

## Joint Standing Committee on Implementation of the National Redress Scheme

### Responses to further questions raised by the Chair of the Committee following the Public Hearing on 7 July 2023

Prepared by

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- 1. The submission refers to the application process triggering shame and embarrassment, particularly question 44, and that this is leading to delays in completing the application of up to 2 years for some men.**

- a. How might question 44 be improved to minimise the trauma that may be triggered?**

The answer to question 44 is tied to the schedule set out in the assessment framework. What the applicant describes in answering question 44 determines whether they will receive \$5,000 as recognition of exposure abuse, \$30,000 as recognition of contact abuse or \$70,000 as recognition of penetrative abuse. The answer therefore is of fundamental importance.

SAMSN support staff report that the way they are managing the level of detail required to properly answer question 44, is to make sure the clients are aware in advance what is going to be asked, what detail will be needed; to make sure clients have proper supports in place both before and after their appointment with SAMSN. It is also important that those providing support to the client, their family and friends, know about the National Redress Scheme, what is being asked of the client and what support that client will need, both before and after the appointment.

Even so, when a client has experienced ‘penetrative’ abuse and has described to SAMSN support staff that abuse in terms of ‘he tried to try everything on me,’ ‘he was doing weird things to me’ and ‘he was trying to get me to do things to him’ – those descriptions have been found to be insufficient to enable the client to receive a payment for penetrative abuse. The advice from knowmore Legal Service was that the client needed to particularise what happened to him. Going back to the client to request more detail of the penetrative abuse, involved ensuring the client was very well supported and was fully aware of the reasons why this further information was needed – it was not because we did not believe him.

We have several suggestions that might go some way to minimise the trauma triggered by answering this question.

- a. giving consideration to a tick box answer for the type of abuse experienced: similar to the tick box format in question 58. Many of our clients prefer to mark boxes rather than to tell out loud what happened to them.
- b. giving consideration to requesting Independent Decision Makers to adopt a different approach to interpreting the information provided in answer question 44; that wording given in the answer to this question be viewed through a trauma-informed lens not a strictly legal lens. For example, how would someone impacted by childhood trauma describe penetrative abuse? Taking this approach to the written answer could be supplemented by knowledge the Scheme had about the institution and/or the perpetrator.



2. The submission refers to some private law firms either not providing information about the Redress Scheme or are actively discouraging clients from going down that path. In evidence given on 7 July, Mr Hughes-Cashmore referred to this practice as “really unethical behaviour”.
- a. Given that all lawyers have an obligation to act ethically in the interests of their clients, would the behaviour observed by SAMSN of some law firms constitute a breach of ethical standards?

SAMSN has supported many clients who are in the middle of the civil litigation process. Many are distressed by this process, the time being taken, the lack of communication with their lawyers and for some men the need to accept settlement offers well below the initial advice as to the amount they might receive. Many of these men did not know that there was a National Redress Scheme.

For staff it is very concerning, that it is being left to them as a support service, to inform clients there is an alternate route to obtain an acknowledgement of the sexual abuse and the impact of that abuse.

Certainly Section 4.1.1 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 provides that a solicitor must “*act in the best interests of a client in any matter in which the solicitor represents that client.*” Failing to mention the existence of an alternative process for clients to pursue justice, is in our opinion not acting in the best interests of clients and breaches ethical standards.

- b. If so, has any action been taken by SAMSN to alert the relevant authorities of this unethical and misleading behaviour? What has been the response (if applicable)?

SAMSN provides clients with details of the complaints procedures offered by the Office of the Legal Services Commissioner. SAMSN will support clients to complete the complaints form and will support the clients through this process. However, for our clients a point of exhaustion has often been reached and they make the decision not to pursue a formal complaint.

SAMSN management raises the issue of this behaviour in discussions with Federal and State politicians and in media interviews. While there is always a sympathetic hearing, little at this stage has been done to stem these behaviours.

SAMSN believes that if all Law Societies imposed an obligation on lawyers to advise clients in historical child sexual abuse matters, of the existence of the National Redress Scheme and of the free legal and support services available to assist clients, this behaviour could be stopped.



**c. Is the current legislation to deter unethical behaviour of law firms and claim farming adequate, or do these laws require reviewing?**

Claims farming has been outlawed in Queensland.<sup>1</sup> As New South Wales does not have these laws it is not possible for SAMSN, a New South Wales based service provider, to comment on the effectiveness or otherwise of the legislation in Queensland.

However, SAMSN believes that New South Wales and other jurisdictions where claims farming has not been made illegal, should introduce legislation similar to that in Queensland.

**3. The next question might be useful in measuring whether the level of awareness is increasing or decreasing since the commencement of the Scheme.**

By way of general comment, SAMSN is concerned that without active engagement by the Department of Social Services in the promotion of the National Redress Scheme, this Scheme will close with many survivors not having heard about it. Active media campaigns and co-ordinated community education programs are needed to let survivors of historical child sexual abuse know of the National Redress Scheme. Their anger and distress at missing out because they did not know of the Scheme, will far outweigh any misplaced concern that promotion of the National Redress Scheme will re-traumatise survivors.

**a. Now that we are half-way through the Scheme, how would you describe the spread of applications through SAMSN over the past 5 years. i.e. – has there been a steady flow of applicants since the start, a surge at the start followed by a gradual tail-off, or a steady increase from the start?**

From the commencement of the Scheme in 2018, there has been a steady flow of clients coming to SAMSN for support with their redress application. Following SAMSN's participation in the National Redress Scheme workshops for community organisations or the appearance of stories in the media about child sexual abuse, we do see an increase in men contacting SAMSN making enquiries about redress.

**b. Is the spread of applicants the same for all cohorts (people with and without disability, First Nations people, culturally and linguistically diverse)?**

Of the clients SAMSN has supported in the last financial year

- 21% have identified as Aboriginal or Torres Strait Islander
- 14% have identified as coming from a culturally and linguistically diverse background
- 45% have identified as living with disability

While the number of clients identifying as Aboriginal or Torres Strait Islander or coming from a culturally and linguistically diverse background has been steady, SAMSN has seen a significant increase in men with disability seeking support in relation to redress.



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<sup>1</sup> *Personal Injuries Proceedings and Other Legislation Amendment Act 2022 (Qld) Part 6*

**c. How do most of your clients first hear about the Redress Support Services offered by SAMSN?**

SAMSN is a Redress Support Service funded to support male survivors of institutional child sexual abuse living in New South Wales and to capacity build support services in New South Wales, Tasmania and South Australia working with male survivors of child sexual abuse.

Many clients come to SAMSN either as a result of visiting the National Redress Scheme website, where SAMSN is listed as a Redress Support Service or as a result of referral from other Redress Support Services. SAMSN is the only support service specifically supporting male survivors.

Clients are also referred to SAMSN directly by the National Redress Scheme.

SAMSN is part of the steering committee of Redress Support Services in New South Wales (the other services being Link-Up NSW, Kinchela Boys Home Aboriginal Corporation, Wattle Place and People with Disability Australia) delivering workshops around New South Wales to community organisations about the National Redress Scheme. Since May 2022, eight workshops have been delivered. As a result of these workshops, community organisations have been referring clients to SAMSN as one of the specialist Redress Support Services.

SAMSN also has an active social media presence reaching clients and potential clients, promoting its role as a Redress Support Service within the National Redress Scheme.

SAMSN's website contains resources providing information to men about the various options available to them in seeking justice. SAMSN has on its website the link to its 8 episode podcast series STRONGER. The podcast has had more than 6000 individual listeners since it was launched in February 2022. The second most popular episode has been the episode about the National Redress Scheme.

However, many clients making contact with SAMSN, have not heard about the National Redress Scheme. These clients have either phoned the Peer Support Phone Line, have contacted SAMSN for support with housing or Centrelink or are attending one of our Eight-week Support Groups. During the course of the intake process and initial conversations, clients often indicate they are survivors of institutional child sexual abuse. Our staff ensure the clients are made aware of their legal options and encourage them to obtain legal advice from knowmore Legal Service.



4. **The submission recommends a relaxation of the protected information provisions for banks. From my understanding, banks would usually have an obligation to investigate potential money laundering whenever a large sum is deposited into an account. Being prevented from investigating due to protected information obligations, this often leads to difficult and embarrassing interactions between the client and the bank.**

- a. **Could you please elaborate on how and why these difficult and embarrassing interactions come about?**

In September 2021 and March 2022, SAMSNS together with the NSW Ageing and Disability Commission held roundtable discussions inviting key organisations supporting clients who had received redress monies, to attend to discuss emerging issues.

The organisations in attendance included representatives from knowmore Legal Service, Legal Aid, Seniors Rights Service, Kinchela Boys Home Aboriginal Corporation, the Australian Banking Association, Wattle Place, People with Disability Australia, Blue Knot Foundation, a private law firm, NSW Public Guardian, Justice Connect, Settlement Services International, Financial Counselling Foundation and one of the four major banks. At both roundtables, concerns were expressed about clients, particularly elderly clients in receipt of Centrelink benefits or low wages, suddenly receiving large sums of money into their bank accounts from redress, leaving them vulnerable to financial abuse.

We were advised some of these clients reported embarrassing discussions taking place in banks with bank staff questioning where ‘this money’ had come from. There were assumptions being made by bank staff that the money had found its way into their account as a result of money laundering. The protected information provisions prevented bank staff from asking whether the money had been deposited because of a successful application to the redress scheme.

Many of these clients reported to services that they had to explain to bank staff why the money was in their account. The clients reported feeling ashamed, embarrassed and that they were not being believed.

The banking representatives at the roundtable reported that not only were these situations difficult for the client/customer but also for bank staff.

If the protected information provisions were relaxed to allow bank staff in limited circumstances including those set out above, to ask if the money was in the account as a result of an application to the National Redress Scheme, the trauma involved could be reduced.



**b. Would a relaxation of protected information obligations for banks potentially lead to privacy concerns for applicants, particularly in regional and rural communities?**

SAMSN accepts there is a tension between the need to maintain a person's privacy and the need to ensure sufficient information is available to avoid re-traumatising a person. SAMSN agrees the relaxation of protected information obligations for banks, especially in regional and rural communities, may have the potential of increasing privacy concerns.

However, banking staff are required to protect the privacy of banking customers. We would also suggest this tension could be minimised by banking staff receiving training on the dynamics, impacts and experiences of people who have experienced institutional child sexual abuse.

At the second roundtable in March 2022 one of the emerging issues identified was the number of services including banks, who treated clients poorly, showing little respect or understanding of the trauma the clients had experienced that had resulted in these payments received.

**c. Do many clients take up the offer of financial counselling from knowmore following a successful outcome?**

As the writer left knowmore Legal Service in July 2021, this question would be better directed to knowmore Legal Service for updated data.

**d. Should all successful outcomes automatically be provided with a financial counselling session to mitigate the potential for financial abuse?**

What we have learnt from the Aboriginal specialist support services and specialist services supporting Forgotten Australians, is that for the clients they support, there is a distrust of anything to do with "counselling". The provision of a financial counselling session following the receipt of a successful outcome, is very unlikely to be taken up.

One suggestion put forward by the Ageing and Disability Commission which SAMSN endorses, is to delay the payment of the redress money into the successful applicant's account.<sup>2</sup> The delay would enable accessible information to be provided about the risk of financial abuse, how this abuse can occur and what can be done to protect against abuse. A simple factsheet like the one **attached** could be sent out with the successful outcome letter, providing information and contact numbers for help. These factsheets are made available to community organisations at the workshops SAMSN has been involved in delivering.



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<sup>2</sup> Ageing and Disability Commission Submission dated 30 March 2023 page 3

# Keeping your redress or other payments safe

## Financial abuse

The National Redress Scheme, NSW Stolen Generations Reparation Scheme and the Territories Stolen Generations Redress Scheme can provide payments to eligible people who have experienced sexual or institutionalised abuse. If you do receive a payment, it's important to know how to keep it safe.

### What is financial abuse?

Financial abuse is when someone you know tries to stop you spending your own money. If this happens to you, you might not be able to pay for everyday things like medication, rent or bills, or spend your money the way you want to.

### How can you keep your payment safe?

- Keep the news of your payment private.
  - Separate your bank accounts.
  - Keep your documents secure.
  - Open your own mail.
- ✔ **Don't** share your PIN to your bank account.
  - ✔ **Don't** give your key card or credit card to anyone.
  - ✔ **Don't** share your internet banking details.



### Free and confidential help is available

**Organisation Name:** [Mob Strong Debt Help](#) **Phone:** 1800 808 488

A free, nationwide legal advice and financial counselling service for Aboriginal and Torres Strait Islander people

**Organisation Name:** [knowmore Legal Service](#) **Phone:** 1800 605 762

A free, independent legal service providing advice to survivors of child sexual abuse about justice and redress schemes

**Organisation Name:** [NSW Ageing and Disability Commission](#) **Phone:** 1800 628 221

For information, support or to report abuse of older people and adults with disability in their family, home and community

**Organisation Name:** [Seniors Rights Service](#) **Phone:** 1800 424 079

Information and support to people using, or seeking to access, in-home and residential aged care services

**Organisation Name:** [National Debt Helpline](#) **Phone:** 1800 007 007

Free professional financial counselling



# Keeping your redress or other payments safe

## Scams and fraud

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### What is a scam?

Scams can target anyone and often appear real by creating believable stories that can convince you to share your details, or make you to share your money.

#### **You can protect yourself from scams. Some things to look out for include:**

- someone acting as a long lost friend and wanting to reconnect or start a relationship with you, or is putting pressure on you to help them financially
- someone unexpectedly and desperately asking for help, or offering more money at a later date in exchange for a loan.

### What is fraud?

Fraud is when your money is spent without you knowing. It can happen quickly and easily by someone pretending to be from your bank, the government, a charity or a business to get your details and then spend your money.

#### **You can protect yourself from fraud. Some things to look out for are:**

- emails being sent to you asking you to click on links, share your details or personal information such as passwords, usernames or your ID
- phone calls claiming to be from a trusted organisation and asking for your personal details.

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