

30 March 2023

Our ref: ADCDOC23/615

Senator Catryna Bilyk
Chair
Joint Standing Committee on the Implementation of the National Redress Scheme
Via email only to: redress@aph.gov.au

Dear Senator Bilyk

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

The NSW Ageing and Disability Commission (ADC) welcomes the opportunity to make a submission to the Joint Standing Committee on the Implementation of the National Redress Scheme and to respond to the discussion paper published by the Committee.

Relevant background

The ADC was established on 1 July 2019, with the objectives of protecting adults with disability and older people from abuse, neglect and exploitation, and protecting and promoting their rights.

A key role of the ADC is to respond to reports about adults with disability and older people in NSW who are subject to, or at risk of, abuse, neglect and exploitation in their family, home and community, including by providing advice, making referrals, and conducting investigations.

In 2020-2022, the ADC received 10,963 reports, involving a 40% increase over the three-year period. Of the 10,963 reports:

- the majority (77%) involved older people,¹ including older people with disability
- one-quarter (23%) involved adults with disability (who were not older people)
- three percent involved older people and adults with disability who identified as Aboriginal and/or Torres Strait Islander
- for older people, the most common alleged abuse involved psychological abuse (40%), financial abuse (28%) and neglect (21%), primarily by their adult children or other family members
- for adults with disability, the most common alleged abuse involved psychological abuse (34%), neglect (26%) and financial abuse (18%), primarily by their parents or other family members
- for both older people and adults with disability, psychological abuse has commonly been used to enable financial abuse and exploitation, including verbal threats, pressure, blackmail, and harassment.

¹ Under the *Ageing and Disability Commissioner Act 2019* [NSW], 'older adult' means a person who is aged 65 years and older, or aged 50 and older if the person is Aboriginal or Torres Strait Islander.

In 2021, concerns were raised with the ADC about the circumstances of some older survivors of institutional child sexual abuse with declining decision-making capacity. In particular, concerns were raised about two key aspects:

1. Options for best supporting survivors with declining decision-making capacity who need to make decisions in relation to pursuing claims through civil litigation or the National Redress Scheme (NRS).
2. The need to improve safeguards for survivors from financial abuse and exploitation, including in relation to NRS payments.

In response to these concerns, the ADC held two roundtables with NSW stakeholders in 2021 and 2022 to explore the issues, discuss practical options for strengthening safeguards and mitigating risks, and to consider opportunities for further action.

The submission of the ADC has been informed by the roundtable discussions with key stakeholders and our experience in handling reports about abuse, neglect and exploitation of adults with disability and older people, including survivors. Given the role of the ADC, our submission is focused on improving safeguards for survivors from financial abuse and exploitation associated with NRS payments.

Effect of the protected information provisions in legislation

In the experience of the ADC, the protected information provisions are too restrictive. While we recognise the importance of protecting information in relation to survivors, there needs to be sufficient scope to enable action on abuse.

It is critical that actions are taken as early as possible in response to identified or suspected financial abuse of survivors. This includes parties being able to safely contact the survivor to discuss the concerns and safeguarding options, and to raise concerns with safeguarding bodies in relevant cases. However, the ADC understands that the restrictive provisions in relation to the use of personal and protected information present a barrier to key parties, including banks and other financial institutions, taking these and other important actions to support survivors.

While section 93(1)(f) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act) provides for a person to obtain, record, disclose or use protected information if they believe on reasonable grounds that this action is ‘necessary to prevent or lessen a serious threat to an individual’s life, health or safety’, this does not adequately cover financial abuse.

In our experience, the impact and effects of financial abuse are devastating, with significant and ongoing consequences for the adult with disability or older person. For people with a trauma history, the impact is compounded. At a minimum, all efforts should be made to remove barriers to enable banks and financial institutions to contact a survivor (customer) where they identify or suspect that the customer may be subject to financial abuse. We support the submission from Survivors & Mates Support Network (SAMSN) to the Committee in relation to this issue.

In our view, there are a number of ways this issue could be resolved, including (but not limited to):

- issuing public guidance to clarify that a ‘serious threat to an individual’s life, health or safety’ under section 93(1)(f) can include financial abuse
- amending the Act to ensure that serious threat to an individual’s financial circumstances is included in section 93(1)(f).

Given the impact of financial abuse on survivors, the ADC emphasises the need for action to be taken to address this issue as a matter of priority.

Availability and accessibility of information for survivors

The work of the ADC has highlighted the importance of survivors receiving clear and accessible information about financial abuse, at the right time. While redress support services and others have useful information about financial abuse and steps that survivors can take to protect themselves and their NRS payment, we are conscious that most NRS applicants do not access support services.

In our view, there is a need for survivors to receive clear information that:

- provides brief, simple and frank messaging about the risk of financial abuse they face in relation to their NRS payment
- identifies the common ways this financial abuse occurs
- identifies how they can protect themselves and their payment and where they can obtain support
- is available in a range of accessible formats, and
- is provided **after** they have accepted the offer but **before** the payment is made.

The timing of this messaging is critical. It is important that applicants receive information and are able to access financial counselling and other support from an early point and at any stage in the process. However, the period immediately before the survivor receives the payment provides a vital opportunity for reducing financial abuse – the timing helps them to better connect the messaging to their own situation and to take steps to protect their finances and/or be more willing to accept support to do so.

In our view, to support the timing and impact of this communication to survivors, there would be merit in considering slightly extending the length of time between the survivor accepting the offer and receiving the payment. We note the submission of the Department of Social Security that more than 90% of final NRS payments are made within 14 days of acceptance. We would not be supportive of prolonged delays with the payment; however, a slight extension to the timeframe would provide greater scope for safeguarding arrangements to be put in place while not unfairly disadvantaging the survivor.

More broadly, stakeholders in our roundtable discussions were consistent in their views about the importance of financial counselling support for survivors, and the need for:

- a significant focus to be put on Aboriginal and multicultural communities
- creative approaches to engage survivors in conversations about financial counselling and safeguards, and
- more culturally informed and accessible communications that talk about money in a culturally appropriate way.

Awareness of the scheme

While uptake of the NRS is increasing, raising awareness of the scheme appears to have mainly rested with the redress support services. While these organisations do an excellent job, we understand that some are struggling to meet current demand within existing resources.

In addition to a national community communication and education campaign about the scheme, there would be merit in a targeted and funded approach focused on community organisations. The work of the ADC consistently highlights the critical role that community organisations play in connecting locally to people needing support; providing key information at the time that it is needed; and linking individuals to necessary assistance. Among other things, community and non-government organisations provide an important mechanism for the NRS to disseminate information via a trusted source, and to connect to survivors who would not otherwise be able to be reached.

Accessibility of the forms

We have heard from a range of stakeholders that the NRS forms are long, have inaccessible language for a range of people with disability or who have lower levels of literacy, and dissuade some survivors from pursuing the process.

In particular, in relation to the Redress Payment Choice form for survivors to indicate whether they wish to receive payment by instalment, a lump sum or a combination of both, we have heard that the form is long, the language is inaccessible for many survivors, and the high number of choices, including the timing of instalments, becomes overwhelming. We have been advised that this is causing some survivors who wanted to take the payment by instalments to opt instead for the lump sum, which increases their risk of financial abuse.

There would be merit in reviewing the forms with a view to simplifying the language, maximising accessibility, and making it easier for survivors to make informed decisions.

Thank you for the opportunity to make a submission on this important issue. Please do not hesitate to contact Rory O'Neill, Principal Project Officer, on [redacted] or [redacted] if you have any questions or would like to discuss.

Yours sincerely

Robert Fitzgerald AM
NSW Ageing and Disability Commissioner