



**Western NSW
Community Legal
Centre Inc**



27 February 2023

Joint Standing Committee on Implementation of the National Redress Scheme

Dear Committee,

Re: Inquiry into the Operation of the National Redress Scheme

Western NSW Community Legal Centre Inc (**WNSWCLC**) is a community-based, not-for-profit organisation located in Dubbo that provides free legal services to people in Western NSW who experience social, economic and/or geographic disadvantage. WNSWCLC provides legal advice, ongoing casework, referrals and representation, and offers outreach services to rural and remote towns, servicing an area of approximately 200,000 square kilometres, bordered by Mudgee in the east, the Queensland border to the north, Bourke and Cobar in the west and Forbes in the south. WNSWCLC also engages in community legal education, law reform and offers media comment on issues of importance.

Western Women's Legal Support (**WWLS**) is a program of WNSWCLC providing services that specialise in family and domestic abuse. WWLS was established in 2015 after the Commonwealth Government identified Western NSW as having some of the highest rates of family and domestic abuse in the country. WWLS provides holistic legal and non-legal support to female and children victim-survivors of family, domestic and sexual abuse. WWLS covers the same geographic area as WNSWCLC, but has recently broadened its area to include Parkes, West Wyalong, Lake Cargelligo and Condobolin. WWLS is the only family and domestic abuse legal service based west of the Blue Mountains that assists all demographics of society, including Aboriginal and Torres Strait Islander, culturally and linguistically diverse, gender and sexually diverse and homeless peoples, by providing face to face and telephone services across our outreach areas.

The offices of WNSWCLC and WWLS are located on the land of the Tubba-Gah people of the Wiradjuri Nation, who we recognise as its traditional owners and we acknowledge that sovereignty was never ceded. In addition to Wiradjuri Nation, the area of Western NSW which we service spans across the traditional land of the Kamilaroi, Wongaibon, Wailwan, Ngemba, Barkindji, Murrwarri and Yuwaalaraay peoples. Western NSW represents approximately 2% of the total population of NSW but is home to over 10.5% of NSW's First Nations persons. In the 2021/2022 financial year, 39% of our clients identified as First Nations, reflecting the disproportionate disadvantage that First Nations people continue to face.

Whilst WNSWCLC and WWLS have had limited involvement with the National Redress Scheme (**Scheme**), we welcome the opportunity to provide the below feedback.



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WNSWCLC and WWLS response

WNSWCLC and WWLS will provide limited submissions in relation to the following Terms of Reference:

- 1 *Applications for redress from; persons with disability and First Nations people*
- 3 *Strategies that could assist persons with disability and First Nations people to access the Scheme*
- 4 *Availability of legal advice for survivors and their advocates and, in addition:*
 - b. *Opportunity for Scheme applicants to consider available legal options and to exercise their own choices.*
 - c. *Strategies to minimise instances of alleged claim farming or excessive fees.*
- 5 *The performance and effectiveness of support services for Scheme applicants, including:*
 - a. *Accessibility*
 - b. *Resourcing and funding levels*
- 7 *Any other relevant matters*

We have had the opportunity to review the set of submissions prepared by Knowmore, the specialist organisation on the Scheme. Knowmore's submission is extensive. It was disheartening to read we share similar concerns regarding the Scheme, (discussed below) and these have been raised in previous reviews. We endorse the recommendations set out in Knowmore's submissions, specifically to implement reforms that are overdue. We agree they need to be implemented as a matter of urgency.

1. Applications for redress from persons with a disability and First Nations people

Our scope of engagement with the Redress scheme is limited. We have not submitted applications for redress on behalf First Nations and persons with disability. Rather, we provide general advice on their rights and how to access the Scheme, including making appropriate referrals for assistance. WNSWCLC's main clientele for these referrals are First Nations people.

WWLS have referred First Nations people and persons with a disability to Knowmore. We are concerned about the stress on Knowmore's resources that such referrals from various services must place.

3. Strategies that could assist persons with a disability and First Nations people to access the Scheme

A majority of our clients seeking to access the Scheme live in regional, rural and remote areas, are incarcerated, have low literacy levels, may have a disability, are victim-survivors of domestic abuse, experience significant trauma and have limited financial means. Our clients prefer face to face contact rather than talking on the telephone. The Scheme and the services Knowmore provide are fantastic, however there can be logistical issues at times. For example, COVID-19 prevented Knowmore from coming out to our offices and helping clients, until last year. We note from Knowmore's resourcing, the trips were only a couple of times a year. We provide a legal outreach to our remote communities once a month to maintain engagement and access to our services.

Recommendation: That specific funding be directed towards free public legal assistance service providers in regional and remote areas to provide face-to-face legal assistance for persons with a disability and First Nations people accessing the Scheme.

4. Availability of legal advice for survivors and their advocates

b) Opportunity for Scheme applicants to consider available legal options; and

c) To exercise their own choices and strategies to minimise instances of alleged claim farming or excessive fees

Clients who have already made successful claims under the Scheme have reported paying tens of thousands of dollars in legal costs from their damages to private firms.

If our clients are not able to access the Scheme through free public legal assistance service providers then the alternate legal provider is a private solicitor, which is often not feasible for our clients: they are required to sign complex costs agreements and undertake remote communication methods, which they can find difficult. We are limited in our assistance due to resourcing and funding. If we were to receive funding then we can provide direct on the ground services to our regional and remote clients.

Recommendation: The Scheme allow all legal providers to advise and lodge applications, but be paid at a fixed rate exclusive of the damages awarded to applicants. This will regulate and ensure applicant's receive their full entitlement and reduce claim farming.

5. The performance and effectiveness of support services for Scheme applicants, including accessibility and resourcing and funding levels

While we can't assess the performance and effectiveness of support services, clients have communicated their concerns to us about their lack of financial literacy. They have expressed they wish they had ongoing support and financial counselling to ensure they do not spend such a large sum of money in a short time-frame.

Recommendation: The Scheme provide accessible financial counselling/planning and ongoing support after a claim has been paid, in regional, remote and rural areas. Such support provided is to be culturally safe and tailored to each individual's particular circumstances.

7. Any other relevant matters

Issue of "extreme circumstances"

There is a concern about the limiting nature and understanding of what constitutes "extreme circumstances" under the Scheme, which is highlighted in the below case study.

Case Study: WNSWCLC had a client who lodged his application for redress. He had received a prior settlement payment from the abusing institution. A decision was made by the Scheme to top up his payment to a total sum of \$100,000. He did not meet the exceptional circumstances test and was denied the extra \$50,000 available under the Scheme. The Reasons for Decision are not made available so it was not possible to assess why he was unsuccessful, nor to give him any detail around why he did not qualify for the extra payment. Our client was aware of other people who had been successful in getting the extra \$50,000. He described that being paid less made him feel worthless and couldn't understand why he was less deserving than others, as though what happened to him was somehow less serious.

Section 4 of the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018, states,

“Extreme circumstances: sexual abuse of a person occurred in **extreme circumstances** if:
(a) the abuse was penetrative abuse; and
(b) taking into account:
(i) whether the person was institutionally vulnerable; and
(ii) whether there was related non-sexual abuse of the person;

it would be reasonable to conclude that the sexual abuse was so egregious, long-term or disabling to the person as to be particularly severe.”

In our opinion, the definition of ‘extreme circumstances’ is archaic. A scheme aimed at dealing with childhood sexual abuse in an institution should not be containing a definition that, by its very nature, distinguishes between different levels of abhorrence for what happened to these survivors. To make it worse, the wording associated with it is offensive: ‘so long term’, ‘egregious’ and ‘disabling’ are inappropriate. All circumstances of penetrative abuse of a child under the care and authority of an institution should be deemed “particularly severe”. The only impact this definition can serve is to invalidate the experiences of those survivors who do not meet this threshold. It is unlikely that survivors who do meet the threshold will feel any great sense of validation or vindication, but even if they do, it is likely this number of people is significantly fewer than those who don’t meet the threshold and are left feeling less deserving.

Recommendation: The Scheme abolish the definition of extreme circumstances.

Recommendation: The Scheme set a universal limit and award that sum to all successful applicants. That way, the process and the compensation can allow for a better healing experience.

Conclusion

We ask the Committee to consider and implement the recommendations as set above.

We thank you for the opportunity to put the above comments forward in response in this review.

For any questions or to discuss this submission further, please contact Larissa Connolly, Solicitor,

Yours faithfully
Western NSW Community Legal Centre Inc
Per:

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