knowmore
free legal help for survivors

Submission to the second anniversary review of the National Redress Scheme

30 September 2020

Contents

About knowmore 2
Our service 2
Our clients 2
knowmore's submission 3
Overview 3
5
6
7
8
9
Non-participation of institutions 10
A decision-making process that lacks transparency and procedural fairness 20
Unfairness and inconsistencies in redress decisions 32
Inadequacies and inconsistencies in the counselling and psychological component of redress 41
Exploitative practices of some law firms and 'survivor advocacy' businesses 51
Conclusion 56
Appendix 1: Index to knowmore's previous submissions and other commentary on the National Redress Scheme 57

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 mission 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.

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). knowmore receives funding from the Australian Government, represented by the Departments of Attorney-General and Social Services. knowmore also receives some funding from the Financial Counselling Foundation.

From 1 July 2018, knowmore has been funded to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National 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 and Perth. 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.

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 31 August 2020, knowmore has received 35,590 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 6,977 clients. More than a quarter (28%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. More than a fifth (23%) of clients are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

knowmore's submission

Overview

The second anniversary review of the National Redress Scheme (NRS) is the third review of the Scheme since it began on 1 July 2018.[1] As such, we have already said much about the implementation and operation of the Scheme based on our work with survivors of institutional child sexual abuse.

Overall, we continue to support an independent national redress scheme as an essential mechanism for helping survivors of institutional child sexual abuse to obtain justice for their experiences, and for holding responsible institutions to account. The NRS has provided redress to many survivors who would otherwise have had no avenue for obtaining justice, and we know that for many of our clients, their offer of redress has been truly life-changing.

Notwithstanding this, there are a number of problems in the design and operation of the NRS. In the two years since the NRS commenced, we have assisted thousands of survivors to investigate their options for redress, including their eligibility to apply to the NRS; make applications; and consider offers of redress and potential rights of review. In our experience assisting these clients, these problems are preventing the Scheme from fully delivering on the essential elements of redress identified by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) — namely, equal access to justice for all survivors of institutional child sexual abuse, equal and fair treatment of survivors throughout the redress process, and survivor-focused and trauma-informed redress.[2] They are also preventing the Scheme from delivering redress in accordance with the general principles outlined in the NRS legislation — that redress be survivor-focused, have appropriate regard to what is known about child sexual abuse and to the needs of survivors, and avoid further harming or traumatising survivors.[3]

We have detailed these problems in our previous submissions and, for the most part, we do not repeat our comments here. In particular, this submission does not focus on our concerns about the design of the Scheme and its departures from the well-founded recommendations of the Royal Commission, although we continue to hold those concerns. This submission also does not focus on some ongoing operational issues, including delays in assessing NRS applications and shortcomings in the Scheme's communication with survivors. We direct readers to our discussion of these issues in our previous submissions; an index to these is included in Appendix 1.

Instead, we have focused in this submission on expanding on some of the most pressing concerns flagged in our April 2020 submission to the Joint Select Committee on Implementation of the NRS (the JSC).[4] These are:

1. The continued non-participation of institutions in the NRS.
2. A decision-making process that lacks transparency and procedural fairness.

---

1 The first being the inquiry of the former Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (final report published in April 2019), and the second being the ongoing inquiry of the current Joint Select Committee on Implementation of the NRS (first interim report published in May 2020).

2 See Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, 2015, p. 4 and Recommendations 1 and 4, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf>.

3 Section 10, subsections (2) to (4), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

4 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, April 2020, <www.aph.gov.au/DocumentStore.ashx?id=0b31875e-ce72-4a05-a47b-fcb0f572e4df&subId=680321>.

3. Unfairness and inconsistencies in redress decisions.
4. Inadequacies and inconsistencies in the counselling and psychological component of redress across the states and territories.
5. The ongoing risk of survivors being exploited by some law firms and survivor advocacy businesses.

In our view, the NRS simply cannot be regarded as delivering redress that is survivor-focused and that avoids further harming or traumatising survivors as long as these problems remain.

In each area, we make further recommendations designed to ensure that the NRS delivers the essential elements of redress envisaged by the Royal Commission, in accordance with the general principles in the NRS legislation. All of our recommendations are listed below, and detailed comments on the key issues are provided in the following sections.

A number of our recommendations overlap with recommendations previously made by the JSC in May 2020,[5] and by the former Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission (the former JSC) in April 2019.[6] We continue to strongly support the implementation of these committees' recommendations. It seems to us that, overall, there has been little consideration of these so far, with the Australian Government deferring further consideration of many of the recommendations to the second anniversary review.[7] We therefore hope that the completion of the second anniversary review will lead the Commonwealth and state and territory governments to come to a clear position on the previously recommended reforms and to determine what action, if any, will be taken in response. We expect some survivors have been pinning their hopes on this review to lead to the changes recommended previously, and we think it is critical that these issues are finally dealt with.

List of recommendations

Recommendation 1 (page 12)

That the NRS legislation be amended to:

a. remove the indexing of prior payments under Step 4 of the method statement in section 30(2) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*; and

5 Joint Select Committee on Implementation of the NRS, *First Interim Report*, Parliament of Australia, Canberra, 2020, <parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024473/toc_pdf/FirstInterimReportoftheJointSelectCommitteeonImplementationoftheNationalRedressSchemeApril2020.pdf;fileType=application%2Fpdf>.

6 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, Parliament of Australia, Canberra, 2019, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Royal_Commission_into_Institutional_Responses_to_Child_Sexual_Abuse/RoyalCommissionChildAbuse/~/media/Committees/royalcommission_childabuse_ctte/report.pdf>.

7 In its response to the former JSC's recommendations, the Australian Government stated in relation to 12 recommendations (out of 29) that it will "consult with jurisdictions and… further consider this recommendation through the legislated second anniversary review of the Scheme". See Australian Government, *Australian Government Response to the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse Report: Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, Australian Government, Canberra, 2020, <www.aph.gov.au/DocumentStore.ashx?id=529534d0-9103-459e-a2aa-34eb049c3c41>. We are not aware of any formal government response to the current JSC's first interim report.

b. ensure the redress payments set out in section 5 of the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 are indexed over the life of the Scheme to account for inflation.

These amendments should apply retrospectively, and be accompanied by a review of payments already made to ensure that these survivors receive any additional amount they would be entitled to under the new provisions.

Recommendation 2 (page 14)

That the NRS provides survivors with enhanced transparency about the participation status of institutions by:

a. updating the lists of non-participating institutions on the NRS website as a matter of urgency, to ensure they capture every non-participating institution named in an application to date;

b. publishing on the NRS website written statements from non-participating institutions detailing their intention and timeline for joining the Scheme;

c. revising the letters it sends to survivors who make applications naming non-participating institutions, to ensure they include specific information about the institutions' participation status and make reference to any written statements detailing the institutions' intentions and timelines for joining the Scheme; and

d. updating the lists of non-participating institutions on the NRS website as applications naming new non-participating institutions are received.

Recommendation 3 (page 14)

That, if necessary to implement Recommendation 2, Part 4-3, Division 2 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* be amended to specifically authorise the disclosure of protected information by the Scheme for the purposes of providing survivors with enhanced transparency about institutions' participation status, regardless of whether disclosure is expressly or impliedly authorised by the institution to which the information relates.

Recommendation 4 (page 15)

That the Minister gives a firm and unambiguous commitment to survivors that all non-participating institutions that were named in applications received before 30 June 2020 and that have signalled their intention to join the NRS will be participating in the Scheme before 31 December 2020.

Recommendation 5 (page 16)

That:

a. the NRS urgently identifies all defunct institutions named in applications received to date;

b. participating jurisdictions agree to be funders of last resort for these institutions as appropriate; and

c. these institutions be listed in the National Redress Scheme for Institutional Child Sexual Abuse (Funders of Last Resort) Declaration 2019 by 31 December 2020.

Recommendation 6 (page 16)

That:

a. all participating jurisdictions agree that they will act as funders of last resort for an institution where:

   i. the institution no longer exists and it was not part of a larger group of institutions or there is no successor institution; or

   ii. the institution still exists but has no assets from which to fund redress,

   and that the concept of 'equal responsibility' should not apply; and

b. the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* be amended to give effect to this agreement.

Recommendation 7 (page 18)

That, before 31 December 2020, the Australian Government and all state and territory governments introduce legislative and policy amendments to make institutions that refuse to the join the NRS (after being named in at least one application) ineligible to:

a. receive any government funding or contracts;

b. receive any tax concessions, including charitable tax concessions; and

c. engage in any child-related work.

Recommendation 8 (page 19)

That all local governments adopt resolutions to make institutions that refuse to join the NRS (after being named in at least one application) ineligible to:

a. receive council grants and funding;

b. access council facilities;

c. participate in community events; and

d. distribute information on council property.

Recommendation 9 (pages 19–20)

That consideration be given to appropriate legislative and other changes to ensure that survivors whose applications name institutions that refuse to join the NRS can access at least some forms of redress — for example, an acknowledgment from the Scheme of the abuse they experienced plus access to counselling and psychological care.

Recommendation 10 (page 20)

That the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* be amended to:

a. require any new, non-participating institution that is named in a future application for redress to join the NRS within six months of being notified of the application; and

b. require any new defunct institution or institution that is not financially capable of joining the NRS, which is named in a future application for redress, to be listed in the National Redress Scheme for Institutional Child Sexual Abuse (Funders of Last Resort) Declaration 2019 within six months of the relevant participating jurisdiction being notified of the application.

Recommendation 11 (page 24)

That the Australian Government urgently:

a. identifies the publication of the Assessment Framework Policy Guidelines as a high priority area for reform, consistent with Recommendation 3 of the current JSC, and commence consultations with state and territory governments to achieve this reform;

b. introduces amendments to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to permit the publication of the Assessment Framework Policy Guidelines; and

c. following the commencement of these amendments, publishes the Assessment Framework Policy Guidelines at the earliest possible opportunity.

Recommendation 12 (page 27)

That the Scheme Operator ensures that:

a. the provisions of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* are interpreted and applied in a manner that ensures the provision of natural justice to survivors; and

b. the Scheme's quality assurance and/or quality control framework should ensure that survivors are

consistently afforded natural justice at first instance decisions and in internal review processes.

Recommendation 13 (page 29)

That, consistent with Recommendation 6 of the JSC, the Scheme Operator ensures that:

a. IDMs comply with their obligation to provide adequate written reasons for their determinations. In accordance with this obligation, IDMs should, to the maximum extent possible, explain how a decision was reached, including their findings on material questions of fact and what information was taken into account and/or not taken into account to reach those findings.

b. the Scheme's quality assurance and/or quality control framework prioritises the provision of adequate reasons for determinations at first instance and in internal review processes.

Recommendation 14 (page 32)

That the Commonwealth, state and territory governments urgently implement Recommendations 26, 27 and 28 of the former JSC.

Recommendation 15 (page 32)

That the NRS:

a. regularly audits the internal review process to:
   i. identify common errors and inconsistencies in the decision-making process;
   ii. assess the effectiveness of the internal review process in rectifying errors and inconsistencies in original decisions; and
   iii. implement strategies to reduce errors and inconsistencies in original decisions; and

b. publicly releases more information about the internal review process, including key data on the number of internal review applications received, the outcomes of these applications, and the average processing times.

Recommendation 16 (page 32)

That the second anniversary review considers the protected information provisions of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*, and the extent to which either the provisions or the NRS's interpretation of the provisions inhibit the transparency and procedural fairness of the decision-making process. Where necessary, legislative amendments should be identified to improve the transparency and procedural fairness of the decision-making process for survivors.

Recommendation 17 (page 34)

That the NRS establishes a comprehensive quality assurance and/or quality control framework to ensure consistency and fairness in decision-making. The NRS should also ensure that:

a. information about this framework is publicly available; and

b. the framework is subject to regular review to ensure that it is effective in addressing unfairness and inconsistency in decision-making, particularly in relation to high-risk areas of decision-making.

Recommendation 18 (page 35)

That, to mitigate the risk of unfairness and inconsistency in the assessment of 'reasonable likelihood', the NRS:

a. undertakes a review of the Assessment Framework Policy Guidelines to ensure that the Scheme's evidentiary threshold is assessed consistently with current research on and understanding of the nature of institutional child sexual abuse and the impact of abuse on memory and on patterns of disclosure among survivors; and

b. ensures that IDMs receive regular training to enable them to fairly and consistently assess redress applications in a trauma-informed manner and with appropriate regard to what is known about

the nature and impact of institutional child sexual abuse on survivors.

Recommendation 19 (page 37)

That Recommendation 12 of the former JSC be implemented as a matter of priority, by amending the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework to ensure that recognition of extreme circumstances of sexual abuse is not dependent upon whether the abuse was penetrative abuse.

Recommendation 20 (page 37)

That, consistent with Recommendation 13 of the former JSC, the Australian Government publicly clarifies how extreme circumstances are assessed under the NRS's legislative and policy framework.

Recommendation 21 (page 39)

That the NRS's legislative and policy framework be amended to ensure that any prior payments, or components of prior payments, for non-sexual abuse are not considered as relevant prior payments for the purposes of determining a redress application. In implementing this recommendation, special consideration should be given to the disproportionate and concerning impact that the current approach has had on members of the Stolen Generations and to ensuring that this is rectified.

Recommendation 22 (page 40)

That the NRS's policy framework, and legislative framework if necessary, be amended to ensure that the definition of sexual abuse is formulated and applied consistently with the Royal Commission's approach, and also with current understanding of the causes, nature and impact of institutional child sexual abuse.

Recommendation 23 (page 40)

That, if the NRS's approach to the definition of sexual abuse is intended to depart from the approach adopted by the Royal Commission, the Australian Government publicly clarifies the intended departures and the reasons for these departures.

Recommendation 24 (page 41)

That the NRS's policy framework, and legislative framework if necessary, be amended to ensure that the approach to determining institutional responsibility is formulated and applied consistently with the Royal Commission's findings and recommendations.

Recommendation 25 (page 49)

That the Minister ensures that, within the next 12 months:

a. The counselling and psychological component of the NRS is formally reviewed. This should particularly focus on identifying ways to increase national consistency, and identifying elements of good practice in individual jurisdictions that should be applied in other states and territories. The review should also include consumer feedback from survivors, and a review of the functionality and utility of the Trauma Support Directory.
b. Priority is given to addressing the healing and therapeutic needs of Aboriginal and/or Torres Strait Islander survivors receiving redress.
c. A set of clear practice standards for service providers and practitioners is developed.
d. A framework for assessing the quality of services delivered under the counselling and psychological component of the NRS is developed. This should include an ongoing mechanism for receiving consumer feedback, and regular public reporting on findings as to the effectiveness of services.

Recommendation 26 (page 50)

That:

a. all participating jurisdictions agree to give survivors the option of receiving the counselling and psychological component of redress as either a monetary payment or access to services; and

b. the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* be amended to give effect to this agreement.

Recommendation 27 (pages 50–51)

That the NRS's legislative and policy framework be amended as necessary to ensure that:

a. survivors can be offered and can access counselling and psychological services in a jurisdiction other than the one in which they live (as stated in their application) if this is requested by the survivor; and

b. survivors' entitlements under the counselling and psychological component of redress can be transferred across jurisdictions if a survivor relocates.

Recommendation 28 (page 52)

That all state and territory governments prioritise the implementation of the recommendations in Volume 9 of the Royal Commission's Final Report, particularly Recommendations 9.1, 9.2, 9.3 and 9.6.

Recommendation 29 (page 52)

That all state and territory governments consult with Aboriginal and Torres Strait Islander Community Controlled Organisations currently engaging with Aboriginal and/or Torres Strait Islander survivors to better understand survivors' specific cultural and support needs and to assist in identifying and developing appropriate service system responses for them.

Recommendation 30 (page 55)

That before 31 December 2020, legislative and policy amendments be introduced to:

a. cap the fees that lawyers can charge for services delivered with respect to NRS applications;

b. make it unlawful for lawyers to charge contingency fees for services delivered with respect to NRS applications;

c. impose a legal obligation on lawyers to advise a potential client of the availability of free services (knowmore and the Redress Support Services), and to certify such advice has been provided, before executing a costs agreement for an NRS application;

d. make it an offence for any person to:

   i. contact a person without their consent and solicit or induce them to make an NRS application; or

   ii. give or receive any money or other benefit in exchange for a referral to make an NRS application;

e. establish a set of expected practice standards for lawyers and survivor advocates providing services with respect to NRS applications; and

f. establish a specific complaints process within the Scheme to deal with concerns about the conduct of lawyers and representatives from survivor advocacy businesses.

Recommendation 31 (page 55)

That the NRS provides potential applicants with information relevant to their decision to hire a lawyer or survivor advocate, including key factors they may wish to consider, any caps on fees, and how they can make a complaint if they have concerns about the conduct of a lawyer or survivor advocate.

Recommendation 32 (page 56)

That the NRS, in collaboration with knowmore and redress support services, develops targeted campaigns to increase awareness and understanding of the NRS among survivor groups that are particularly vulnerable to exploitation by private law firms and survivor advocacy businesses, including Aboriginal and/or Torres Strait Islander survivors, survivors in prison, and survivors with low levels of literacy.

Non-participation of institutions

Impact on survivors

The non-participation of over 170 institutions[8] more than two years after the NRS commenced remains a major concern. It means that the Scheme is fundamentally inaccessible to many survivors and, as such, provides no access to justice for those survivors. On this point, the Royal Commission observed:

> *[Survivors] regard equal access and equal treatment as essential elements if a redress scheme is to deliver justice…*
>
> *[The availability of redress] should not depend on factors such as:*
> - *the state or territory in which the abuse occurred*
> - *whether the institution was a government or non-government institution*
> - *whether the abuse occurred in more than one institution*
> - *the nature or type of institution*
> - *whether the institution still exists*
> - *the assets available to the institution.*[9]

Unfortunately, the non-participation of institutions means that these factors are indeed affecting the availability of redress, to the detriment of many survivors.

Survivors who have been deterred from applying for redress

We are aware that many survivors have simply chosen not to apply for redress in light of the non-participation of their institution. Given the process of applying for redress will be inherently traumatising for many survivors, it is understandable that some survivors would avoid the NRS altogether when they face no real prospect of a positive outcome. We note this is particularly true for survivors from the Jehovah's Witnesses, which has been steadfast in its refusal to join the NRS, despite the Royal Commission hearing from 70 survivors of abuse in the Jehovah's Witnesses and finding that the organisation "fails to protect children and does not respond adequately to child sexual abuse":[10]

> *Jehovah's Witness survivors know that their organisation will not join the redress scheme and therefore won't apply. It only stirs up emotions and retraumatises them with no good outcome.* [Irene Shea, former Jehovah's Witness and advocate and supporter of child abuse survivors][11]

---

8 As of 23 September 2020, 169 institutions were listed on the NRS website as intending to participate in the NRS (<www.nationalredress.gov.au/institutions/institutions-intending>), and four were listed as having not joined or signified their intent to join (<www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined>). Given our concerns about the completeness of these lists, as outlined below, we expect there are more non-participating institutions than this.

9 Royal Commission, *Redress and Civil Litigation Report*, p. 4. See also Recommendation 1.

10 Royal Commission, *Final Report: Volume 16, Religious Institutions Book 3*, 2017, pp. 71 and 102, <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_16_religious_institutions_book_3_0.pdf>.

11 I Shea, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 29)*, 2020, p. 2, <www.aph.gov.au/DocumentStore.ashx?id=3429dda9-fdab-4ba4-8177-534dc2367484&subId=686487>.

> *[One reason why survivors of child sexual abuse in the Jehovah's Witness institution are not applying for redress is] the government not making the redress scheme compulsory, thus making it a pointless exercise. Survivors understood that the Jehovah's Witnesses had no intention of opting into the redress scheme.* [Diane Lynn, former Jehovah's Witness who was sexually abused in the institution][12]

We have no doubt that the non-participation (and delayed participation) of many institutions is one factor that has contributed to the lower than expected number of survivors who have applied for redress so far.

Survivors who have applied for redress

For those survivors who have been willing to proceed with applications despite the non-participation of one or more of their institutions, this has only led to tremendous uncertainty and stressful, drawn out interactions with the NRS. Upon making an application in relation to a non-participating institution, survivors are told by the NRS that: "We are not able to make a decision about your application for redress at this time because the institutions you wrote about have not yet joined the Scheme" and "You can leave your application on hold until the institutions that you wrote about join the Scheme". The relevant institutions are not named in the letter, and no information is given about whether they have agreed to join or how long the survivor should expect to wait for this to happen (aside from the limited information available on the NRS website for some institutions).[13] Given there has been much uncertainty about the intentions of particular institutions, as discussed further below, impacted survivors are left to face long, anxious waits with no guarantee that they will ever be able to obtain redress.

Some survivors, exhausted by the wait, have opted to have their applications taken off hold and assessed without regard to the non-participating institution/s. This has deprived many of their full entitlement to redress. For example, one of our clients was found to be entitled to $100,000, but had their offer halved because the second responsible institution was not participating in the Scheme. Given the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) (the NRS Act) only permits survivors to make one application for redress,[14] this client will never be able to access their lost $50,000, even if the institution joins in the future.

Other survivors, many of whom have no choice but to wait for their institution to commit to the Scheme, have had their applications on hold for over two years. As discussed further below, it seems clear that some non-participating institutions will never join the NRS and that some survivors will therefore never be able to access redress under the Scheme's current design. This is not what the Royal Commission envisaged, and survivors should not be expected to accept it. This outcome replicates the unfairness and inconsistency that existed in past institutional attitudes and practices towards providing redress to survivors. The Scheme was intended to address these problems.

For other survivors who have submitted applications, the best case scenario now is that their institutions join by the extended deadline of 31 December 2020. Even then, the design of the Scheme means that survivors who ultimately receive monetary offers will be the ones who bear the penalty for their institutions not joining the NRS more promptly. The fact that redress payment amounts in the Assessment Framework are not indexed over the life of the Scheme means that these survivors will, in real terms, be receiving less than survivors who were able to have their applications assessed earlier. For survivors who have received relevant prior payments, the penalty is double because these payments *are* indexed. As an example, a survivor who received a $50,000 prior payment in July 2010 would be up to $2,229 worse off as

12 D Lynn, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 22)*, 2020, p. 2, <www.aph.gov.au/DocumentStore.ashx?id=6edb8d50-ec1a-48c4-b2b6-e58506f1166a&subId=680509>.

13 NRS website, 'Institutions intending to participate in the National Redress Scheme', <www.nationalredress.gov.au/institutions/institutions-intending> and 'Institutions that have not joined or signified their intent to join the Scheme', <www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined>.

14 Section 20(1)(a), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

a result of receiving an NRS offer in the second half of 2020 compared to the first half of 2019.[15] It is perverse that the responsible institutions will have effectively earned a discount on their redress obligations, while survivors pay the price.

knowmore and others have repeatedly raised concerns about these aspects of the redress scheme. These issues were highlighted as far back as 2017 when the previous Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 was considered by the Senate Community Affairs Legislation Committee.[16] Most recently, the JSC recommended in its May 2020 report that the practice of indexing prior payments be stopped and that, in the meantime, prior payments be indexed only up to the date of application, not the date of offer.[17] The Committee observed this was "an immediate step needed to address some of the inequity [in the Scheme]".[18] We note that, five months on, this recommendation has still not been actioned and, in fact, we are not aware of any response to it from the Australian Government.

It is unacceptable that these problems have been allowed to continue to impact survivors, especially in the context of non-participating institutions that are entirely beyond their control. Consistent with the JSC's recommendation, we seek urgent amendments to the NRS Act to remove the indexing of prior payments. We also recommend legislative amendments to ensure that redress payments are indexed over the life of the Scheme to account for inflation. In our view, it is essential that these amendments be applied retrospectively so that survivors who have already received their redress offers do not suffer an undue disadvantage.

Recommendation 1

That the NRS legislation be amended to:

a. remove the indexing of prior payments under Step 4 of the method statement in section 30(2) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*; and

b. ensure the redress payments set out in section 5 of the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 are indexed over the life of the Scheme to account for inflation.

These amendments should apply retrospectively, and be accompanied by a review of payments already made to ensure that these survivors receive any additional amount they would be entitled to under the new provisions.

We discuss ways to specifically address the problem of non-participating institutions in the following sections.

Need for more transparency

We acknowledge the action taken to date by the NRS and the Ministers' Redress Scheme Governance Board to encourage institutions to join the Scheme, particularly the 'naming and shaming' of six institutions by the Minister for Families and Social Services (the Minister) on 1 July 2020.[19] This was a useful step in

15 A prior payment on 1 July 2010 would be indexed to $58,125 on 1 June 2019, but $60,354 on 30 September 2020. As just two examples, this would mean a redress payment of $89,646 versus $91,875 for a survivor awarded $150,000, or a payment of nothing versus $1,875 for a survivor awarded $60,000.

16 See discussion in Senate Community Affairs Legislation Committee, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions] Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]*, 2018, paragraphs 3.28–3.29 and 3.49, <www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AbuseRedressScheme/~/media/Committees/clac_ctte/AbuseRedressScheme/Final_Report/report.pdf>.

17 Joint Select Committee on Implementation of the NRS, *First Interim Report*, Recommendation 5.

18 Joint Select Committee on Implementation of the NRS, *First Interim Report*, p. 34.

19 Senator the Hon A Ruston (Minister for Families and Social Services), *National Redress Scheme Update*, media release, 1 July 2020, <ministers.dss.gov.au/media-releases/5946>.

providing more clarity about the status of these particular institutions, and was obviously effective in leading two institutions to commit to joining the NRS.[20] We have also received positive feedback from some clients who felt the government's actions sent a powerful message of support to survivors from these institutions.

Other survivors have told us that they were left deeply disappointed by the government's actions, as not all non-participating institutions named in applications to the NRS were included in the lists published on 1 July. This has led to more confusion, uncertainty and distress for many survivors waiting for institutions to join the Scheme. knowmore is aware of 26 institutions named in applications for more than 31 clients that are not currently included either in the list of institutions that have not joined or signified their intention to join the Scheme[21] or in the list of institutions intending to join the Scheme.[22] We know some other non-participating institutions are similarly unaccounted for.[23]

We note from the NRS website that the list of institutions that have not joined the Scheme or signified their intention to join "is not exhaustive". Similarly, we note that the list of institutions intending to join the Scheme only includes those institutions that agreed to have their name publicly listed. This seems entirely contrary to the interests of transparency. In a survivor-focused scheme, institutions should not be able to dictate what information the NRS publishes about their participation status. While we expect the NRS's current approach reflects concerns about disclosing 'protected information', we would think the provisions enabling the Minister to disclose protected information in the public interest[24] are more than adequate to allow details of non-participating institutions to be published.

knowmore has provided the NRS with the names of those institutions it is aware of, from its client work, that do not appear in the lists on the website, as well as three other institutions relevant to clients still considering their redress options. We have been advised that the names of these institutions have been provided to the NRS's on-boarding team. However, no further information is available to us to clarify the status of these institutions, their intentions and possible timeframes for participation. Consequently, we have been unable to provide impacted clients with any certainty about if or when their applications may be able to progress, which unsurprisingly contributes to their distress.

The lists published by the NRS also do not include the written statements provided by institutions as recommended by the JSC.[25] This means the reasons institutions have not yet joined the Scheme are unclear, although public commentary suggests that at least three of the institutions named to date will

20 M Doran, 'More organisations join National Redress Scheme after being named and shamed', *ABC News*, 2 July 2020, <www.abc.net.au/news/2020-07-02/more-organisations-join-national-redress-scheme-anne-ruston/12415214>.

21 NRS website, 'Institutions that have not joined or signified their intent to join the Scheme', <www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined> (as at 28 September 2020).

22 NRS website, 'Institutions intending to participate in the National Redress Scheme', <www.nationalredress.gov.au/institutions/institutions-intending> (as at 28 September 2020).

23 Four institutions named in the Royal Commission are listed on the NRS website as not participating, but they have not been named in either of the other two lists (Gold Coast Family Support Group/FSG Australia; Hunter Aboriginal Children's Services; RG Dance Pty Ltd; Yeshiva Centre and the Yeshiva College Bondi). See 'Institutions named in the Royal Commission that have not yet joined the Scheme', <www.nationalredress.gov.au/institutions/institutions-named-royal> (as at 28 September 2020).

24 Section 95(1) of the NRS Act states that the Operator (that is, the Minister) "may disclose protected information that was provided to, or obtained by, an officer of the scheme for the purposes of the scheme if: (a) the Operator certifies that the disclosure is necessary in the public interest in a particular case or class of cases and the disclosure is to such persons and for such purposes as the Operator determines…". There is no requirement for an institution to which the information relates to provide their consent to disclosure, although having disclosure "expressly or impliedly authorised" by the institution is an alternative basis on which the Operator can disclose protected information under paragraph (b)(i).

25 Joint Select Committee on Implementation of the NRS, *First Interim Report*, Recommendation 10.

never participate.[26] For institutions listed as intending to join, the lack of written statements means survivors have no clarity about exactly when the institution expects or intends to be participating in the Scheme.

If survivors are to have any certainty about the participation status of their institution, there must be enhanced transparency. knowmore therefore calls for the lists on the NRS's website to be updated as a matter of urgency. The NRS must ensure that every institution named in an application is accounted for in these lists. Consistent with the JSC's Recommendation 10, the NRS must also ensure that it publishes any written statement provided by an institution detailing their intention and timeline for joining the Scheme. We recommend that the NRS also include this information in the letters it sends to survivors who make applications naming a non-participating institution; that is, these letters should be tailored to include specific information about the relevant institutions' participation status, and make reference to any relevant written statements.

Recommendation 2

That the NRS provides survivors with enhanced transparency about the participation status of institutions by:

a. updating the lists of non-participating institutions on the NRS website as a matter of urgency, to ensure they capture every non-participating institution named in an application to date;

b. publishing on the NRS website written statements from non-participating institutions detailing their intention and timeline for joining the Scheme;

c. revising the letters it sends to survivors who make applications naming non-participating institutions, to ensure they include specific information about the institutions' participation status and make reference to any written statements detailing the institutions' intentions and timelines for joining the Scheme; and

d. updating the lists of non-participating institutions on the NRS website as applications naming new non-participating institutions are received.

If it is considered that the current provisions of the NRS Act do in fact act as a barrier to the disclosure of this information, we further recommend that a new section be inserted into Part 4-3, Division 2 to specifically authorise disclosure for the purposes of providing survivors with enhanced transparency about institutions' participation status.

Recommendation 3

That, if necessary to implement Recommendation 2, Part 4-3, Division 2 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* be amended to specifically authorise the disclosure of protected information by the Scheme for the purposes of providing survivors with enhanced transparency about institutions' participation status, regardless of whether disclosure is expressly or impliedly authorised by the institution to which the information relates.

26 The Jehovah's Witnesses and Kenja Communication have indicated they will not join the Scheme (Jehovah's Witnesses statement to The Project, 1 July 2020, <10play.com.au/theproject/articles/statement-from-the-jehovahs-witnesses/tpa200621ycelq>; Kenja Communication's letter to the Minister, 29 June 2020, <www.kenja.com.au/national-redress-scheme.aspx>), while the Lakes Entrance Pony Club has indicated that it had advised the NRS that it was not financially capable of joining the Scheme (interview with Sylvia Stender, Treasurer of Lakes Entrance Pony Club on ABC Ballarat, 2 July 2020).

Need for clear action

knowmore has previously advocated for non-participating institutions to be subject to a range of consequences.[27] We continue to support these measures, as discussed further below. However, we are also of the view that the Scheme is now at a point where more nuanced consideration needs to be given to the problem of non-participating institutions that are responsible for child sexual abuse.

From knowmore's understanding, it seems possible to separate non-participating institutions into five broad groups:

1. Institutions that are intending to join.
2. Institutions that are defunct and are not covered by a funder of last resort declaration.
3. Institutions that are not financially capable of joining.
4. Institutions that have refused to join.
5. Institutions that have not yet been named in an NRS application but may be named in the future.

The best approach for holding institutions to account and ensuring survivors can access redress will vary for each group. We outline our recommended approaches below.

Institutions that are intending to join

As of 23 September 2020, 169 institutions were listed on the NRS website as intending to join the Scheme.[28] knowmore expects every one of these institutions (and any others intending to join that are not listed) to be participating in the NRS before 31 December 2020, as per the extended deadline. While we note the impacts of the COVID-19 pandemic may have legitimately affected some institutions' capacity to join before the original deadline of 30 June 2020, we consider the extended deadline is already generous for many institutions. The deadline simply cannot be extended again. Survivors require certainty about their redress prospects. They have already waited long enough. We therefore call on the Minister to give survivors a firm and unambiguous commitment that the 31 December 2020 deadline will be met.

> **Recommendation 4**
>
> That the Minister gives a firm and unambiguous commitment to survivors that all non-participating institutions that were named in applications received before 30 June 2020 and that have signalled their intention to join the NRS will be participating in the Scheme before 31 December 2020.

Institutions that are defunct and are not covered by a funder of last resort declaration

knowmore is aware of a number of non-participating institutions named in applications that appear to be defunct, but which have not been listed in funder of last resort declarations. Our view is that these institutions need to be confirmed as defunct and to have funder of last resort declarations made to enable impacted survivors to have their applications assessed.[29] To this end, knowmore recommends that the NRS identify all defunct institutions named in applications as soon as possible, and that the Commonwealth and state and territory governments agree to be funders of last resort for these institutions as appropriate. In our view, the relevant declarations should all be made by 31 December 2020 to give affected survivors certainty.

---

27 knowmore, *Submission to the Joint Select Committee: Inquiry into the Implementation of Redress Related Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse*, 2018, p. 12, <www.aph.gov.au/DocumentStore.ashx?id=fb63cd88-4da9-412c-896f-450c82bf0d8a&subId=659185>; knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, p. 8.

28 NRS website, 'Institutions intending to participate in the National Redress Scheme', <www.nationalredress.gov.au/institutions/institutions-intending> (as at 23 September 2020).

29 See further discussion of defunct institutions and funder of last resort provisions in our April 2020 submission to the JSC. Notably, the institution referred to in our case study — Bomaderry Aboriginal Children's Home in New South Wales — is still not covered by a funder of last resort declaration, meaning our client has now been waiting almost two years for a decision on their application.

Recommendation 5

That:

a. the NRS urgently identifies all defunct institutions named in applications received to date;

b. participating jurisdictions agree to be funders of last resort for these institutions as appropriate; and

c. these institutions be listed in the National Redress Scheme for Institutional Child Sexual Abuse (Funders of Last Resort) Declaration 2019 by 31 December 2020.

As highlighted in our April 2020 submission to the JSC, the Scheme's existing funder of last resort provisions also need to be changed to ensure the greatest possible number of survivors can access redress.[30] As we have raised many times before, the narrow framing of the provisions — which require the relevant government to be "equally responsible" for a survivor's abuse before it is liable to act as the funder of last resort for the defunct institution — is contrary to what the Royal Commission recommended and, as we predicted in our earliest submissions, means some survivors will continue to be deprived of access to redress.

We therefore reiterate our calls for the funder of last resort provisions in the NRS Act to be amended for consistency with the Royal Commission's recommendation. Specifically, the Commonwealth and state and territory governments should act as funders of last resort in instances where:

- the institution no longer exists and it was not part of a larger group of institutions or there is no successor institution; or
- the institution still exists but has no assets from which to fund redress,[31]

and the concept of 'equal responsibility' should not apply.

Recommendation 6

That:

a. all participating jurisdictions agree that they will act as funders of last resort for an institution where:
   i. the institution no longer exists and it was not part of a larger group of institutions or there is no successor institution; or
   ii. the institution still exists but has no assets from which to fund redress,

   and that the concept of 'equal responsibility' should not apply; and

b. the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* be amended to give effect to this agreement.

We acknowledge that these changes will increase the costs of the Scheme for participating jurisdictions and, in the current economic environment, this presents some challenges. However, we remain in agreement with the Royal Commission that these additional costs are "a fair and reasonable amount to expect governments to pay given their social, regulatory and guardianship responsibilities…".[32] As it is, we do not think that the costs to governments of being funder of last resort under these arrangements would be as high as initially estimated by the Royal Commission[33] given the lower than expected take-up of the Scheme by survivors to date. Most importantly, though, we know that a failure to embrace these changes will be seen by survivors as a failure to give them justice. As the Prime Minister acknowledged in his

30 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, pp. 7–9.

31 See related discussion in Royal Commission, *Redress and Civil Litigation Report*, pp. 337–338.

32 Royal Commission, *Redress and Civil Litigation Report*, p. 341

33 The Royal Commission estimated that if the Commonwealth Government and all state and territory governments agreed to be funders of last resort under the model it proposed, the cost of last resort funding would be $613 million (*Redress and Civil Litigation Report*, p. 341).

National Apology,[34] survivors were failed as children by the very institutions entrusted with their care. They should not be failed again by government.

Institutions that are not financially capable of joining

It appears that some still-existing institutions may want to join the NRS but will not be financially capable of doing so.[35] In these cases, there needs to be a genuine funder of last resort to ensure impacted survivors are able to access redress.

Again, the Royal Commission's recommended funder of last resort provisions were intended to cover situations like these, and it is essential that the above amendments are introduced as a matter of priority.

Institutions that have refused to join

As noted earlier, it appears that two of the institutions named by the Minister on 1 July 2020 — the Jehovah's Witnesses and Kenja Communication — have refused to join the NRS.[36] At least eleven other institutions also appear to have formally declined to participate in the Scheme, noting advice from the Department to the JSC in May 2020.[37]

Institutions that have been responsible for child sexual abuse and that refuse to join the NRS need to face appropriate consequences, including financial penalties. As we have noted previously, we support these institutions:

- being made ineligible for any government funding or contracts
- being made ineligible for any tax concessions, including charitable tax concessions
- being prevented from engaging in child-related work.

The last of these would be consistent with the Royal Commission's recommendation that governments should require all institutions engaged in child-related work to meet the Royal Commission's recommended Child Safe Standards,[38] which are now reflected in the National Principles for Child Safe Organisations.[39] It seems clear to us that any institution that refuses to open itself up to accountability via the NRS cannot ever be regarded as a child safe organisation, particularly noting Principle 1 (see the box on the next page).

---

34 The Hon S Morrison MP (Prime Minister), *National Apology to Victims and Survivors of Institutional Child Sexual Abuse*, 22 October 2018, <www.childabuseroyalcommissionresponse.gov.au/sites/default/files/2019-03/National-apology-to-institutional-child-sex-abuse-PM.pdf>.

35 For example, the treasurer of the Lakes Entrance Pony Club stated in a radio interview with ABC Ballarat on 2 July 2020 that the club was shocked after it was named by the Minister, as the club only knew about the redress application naming it the previous Friday (26 June 2020). The treasurer explained that they had told the Minister that the club is not financially capable of joining the Scheme as there are only two club members.

36 See footnote 26.

37 Information from the Department is that 13 institutions in total have declined. See Department of Social Services, *Answer to Question on Notice: Joint Select Committee on Implementation of the NRS — Question 4 (SQ20-000463)*, 29 May 2020, <www.aph.gov.au/DocumentStore.ashx?id=fcb07a71-3b98-4436-8721-0073e9053e30>.

38 Royal Commission, *Final Report: Volume 6, Making Institutions Child Safe*, 2017, Recommendation 6.8, <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_6_making_institutions_child_safe.pdf>.

39 Australian Human Rights Commission, *National Principles for Child Safe Organisations*, AHRC, Sydney, 2018, <childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf>.

Principle 1: Child safety and wellbeing is embedded in organisational leadership, governance and culture

Examples of key action areas

1.1 The organisation makes a public commitment to child safety.

1.2 A child safe culture is championed and modelled at all levels of the organisation from the top down and the bottom up.

Examples of indicators that this principle is upheld

- The organisational leadership models and regularly reinforces attitudes and behaviours that value children and young people and a commitment to child safety, child wellbeing and cultural safety. This commitment is clear in duty statements, performance agreements and staff and volunteer review processes.

We note and welcome some initial commitments to these actions from government. For example, the Minister noted in her 1 July announcement that those institutions 'named and shamed' were now ineligible to apply for Commonwealth funding,[40] and the Victorian Government has signalled that it will similarly withhold state funding from non-participating institutions in Victoria.[41] We understand that the other states and territories are also generally supportive of further actions being taken against non-participating institutions.[42]

In our view, survivors from institutions that have refused to join the NRS deserve to see those actions taken now. We therefore urge the Commonwealth and state and territory governments to follow through on their initial commitments and ensure all legislative and policy amendments required to give effect to the penalties outlined above are introduced by the end of this year.

Recommendation 7

That, before 31 December 2020, the Australian Government and all state and territory governments introduce legislative and policy amendments to make institutions that refuse to the join the NRS (after being named in at least one application) ineligible to:

a. receive any government funding or contracts;

b. receive any tax concessions, including charitable tax concessions; and

c. engage in any child-related work.

We also welcome a recent decision by the Knox City Council in Victoria to take action against non-participating institutions at a local government level.[43] In a unanimous vote, the council resolved that any organisation named by the Royal Commission and not participating in the NRS will be ineligible to:

- receive council grants and funding
- access council facilities
- participate in community events
- receive permits to distribute information on council property.[44]

40 Senator the Hon A Ruston (Minister for Families and Social Services), *National Redress Scheme Update*.

41 The Hon J Hennessy MP (Attorney-General), *Organisations on Notice to Join National Redress Scheme*, media release, 19 April 2020, <www.premier.vic.gov.au/organisations-notice-join-national-redress-scheme>.

42 As per correspondence from the states and territories to the JSC (see <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme/NationalRedressScheme/Additional_Documents?docType=Correspondence>).

43 Knox City Council, *Council Stands Up for Victims of Child Sexual Abuse*, 28 August 2020, <www.knox.vic.gov.au/Page/Page.aspx?Page_Id=6109>.

We strongly support these actions, and recommend that other local governments adopt similar resolutions.

Recommendation 8

That all local governments adopt resolutions to make institutions that refuse to join the NRS (after being named in at least one application) ineligible to:

a. receive council grants and funding;

b. access council facilities;

c. participate in community events; and

d. distribute information on council property.

Imposing the above penalties on institutions that refuse to join the NRS, while an appropriate consequence for what the Prime Minister has aptly described as their "reprehensible" failure to sign on, does nothing to address the inability of affected survivors to access redress. At present, failures by responsible institutions to participate in the Scheme leave the loss to be borne by the relevant survivor, who is forced then to pursue a civil claim for damages (which may be difficult, traumatising and strongly defended by the institution), or to abandon any hope of achieving justice through redress.

As such, we noted with interest a recommendation to the JSC from the Rationalist Society of Australia that institutions refusing to join the Scheme should be "subject to a financial penalty of 150% of the amount they would otherwise contribute to the National Redress Scheme".[45] If such a penalty was imposed, this could provide a means of funding any successful redress applications from relevant survivors, presuming institutions paid up. We acknowledge that enforcing this may pose some challenges, but it could provide a novel solution for those survivors who would otherwise be excluded from the Scheme. Alternatively, consideration could be given to allocating the additional revenue arising from the revocation of a responsible institution's charitable status to fund a monetary component of redress for relevant survivors.

Whether or not institutions that refuse to participate in the Scheme are subject to financial penalties of these kinds, we believe there must be some way for affected survivors to access at least some elements of redress. We suggest that amendments could be made to enable survivors of these non-participating institutions to have their application determined by the NRS and, should it be approved, to access redress in the form of a) an acknowledgement from the Scheme of the abuse they experienced and b) counselling and psychological care as per the existing counselling and psychological component of redress. Consistent with our earlier comments on the funder of last resort provisions, we think it would be reasonable for the Commonwealth and state and territory governments to cover the costs of the counselling and psychological component of redress for these survivors. Given the importance of the NRS delivering justice for all survivors, regardless of the institution they were abused in, we would urge further consideration to be given to this proposal.

Recommendation 9

That consideration be given to appropriate legislative and other changes to ensure that survivors whose applications name institutions that refuse to join the NRS can access at least some forms of redress — for example, an acknowledgment from the Scheme of the abuse they experienced plus access to counselling and psychological care.

---

44 We note that this will be particularly welcomed by some former Jehovah's Witnesses who have expressed concerns about Jehovah's Witnesses distributing their publications in public places, including outside schools and childcare centres — see Diane Lynn, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 22)*.

45 Rationalist Society of Australia, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 24)*, 2020, <www.aph.gov.au/DocumentStore.ashx?id=56cb4727-493d-49de-80e6-13d19aee6c63&subId=686480>.

Institutions that have not yet been named in an NRS application but may be named in the future

It is likely that some future applications to the NRS will name institutions that have not yet been named and are not yet participating in the Scheme. Consistent with our earlier comments, it is essential that survivors be given clarity about the participation status of these institutions and certainty about how long they will have to wait to access redress. We therefore strongly support the Minister's announcement that any new, non-participating institution named in an application will have six months from the time they are notified of the application to join the NRS.[46] We recommend that the NRS Act be amended to reflect this timeframe, and that it also apply to the making of funder of last resort declarations for defunct institutions (or institutions that are not financially capable of joining, consistent with our earlier Recommendation 6).

Recommendation 10

That the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* be amended to:

a. require any new, non-participating institution that is named in a future application for redress to join the NRS within six months of being notified of the application; and

b. require any new defunct institution or institution that is not financially capable of joining the NRS, which is named in a future application for redress, to be listed in the National Redress Scheme for Institutional Child Sexual Abuse (Funders of Last Resort) Declaration 2019 within six months of the relevant participating jurisdiction being notified of the application.

All of our other recommendations above should also apply as relevant to new, non-participating institutions (for example, institutions that ultimately refuse to join the Scheme should be subject to the penalties outlined under Recommendations 7 and 8).

A decision-making process that lacks transparency and procedural fairness

In our April 2020 submission to the JSC we discussed the lack of transparency and accountability in some of the NRS's operations and decision-making process.[47] While we remain concerned about the lack of transparency in the NRS's operations, including the considerable gaps in the NRS's published data and shortcomings in the Scheme's communication with survivors about the status of their individual applications, we will not repeat our comments on these issues here. We refer readers to our previous comments on these issues[48] and reiterate our continued support for the implementation of the relevant recommendations of both the Royal Commission and the former JSC.[49]

In this submission, we have focused on expanding on the lack of transparency and procedural fairness in the decision-making process and the impact this is having on affected survivors. In our view, this remains a major and pressing concern that requires immediate action.

46 Senator the Hon A Ruston (Minister for Families and Social Services), *National Redress Scheme Update*.

47 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20),* pp. 19–23.

48 See Appendix 1.

49 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, Recommendations 24 and 25; Royal Commission, *Redress and Civil Litigation Report*, Recommendation 69.

Impact on survivors

The lack of transparency and procedural fairness in the decision-making process has significant implications for the Scheme's ability to deliver justice for many survivors.[50] It also compromises the Scheme's ability to deliver redress in accordance with its own general principles, including that redress should:

- be survivor-focused
- have appropriate regard to what is known about the nature and impact of child sexual abuse and the needs of survivors
- as far as possible, avoid further harming or traumatising survivors.[51]

The Royal Commission recognised that transparency and fairness are essential to reducing the risk of re-traumatisation and maximising the benefits of redress for survivors.[52] The Royal Commission's expectation was that, in order to achieve this, redress applications would be:

> *…assessed in accordance with transparent and consistent criteria and the applicant will be given sufficient information to understand how their eligibility and the amount of any monetary payment were determined.*[53]

However, the NRS's decision-making process often falls far short of this standard.

In knowmore's experience, this is due to the following key problems in the decision-making process:

1. The lack of transparency surrounding the Assessment Framework Policy Guidelines.
2. The lack of natural justice for survivors.
3. The lack of the provision of adequate reasons for determinations to applicants.
4. The lack of transparency and fairness in the internal review process.

These problems risk undermining a survivor's trust and confidence in the decision-making process and their ability to understand how or why a decision has been made. It is not uncommon for a survivor to experience these problems cumulatively. For some, it has impacted their overall perception of the redress process and whether the decision they received was fair, making it difficult to accept the outcome and progress their healing. For others, it has perpetuated the power imbalance they have frequently experienced when engaging with institutions.

In some instances, a lack of transparency and procedural fairness in the decision-making process may also raise concerns about the correctness of a determination. These same shortcomings may prevent survivors from rectifying any error in the decision. For example, without an understanding of the policy framework underpinning the decision and/or the reasons for the decision, it is difficult for survivors to make an informed choice about whether to exercise their right to seek an internal review.

---

50 Providing justice for survivors is one of the main objects of the NRS, as per section 3(1)(b) of the NRS Act. The Royal Commission recognised that redress scheme processes are fundamental to providing justice for survivors, stating "how survivors feel they were treated and whether they were listened to, understood and respected are likely to have a significant impact on whether they consider they have received 'justice'" (Royal Commission, *Redress and Civil Litigation Report*, p. 132).

51 Section 10, subsections (2) to (4), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

52 Royal Commission, *Redress and Civil Litigation Report*, p. 269.

53 Royal Commission, *Redress and Civil Litigation Report*, p. 43.

In its April 2019 report, the former JSC emphasised the need for greater transparency and accountability in the NRS's decision-making process and made several recommendations for improvement in this regard.[54] These recommendations are yet to be implemented.

The current JSC has also recognised the pressing need for improvements to the NRS's decision making-process to make it more transparent and procedurally fair. The JSC made several recommendations aimed at ensuring that the second anniversary review would examine this as a high priority area for reform.[55] We urge the review to do so.

Lack of transparency surrounding the Assessment Framework Policy Guidelines

Section 33 of the NRS Act authorises the Minister to make guidelines for the purposes of applying the Assessment Framework, known as the Assessment Framework Policy Guidelines. It is knowmore's understanding that these guidelines are a critical component of the decision-making process, underpinning the determination of both the monetary and counselling and psychological components of redress.[56]

However, the NRS Act prohibits a person from obtaining, recording, disclosing or using the Assessment Framework Policy Guidelines.[57] There are only very limited exceptions to this, such as where the person is an officer of the Scheme.[58] A person who breaches these provisions commits an offence, punishable by imprisonment for 2 years or 120 penalty units, or both.[59] As a result of these provisions, neither survivors nor support services are able to access the Assessment Framework Policy Guidelines.

knowmore is of the view that the secrecy surrounding these guidelines has significant, unintended implications for the transparency, fairness and effectiveness of the decision-making process. It also undermines the Scheme's intentions to be survivor-focused and trauma-informed.

Denying survivors access to the policy framework that underpins the assessment of their redress application directly impacts their ability to understand how and why their redress decision was made. This is particularly problematic for survivors who receive an adverse and/or unexpected redress outcome.

It also makes it very challenging for knowmore and redress support services to provide advice and support to survivors when we are not able to determine whether the decision they received is fair or consistent with the Scheme's legislative and policy framework. This is exacerbated by the fact that some key terms in the assessment framework are ambiguously defined,[60] as well as by the apparent inconsistencies in the application of the assessment framework by some independent decision-makers (IDMs).[61]

The principal justification given for the lack of transparency surrounding the Assessment Framework Policy Guidelines is to mitigate the risk of fraudulent applications. According to the Explanatory Memorandum:

> *Providing for detailed guidelines would enable people to understand how payments are*

54 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, p. xvii and Recommendations 11 and 13.

55 Joint Select Committee on Implementation of the NRS, *First Interim Report*, Recommendations 3 and 6.

56 Section 33, subsection (1), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

57 Part 4-3, Division 3, *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

58 Section 102, *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

59 Section 104, *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

60 For example, the term 'extreme circumstances' in section 4 of the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 (Cth) lacks precision and clarity.

61 See pages 32 to 41 of this submission for further discussion of this issue.

> *attributed and calculated, and risks the possibility of fraudulent or enhanced applications designed to receive the maximum redress payment under the Scheme being submitted.*[62]

The former JSC strongly refuted this justification, stating:

> *The Committee is concerned about the secret nature of the Assessment Framework Policy Guidelines (Assessment Guidelines), which are made for the purpose of applying the Assessment Framework. While it is of course important to mitigate the risk of fraudulent applications, the committee does not accept that this is a sufficient reason for not making the detailed Assessment Guidelines public. This is particularly important in light of other constraints placed on applicants, such as the limit of one application per person, the inability to provide additional information after a determination has been made, and the preclusion of an external review. The lack of transparency in relation to the Assessment Guidelines and consequently, the details of how redress payments are determined, appear to be emblematic of broader issues concerning the transparency of the scheme.*[63]

In knowmore's view, the benefits of publishing the Assessment Framework Policy Guidelines far outweigh the explanation that has been given to justify their secrecy. These benefits include:

- assisting survivors, legal advisers and support services to better understand the decision-making process and the Scheme's approach to key terms in the Assessment Framework
- assisting with the timely resolution of applications, as survivors will be better able to understand what information is relevant to the assessment of their application and provide this information up front, therefore reducing the risk of re-traumatisation in the application process and reducing the need for the Scheme to seek clarification from survivors
- assisting legal advisers and support services to better manage expectations about the likely outcome of a redress application, therefore increasing certainty for survivors
- supporting and promoting consistency in decision-making
- enhancing the ability of survivors and those supporting them to understand how and why a redress decision has been made
- assisting legal advisers and support services to provide advice to survivors about the reasonableness and lawfulness of the original decision and the likely outcome of an internal review, therefore enhancing the ability of survivors to make an informed choice about whether to exercise their right to seek an internal review.

Both the current and former JSC have called for further transparency surrounding the Assessment Framework Policy Guidelines, as indicated on the following page.

62 Explanatory Memorandum to the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018, p. 38, <parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6101_ems_3475681d-40d9-44dd-8d46-19dc713fce13/upload_pdf/672609.pdf;fileType=application%2Fpdf>.

63 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, paragraph 8.79.

Relevant recommendations of the former JSC

Recommendation 11

The committee recommends that the government clearly communicates to the public, to the maximum extent allowed under current provisions, how applications for redress are considered and the grounds on which determinations are made.

Recommendation 13

If the current National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 is maintained, then the committee recommends that the government publicly clarify key terms in the Assessment Framework.

Relevant recommendation of the current JSC in its first interim report

Recommendation 3

The Committee recommends that the second anniversary review examine the following areas for reform as high priority:

- Publishing the Assessment Framework Policy Guidelines to assist survivors prepare their application…

In its response to the recommendations of the former JSC, the Australian Government agreed with Recommendation 11 and supported Recommendation 13 in principle.[64] However, knowmore has not observed any progress towards implementing these important recommendations. We are also not aware of any formal government response to the recommendations of the current JSC in its first interim report. In light of this, we make the following recommendation.

Recommendation 11

That the Australian Government urgently:

a. identifies the publication of the Assessment Framework Policy Guidelines as a high priority area for reform, consistent with Recommendation 3 of the current JSC, and commence consultations with state and territory governments to achieve this reform;

b. introduces amendments to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* to permit the publication of the Assessment Framework Policy Guidelines; and

c. following the commencement of these amendments, publishes the Assessment Framework Policy Guidelines at the earliest possible opportunity.

Lack of natural justice

knowmore remains concerned about the lack of natural justice, or procedural fairness, in aspects of the NRS's decision-making process. As we highlighted in our submission to the JSC,[65] we are particularly concerned that survivors are being denied the opportunity to access and respond to information that may adversely affect the outcome of their redress application. This includes information provided by a participating institution under section 25 of the NRS Act.

64 Australian Government, *Australian Government Response to the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse Report*.

65 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, p. 21.

Duty to observe the rules of natural justice

As the review will understand, there is a general presumption that the rules of natural justice will apply to an administrative decision-making process that directly affects the rights or interests of an individual.[66] Although Parliament can seek to limit or exclude the requirements of natural justice, courts have been reluctant to accept this without a clear manifestation of legislative intention.[67] In knowmore's view, the NRS Act neither clearly excludes nor limits the duty of IDMs to observe the rules of natural justice.

Accordingly, it is our view that the duty to observe the rules of natural justice applies to decisions made by IDMs under the NRS Act. This includes decisions relating to:

- the eligibility of persons to apply for redress and the validity of their NRS applications (including decisions under the special assessment process for people with serious criminal convictions)
- determinations of redress applications made under section 29 of the NRS Act
- decisions made under the Scheme's internal review and revocation processes.

However, we remain concerned that IDMs are failing to comply with the rules of natural justice, including the hearing rule, which requires IDMs to notify survivors of information that may adversely affect the determination of their application and to provide them with a meaningful opportunity to respond to this information.

For example, when a survivor lodges an application naming a participating institution, it is common practice for the NRS to request information from the institution under section 25 of the NRS Act. This may include, but is not limited to, the survivor's institutional records. In our experience, information provided by a participating institution is generally not disclosed to the survivor. Despite this, the IDM may take into account this information in determining the survivor's redress application. This is particularly concerning where the information may be inconsistent with or contrary to the information provided by the survivor.

Some of our clients have received NRS decisions that we have been unable to understand or reconcile, leading us to believe that the IDM may have had access to information about the survivor that was not disclosed to the survivor. In other instances, survivors have received phone calls from NRS staff seeking further information about aspects of their claim, presumably following receipt of information from the institution. Some of these phone calls have occurred without the nominee present, without clear information being provided to the survivor about the purpose of the call, and without adequate disclosure of any adverse information that may be relied upon by the IDM. In our view, this is unfair.

Given the lack of transparency surrounding the decision-making process and the lack of adequate written reasons for decisions, it is at times unclear what information has been relied upon by an IDM to reach a determination and the weight given to any adverse information provided by a third party such as a participating institution. It is also unclear why IDMs are failing to disclose any adverse information to survivors and to provide them with an opportunity to respond. We suspect this may be because of either a lack of clear procedures within the NRS, or an over-reliance on the protected information provisions in the NRS Act. If the former, the NRS should urgently implement procedures to ensure that survivors are afforded natural justice throughout the decision-making process. If the latter, the NRS should urgently revise its approach to the Act's protected information provisions.

While we acknowledge that information or evidence taken into account by an IDM, such as information provided by an institution, may *prima facie* enliven the protected information provisions in the NRS Act, that does not justify the denial of natural justice to survivors and the disclosure of such information where

66 M Groves, 'The evolution and entrenchment of natural justice' in M Groves (ed), *Modern Administrative Law in Australia: Concepts and Context* (second edition), Cambridge University Press, 2017, p. 206; Administrative Review Council, *Best Practice Guide No. 2: Natural Justice*, ARC, Canberra, 2007, p. 5, <www.ag.gov.au/legal-system/publications/administrative-review-council-best-practice-guide-2-natural-justice>.

67 *Kioa v West* (1985) 159 CLR 550 [584] (Mason J); *Minister for Immigration and Border Protection v WZARH* (2015) HCA 40 [30] (Kiefel, Bell and Keane JJ); M Groves, 'The evolution and entrenchment of natural justice', p. 206.

that is necessary to provide natural justice. In our view, both the Scheme's objects and the general principles guiding actions of officers under the Scheme support an interpretation of the protected information provisions in a manner that affords natural justice to affected survivors.[68]

We also note that the protected information provisions have several exceptions that would allow IDMs to afford natural justice to survivors. For example, the NRS Act permits the disclosure of protected information "for the purposes of the scheme".[69] The provision of natural justice to survivors should be considered to fall within the ordinary operation of the Scheme and to be permitted by this exception. Alternatively, the NRS Act permits the disclosure of protected information "with the express or implied consent of the person or institution to which the information relates".[70] IDMs should therefore consider whether the express or implied consent of the person or institution to which the information relates can be obtained in order to afford natural justice to survivors. Further, in interpreting this provision, IDMs should consider whether information provided by an institution about a survivor, such as a survivor's institutional records, can be considered to 'relate' to the survivor and therefore, whether the survivor's consent can be implied.[71]

Impact on survivors

Many of our clients continue to experience a deep mistrust of institutions that are responsible for the harm they experienced as children. For some, this mistrust may have been exacerbated by the institution's behaviour during past justice or redress processes. For example, some institutions may have previously failed to acknowledge the extent and impact of the abuse experienced by a survivor, in an attempt to minimise their own institutional culpability. As a result, some survivors simply do not trust that participating institutions will act in good faith during the redress process. For these survivors, the inability to access and respond to information provided by the institution to the NRS and relevant to a determination made in respect of a survivor's application can cause significant distress.

In the JSC's recent public hearings, both survivors and other support services raised concerns about the lack of natural justice in the NRS's decision-making process. For example, one survivor explained that "the biggest healing component in this whole process for victims of sexual abuse is going to be if they feel that they have been justly dealt with"[72] and that "until the legal rights and natural justice are front and centre in the redress scheme there will be no real justice for survivors, and further harm will be done".[73] Similarly,

---

68 Section 15AA of the *Acts Interpretation Act 1901* (Cth) requires the Scheme Operator to interpret the provisions of the NRS Act in accordance with its objects, which include to recognise and alleviate the impact of past institutional child sexual abuse, and to provide justice for the survivors of that abuse [as per section 3, subsection (1), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth)]. We also note that section 10 of the NRS Act requires the Operator and officers of the Scheme to take into account a number of general principles, including that redress be survivor-focused and avoid, as far as possible, causing further harm or trauma to survivors. We submit that denying a survivor an opportunity to comment on adverse information prior to a determination being made is inconsistent with these general principles.

69 Section 93, subsection (1)(e)(i), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

70 Section 93, subsection (1)(e)(ii), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

71 According to the Administrative Review Council, "adverse information of a personal nature that has been received should generally be disclosed to the person concerned, even if the information will not be relied on when a decision is made" (*Best Practice Guide No. 2: Natural Justice*, p. 9).

72 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Monday, 6 April 2020*, Evidence of Robert, p. 21, <parlinfo.aph.gov.au/parlInfo/download/committees/commsen/b09efaf9-cb03-48ac-a10ac85599257bd3/toc_pdf/Joint%20Select%20Committee%20on%20Implementation%20of%20the%20National%20Redress%20Scheme_2020_04_06_7661.pdf;fileType=application%2Fpdf#search=%22committees/commsen/b09efaf9-cb03-48ac-a10a-c85599257bd3/0001%22>.

73 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Monday, 6 April 2020*, Evidence of Robert, p. 15.

Tuart Place highlighted the fundamental unfairness of denying survivors the right to access their own personal information provided by institutions to the Scheme.[74]

A decision-making process that does not overtly provide natural justice to survivors is neither survivor-focused nor trauma-informed, and is procedurally unfair. Such a process risks producing decisions that are both wrong and unfair, and may cause further harm and trauma to survivors. This is particularly so where information from the survivor is routinely shared with the institution, but not vice versa.

Recommendation 12

That the Scheme Operator ensures that:

a. the provisions of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* are interpreted and applied in a manner that ensures the provision of natural justice to survivors; and

b. the Scheme's quality assurance and/or quality control framework should ensure that survivors are consistently afforded natural justice at first instance decisions and in internal review processes.

Lack of adequate reasons for determinations

knowmore remains concerned that some IDMs are failing to provide survivors with adequate reasons for their determinations, leaving them without a clear understanding of how and why a decision on their application was made.

The lack of adequate reasons is particularly concerning where a survivor receives an adverse decision. This includes cases where:

- survivors are found not to be eligible for redress, or a component of redress, under the Scheme — for example, where the abuse experienced by the survivor is not found to be within the scope of the Scheme or a participating institution is not found to be responsible
- survivors receive an offer of redress that is substantially different to what they reasonably expected to receive, based on the legislative criteria and the Assessment Framework — for example, where a survivor receives an offer of redress recognising only contact abuse, despite their application clearly stating that they also experienced penetrative abuse.

In our view, providing detailed written reasons for decisions is essential to the transparency, accountability, and fairness of the NRS's decision-making process. Failing to provide adequate reasons may lead to the perception that the redress decision is unfair or arbitrary and will cause unnecessary and additional distress to survivors.

Duty to provide reasons

IDMs have a statutory duty to provide written reasons for their determinations to survivors, derived from section 34(1)(b) of the NRS Act.[75] The legislation makes clear that the duty to provide reasons goes beyond the obligation merely to notify the survivor of whether the application has been approved and if so, the offer of redress.

This interpretation is consistent with section 25D of the *Acts Interpretation Act 1901* (Cth), which provides:

> *Where an Act requires a tribunal, body or person making a decision to give written reasons for the decision, whether the expression "reasons", "grounds" or any other expression is used, the*

74 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Wednesday, 15 April 2020*, Evidence of Mrs S Regan (Counsellor, Tuart Place), p. 19, <parlinfo.aph.gov.au/parlInfo/download/committees/commsen/a2f7b3bc-e75c-4fa5-9ca6-441c03fd4234/toc_pdf/Joint%20Select%20Committee%20on%20Implementation%20of%20the%20National%20Redress%20Scheme_2020_04_15_7668.pdf;fileType=application%2Fpdf#search=%22committees/commsen/a2f7b3bc-e75c-4fa5-9ca6-441c03fd4234/0001%22>.

75 A similar obligation exists in relation to a review determination under section 77 of the NRS Act.

> *instrument giving the reasons shall also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based* [emphasis added].

At a minimum, the written reasons provided by IDMs should give survivors enough information to enable them to understand the grounds on which their redress decision was made and their offer of redress was calculated. According to the Administrative Review Council's Best Practice Guide on reasons:

> *The actual reasons relied upon by the decision maker at the time of making the decision must be stated. Every decision should be amenable to logical explanation. The statement must detail all steps in the reasoning process that led to the decision, linking the facts to the decision. The statement should enable a reader to understand exactly how the decision was reached; they should not have to guess at any gaps.*[76]

Written reasons provided by IDMs under the Scheme

In knowmore's experience, the notice of determination given to survivors clearly sets out the decision and, where relevant, the offer of redress. However, it often fails to give adequate reasons for the decision. Although most survivors also receive an offer call from the NRS, these offer calls are generally not undertaken by IDMs and rarely provide any further information about the reasons for the decision.

As we submitted to the JSC, many of knowmore's clients have received brief and vague written reasons for their redress decision.[77] In some instances, the reasons provided by the IDM have been confined to a few short paragraphs. In others, the IDM has relied solely on standard wording and failed to provide any insight into the real reasons for the decision or the factors and evidence relevant to the determination of an individual survivor's application. The below extract is an example of written reasons provided to some knowmore clients who received adverse decisions from IDMs.

Written reasons provided to several knowmore clients who received adverse decisions in which only some of the sexual abuse they experienced as children was accepted by the IDM

Reasons for the determination

I have determined that you are eligible for redress under the Act for the abuse you experienced for the following reasons:

- You experienced sexual abuse [if relevant insert "as well as related non-sexual abuse"].
- The abuse is within the scope of the Scheme because it occurred when you were a child, in [insert jurisdiction] (which is a State that is participating in the Scheme) and before the Scheme's start date of 1 July 2018.
- [Insert institution] was responsible for bringing you in contact with your abuser/s.
- The abuse you experienced is of the kind that the monetary payment under the Assessment Framework would be more than nil.
- You were an Australian citizen at the time of making your application.

For more information about eligibility requirements for redress under the Scheme, go to legislation.gov.au and search for 'National Redress Scheme'. Select the 'National Redress

76 Administrative Review Council, *Best Practice Guide 4: Reasons*, ARC, Canberra, 2008, p. 8, <www.ag.gov.au/legal-system/publications/administrative-review-council-best-practice-guide-4-reasons>. According to the website of the Attorney-General's Department, the Administrative Review Council's best practice guides are still regarded as good policy, despite the Council ceasing to operate (see <www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications>).

77 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, p. 21.

Scheme for Institutional Child Sexual Abuse Act 2018' and select 'Expand All', then under 'Part 2-2', select 'Division 2'.

You can also view the Assessment Framework by going to legislation.gov.au and searching for 'National Redress Scheme Assessment Framework'.

In knowmore's view, written reasons that are based solely on standard wording that fail to shed light on what was decided and why in an individual case are wholly inadequate. This can also lead to distress for some survivors, particularly where no or minimal explanation was provided as to why their experiences of abuse were either not considered or not accepted by the IDM. In these instances, the lack of adequate reasons risks causing further harm and trauma to survivors.

The lack of adequate reasons for decisions can also adversely impact on an affected survivor's ability to properly consider and exercise any right of review. As we submitted to the JSC, providing a survivor with adequate written reasons is essential to ensuring that they have the opportunity not only to understand the decision, but to also make an informed choice about whether to exercise their right to seek a review of the decision.[78] A failure to provide adequate written reasons may also give rise to a perception that the NRS is discouraging survivors from seeking a review and is therefore favouring the interests of the Scheme and/or the responsible institution over the survivor.[79]

Recommendation 13

That, consistent with Recommendation 6 of the JSC, the Scheme Operator ensures that:

a. IDMs comply with their obligation to provide adequate written reasons for their determinations. In accordance with this obligation, IDMs should, to the maximum extent possible, explain how a decision was reached, including their findings on material questions of fact and what information was taken into account and/or not taken into account to reach those findings.

b. the Scheme's quality assurance and/or quality control framework prioritises the provision of adequate reasons for determinations at first instance and in internal review processes.

Lack of transparency and fairness in the internal review process

Since the commencement of the NRS on 1 July 2018, knowmore has assisted a number of clients to apply for an internal review of their NRS decision. The internal review process is an important safeguard, particularly in the context of the Scheme being new and evolving, and in some cases we have achieved significantly more satisfactory outcomes for survivors by assisting them to review an original decision. However, significant improvements are still required to improve the transparency and procedural fairness of the internal review process.

We particularly remain concerned about the following shortcomings in the internal review process:

- the limited scope of the internal review process, including that there is no right for a survivor to seek a review of a decision that they are not entitled to apply for redress or are not eligible for redress on certain grounds
- that survivors are prevented from providing new information to support their application for an internal review, and the lack of clarity surrounding what constitutes new information
- that survivors who apply for an internal review risk having their original decision reduced
- the general lack of transparency surrounding the internal review process, which is deterring some survivors from seeking a review.

78 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, p. 21.

79 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, p. 21.

Limited scope of the internal review process

knowmore remains concerned that there is no right of internal review for a decision that a person is not entitled to apply for redress, such as a decision made pursuant to section 20 of the NRS Act that there are not exceptional circumstances justifying an application being made by a person in gaol. There is also no right of internal review for an adverse determination under section 63 of the NRS Act, which governs the special assessment process for applicants with serious criminal convictions.[80]

In our view, all decisions made by IDMs should be subject to the internal review process. This is necessary to ensure transparency and procedural fairness in the Scheme's decision-making process and to ensure that decisions are fair and lawful. The lack of transparency surrounding the assessment of applications by persons in gaol or persons with serious criminal convictions, the wide discretion vested in the Scheme Operator to determine such applications, and the significant implications that an adverse decision has on a survivor's ability to access justice under the Scheme further justify a right to internal review.

Prohibition on providing new information during an internal review

The former JSC made several recommendations aimed at improving the transparency and procedural fairness of the internal review process, including to allow applicants to provide new information during the internal review process.

> Relevant recommendation of the former JSC
>
> *Recommendation 26*
>
> The committee recommends that Commonwealth, state and territory governments agree to and implement amendments necessary to allow applicants to provide additional information in support of their review application, up to the point of the redress payment being made.

We continue to strongly support reforms to enable survivors to provide new information during an internal review process, to improve the transparency and fairness of the decision-making process. In our view, survivors should have a right to provide new information during the internal review process, particularly given the inherently traumatic nature of the application process, the limit on the number of applications they can make to the Scheme, the lack of access to external review, and the significant rights they are required to give up if they are to accept the offer of redress.

Until these reforms are implemented, the NRS should provide further clarity about how the internal review process operates and, specifically, what constitutes 'new information'. As we explained in our submission to the JSC, where a client decides to seek an internal review of their redress decision, it is our general practice to assist them to provide a submission in support of the review request. A submission of this nature typically highlights any apparent inconsistencies or unfairness in the original decision, and may explain the reasons we believe the decision is affected by error.

Under the current provisions in the NRS Act, and in accordance with the usual approach taken in reviewing administrative decisions, such submissions by a legal adviser or other advocate should not be considered to be 'new information' where they do not raise new claims or factual circumstances, but focus instead on issues of statutory interpretation, principles of administrative law, the relevant findings of the Royal Commission, perceived defects in the original decision, and the like — all of which may help to ensure the correct decision is arrived at in the review process. However, we have been unable to determine whether these submissions are being classified as 'new information' or whether they are being considered by IDMs under the internal review process.

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

Risk that a redress offer will be reduced upon review

Under the NRS Act, survivors who apply for an internal review risk having the monetary component of their redress offer reduced. In our view, this significantly undermines the ability of the internal review process to be survivor-focused, and effectively acts as a deterrent for survivors to seek a review. For some of our clients, this has been the cause of considerable distress. In some instances, survivors have chosen to accept their offer rather than apply for an internal review, despite their offer being substantially less than what they reasonably expected to receive and in some cases, being potentially affected by error.

As we submitted to the former JSC:

> *It will inevitably be extremely distressing for a survivor, who already perceives their offer of redress to be inadequate, to learn upon review that is has been further reduced. The Operator of the scheme should bear the onus of getting the determinations right in the first instance and should carry the consequences in the expected very small number of cases where there is an error on quantum made in favour of a survivor.*[81]

The former JSC acknowledged this injustice and made the following recommendation.

> Relevant recommendation of the former JSC
>
> *Recommendation 27*
>
> The committee recommends that Commonwealth, state and territory governments agree to and implement amendments necessary to ensure that a review does not result in an applicant receiving a lower redress amount than their original offer.

General lack of transparency surrounding the internal review process

As we stated in our submission to the former JSC, there is a general lack of information about the internal review process. This includes a lack of publicly available data about number of internal review applications lodged, the outcomes of these applications, and the average processing times under this process from the date of the internal review request to the date the survivor is notified of the outcome. This can create additional stress and uncertainty for survivors who have no ability to assess the prospects of an internal review application and how long it will take to receive an outcome.

In our experience, this lack of transparency and certainty has deterred some survivors, particularly those who are elderly and/or unwell, from seeking an internal review despite the fact that they would likely receive a fairer offer of redress upon review.

We therefore support the following recommendation of the former JSC, and call on the NRS to urgently release more information about the internal review process and key data relating to the number of reviews that have been sought, the outcomes, and the average processing times.

> Relevant recommendation of the former JSC
>
> *Recommendation 28*
>
> The committee recommends that the government closely monitor the timeliness of internal review determinations.

81 knowmore, *Submission to the Joint Select Committee: Inquiry into the Implementation of Redress Related Recommendations of the Royal Commission*, p. 10.

Recommendation 14

That the Commonwealth, state and territory governments urgently implement Recommendations 26, 27 and 28 of the former JSC.

Recommendation 15

That the NRS:

a. regularly audits the internal review process to:
   i. identify common errors and inconsistencies in the decision-making process;
   ii. assess the effectiveness of the internal review process in rectifying errors and inconsistencies in original decisions; and
   iii. implement strategies to reduce errors and inconsistencies in original decisions; and
b. publicly releases more information about the internal review process, including key data on the number of internal review applications received, the outcomes of these applications, and the average processing times.

Role of the protected information provisions in the NRS Act

In our experience, the lack of transparency and procedural fairness in the decision-making process appears to arise, at least in part, from the protected information provisions in the NRS Act.[82] As detailed above, we are concerned that in some instances there has been an overreliance on, and misinterpretation of, these provisions by officers under the Scheme.[83]

We believe that urgent consideration should be given to the Scheme's approach to these provisions and whether they are being incorrectly relied upon to deny transparency and procedural fairness to survivors. If it is found that the provisions do in fact operate to substantially limit or prevent IDMs from providing transparent and procedurally fair decisions to survivors, legislative amendments should be introduced as a matter of priority to rectify this.

Recommendation 16

That the second anniversary review considers the protected information provisions of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*, and the extent to which either the provisions or the NRS's interpretation of the provisions inhibit the transparency and procedural fairness of the decision-making process. Where necessary, legislative amendments should be identified to improve the transparency and procedural fairness of the decision-making process for survivors.

Unfairness and inconsistencies in redress decisions

In our April 2020 submission to the JSC, we raised concerns about unfairness and inconsistency in the assessment of some NRS applications.[84] This remains one of the most significant and pressing concerns we have with the implementation and operation of the NRS.

In the following sections, we expand on our discussion of this issue and highlight areas where we are seeing ongoing unfairness and inconsistency in redress outcomes.

Impact on survivors

Unfairness and inconsistency in redress outcomes can cause considerable distress, anxiety and uncertainty for survivors. As part of their healing journey, many survivors have developed a strong sense of connection and solidarity with others who have a shared or common experience of abuse. Survivors in this situation

82 Part 4-3, *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

83 knowmore staff are frequently told by officers of the Scheme that information cannot be disclosed due to the protected information provisions.

84 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, pp. 19–23.

can become extremely frustrated and distressed when they learn that their redress application has been assessed inconsistently to other comparable applications.

We are also concerned that some survivors have received an NRS decision that is inconsistent with the Royal Commission's approach to what does and does not constitute sexual abuse, despite the definition of sexual abuse in the NRS Act closely mirroring the definition adopted by the Royal Commission.[85] Survivors in this situation have been re-traumatised by the NRS's failure to appropriately recognise their experiences of institutional child sexual abuse.[86]

Where a redress outcome is unfair or inconsistent, the burden is on survivors to rectify this by seeking an internal review of the decision. However, this can lead to further stress, uncertainty and delays for survivors. It has been our experience that many survivors will choose to accept unfair and inconsistent offers of redress rather than go through this process. We are also concerned that survivors who do not seek legal assistance may not realise that their redress outcome has been affected by inconsistent decision-making and may not seek an internal review.

Unfairness and inconsistency in redress outcomes has significant implications for the Scheme's ability to deliver the essential elements of redress identified by the Royal Commission — equal access to justice for all survivors of institutional child sexual abuse, equal and fair treatment of survivors throughout the redress process, and survivor-focused and trauma-informed redress.[87] It also has implications for the Scheme's ability to deliver redress in accordance with the general principles outlined in the NRS legislation — that redress be survivor-focused, have appropriate regard to what is known about child sexual abuse and to the needs of survivors, and avoid further harming or traumatising survivors.[88]

Need for greater transparency

Inconsistency and unfairness in redress outcomes is exacerbated by the lack of transparency and procedural fairness in the decision-making process. As explained earlier, it can be very difficult for knowmore and redress support services to provide accurate advice to survivors about the redress process and to manage their expectations about the likely outcome when we do not have access to the Assessment Framework Policy Guidelines and when our clients are receiving seemingly inconsistent decisions. Similarly, the lack of natural justice and adequate written reasons for decisions in some instances can make it almost impossible to determine how and why a decision has been made and whether the outcome is fair and consistent with comparable determinations.

Need for an effective quality assurance and/or quality control framework

We are not aware of whether the NRS has a quality assurance and/or quality control framework to ensure consistency and fairness in decision-making. Such a framework is critical to providing equal access to justice for survivors and ensuring that they receive equal and fair treatment and outcomes throughout the redress process. Without an effective quality assurance and/or quality control framework, there is likely to be an ongoing risk of unfairness and inconsistency in redress outcomes. There are a number of reasons for this, including the complex nature of the NRS and its legislative framework, the broad discretion given to IDMs,

85 We note the Royal Commission's definition of child sexual abuse had two components. The first was the recognition that child sexual abuse is "any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards". The second was a non-exhaustive list of acts that could constitute sexually abusive behaviour. The definition of sexual abuse in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) directly replicates the first component. While the definition in the Act does not include examples of sexually abusive behaviour, the Explanatory Memorandum to the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (Cth) does not suggest that the parliament intended for the NRS to depart from the Royal Commission's approach to the meaning of sexual abuse.

86 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, pp. 12–13.

87 Royal Commission, *Redress and Civil Litigation Report*, p. 4 and Recommendations 1 and 4.

88 Section 10, subsections (2) to (4), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

and the likely disparity in the quality of redress applications.

If such a framework is not already in place, we would urge the NRS to introduce a quality assurance and/or quality control framework as a matter of priority. If one already exists, the NRS should publicly release information about it. Further, any quality control and/or quality control framework that is implemented should be subject to regular review to ensure that it remains relevant and effective.

Recommendation 17

That the NRS establishes a comprehensive quality assurance and/or quality control framework to ensure consistency and fairness in decision-making. The NRS should also ensure that:

a. information about this framework is publicly available; and

b. the framework is subject to regular review to ensure that it is effective in addressing unfairness and inconsistency in decision-making, particularly in relation to high-risk areas of decision-making.

Key areas of unfairness and inconsistency in redress outcomes

In knowmore's experience, unfairness and inconsistency in redress decisions is particularly evident in the areas where IDMs have a greater level of discretion. This includes when determining:

- reasonable likelihood
- extreme circumstances
- what does and does not constitute sexual abuse
- relevant prior payments
- institutional responsibility.

Reasonable likelihood

Consistent with the recommendations of the Royal Commission[89] and with the interests of providing survivor-focused and trauma-informed redress, the Australian Parliament adopted 'reasonable likelihood' as the relevant evidentiary threshold for determining eligibility under the Scheme.[90] This evidentiary threshold was intended to be low,[91] requiring only that the chance of the person being eligible for redress "is real, is not fanciful or remote and is more than merely plausible".[92]

Despite this low evidentiary threshold, we have observed a concerning number of decisions by IDMs that have failed to recognise some or all of the survivor's experiences of child sexual abuse. For example, several of our clients have received an offer of redress for contact abuse only, despite their NRS applications clearly stating that the nature of the abuse they experienced was penetrative. Due to the lack of transparency and procedural fairness in the decision-making process, it is often difficult to determine the reasons for these decisions and whether the IDM found that there was not a reasonable likelihood that the abuse occurred, or simply failed to take it into account in making their determination.

The Royal Commission published research into the ways in which justice and redress processes can be affected by common misconceptions and inaccurate assumptions about how survivors recall and provide evidence about historical child sexual abuse. This research found that:

> *…police officers, legal professionals, judges, juries and laypersons hold misconceptions about memory that can influence outcomes in cases of child sexual abuse. Misconceptions about fundamental aspects of memory — such as the formation of memory gaps, rates of forgetting and the significance of self-contradictions, inconsistencies and errors — can lead juries to*

89 Royal Commission, *Redress and Civil Litigation Report*, Recommendation 57.

90 Section 12, subsection (2)(b), *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

91 Explanatory Memorandum to the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018, pp. 38 and 101.

92 Section 6, *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

> *doubt the reliability of evidence given by child and adult victims. Many legal professionals and juries are unaware that these memory features are common and do not indicate memory impairment or dishonesty.*[93]

Given the diverse backgrounds and experiences of IDMs, the independent nature of their role, and the broad discretion that is vested in them, there is a risk that some redress decisions may also be affected by common misconceptions and inaccurate assumptions about the impacts of child sexual abuse on survivors and that these misconceptions may result in an IDM unfairly and incorrectly finding that there is not a reasonable likelihood that abuse occurred.

The NRS should take urgent action to mitigate this risk, including by reviewing the Assessment Framework Policy Guidelines to ensure that it provides clear guidance on applying the reasonable likelihood threshold and that this guidance is consistent with current research on and understanding of the nature of institutional child sexual abuse and the impact of abuse on memory and patterns of disclosure among survivors. The NRS should also ensure that all IDMs receive regular training to enable them to adopt a trauma-informed approach to the assessment of redress applications and to ensure that redress is assessed, offered and provided with appropriate regard to what is known about the nature and impact of institutional child sexual abuse on survivors.

Recommendation 18

That, to mitigate the risk of unfairness and inconsistency in the assessment of 'reasonable likelihood', the NRS:

a. undertakes a review of the Assessment Framework Policy Guidelines to ensure that the Scheme's evidentiary threshold is assessed consistently with current research on and understanding of the nature of institutional child sexual abuse and the impact of abuse on memory and on patterns of disclosure among survivors; and

b. ensures that IDMs receive regular training to enable them to fairly and consistently assess redress applications in a trauma-informed manner and with appropriate regard to what is known about the nature and impact of institutional child sexual abuse on survivors.

Extreme circumstances

knowmore is also concerned about unfairness and inconsistency in the assessment of extreme circumstances relating to survivors' experiences. In particular, we are concerned about:

- the arbitrary categorisation of extreme circumstances in the NRS's Assessment Framework
- the lack of clarity as to what constitutes extreme circumstances
- the perceived lack of consistency and fairness in decisions involving extreme circumstances.

Under the NRS's Assessment Framework, a survivor can only be found to have experienced extreme circumstances if they also experienced penetrative abuse.[94] In our view, this limitation is both arbitrary and inconsistent with the Royal Commission's findings regarding the nature and impact of institutional child sexual abuse. This view was shared by the former JSC, which recommended that:

> *If the current National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 is maintained, then the committee recommends that any acknowledgement*

93 J Goodman-Delahunty, MA Nolan and EL Van Gijn-Grosvenor, *Empirical Guidance on the Effects of Child Sexual Abuse on Memory and Complainant's Evidence: Report for the Royal Commission into Institutional Responses to Child Sexual Abuse*, 2017, p. 2, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/research_report_-_empirical_guidance_on_the_effects_of_child_sexual_abuse_on_memory_and_complainants_evidence.pdf>.

94 Section 4, National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 (Cth).

> *of 'extreme circumstances' in the Assessment Framework be applicable to all applicants, not only those who experienced penetrative abuse.*[95]

knowmore strongly supports this recommendation, as well as the former JSC's recommendation that the Australian Government also publicly clarify key terms in the Assessment Framework.[96] In our view, there is a pressing need for further clarity as to what constitutes extreme circumstances. Currently, the legislative definition of extreme circumstances is ambiguous and any further guidance provided in the Assessment Framework Policy Guidelines is not publicly available.

As we highlighted to the JSC, without further clarity there is a risk that some survivors may omit information from their applications that is relevant to the determination of extreme circumstances, therefore depriving them of access to a further $50,000 to recognise and alleviate the impacts of the abuse they experienced. Conversely, the lack of clarity may lead survivors to feel the need to disclose too much information in their application out of fear that it may be relevant to the determination of their application, therefore increasing the risk of re-traumatisation. These risks may be especially heightened for survivors who choose to complete their applications without support.

In some instances, the lack of clarity surrounding the definition of extreme circumstances is exacerbated by unfairness and inconsistency in the determination of whether extreme circumstances exist. We provide the following example in which survivors received unfair and inconsistent redress outcomes due to determinations about the factor of extreme circumstances.

Two siblings with common experiences of abuse who received inconsistent decisions on extreme circumstances

knowmore assisted two siblings who had very similar experiences of institutional child sexual abuse to apply for redress under the Scheme.

Both siblings had previously participated in civil proceedings, and had received almost identical relevant prior payments from the responsible institution.

Despite their common experiences of abuse and history of prior payments, the clients received vastly different redress outcomes under the NRS:

- One sibling was found to have experienced extreme circumstances and received an offer of all three components of redress, including a monetary payment of approximately $30,000.
- The other sibling was found not to have experienced extreme circumstances. As a result, following the deduction of relevant prior payments, they received an offer of redress that did not include a monetary payment.

knowmore has been unable to reconcile these inconsistent outcomes. The written reasons for the determinations shed no light on why these two siblings received such different outcomes, leaving us to believe that it may be because their applications were assessed by different IDMs. This unexplained unfairness and inconsistency has had a significant impact on the survivors and is inconsistent with the principles of transparent and consistent decision-making. While one has been able to accept their offer, the other has experienced further delays, stress and uncertainty while waiting for the outcome of an internal review.

95 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, Recommendation 12.

96 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, Recommendation 13.

Recommendation 19

That Recommendation 12 of the former JSC be implemented as a matter of priority, by amending the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework to ensure that recognition of extreme circumstances of sexual abuse is not dependent upon whether the abuse was penetrative abuse.

Recommendation 20

That, consistent with Recommendation 13 of the former JSC, the Australian Government publicly clarifies how extreme circumstances are assessed under the NRS's legislative and policy framework.

Relevant prior payments

knowmore remains concerned about unfairness, inconsistency and the lack of transparency in the assessment of relevant prior payments. We are particularly concerned that in some instances:

- prior payments for non-sexual abuse are unfairly being deemed to be relevant prior payments under the Scheme; and
- prior payments that are deemed to be relevant are being inconsistently apportioned and deducted by IDMs.

In our experience, unfairness and inconsistency in the NRS's approach to relevant prior payments is having a disproportionate and worrying impact on elderly Aboriginal and/or Torres Strait Islander survivors who are members of the Stolen Generations and who have received prior payments under state-based redress schemes or through civil litigation. These prior payments were awarded to survivors in recognition of their experiences of being forcibly removed from their family, community, culture and country on the basis of their Aboriginality. Often these prior payments were not intended to provide reparations for institutional child sexual abuse, and some survivors did not disclose their experiences of institutional child sexual abuse, or the severity of that abuse, a part of those processes.

Despite this, prior payments to survivors of the Stolen Generations are generally deemed to be relevant prior payments under the Scheme.[97] As a result, these payments are being indexed and then deducted from the survivor's redress offer. In some instances, survivors have received no monetary payment from the NRS as a result of this approach. This has been distressing and re-traumatising for survivors, many of whom have experienced a persistent lack of social justice throughout their lives. For these survivors, the NRS's approach to relevant prior payments has significantly compromised their ability to achieve justice for the child sexual abuse they experienced and to effectively hold responsible institutions to account.

We have also observed considerable inconsistencies in the way these prior payments have been assessed by IDMs. In some instances, IDMs appear to have acknowledged that the survivor did not disclose, or only partially disclosed, their experiences of child sexual abuse as part of previous Stolen Generations claim and as a result, have apportioned these payments. In other instances, the IDM has deducted the full amount of the prior payment. As we stated in our April 2020 submission to the JSC:

> *We have also noted considerable inconsistencies in the way these prior payments have been assessed, and a lack of adequate reasons for particular determinations. As a result, it has been difficult to determine whether the unfairness and inconsistency in these decisions is the result*

97 Section 26(5) of the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (Cth) provides that "a payment to the person in relation to non-sexual abuse for which the responsible institution is responsible is not a relevant prior payment (to any extent) if the non-sexual abuse is not covered by a set of abuse that also covers sexual abuse of the person". This suggests that a prior payment will be deemed to be relevant where it is covered by a set of abuse that also covers sexual abuse. A set of abuse is defined in section 20 of the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (Cth).

of the NRS's policy framework, or a lack of understanding about the purpose and nature of these prior payments among IDMs.[98]

The unfairness and inconsistency in the NRS's approach to relevant prior payments can be demonstrated by comparing the following two case examples.

An Aboriginal client and member of the Stolen Generations whose relevant prior payment was apportioned and only partly deducted

The client is an Aboriginal person and a member of the Stolen Generations. The client experienced institutional child sexual abuse in foster care while they were in the care of a state government.

The client had previously participated in civil proceedings, as part of a Stolen Generations group action. As a result of the group action, the client received a payment.

That payment was awarded to the client in recognition of the impact of unjust historical policies of forcible removal of children on the basis of their Aboriginality. It was not intended to provide reparations for institutional child sexual abuse.

During the civil proceedings, the client had disclosed some of the child sexual abuse they had experienced. However, the client did not disclose the severity of that abuse. knowmore assisted the client to apply for redress, and made submissions in support of the application contending that the above payment should not be deemed a relevant prior payment for this reason.

The client was found eligible for redress and received an offer of over $100,000, which they accepted. In this case it would seem that the IDM apportioned the prior payment, finding only part of it to constitute a relevant prior payment.

An Aboriginal client and member of the Stolen Generations whose relevant prior payment was unfairly assessed

The client is an elderly Aboriginal person and a member of the Stolen Generations. The client experienced institutional child sexual abuse in a residential home while they were under the care of a state government.

The client had previously participated in civil proceedings, as part of a Stolen Generations group action. As a result of the group action, the client received a payment.

This prior payment was awarded in recognition of the impact of unjust historical policies of forcible removal of children on the basis of their Aboriginality. It was not intended to provide reparations for institutional child sexual abuse.

During the civil proceedings the client did not disclose any details of the sexual abuse they had experienced. The client was only later able to disclose their experiences of institutional child sexual abuse with the support of an Aboriginal Engagement Advisor and a lawyer at knowmore. knowmore made submissions that the prior payment should be disregarded in its entirety for this reason.

The client was found eligible for redress but received no offer of a monetary payment. In this instance, the IDM found the entirety of the prior payment to be relevant, applied indexation, and deducted the full amount from their redress offer. The client was not provided with adequate written

98 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, p. 13.

reasons explaining how their application was determined.

The redress outcome has caused significant distress to this client, who has been left without a clear understanding of how or why the decision was made, as well as a feeling that they have been treated differently to other Stolen Generations survivors.

Cases such as these demonstrate the pressing need for the NRS's approach to prior payments to be examined and revised.

Recommendation 21

That the NRS's legislative and policy framework be amended to ensure that any prior payments, or components of prior payments, for non-sexual abuse are not considered as relevant prior payments for the purposes of determining a redress application. In implementing this recommendation, special consideration should be given to the disproportionate and concerning impact that the current approach has had on members of the Stolen Generations and to ensuring that this is rectified.

We also continue to call for reforms to the NRS legislation to remove the indexing of prior payments. We refer readers to our discussion of this issue and related recommendations on pages 11 and 12 of this submission.

Definition of sexual abuse

knowmore is concerned that, in some important instances, the NRS is adopting a limited approach to the definition of sexual abuse that is not survivor-focused and is inconsistent with the approach and findings of the Royal Commission. We refer readers to our detailed commentary on this issue in our April 2020 submission to the JSC.[99]

We particularly remain concerned that institutional child sexual abuse perpetrated by medical and healthcare professionals, including abuse perpetrated as part of routine "medical" examinations in residential institutions, is not being adequately recognised by the NRS and, as a result, some survivors have been found to be ineligible for redress under the Scheme. Due to the lack of transparency in the NRS's decision-making process, including the secrecy surrounding the Assessment Framework Policy Guidelines and the lack of adequate written reasons for decisions, we have not been able to determine the reasons for such a limited approach. It therefore remains unclear whether these decisions represent a broader policy position adopted by the NRS, or whether they are the result of IDMs exercising their discretion to determine that a particular instance of abuse does not constitute sexual abuse within the meaning of the NRS Act, despite being clearly contrary to accepted community standards.

In any event, this limited approach to what does and does not constitute sexual abuse is inconsistent with the approach adopted by the Royal Commission to abuse of this nature. As we explained in our April 2020 submission to the JSC:

> *The Royal Commission identified healthcare as an environment that encouraged or facilitated offending, stating that in some cases "specialist expertise, as in the case of medical practitioners… enabled perpetrators to disguise sexual abuse".[100] The Royal Commission recognised sexual abuse perpetrated by medical and health professionals in a number of different contexts, including in residential institutions, hospitals and community health settings… Medical and health professionals who abuse their position of trust to sexually abuse children in their care should be held to account and the NRS should provide equal access to*

99 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, pp. 12–13.

100 Royal Commission, *Final Report: Volume 2, Nature and Cause*, 2017, p. 12, <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_2_nature_and_cause.pdf>.

justice and redress for survivors of such abuse.[101]

Recommendation 22

That the NRS's policy framework, and legislative framework if necessary, be amended to ensure that the definition of sexual abuse is formulated and applied consistently with the Royal Commission's approach, and also with current understanding of the causes, nature and impact of institutional child sexual abuse.

Recommendation 23

That, if the NRS's approach to the definition of sexual abuse is intended to depart from the approach adopted by the Royal Commission, the Australian Government publicly clarifies the intended departures and the reasons for these departures.

Institutional responsibility

knowmore is concerned about an increase in decisions by IDMs where an institution has not been found to be responsible for the child sexual abuse experienced by the survivor. A number of our clients have been found to be ineligible for redress, or only partly eligible for redress, on this basis despite the abuse they experienced clearly having occurred in an institutional context.

We are particularly concerned that IDMs are taking an overly limited approach to determining institutional responsibility in the context of out-of-home care, including where the abuse was perpetrated by family members while the survivor was placed in kinship care or on missions. In our view, this limited approach is unfair and lacks an understanding of the history and nature of the institutionalisation of children in Australia. It is also inconsistent with the findings and recommendations of the Royal Commission.

The Royal Commission closely examined institutional child sexual abuse in the out-of-home care system. The Royal Commission's inquiry was not limited to abuse in the context of foster care, but also included other forms of out-of-home care including kinship or relative care and residential care.[102] The Royal Commission found that regardless of the model of out-of-home care, "the responsibility for administering, funding and delivering child protection services — including the provision of out-of-home care — rests with the state and territories".[103]

In recommending the establishment of an independent national redress scheme, the Royal Commission highlighted the importance of all survivors of institutional child sexual abuse having equal access to redress and receiving equal treatment throughout the redress process regardless of the nature or type of the institution in which they experienced abuse.[104] The Royal Commission also recommended a broad approach to determining when child sexual abuse should be taken to have occurred in an institutional context, as outlined on the following page.

Recommendation 45 of the Royal Commission's *Redress and Civil Litigation Report*

Child sexual abuse should be taken to have occurred in an institutional context in the following circumstances:

a. it happens:
   i. on premises of an institution
   ii. where activities of an institution take place or
   iii. in connection with the activities of an institution in circumstances where the institution is, or should be treated as being, responsible for the contact between the abuser and the applicant that resulted in the abuse being committed

b. it is engaged in by an official of an institution in circumstances (including circumstances that involve settings not directly controlled by the institution) where the institution has, or its activities have, created, facilitated, increased, or in any way contributed to (whether by act or omission) the risk of abuse or the circumstances or conditions giving rise to that risk

c. it happens in any other circumstances where the institution is, or should be treated as being, responsible for the adult abuser having contact with the applicant.

101 knowmore, *Submission to the Royal Commission on Implementation of the NRS (Submission 20)*, p. 12.

102 Royal Commission, *Final Report: Volume 12, Contemporary Out of Home Care* (2017) <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_12_contemporary_out-of-home_care.pdf>.

103 Royal Commission, *Final Report: Volume 12, Contemporary Out of Home Care*, p. 10.

104 Royal Commission, *Redress and Civil Litigation Report*, p. 4. See also Recommendation 1.

In our view, the NRS's limited approach to determining institutional responsibility for child sexual abuse is unfair and inconsistent with the recommendations of the Royal Commission. It also disproportionately affects survivors of abuse in particular institutional contexts, such as the many children under the care and protection of state governments who were placed in kinship or relative care, as well as Aboriginal and/or Torres Strait Islander children who are disproportionately represented in the out-of-home care system in every jurisdiction.[105]

Recommendation 24

That the NRS's policy framework, and legislative framework if necessary, be amended to ensure that the approach to determining institutional responsibility is formulated and applied consistently with the Royal Commission's findings and recommendations.

Inadequacies and inconsistencies in the counselling and psychological component of redress

We noted in our April 2020 submission to the JSC that the NRS's significant departures from the Royal Commission's recommendations regarding counselling and psychological care means that this component of redress is not as survivor-focused and trauma-informed as it should be.[106] We particularly raised concerns about the difficulties survivors face in obtaining care that reflects the Royal Commission's key principles of availability, accessibility, acceptability and high quality.[107]

To support further discussion and consideration of these issues, knowmore has reflected on its experiences with counselling and psychological services for redress clients to examine how these are being delivered in each state and territory with respect to key elements of the Royal Commission's four principles. The outcomes of this exercise are shown in the table on pages 43 to 46. Although the table is necessarily a summary of our experiences (that is, it is not possible to reflect every unique circumstance in it), it usefully highlights apparent strengths and weaknesses and inconsistencies across jurisdictions, as we understand them. Within the table, areas of what we consider to be comparatively good practice are indicated in green, while areas of what we consider to be comparatively limited practice are indicated in red (see full key on page 46). We outline our key observations after the table on page 47 onwards.

105 Royal Commission, *Final Report: Volume 12, Contemporary Out-of-Home Care*, p. 10.

106 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*.

107 The Royal Commission referred to these four principles throughout its report on advocacy, support and therapeutic treatment services. They are drawn from the International Covenant on Economic, Social and Cultural Rights, which was ratified by Australia in 1975 and enshrines the right to the highest attainable health (Royal Commission, *Final Report: Volume 9, Advocacy, Support and Therapeutic Treatment Services*, 2017, p. 69, <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_9_advocacy_support_and_therapeutic_treatment_services.pdf>).

Table 1: knowmore's views on the operation of the counselling and psychological component of the NRS across Australia.

		ACT *Access to services*	NSW *Access to services*	Qld *Access to services*	NT *Access to services*	WA *Payment up to $5,000*	SA *Payment up to $5,000*	Vic *Access to services*	Tas *Access to services*
Availability	**Duration of counselling**	Approved in blocks of 10, but can have counselling as long as needed	Minimum of 22 hours, but can continue indefinitely	20 hours and more if needed; cost capped at $180 plus GST per session	20 hours with extensions made on a case by case basis; can be accessed at any point in a survivor's life	Exposure abuse: 5 to 7 hours Contact abuse: 10 to 14 hours Penetrative abuse: 19 to 28 hours	Exposure abuse: 5 to 7 hours Contact abuse: 10 to 14 hours Penetrative abuse: 19 to 28 hours	At least 20 hours, calculated at max. $250 per session	At least 20 hours
Accessibility	**Co-ordination of CPC services**	Done by Victim Support ACT (part of the ACT Human Rights Commission)	Done by Victims Services Redress Team based on existing Victims Services model	Done by the Counselling Program Team, Department of Child Safety, Youth and Women	Done by the NT Redress Co-ordination Team (RCT), Department of the Attorney-General and Justice	None	None	Done by Restore (central contact point for 17 specialist counselling organisations)	Done by the Child Abuse Royal Commission Response Unit (CARCRU), Department of Justice
	Assistance to identify a suitable counsellor	Victim Support will help survivor identify an appropriate professional based on needs and preferences	Victims Services will give survivor list of Approved Counsellors to choose from	Counselling Program Team will help survivor source a preferred practitioner	RCT can help survivor identify a suitable provider	Up to the survivor to navigate the service system and identify an appropriate counsellor	Up to the survivor to navigate the service system and identify an appropriate counsellor	Restore will explore options to meet survivor's needs and accept recs subject to accreditation checks	CARCRU will help survivor identify a suitable counsellor on or off register of approved providers

	ACT *Access to services*	NSW *Access to services*	Qld *Access to services*	NT *Access to services*	WA *Payment up to $5,000*	SA *Payment up to $5,000*	Vic *Access to services*	Tas *Access to services*
Assistance to arrange appointments	Up to the survivor to arrange appointments	Victims Services can book initial appointment for the survivor	Counselling Program Team can liaise with practitioners and arrange warm referral for first appointment	RCT can make warm referrals if requested	Up to the survivor to arrange appointments	Up to the survivor to arrange appointments	Restore can assist with initial arrangements if required	CARCRU can make warm referrals and liaise with counsellors to arrange an appointment
Assistance to attend appointments	No assistance available	No assistance available	No assistance available	No assistance available	No assistance available	No assistance available	Restore can assist with transport costs where access is a problem	Considered on a case by case basis
Availability of appropriate services for survivors in regional or remote areas	Services accessible to survivors in regional areas (noting most of the ACT is classified as a major city); phone/video counselling available	Few/no counsellors in some regional and remote areas; some phone/video counselling available	Very few counsellors in the Trauma Support Directory are in regional and remote areas, though practitioners can be assisted to register	RCT engages practitioners who have flexible delivery options, including phone and video conferencing	Very few specialist services available in regional and remote areas; some phone/video counselling available	Very few specialist services available in regional and remote areas; some phone/video counselling available	Limited availability in regional areas; Centres Against Sexual Assault and Redress Support Services will provide phone counselling	Services available in regional areas; in remote areas, travel may be required and poor reception can limit phone counselling

		ACT *Access to services*	NSW *Access to services*	Qld *Access to services*	NT *Access to services*	WA *Payment up to $5,000*	SA *Payment up to $5,000*	Vic *Access to services*	Tas *Access to services*
Acceptability	**Flexibility to see an existing counsellor**	Victim Support can contact counsellor to determine whether it can arrange payment for future sessions	Counsellor must be an Approved Counsellor or approved as an Interim Counsellor — onerous process and approval not always given	Counsellor must be registered in the Trauma Support Directory; Counselling Program Team can assist practitioners to register	Survivor can see existing counsellor if they meet the National Service Standards	Survivor can use lump sum payment to pay any existing counsellor	Survivor can use lump sum payment to pay any existing counsellor	Survivor can see existing counsellor subject to accreditation checks	Survivor can see existing counsellor as long as they are fully qualified
	Flexibility to access alternative services Including cultural healing modalities and alternative therapies	Survivor can access services including trauma-informed massage, and yarning circles and healing farms for Aboriginal survivors	Survivor can ask Victims Services for alternative services — access may be possible	Feasible as long as the service works within the parameters of the program (appropriate accreditation, insurance etc.)	Not clear if alternative services can be accessed	Survivor can use lump sum payment to pay for any service they choose	Survivor can use lump sum payment to pay for any service they choose	Restore will consider cultural healing and other accredited therapeutic modalities and will advocate for flexibility	CARCRU will consider any proposal/ request (e.g. for life coaching, cultural healing)

		ACT *Access to services*	NSW *Access to services*	Qld *Access to services*	NT *Access to services*	WA *Payment up to $5,000*	SA *Payment up to $5,000*	Vic *Access to services*	Tas *Access to services*
High quality	**Availability of culturally appropriate/ relevant services for Aboriginal and/or Torres Strait Islander survivors**	Have Aboriginal counsellors + counsellors with expertise/ experience with Aboriginal clients; Aboriginal survivors can access cultural healing as noted above	Approved Counsellors include practitioners with Aboriginal and Torres Strait Islander experience/ background	No Aboriginal and/or Torres Strait Islander practitioners in the Trauma Support Directory; limited services available	Culturally appropriate services available across the NT based on survivor's needs	Limited services available	Limited services available	Culturally appropriate services available through VACCA, Centres Against Sexual Assault and other Redress Support Services	Limited services available, though CARCRU can work with Tasmanian Aboriginal Centre to find suitable counsellors
	Oversight and regulation of services Including practice standards for practitioners, regular evaluations, and feedback/ complaints mechanisms	Practice standards in place; feedback and complaints processes available	Charter of Victims Rights and NSW Code of Practice apply to counsellors	Complaints process exists for survivors who contact the Counselling Team Program	All service providers must meet the National Service Standards	No specific framework in place as yet	No specific framework in place as yet	Complaints mechanism in place; Restore will assist survivors with complaints process	Minimum requirements and approval criteria for providers on CARCRU register; no standards for providers off register

In knowmore's view/experience, the jurisdiction's practice is comparatively good/has key strengths.

In knowmore's view/experience, the jurisdiction's practice is about average/has a mix of strengths and weaknesses.

In knowmore's view/experience, the jurisdiction's practice is comparatively limited/has key weaknesses.

Key observations

Availability

It is apparent from the table that the lump sum payment model is continuing to leave survivors in South Australia and Western Australia drastically worse off compared to their counterparts in the other jurisdictions. This is particularly true for survivors who receive redress for non-penetrative sexual abuse, with their payments likely to fund no more than 14 hours of counselling. This is clearly insufficient to address the varied and complex needs of many survivors.

In the six jurisdictions that provide survivors with access to services, there is now greater certainty about the number of hours of counselling that survivors can access, and there are no specific limits in place. It remains unclear, however, whether services will be available in all jurisdictions "throughout a survivor's life" and "on an episodic basis" as the Royal Commission recommended, although New South Wales, the ACT and the Northern Territory have shown some promising commitments in this regard.[108]

Accessibility

Another negative consequence of the lump sum payment model is that it makes counselling and psychological services much more inaccessible to survivors in South Australia and Western Australia. Survivors in these states are left to navigate the service system by themselves, and there is no central team or organisation available to help survivors identify a suitable counsellor or arrange or attend their appointments.

Conversely, services are generally much more accessible to survivors in the six jurisdictions that provide access, as the delivery of the counselling and psychological component is coordinated by a central team or organisation. These generally provide survivors with initial assistance to locate and engage with services. This appears to be a particular strength in Victoria, where Restore has demonstrated a strong commitment to helping survivors to explore their options and to access services that meet their individual needs. This extends to helping survivors to attend appointments by covering transport costs.

Further to our comments in our submission to the JSC, it is apparent that limited services for survivors in some regional and remote areas is a problem across almost all states and territories. This appears to be particularly and understandably pronounced in the larger and more geographically dispersed jurisdictions such as Western Australia and Queensland.

Acceptability

While the lump sum payment model deprives survivors of adequate amounts of counselling as noted above, it actually provides them with the greatest degree of flexibility and control over their healing and recovery. Compared to the other states and territories, where there are some constraints on the services survivors can access, survivors in South Australia and Western Australia are free to use their counselling and psychological payment to see any counsellor they choose, including any existing counsellor. They are also free to use their payment to access alternative services such as cultural healing and non-standard therapies that may have more beneficial outcomes for them.

Among the jurisdictions that provide survivors with access to services, some are more likely than others to allow a survivor to continue to see an existing counsellor or access alternative services. While most jurisdictions are committed to exploring options for survivors and advocating for their needs, various circumstances may mean there is not always full flexibility in practice. For example, the process to become an Interim Counsellor in New South Wales is perceived as quite onerous, so a survivor's existing counsellor needs to be motivated to complete it. We are also aware that Victims Services has not always approved Interim Counsellors in locations such as Sydney that are already well serviced by Approved Counsellors.

108 Royal Commission, *Redress and Civil Litigation Report*, Recommendation 9.

As we noted in our submission to the JSC, there is a general lack of culturally appropriate services for Aboriginal and/or Torres Strait Islander survivors in most states and territories. While we have heard some examples of survivors being afforded flexibility in this area (for example, one terminally ill client was able to continue to work with a traditional healer in lieu of receiving funded services), for the most part, there is a focus on providing culturally competent services within a Western healing framework that is not always relevant to Aboriginal and Torres Strait Islander survivors. Overall, recognition of and funding for cultural healing modalities such as healing circles, family work, community-focused healing and connection to culture is simply inadequate. We expect there is a similar lack of suitable services and tailored treatment options for other groups of survivors, including survivors from culturally and linguistically diverse backgrounds and survivors with disability, although we have not specifically looked into this.

High quality

With respect to the principle of high quality, all jurisdictions currently have very limited oversight, regulation and quality control mechanisms in place. This is a particular problem in South Australia and Western Australia as a result of their 'de-centralised' models, but no jurisdiction has yet developed a comprehensive framework to ensure the quality of services delivered to survivors under the NRS. As a positive, most jurisdictions at least have some elements of such a framework in place, including complaints processes in the ACT, New South Wales, Queensland and Victoria.

Other observations

One issue not reflected in the table is that the lack of consistency and coordination across jurisdictions can make it very challenging for survivors to access services under the NRS. As illustrated in the case studies below, these challenges can arise when a person has been abused in one jurisdiction but lives in another, or when they move interstate after receiving their redress offer. Similar challenges may also arise for residents of border communities, for example, who may live in one state but find it easier to access suitable services in a neighbouring one.

A client living in one state but eligible for pre-redress counselling under the victims support scheme in another jurisdiction

knowmore is currently assisting a client in New South Wales who experienced childhood sexual abuse in the ACT. Although the client has not yet received their offer of redress, their situation highlights some of the challenges posed by the lack of coordination of the counselling and psychological component of redress across jurisdictions.

Currently, the client is eligible to access counselling through the ACT's Victims Support Scheme. Once they receive their redress offer, they will be eligible to access counselling through New South Wales's arrangements under the NRS.

It is important to the client that there is continuity in their care — they do not want to have to tell their story to a whole new person after receiving their redress offer. This means the client needs to find a counsellor who is registered with both ACT Victims Support and Victims Services NSW. Unfortunately, this is difficult to find.

The client has now been trying to access counselling for more than 12 months, with the situation still not resolved. The client feels the system is broken, and is very tired of the process. It has not been helpful for their healing or health, and it is taking its toll.

A client who is moving interstate

One of our clients recently received an offer from the NRS comprising a payment, a direct personal response, and access to counselling and psychological care under arrangements in Queensland, where the client is currently residing.

The client intends to leave Queensland for Western Australia in the near future, as they want to put their abuse behind them. The client is currently seeing a good, free counsellor in Western Australia and wants to continue that therapeutic relationship.

The NRS has advised knowmore that a survivor's offer of counselling is linked to the state in which they reside when their offer is made. This is not transferable in any way, and our client is unable to have their offer of counselling converted to a lump sum payment.

For our client, getting any benefit from the counselling and psychological component of their offer means finding a counsellor registered on the Trauma Support Directory. While Queensland will pay for the client to attend 20 sessions with this counsellor, these arrangements present unnecessary challenges to survivors accessing counselling and are clearly not survivor-focused.

We have previously been uncertain as to how the counselling and psychological component of the Scheme would operate in situations like these, but the recent experiences of our clients indicate a concerning lack of flexibility and an inability to prioritise survivors' needs. These problems would seem to be arising from the provisions in section 16(1) of the NRS Act, which tie the counselling and psychological component of redress to where a survivor lives at the time of their application.

Recommended actions

It has been very pleasing to identify some positive examples of flexibility and a focus on survivors' needs in the counselling and psychological component of the NRS. Overall, however, our assessment has highlighted ongoing deficiencies and significant inequality among survivors depending on where they live. As such, we maintain our support for the implementation of Recommendations 17 to 19 of the former JSC,[109] to more closely align the counselling and psychological component of the NRS with the Royal Commission's original recommendations. We also reiterate the recommendations we made in our April 2020 submission to the JSC,[110] and recommend that they be implemented within the next 12 months.

Recommendation 25

That the Minister ensures that, within the next 12 months:

a. The counselling and psychological component of the NRS is formally reviewed. This should particularly focus on identifying ways to increase national consistency, and identifying elements of good practice in individual jurisdictions that should be applied in other states and territories. The review should also include consumer feedback from survivors, and a review of the functionality and utility of the Trauma Support Directory.

b. Priority is given to addressing the healing and therapeutic needs of Aboriginal and/or Torres Strait Islander survivors receiving redress.

c. A set of clear practice standards for service providers and practitioners is developed.

d. A framework for assessing the quality of services delivered under the counselling and psychological component of the NRS is developed. This should include an ongoing mechanism for receiving consumer feedback, and regular public reporting on findings as to the effectiveness of services.

109 Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, *Getting the National Redress Scheme Right: An Overdue Step Towards Justice*, pp. 78–87 and 145–148.

110 knowmore, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 20)*, p. 29.

Based on our above observations, we also make further recommendations in three areas.

First, and notwithstanding that we ultimately remain supportive of the Royal Commission's recommendations for counselling support to be made available to survivors throughout their lives and on an episodic basis, we recommend that survivors in all jurisdictions be given the option of receiving a lump sum payment or access to services in recognition of the fact that both of the current models have pros and cons. Although the Royal Commission recommended that redress should fund counselling and psychological care as needed rather than provide lump sum payments,[111] it also recommended that survivors be allowed flexibility and choice.[112]

We have already seen some of this flexibility in practice, with a client experiencing homelessness given their counselling and psychological component of redress as a lump sum payment, despite living in a state that would ordinarily provide access to services. This is a positive example of survivor-focused redress, and we encourage more flexibility of this kind. In particular, it is clear to us that many survivors have a strong desire to be supported to heal in ways that do not always involve traditional counselling services. For example, some survivors have expressed interest in accessing yoga, Reiki, 'trauma retreats' and equine therapy as part of their recovery.[113] We think it is essential that survivors are given more choice in this regard, especially when access to support of this kind may not always be available or easy to arrange under the current models. Notwithstanding this, survivors who opt to receive a lump sum payment should remain entitled to receive assistance from the central coordinating team or organisation if needed (for example, to identify a suitable practitioner).

Recommendation 26

That:

a. all participating jurisdictions agree to give survivors the option of receiving the counselling and psychological component of redress as either a monetary payment or access to services; and

b. the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* be amended to give effect to this agreement.

Second, we recommend that the NRS's legislative and policy framework be amended to ensure there is greater flexibility and cross-jurisdictional cooperation in how the counselling and psychological component of redress can be accessed by survivors, to address problems arising from the operation of section 16(1) of the NRS Act. At a minimum, the amendments should a) enable survivors to be offered and access services under the arrangements of a jurisdiction outside of the one in which they live if, for example, they have a pre-existing relationship with a counsellor or if they will be better able to access appropriate services and b) allow survivors' entitlements to counselling and psychological care under the NRS to be transferred across jurisdictions if a survivor relocates and wishes to access counselling in their new state or territory.

Recommendation 27

That the NRS's legislative and policy framework be amended as necessary to ensure that:

a. survivors can be offered and can access counselling and psychological services in a jurisdiction other than the one in which they live (as stated in their application) if this is requested by the survivor; and

111 Royal Commission, *Redress and Civil Litigation Report*, Recommendation 11.

112 Royal Commission, *Redress and Civil Litigation Report*, Recommendation 9.

113 As one example, see comments from Ms Maddalena Rendina to the JSC (Joint Select Committee on Implementation of the NRS, *Official Committee Hansard — Thursday, 19 March 2020*, pp. 47–49, <parlinfo.aph.gov.au/parlInfo/download/committees/commsen/0234ad4c-ab44-430c-ac71-882139d0aff7/toc_pdf/Joint%20Select%20Committee%20on%20Implementation%20of%20the%20National%20Redress%20Scheme_2020_03_19_7649_Official.pdf;fileType=application%2Fpdf#search=%22National%20Redress%20Scheme%22>).

b. survivors' entitlements under the counselling and psychological component of redress can be transferred across jurisdictions if a survivor relocates.

Finally, we recommend that the states and territories take urgent action to address the Royal Commission's Final Report recommendations regarding support and therapeutic treatment services,[114] to help improve the accessibility and acceptability of services for particular survivor groups. It is clear from the discussion above that there is a lack of appropriate services for survivors in regional and remote areas of Australia and for Aboriginal and/or Torres Strait Islander survivors, among other survivor groups. This reflects a service system that falls short of what the Royal Commission envisaged in Volume 9 of its Final Report (see key recommendations below). It will not be possible for the counselling and psychological component of the NRS to be survivor-focused and trauma-informed until these broader deficiencies are addressed.

Key recommendations from the Royal Commission regarding support and therapeutic treatment services for survivors

Recommendation 9.1

The Australian Government and state and territory governments should fund dedicated community support services for victims and survivors in each jurisdiction, to provide an integrated model of advocacy and support and counselling to children and adults who experienced childhood sexual abuse in institutional contexts.

Funding and related agreements should require and enable these services to:
a. be trauma-informed and have an understanding of institutional child sexual abuse
b. be collaborative, available, accessible, acceptable and high quality
c. use case management and brokerage to coordinate and meet service needs
d. support and supervise peer-led support models.

Recommendation 9.2

The Australian Government and state and territory governments should fund Aboriginal and Torres Strait Islander healing approaches as an ongoing, integral part of advocacy and support and therapeutic treatment service system responses for victims and survivors of child sexual abuse. These approaches should be evaluated in accordance with culturally appropriate methodologies, to contribute to evidence of best practice.

Recommendation 9.3

The Australian Government and state and territory governments should fund support services for people with disability who have experienced sexual abuse in childhood as an ongoing, integral part of advocacy and support and therapeutic treatment service system responses for victims and survivors of child sexual abuse.

Recommendation 9.6

The Australian Government and state and territory governments should address existing specialist sexual assault service gaps by increasing funding for adult and child sexual assault services in each jurisdiction, to provide advocacy and support and specialist therapeutic treatment for victims and survivors, particularly victims and survivors of institutional child sexual abuse.

Funding agreements should require and enable services to:
a. be trauma-informed and have an understanding of institutional child sexual abuse
b. be collaborative, available, accessible, acceptable and high quality
c. use collaborative community development approaches
d. provide staff with supervision and professional development.

114 Royal Commission, *Final Report: Volume 9, Advocacy, Support and Therapeutic Treatment Services*.

Overall, we are yet to see significant progress on these recommendations,[115] and urge the state and territory governments to make them a priority.[116]

Recommendation 28

That all state and territory governments prioritise the implementation of the recommendations in Volume 9 of the Royal Commission's Final Report, particularly Recommendations 9.1, 9.2, 9.3 and 9.6.

In recognition of the large number of survivors who identify as Aboriginal and/or Torres Strait Islander people — 28 per cent of knowmore's current client group, and 14 per cent of survivors who attended private sessions with the Royal Commission[117] — we consider special consideration needs to be given to Recommendation 9.2. To ensure it is implemented appropriately and effectively, we recommend that governments consult with Aboriginal and Torres Strait Islander Community Controlled Organisations currently engaging with Aboriginal and/or Torres Strait Islander survivors to better understand survivors' specific cultural and support needs and to assist in identifying and developing appropriate service system responses for them.

Recommendation 29

That all state and territory governments consult with Aboriginal and Torres Strait Islander Community Controlled Organisations currently engaging with Aboriginal and/or Torres Strait Islander survivors to better understand survivors' specific cultural and support needs and to assist in identifying and developing appropriate service system responses for them.

Exploitative practices of some law firms and 'survivor advocacy' businesses

knowmore continues to hear of survivors being targeted by some law firms and 'survivor advocacy' businesses offering services for redress applications. We discussed these issues at length in our May 2020 submission to the JSC.[118] Other recent examples of the exploitative and unethical practices of these businesses include:

- Targeting vulnerable survivors, including Aboriginal survivors and survivors with low literacy levels, to enter into costs agreements for assistance with submitting redress applications. In some cases, there have been significant concerns about the survivor's capacity to understand the substance of the costs agreement and the services they are receiving.
- Sending unsolicited mail to survivors, especially survivors in prison. A number of knowmore clients have received letters from one particular survivor advocacy business while in prison. Based on what knowmore has seen, these letters:
  - Ask survivors to contact the advocacy business "with the details required for your claim".
  - State that the advocacy business requires an attached "new client intake form to be filled out and sent back to our head office [with] identification documents to start your claim".

115 Based on the annual progress reports provided to date by the Commonwealth and state and territory governments.

116 We note the Australian Government's position that these recommendations are matters for state and territory governments (*Australian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse*, Australian Government, Canberra, 2018, pp. 32–34).

117 Royal Commission, *Final Report: Volume 5, Private Sessions*, 2017, <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_5_private_sessions.pdf>.

118 knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, May 2020, <www.aph.gov.au/DocumentStore.ashx?id=6d888fef-153f-4aa2-9b44-898efa20760e&subId=680321>.

- Advise survivors that "for your claim to be settled within a timely manner, you must participate in the process by providing all the information and documentation to us and your nominated law firm as soon as practicable".

Given the tone of these letters, it is not surprising that our clients have been confused about who the letters were from and what they should do with them. One knowmore client, who had never previously heard of the business, expressed how worrying it was to receive this letter "out of the blue" while in prison.

- Offering survivors 'referral fees'. In particular, there have been reports of the same survivor advocacy business targeting prisons to 'recruit' survivors by providing prisoners with benefits for referrals. knowmore has heard reports that the advocacy business will deposit $100 into the prisoner's prison account for each referral they provide.

In one of the most egregious examples recently brought to our attention, a knowmore client was sent a costs agreement by a law firm they had never been in contact with. It is believed that an acquaintance of our client gave their name to a survivor advocacy business, which in turn passed our client's name onto the law firm. Our client said that they "felt used and taken advantage of" by the lawyers, and felt that the lawyers "were out to make money from [their] pain".

The Background Briefing program by the ABC in June 2020 further examined the circumstances of three survivors who had engaged with private law firms in Western Australia and New South Wales.[119] None of the survivors the ABC spoke to had been made aware of the free services available through knowmore or the redress support services before signing their costs agreements.

A number of other important stakeholders have spoken out against these practices since the ABC's report. Maurice Blackburn Lawyers made a further submission to the JSC noting its "anger and disgust" at the "shocking exploitation of applicants to the National Redress Scheme".[120] Likewise, Professor Patrick Parkinson AM, Academic Dean and Head of School at The University of Queensland's TC Beirne School of Law and member of the former NRS Advisory Committee, wrote to the Chair of the JSC to comment on what he described as the ABC's "very disturbing" account of lawyers charging "contingency fees".[121] Some knowmore clients have also expressed to us their anger and disappointment about their fellow survivors being taken advantage of in these ways.

Recommended responses

Given the significance of this problem, we are very pleased to see that it will be a focus of the JSC's ongoing inquiry and next interim report.[122] We have also been pleased to see the Department giving serious attention to the practices of private law firms, as evidenced in recent discussions with knowmore.

We remain of the view that the responses we recommended in our May 2020 submission to the JSC should be implemented as a matter of priority. We note that several other stakeholders have also indicated their support for these types of strategies, as identified below. To recap, knowmore has recommended:

---

119 J Story Carter, 'Who seeks to profit from the trauma of abuse survivors?', *Background Briefing*, ABC Radio National, 21 June 2020, <www.abc.net.au/radionational/programs/backgroundbriefing/who-seeks-to-profit-from-the-trauma-of-abuse-survivors/12370020>.

120 Maurice Blackburn Lawyers, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 26.1)*, June 2020, <www.aph.gov.au/DocumentStore.ashx?id=be0583a6-1ccc-45a0-9f97-87541a825644&subId=686484>.

121 Professor P Parkinson AM, 'Re National Redress Scheme — Background Briefing Report', letter to Senator Dean Smith, 22 June 2020, <www.aph.gov.au/DocumentStore.ashx?id=0a679923-9338-40e3-ab08-22eda503cad5>.

122 Joint Select Committee on Implementation of the NRS, *Second Interim Report — Focus Areas Determined*, media release, 3 August 2020, <www.aph.gov.au/About_Parliament/House_of_Representatives/About_the_House_News/Media_Releases/Second_Interim_Report_-_Focus_Areas_Determined>.

- A provision in the NRS legislation to cap the fees lawyers can charge for services delivered with respect to the Scheme.[123] We note similar recommendations made by Professor Patrick Parkinson, namely that:
  - the NRS legislation be amended "to make contingency fees unlawful"
  - the "States… review their uplift fee legislation to include applications under compensation schemes [presumably including redress schemes like the NRS]".[124]

  We strongly support the first recommendation as a complement to a cap on fees. We consider that the second recommendation also has merit, although it is likely to have greater utility in relation to state-based redress schemes — as we noted in our submission to the JSC, state-based regulation is unlikely to provide a consistent and effective national response to problems with respect to the NRS.[125]

  We note that Relationships Australia Victoria has also indicated its support for limiting private lawyers' fees to prevent survivors from being exploited.[126]

- A set of expected practice standards for lawyers and survivor advocates providing services to survivors seeking redress, including an obligation on lawyers to advise a potential client of the availability of free services before executing a costs agreement.[127] In his correspondence to the JSC, Professor Parkinson recommended that this obligation be a legal one,[128] which knowmore supports. Maurice Blackburn Lawyers has also indicated its support for an obligation of this type,[129] as has the Chair of the JSC.[130] Relevantly, the anti-claim farming model we refer to below includes a certification process for lawyers acting in motor vehicle accident/compulsory third party (CTP) claims, which requires lawyers to certify, when a claim is made or settled, that they have not engaged in certain conduct with respect to the claim. In our view, that model would provide a mechanism for imposing such an obligation.

  Related to this, Professor Parkinson also recommended that survivors be given the right to terminate any existing costs agreement with a law firm within 14 days of being made aware of knowmore's free services.[131] We also support this.

- Legislative provisions to eradicate 'claim farming' with respect to the NRS, based on the provisions recently enacted in Queensland to combat the problem of claim farming with respect to CTP claims.[132] Among other things, these would make it an offence for any person to a) contact a person without their consent and solicit or induce them to make an NRS application and b) give or receive any money or other benefit in exchange for a referral to make an NRS application.

---

123 knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, p. 6.

124 Professor P Parkinson AM, 'Re National Redress Scheme — Background Briefing Report', p. 2.

125 knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, p. 6.

126 Relationships Australia Victoria, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 19)*, 2020, Recommendation 4b, <www.aph.gov.au/DocumentStore.ashx?id=08072969-610d-4964-b2d9-5e78b2f62a95&subId=680437>.

127 knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, pp. 6–7.

128 Professor P Parkinson AM, 'Re National Redress Scheme — Background Briefing Report'.

129 Maurice Blackburn Lawyers, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 26.1)*.

130 J Story Carter, 'Money for trauma', *ABC News*, 19 June 2020, <www.abc.net.au/news/2020-06-19/lawyers-target-redress-abuse-clients-in-new-cottage-industry/12006878?nw=0>.

131 Professor P Parkinson AM, 'Re National Redress Scheme — Background Briefing Report'.

132 knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, p. 7.

- Information from the NRS for potential applicants relevant to their decision to hire a lawyer or survivors advocate, including key factors they may wish to consider, any caps on fees, and how they can make a complaint if they have concerns about the conduct of a lawyer or survivor advocate.[133] We note that Relationships Australia Victoria made a similar recommendation in its submission to the JSC.[134]
- A Scheme complaints process to deal with concerns about the conduct of lawyers and representatives from survivors advocacy businesses.[135] Relevant to this point, we note that Professor Parkinson called for the naming and shaming of any law firm known to be charging contingency fees.[136] We suggest that one way for this to occur would be for the Scheme to publish reports on the complaints it receives, including the details of substantiated complaints.

With the developments of the last three months, the appetite and momentum for changes to the NRS to protect survivors from exploitation appears to be building. We urge the second anniversary review to also address these important issues in order to help progress the legislative and policy amendments necessary to give effect to our recommendations.

Recommendation 30

That before 31 December 2020, legislative and policy amendments be introduced to:

a. cap the fees that lawyers can charge for services delivered with respect to NRS applications;

b. make it unlawful for lawyers to charge contingency fees for services delivered with respect to NRS applications;

c. impose a legal obligation on lawyers to advise a potential client of the availability of free services (knowmore and the Redress Support Services), and to certify such advice has been provided, before executing a costs agreement for an NRS application;

d. make it an offence for any person to:

   i. contact a person without their consent and solicit or induce them to make an NRS application; or

   ii. give or receive any money or other benefit in exchange for a referral to make an NRS application;

e. establish a set of expected practice standards for lawyers and survivor advocates providing services with respect to NRS applications; and

f. establish a specific complaints process within the Scheme to deal with concerns about the conduct of lawyers and representatives from survivor advocacy businesses.

Recommendation 31

That the NRS provides potential applicants with information relevant to their decision to hire a lawyer or survivor advocate, including key factors they may wish to consider, any caps on fees, and how they can make a complaint if they have concerns about the conduct of a lawyer or survivor advocate.

In addition to oversight and regulation, we also think it is important for there to be more communication about the NRS throughout the community. We note here Beyond Brave's comments to the JSC on the exploitation of survivors, and generally agree that the potential for this is in part linked to a lack of

133 knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, pp. 7–8.

134 Relationships Australia Victoria, *Submission to the Joint Select Committee on Implementation of the NRS (Submission 19)*, Recommendation 4b.

135 knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, p. 8.

136 Professor P Parkinson AM, 'Re National Redress Scheme — Background Briefing Report'.

awareness and understanding of the Scheme in the community.[137] In the current environment of limited regulation to protect survivors from exploitation, it is unsurprising that some law firms and survivor advocacy businesses will undertake aggressive marketing and 'recruitment' strategies, like those noted above with respect to survivors in prison. We have also recently noticed a number of private law firms advertising NRS services for survivors on radio.

We recognise that the relatively limited promotion of the NRS in the initial phase of the Scheme has reflected an understandable desire to avoid creating a level of demand that would overwhelm the Scheme and support services. The delay in many important institutions joining the Scheme also impacted on the utility and timing of undertaking broader awareness-raising engagement plans, in order to avoid causing further trauma to survivors and creating expectations that the Scheme could not meet.

However, given the exploitative practices we are seeing, and given that the NRS has now been operational for over two years and significant progress has been made on issues such as ensuring the participation of relevant institutions and assessing applications more quickly, we think it is timely to give further consideration to the Royal Commission's recommendations for publicising and promoting the availability of the Scheme. We particularly note Recommendation 50, which called for consideration to be given to adopting particular communication strategies for survivors who might be more difficult to reach, including "Aboriginal and Torres Strait Islander communities", "people in correctional or detention centres", and "people with low levels of literacy".[138] Given that these groups are those that are now being targeted by some law firms and survivor advocacy businesses, we support the NRS, in collaboration with participating governments and knowmore and redress support services, developing targeted campaigns to increase awareness and understanding of the Scheme among these groups. This should be supported by any necessary capacity building to ensure that any increase in demand on support services and the NRS can be met.

Recommendation 32

That the NRS, in collaboration with knowmore and redress support services, develops targeted campaigns to increase awareness and understanding of the NRS among survivor groups that are particularly vulnerable to exploitation by private law firms and survivor advocacy businesses, including Aboriginal and/or Torres Strait Islander survivors, survivors in prison, and survivors with low levels of literacy.

137 Joint Select Committee on Implementation of the NRS, *Proof Committee Hansard — Monday, 6 April 2020*, Evidence of Mrs S Galdamez (National Manager of Advocacy and Support Services, Beyond Brave), p. 26.

138 Royal Commission, *Redress and Civil Litigation Report*, pp. 358–360.

Conclusion

knowmore remains strongly supportive of an independent national redress scheme for survivors of institutional child sexual abuse. Our experiences assisting thousands of survivors to investigate their options for redress have shown that, for many, the ability to obtain redress through the NRS is life-changing.

Nevertheless, there are a number of significant problems in the design and operation of the NRS that are preventing the Scheme from delivering redress to survivors in the manner that was envisaged by the Royal Commission and by the Australian Parliament. Many of these problems are systemic issues that have been identified by both the former JSC and the current JSC in their inquiries into the NRS. knowmore continues to strongly support the implementation of these committee's recommendations. We urge the Commonwealth and state and territory governments to progress work to implement these recommendations as a matter of priority.

In this submission we have highlighted five of the most pressing problems that require urgent action:

1. The continued non-participation of institutions in the NRS.
2. A decision-making process that lacks transparency and procedural fairness.
3. Unfairness and inconsistencies in redress decisions.
4. Inadequacies and inconsistencies in the counselling and psychological component of redress across the states and territories.
5. The ongoing risk of survivors being exploited by some law firms and survivor advocacy businesses.

We have also made a number of further recommendations to address these problems and to ensure that the NRS delivers three essential elements of redress — equal access to justice for all survivors of institutional child sexual abuse, equal and fair treatment of survivors throughout the redress process, and survivor-focused and trauma-informed redress.

In closing, we note these words from the Prime Minister when he delivered the National Apology to Victims and Survivors of Institutional Child Sexual Abuse:

> *As we say sorry, we also say we believe you. We say what happened was not your fault.*
>
> *We are sorry that perpetrators of abuse were relocated and shielded rather than held to account, that records have been withheld and destroyed, and accountability avoided.*
>
> *We are sorry that the justice and child welfare systems that should have protected you, were at times used to perpetrate yet more injustices against you…*[139]

This apology was an important and historic acknowledgement of crimes committed against children in Australian institutions and the life-long impacts experienced by many survivors. The NRS represents society's opportunity to deliver on that apology by demonstrating to survivors that they are believed, that institutions will be held to account, and that the justice system will not fail them again. For many survivors, the NRS is the only opportunity they will have to obtain justice for the abuse they experienced as children, and is an essential step in their healing journey. However, unless and until the systemic problems with the NRS are addressed, there remains a serious risk that it will fail to deliver justice and redress for survivors.

139 The Hon S Morrison MP (Prime Minister), *National Apology to Victims and Survivors of Institutional Child Sexual Abuse*.

Appendix 1: Index to knowmore's previous submissions and other commentary on the National Redress Scheme

Topic	References
application process, concerns about/need for support during	*Former JSC hearing (October 2018), p. 64*
assessment framework	
cap/maximum payment	*Commonwealth Redress Bill submission, pp. 5, 25–26* *Former JSC hearing (February 2019), p. 11*
impact, recognition of	*Former JSC hearing (February 2019), pp. 11–12* *Former JSC hearing (October 2018), p. 64* *Former JSC submission, pp. 6–7*
indexation of prior payments	*JSC submission (April 2020), p. 15*
assessment timeframes	*Former JSC hearing (February 2019), p. 4* *JSC hearing (April 2020), p. 35* *JSC submission (April 2020), pp. 9–11*
communication with the NRS	
distressing communication of offers	*JSC submission (April 2020), pp. 15–16*
lack of information about application progress	*JSC hearing (April 2020), p. 36* *JSC submission (April 2020), pp. 15–16*
lack of information generally	*JSC submission (April 2020), p. 15*
counselling and psychological component of redress	*Commonwealth Redress Bill submission, pp. 5, 35–36* *Former JSC submission, pp. 13–14* *JSC hearing (April 2020), p. 36* *JSC submission (April 2020), pp. 25–29* *National Redress Bill submission, pp. 5–7*
cultural safety and support in the NRS, concerns about/need for	*JSC hearing (April 2020), pp. 36–38* *JSC submission (April 2020), pp. 17–19*

Topic	References
design of the NRS, general concerns about	*Former JSC submission, p. 1* *JSC hearing (April 2020), p. 32* *JSC submission (April 2020), p. 3*
direct personal responses	*Former JSC hearing (February 2019), pp. 7–8*
eligibility for redress	
survivors in prison	*Former JSC submission, pp. 7–8*
survivors with serious criminal convictions	*Commonwealth Redress Bill hearing, pp. 40, 42–43* *Commonwealth Redress Bill submission, pp. 4, 8–20* *Former JSC answers to questions on notice, pp. 2–3* *JSC submission (April 2020), pp. 23–24* *National Redress Bill submission, pp. 7–8*
survivors who are not Australian citizens or permanent residents	*Commonwealth Redress Bill submission, pp. 4, 21–24*
exploitative practices of some law firms and survivors advocacy businesses	*JSC hearing (April 2020), p. 33* *JSC submission (April 2020), pp. 32–33* *JSC submission (May 2020), pp. 3–9*
external review of determinations, lack of	*Commonwealth Redress Bill hearing, p. 44*
extreme circumstances, lack of clarity about	*Former JSC hearing (February 2019), pp. 10–11* *JSC hearing (April 2020), p. 39*
financial counselling services, need for/importance of	*Former JSC hearing (February 2019), p. 5* *JSC hearing (April 2020), pp. 33–34* *JSC submission (April 2020), pp. 30–32*
funder of last resort provisions	*Commonwealth Redress Bill hearing, p. 46* *Commonwealth Redress Bill submission, pp. 5–6, 37–39* *JSC submission (April 2020), pp. 6–9* *National Redress Bill submission, p. 8*
internal reviews of determinations	*Former JSC hearing (February 2019), p. 11* *Former JSC submission, p. 10* *JSC submission (April 2020), pp. 21–23*
non-participating institutions	*Former JSC hearing (February 2019), pp. 1–2* *Former JSC hearing (October 2018), p. 66* *Former JSC submission, pp. 11–12* *JSC hearing (April 2020), p. 38* *JSC submission (April 2020), pp. 4–8*

Topic	References
operation of the NRS, general concerns about	*Former JSC hearing (February 2019), p. 1* *JSC submission (April 2020), pp. 3–4*
procedural fairness/natural justice, lack of	*JSC submission (April 2020), pp. 21–23*
protection of survivors' personal information	*Former JSC submission, pp. 8–10* *JSC submission (April 2020), pp. 33–34*
statutory declarations, requirement for	*Commonwealth Redress Bill submission, pp. 5, 27* *JSC hearing (April 2020), p. 35* *JSC submission (April 2020), pp. 34–36*
support for a national redress scheme	*Commonwealth Redress Bill submission, p. 2* *Former JSC hearing (February 2019), p. 2* *Former JSC submission, p. 1* *JSC hearing (April 2020), p. 32* *JSC submission (April 2020), pp. 3, 37*
support for the Royal Commission's redress recommendations	*Commonwealth Redress Bill hearing, pp. 40, 46* *Commonwealth Redress Bill submission, p. 3* *Former JSC hearing (February 2019), p. 2* *Former JSC submission, p. 1*
transparency, lack of/need for	
in NRS decision-making	*Commonwealth Redress Bill submission, pp. 5, 29–31* *Former JSC hearing (February 2019), pp. 11–12* *JSC hearing (April 2020), pp. 38–39* *JSC submission (April 2020), pp. 15, 21–23*
in NRS operations	*Former JSC hearing (February 2019), pp. 1–2, 4* *Former JSC answers to questions on notice, pp. 1–2* *JSC submission (April 2020), pp. 5, 8, 11, 20, 22*
unfair and inconsistent decisions, concerns about	
abuse not regarded as sexual	*JSC hearing (April 2020), pp. 37–38* *JSC submission (April 2020), pp. 12–14*
applications of Aboriginal and/or Torres Strait Islander survivors	*JSC submission (April 2020), pp. 18–19*
prior payments	*JSC hearing (April 2020), p. 39* *JSC submission (April 2020), pp. 13–15*
related non-sexual abuse not recognised	*JSC submission (April 2020), p. 13*

Notes

- 'Commonwealth Redress Bill hearing': Evidence given at the public hearing of the Senate Community Affairs Legislation Committee inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and related bill (lapsed) — 16 February 2018
- 'Commonwealth Redress Bill submission': Submission to the Senate Community Affairs Legislation Committee inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and related bill (lapsed) — February 2018
- 'Former JSC answers to questions on notice': Answers to questions on notice taken at the public hearing of the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, 28 February 2019 – 12 March 2019
- 'Former JSC hearing (February 2019)': Evidence given at the public hearing of the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse — 28 February 2019
- 'Former JSC hearing (October 2018)': Evidence given at the public hearing of the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse — 10 October 2018
- 'Former JSC submission': Submission to the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse — August 2018
- 'JSC hearing (April 2020)': Evidence given at the public hearing of the Joint Select Committee on Implementation of the National Redress Scheme — 6 April 2020
- 'JSC submission (April 2020)': Submission to the Joint Select Committee on Implementation of the National Redress Scheme — April 2020
- 'JSC submission (May 2020)': Supplementary submission to the Joint Select Committee on Implementation of the National Redress Scheme — May 2020
- 'National Redress Bill submission': Submission to the Senate Community Affairs Legislation Committee inquiry into the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and related bill — May 2018

Brisbane
Level 20, 144 Edward St
Brisbane QLD 4000
t 07 3218 4500

Melbourne
Level 15, 607 Bourke St
Melbourne VIC 3000
t 03 8663 7400

Perth
Level 5, 5 Mill St
Perth WA 6000
t 08 6117 7244

Sydney
Level 7, 26 College St
Sydney NSW 2000
t 02 8267 7400

knowmore Legal Service Limited ABN 34 639 490 912 ACN 639 490 912.

knowmore acknowledges the Traditional Owners of the lands across Australia upon which we live and work. We pay our deep respect to Elders past, present and emerging.

knowmore
free legal help for survivors