reviewed by a different decision-maker, may be inconsistent with section 75 of the NRS Act and undermines the intent of the changes to the review process.

As a result, the review process continues to include deterrents for a survivor who may wish to seek a review of their redress decision.¹¹⁸ It continues to be a process that is not survivor-focused or trauma-informed.

The NRS has said that a survivor can, in most circumstances, withdraw an application for review that would otherwise result in a redress payment being reduced.¹¹⁹ While this is welcome, we consider that section 75 of the NRS Act should also include clear legislative protection against a redress payment being reduced as a result of the review process in all circumstances.

We recommend that the Australian Government amend the NRS Act to ensure that:

- a survivor’s redress payment cannot be reduced as a result of an internal review
- there is no adverse impact for a survivor if they choose not to provide new information in response to a request from the NRS as part of the review process.

113 NRS Act, section 75(4).

114 *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (Cth) (NRS Rules), rule 17(3). For further discussion about the inconsistent and unfair treatment of prior payments, see knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 19–21 and 42–44.

115 The NRS can request additional information as part of the internal review process if the reviewer ‘has reasonable grounds to believe that the person who has applied for review has information that may be relevant to the review’. See NRS Act, section 75A.

116 NRS Act, section 75A(4).

117 See NRS Rules, rule 17(2).

118 For further discussion, see knowmore, *Submission to the second anniversary review of the National Redress Scheme*, p 31.

119 See NRS Act, section 74.

Recommendation 8

The Australian Government should amend the National Redress Scheme Act to ensure that:

- a survivor's redress payment cannot be reduced as a result of an internal review
- there is no adverse impact for a survivor if they choose not to provide new information in response to a request from the National Redress Scheme as part of the review process.

Changes to when protected information can be disclosed

We made detailed comments in our primary submission to the Committee about shortcomings of the protected information provisions in the NRS Act, illustrating how these shortcomings compromise the NRS's ability to provide redress in a way that is survivor-focused and trauma-informed.¹²⁰ In particular, we noted:

- a lack of transparency in the NRS's approach to protected information provisions
- survivors' concerns that protected information provisions enable secrecy by the NRS and institutions
- inadequate protections for survivors' information.¹²¹

We made 8 recommendations to improve how the use of information works in relation to the NRS (recommendations 26–33 of our primary submission to the Committee).¹²²

The recent amendments to the NRS Act have made some changes to when protected information can be disclosed. Generally speaking, the amendments:

- clarify that the NRS can provide applicants with certain information about non-participating institutions¹²³
- clarify that the NRS can disclose protected information to public trustees for certain purposes in relation to financial management orders¹²⁴

120 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 65–75.

121 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 66.

122 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 12–13, recommendations 26–33.

123 NRS Act, section 95B.

124 NRS Act, section 96A.

- allow the broader disclosure of protected information for the purpose of institutions undertaking investigation and disciplinary procedures.¹²⁵

knowmore supported the clarification that the NRS can provide applicants with certain information about non-participating institutions.¹²⁶ In our view, this is a step towards addressing survivors' concerns (noted on page 35 above) that the protected information provisions enable secrecy by the NRS and institutions.

We note that, even before the recent amendments, the NRS Act permitted the disclosure of protected information 'for the purposes of the scheme' and 'with the express or implied consent of the person or institution to which the information relates'. In our primary submission to the Committee, we expressed our view that the protected information provisions of the NRS Act would permit the NRS to disclose significantly more information to survivors than was occurring in practice.¹²⁷ We recommended that the NRS make greater use of existing authorisations within the protected information provisions of the NRS Act to provide significantly more information to survivors, including adequate reasons for the withholding of information if there remains some information that cannot be disclosed.¹²⁸ We remain keen to see that this change occurs in practice.

knowmore also expressed concern about the limited safeguards in relation to the recent changes to allow the broader disclosure of protected information for the purpose of institutions undertaking investigation and disciplinary procedures.¹²⁹ As we commented in our primary submission to the Committee:

*... we consider that the Australian Government should amend the NRS Act to implement a general requirement for the NRS and institutions to consult with survivors, and to obtain survivors' genuine and informed consent, before disclosing survivors' information. We recognise that there may be exceptional circumstances where the law requires information to be disclosed – for example, for child safety purposes. In these circumstances, the NRS Act should require the NRS and institutions to handle the disclosure in a trauma-informed way that minimises the impacts on the survivor.*¹³⁰

We noted that there were ongoing issues with the inappropriate disclosure of survivors' information, relating both to what information is disclosed and how the disclosure is

125 NRS Act, section 98(2)(d).

126 knowmore, *Proposed new law for the National Redress Scheme*; knowmore, *A new law for the National Redress Scheme*.

127 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 66–67.

128 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 67, recommendation 26.

129 knowmore, *Proposed new law for the National Redress Scheme*; knowmore, *A new law for the National Redress Scheme*.

130 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, p 74.

handled.¹³¹ In the absence of broader reforms to the protected information provisions to better protect survivors' information, we are concerned that the recent changes in relation to investigation and disciplinary procedures will contribute to ongoing issues with the inappropriate disclosure of survivors' information.

The protected information provisions in the NRS Act are complex, requiring more than a piecemeal approach to reform. We recommend that the Australian Government and the NRS implement the 8 recommendations from our primary submission to the Committee about improving how the use of information works in relation to the NRS.¹³²

Recommendation 9

The Australian Government and the National Redress Scheme should implement the 8 recommendations from our primary submission to the Committee about improving how the use of information works in relation to the National Redress Scheme (recommendation 26–33 of our primary submission to the Committee).

A new process to allow some finalised applications to be re-assessed

The recent amendments to the NRS Act include a new process to allow some finalised applications to be re-assessed (the re-assessment process). As noted on page 10, the re-assessment process is due to commence before the end of September 2024.¹³³

The re-assessment process may be relevant to a survivor where:

- more than one institution was identified by the survivor in their redress application (or identified by the NRS while processing the survivor's redress application)
- the survivor had their redress application finalised with an offer of redress and with at least one non-participating institution, and
- at least one of the non-participating institutions later joined the NRS or was later covered by a government under the NRS's funder of last resort arrangements.¹³⁴

The re-assessment process may allow a survivor to receive a higher redress payment and a direct personal response from the institution(s) that later came to participate in the NRS.¹³⁵

131 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 72–73.

132 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 12–13, recommendations 26 to 33.

133 NRS Amendment Act, section 2(1).

134 NRS Amendment Act, section 71B.

135 NRS Amendment Act, sections 71G–71L.

knowmore welcomed the establishment of the re-assessment process.¹³⁶ The re-assessment process will mitigate the injustice to survivors who accepted a redress payment with a non-participating institution (see the discussion about non-participating institutions and inadequate funder of last resort arrangements on pages 16 to 18 above).

We have received limited information about how the re-assessment process will work in practice or how it will be communicated to survivors who are eligible to have their finalised application re-assessed. We are keen to see that the re-assessment process is implemented in a way that is survivor-focused, trauma-informed and culturally safe, noting that the process represents an important legal right for survivors, while also recognising that it will be distressing for many survivors to be contacted out-of-the-blue about finalised matters. This risk will be heightened for survivors who do not have adequate support.

Recommendation 10

The National Redress Scheme should ensure that the new process to allow some finalised applications to be re-assessed is implemented in a way that is survivor-focused, trauma-informed and culturally safe, noting the importance of adequate support for survivors.

We also note that the re-assessment process will not address the injustice to survivors who:

- did not identify all relevant institutions in their application – for example, because they were not ready to disclose all of the abuse that they experienced
- received an ineligible outcome – for example, because the NRS could not identify a participating institution that it considered to be responsible for the abuse.

In relation to this, we note the comments from the second year review about the restriction preventing survivors from making more than one application to the NRS:

The single application restriction ... fails to acknowledge the manner in which traumatic memory can be recovered by applicants ... It may also be punitive if a mistake is discovered after acceptance of the offer or if there is a policy change that would have favoured the applicant.

...

The inability to submit a second or supplementary application places restrictions on survivors and inhibits the flexibility of the Scheme. The Review understands that the justification for allowing one single application is to avoid the practical difficulty of dealing with subsequent applications where redress payments have already been made and may need to be adjusted. However, the Review is of the view that the focus should be on the applicants, not the institutions' benefit, and there is merit in the Scheme reconsidering this restriction ...¹³⁷

¹³⁶ knowmore, *Proposed new law for the National Redress Scheme*; knowmore, *A new law for the National Redress Scheme*.

¹³⁷ Robyn Kruk AO, *Final report*, pp 70–71.

The second year review recommended that the Australian Government ‘review the current restriction on survivors making a single application, and assess this requirement to ensure fairness to the survivor and to acknowledge any changes in their circumstances or additional available information’.¹³⁸

In knowmore’s view, further reform is required to ensure that survivors are not unfairly disadvantaged by the single application restriction. In particular, we consider that the Australian Government should make further amendments to the NRS Act to ensure that the re-assessment process applies to all survivors who are affected by a change in circumstances after their redress application is finalised.

Recommendation 11

The Australian Government, working with state and territory governments, should implement further reform to the National Redress Scheme to ensure that survivors are not unfairly disadvantaged by the single application restriction. In particular, the Australian Government should make further amendments to the National Redress Scheme Act to ensure that the re-assessment process applies to all survivors who are affected by a change in circumstances after their redress application is finalised.

We make a further recommendation below about mitigating the injustice and harm to survivors who have received an ineligible outcome due to an institution not being covered by the NRS.

Survivors who have received an ineligible outcome due to an institution not being covered by the National Redress Scheme

As noted on page 38, the re-assessment process will not address the injustice to survivors who received an ineligible outcome.

We note that the NRS Act includes a process for the NRS to revoke a redress decision,¹³⁹ which can provide a pathway for survivors who have received an ineligible outcome to have their redress application reconsidered.¹⁴⁰ We consider that the NRS should adopt a formal practice of revoking a redress decision when requested by a survivor who received an ineligible outcome where at least one relevant non-participating institution later joins the NRS or is later covered by a government under the NRS’s funder of last resort arrangements. We note that this practice may be possible under the current legislative framework, which allows the NRS to revoke a redress decision if the NRS receives new information that would have changed the decision.¹⁴¹ We would welcome a clear commitment to this approach via an amendment to the National Redress Guide and/or the NRS Rules, pending legislative reform to broaden the application of the re-assessment process.

138 Robyn Kruk AO, *Final report*, p 75, recommendation 3.1.

139 NRS Act, section 29(4)–(7).

140 See generally Australian Government, *National Redress Guide: revocation*, 15 April 2024, accessed 16 July 2024, <guides.dss.gov.au/national-redress-guide/1/1/r/65>.

141 NRS Rules, rule 17(2).

Recommendation 12

The National Redress Scheme should adopt a formal practice of revoking a redress decision when requested by a survivor who received an ineligible outcome in circumstances where at least one relevant non-participating institution later joins the National Redress Scheme or is later covered by a government under the National Redress Scheme's funder of last resort arrangements.

The Australian Government should provide a clear commitment to this approach via an amendment to the National Redress Guide and/or the National Redress Scheme Rules, pending legislative reform to broaden the application of the re-assessment process.

Concern about the capacity of the National Redress Scheme to deliver redress to all eligible survivors

We acknowledge that the NRS has its own resourcing limitations that may impact on its capacity. As noted on page 4, knowmore holds concerns about the capacity of the NRS to deliver redress to all eligible survivors before the legislated end of the NRS on 1 July 2028. Our concerns are reinforced by data about the number of eligible survivors who have applied for redress and data about delays in processing applications, which we discuss on pages 42 to 43. While we acknowledge the limitations of this data, it is nonetheless indicative of the NRS's capacity to deliver redress to all eligible survivors. This data suggests that the NRS and the redress support system for survivors are approaching a dangerous crunch point in the final year of the NRS (discussed on pages 43 to 44).

The number of eligible survivors who have applied for redress

The Royal Commission estimated that 60,000 eligible survivors would make a claim for redress.¹⁴² The most recent data we are aware of raises our concern that the NRS is not presently on-track to deliver redress to 60,000 survivors by 1 July 2028.

For example, the Department of Social Services (DSS) reported that, as at 15 September 2023, 14,045 applications to the NRS had been determined to be eligible.¹⁴³ This indicates that, as at 15 September 2023, less than a quarter (about 23%) of eligible applicants had applied and been found eligible for redress by the NRS.

Similarly, the NRS recently reported that, as at 5 July 2024, there had been 44,342 applications to the NRS and 15,816 payments made.¹⁴⁴ These figures are only of partial assistance in considering the NRS's capacity to deliver redress to all eligible survivors, as they do not directly correspond to the Royal Commission's estimate that 60,000 eligible

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

143 Australian Government (Department of Social Services), *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme* (submission 9, supplementary submission 8), accessed 26 July 2024, p 7, <www.aph.gov.au/DocumentStore.ashx?id=e043ba05-6fce-4d46-a65f-97ddddd5797&subId=734158>.

144 National Redress Scheme, *National Redress Scheme – update*, 16 July 2024.

survivors would make a claim for redress.¹⁴⁵ Nonetheless, these figures indicate that, as at 5 July 2024, only about a quarter (26%) of eligible survivors had applied and received a payment.

Both of the dates that we have referred to (15 September 2023 and 5 July 2024) are past the halfway point for the NRS (around 1 July 2023). As we acknowledged on page 41, this data has limitations and is only indicative. However, we find it deeply concerning that, past the halfway point for the NRS, the published data indicates that redress may have only been delivered to about a quarter of eligible survivors.

Delays in processing applications

Delays in processing applications for redress raise further concerns about the capacity of the NRS to deliver redress to all eligible survivors. As we noted in our supplementary submission on resourcing, every major review of the NRS has raised concerns about delays in processing redress applications.¹⁴⁶ The second year review reported that the NRS takes an average of 12.5 months to process an application and 13.4 months to process a priority application, commenting that ‘applicants should not wait 13.4 months or more for an outcome’.¹⁴⁷ Despite this, recent data suggests little to no improvement in processing times.¹⁴⁸ It remains common for our clients to face delays of this nature or longer, causing distress as clients do not know whether they will be believed and receive a redress payment.

145 For example, the number of applications presumably includes applications that do not lead to an eligible outcome. The number of payments made is likely to be closer to the number of survivors who have applied and been found eligible for redress, but presumably does not include survivors who were found eligible but rejected a redress offer or survivors who accepted a redress offer with a nil payment.

146 knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme* (submission 14, supplementary submission 1), 28 April 2023, p 3, <www.aph.gov.au/DocumentStore.ashx?id=4fa258fb-5453-44e9-a08a-5f5fe5a98e63&subId=734313>.

147 Robyn Kruk AO, *Final report*, pp 43 and 115.

148 The recently published data is likely to provide a conservative indication of average processing times, as the data dates to when an applicant was notified of a redress outcome, not when the application was finalised (the measure used in the second year review). The NRS has reported that, as at 29 December 2023, the average processing time for applications was 12.2 months. DSS has reported that, as at 15 September 2023, the average processing time for a priority application for the 2023–24 financial year was 12.5 months. See National Redress Scheme, *Strategic Success Measures: December 2023*, 24 April 2024, p 3, <www.nationalredress.gov.au/document/1921>; Australian Government (Department of Social Services), *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme* (submission 9, supplementary submission 11), accessed 26 July 2024, p 2, <www.aph.gov.au/DocumentStore.ashx?id=67aa065c-292c-491d-b3ea-a7d50c622ccd&subId=734158>; Robyn Kruk AO, *Final report*, p 44.

DSS has reported that the NRS finalised 3,862 applications in the 2022–23 financial year.¹⁴⁹ If the NRS maintains this rate of processing, it will finalise a further 19,310 applications by the end of the NRS, not all of which will lead to eligible outcomes. This will not clear the present backlog of applications (24,157 applications as at 5 July 2024),¹⁵⁰ let alone deliver redress to all eligible survivors by the end of the NRS.

As noted on page 8, we welcome the budget's commitment of an additional \$33.3 million over 4 years to the redress support system. We hope this funding will assist to reduce NRS processing times, although we continue to hold concerns about the security and adequacy of funding (see discussion on pages 8 to 9).

A dangerous crunch point for the National Redress Scheme

In light of the issues discussed above, knowmore is concerned that we are approaching a dangerous crunch point for the NRS. We anticipate a surge in redress applications just before the legislated deadline for applications on 30 June 2027.¹⁵¹ knowmore recognises and supports survivors' legal right to apply for redress at any time before the deadline. However, we are also concerned that the final year of the NRS (30 June 2027 to 1 July 2028) is likely to be accompanied by increased pressure on an already overwhelmed system of survivor support services and an extension of the already lengthy delays in processing redress applications. We noted (on page 42) that average processing times for redress applications continue to exceed 12 months. In light of this, and the other data discussed above, we hold serious concerns that the NRS will not be in a position to process the volume of applications required in the final year of the NRS, let alone to do this in a way that is survivor-focused, trauma-informed and culturally safe.

We are facing a situation in which many thousands of eligible survivors of institutional child sexual abuse are at risk of missing out on the redress that they are legally entitled to, with many thousands more facing retraumatisation with the approaching NRS crunch point. As noted on page 9, survivors who experienced institutional child sexual abuse after 30 June 2018 are not eligible for the NRS,¹⁵² highlighting a significant and growing gap in the redress and compensation options available to many survivors of institutional child sexual abuse.¹⁵³

149 Australian Government (Department of Social Services), *Annual report 2022–23*, 11 October 2023, p 117, <www.dss.gov.au/sites/default/files/documents/10_2023/dss-annual-report-published-version_0.pdf>.

150 National Redress Scheme, *National Redress Scheme – update*, 16 July 2024.

151 NRS Act, section 20(1)(e). See also Finity Consulting, *National Redress Scheme participant and cost estimates*, July 2015, p 30, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/national_redress_scheme_participant_and_cost_estimates_report.pdf>.

152 NRS Act, section 14(1)(c).

153 For further discussion of the inadequate legal options for victims and survivors of child sexual abuse who are not eligible for the National Redress Scheme, see knowmore, *Submission to the Australian Law Reform Commission's inquiry into justice responses to sexual violence*, pp 42–43.

These issues cannot wait for the eighth year review of the NRS, which is not due to begin until the second half of 2026.¹⁵⁴ knowmore recommends that the Australian Government, and all state and territory governments, immediately prioritise planning for the legislated end of the NRS, in partnership with survivors and survivor support services.

Recommendation 13

The Australian Government, working with state and territory governments, should immediately prioritise planning for the legislated end of the National Redress Scheme, in partnership with survivors and survivor support services.

knowmore respectfully suggests that planning for the legislated end of the NRS would merit further inquiry by the Committee well in advance of the eighth year review. We would welcome the opportunity to contribute to any inquiry of this nature.

Recommendation 14

The Joint Standing Committee on Implementation of the National Redress Scheme should consider further inquiry into planning for the legislated end of the National Redress Scheme, well in advance of the eighth year review of the National Redress Scheme.

¹⁵⁴ NRS Act, section 192(3).

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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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