

28 February 2023

Committee Secretariat
Joint Standing Committee on Implementation of the National Redress Scheme
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: redress@aph.gov.au

Dear Madam/Sir,

We welcome the opportunity to provide feedback in relation to the Committee's Inquiry into the operation of the National Redress Scheme (NRS).

Maurice Blackburn Pty Ltd is a plaintiff law firm with 34 permanent offices and 30 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, abuse law, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.

Our Abuse Law Practice is national in scope and represents around 800 survivors of abuse at any time. All staff in the practice are specially trained to observe trauma informed care and practice principles when dealing with survivors.

Maurice Blackburn congratulates the Committee on its ongoing commitment to genuine consultation on matters of importance related to the implementation and ongoing operation of the National Redress Scheme.

Our contributions to public policy consultations are drawn from the lived experience of the clients we serve, and the Maurice Blackburn staff who serve them. To that end, we restrict our contribution to elements of the Terms of Reference with which we have direct experience. We have also focused much of our submission on our experiences in assisting clients in Tasmania. Our experience tells us that supports available to victim survivors in Tasmania are not as comprehensive as those in mainland jurisdictions.

As always, we would be delighted to discuss our observations and legal insights in more detail with the Committee, if that would be of benefit.



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Term of Reference 1 – Applications for redress for persons with disability and First Nations people.

We ask that the Committee, in reviewing responses to this term of reference, consider 'disability' in the broad sense, thereby incorporating those who would experience difficulty or disadvantage in navigating the application process.

Our experience in assisting victim survivors of childhood sexual abuse in Tasmania tells us that a significant number of potential applicants experience difficulty due to their functional literacy.

The most recent data from the Australian Bureau of Statistics 'Programme for the International Assessment of Adult Competencies' (PIAAC)¹ tells us that only 52.8% of males and 46.9% of females in Tasmania possess level 3 literacy or above. Those below level 3 are considered to be lacking the basic skills needed to understand and use information from newspapers, magazines, books and brochures.

The impacts of low literacy capabilities on an applicant's experience with the NRS are many and varied.

We have experienced a number of cases where individuals making their own redress applications are accepting offers without reading, or having the capacity to understand the fine print.

Our staff in Darwin are providing assistance to a First Nations survivor whose NRS application was rejected due to his incarceration history. This client is functionally illiterate due to receiving only a grade 3 education.

Often these applicants do not understand that they have the option to consult legal assistance when lodging an application, and advice about accepting a redress offer. Many also do not understand that they are barred from pursuing a civil claim once a redress offer has been accepted.

We encourage the Committee to investigate further the impact of poor functional literacy on applicants' capacity to achieve appropriate compensation for their abuse.

We also urge the Committee to satisfy itself that information provided to applicants is accessible, and that those with low literacy skills are sufficiently protected by that literature.

Term of Reference 4 - Availability of legal advice for survivors and their advocates and, in addition:

- a. Quality of legal advice.**
- b. Opportunities for Scheme applicants to consider available legal options and to exercise their own choices.**
- c. Strategies to minimise instances of alleged claim farming or excessive fees.**

Maurice Blackburn has written to the Committee in the past with reference to these issues.

¹ <https://www.abs.gov.au/statistics/people/education/programme-international-assessment-adult-competencies-australia/latest-release>

We have been distressed by reports of some law firms exploiting applicants to the Scheme. There are a number of manifestations to this, such as:

- i. The charging of exorbitant fees to assist survivors in completing their application for the NRS when Government-funded and appropriate services exist for this exact purpose,
- ii. The failure to disclose to potential clients that there are such free and funded services available to them through the NRS to assist with Redress applications,
- iii. The purposeful targeting of vulnerable cohorts of survivors regarding NRS applications, and
- iv. The failure to ensure that lawyers who may be assisting redress applicants are properly trained in trauma-informed service provision, and understand the dangers of retraumatising clients.

Consider the following case study:

We were approached by a client of another law firm (known here as 'Law Firm X') who received advice and representation from that law firm in relation to her application to the NRS.

Law Firm X:

- *Did not have the client assessed by a consultant psychiatrist for medico legal purposes or otherwise obtain any medical evidence about the extent of the injury caused by the abuse;*
- *Did not take instructions or otherwise explore a potential economic loss claim on behalf of the client;*
- *Did not give the client advice that she might be entitled to a civil claim as an alternative;*
- *Submitted a claim to NRS;*
- *On receiving the offer of \$150,000 told the client to accept the offer and did not give the client advice that she was able to reject the offer; and*
- *Charged the client \$16,500 for submitting the claim form to NRS.*

In taking instructions from the client, it was immediately apparent that she has suffered an economic loss as a result of the abuse and that her pain and suffering are moderate to severe and would certainly exceed \$150,000 alone.

Our on-the-ground staff in the Northern Territory report anecdotal evidence of unscrupulous firms taking more than half of (or in some cases the entire) redress payment in legal costs.

We are also aware of organisations in the NT which may be selling claimants' statements to private firms. Our NT staff are reporting that such firms are increasingly targeting NT communities.

Maurice Blackburn encourages the Committee to consider the potential benefits of requiring that lawyers must meet a formal obligation when working with clients or potential clients seeking to make an application to the NRS to disclose that free government services for such applications are available.

In terms of quality of advice, we are distressed by any suggestions that services provided free of charge to survivors with respect to redress applications may equate to poor or inadequate service provision.

On the contrary, we know that all staff engaged by government appointed agencies such as knowmore are appropriately trained in trauma-informed service provision. Indeed, Maurice Blackburn refers any abuse survivor seeking support with their Redress application to knowmore for this assistance.

While we appreciate knowmore's service and expertise, we are concerned that a number of other NRS service providers do not seem to have the same depth of knowledge of the rules surrounding civil law options available to applicants. Our NT staff in particular report numerous circumstances where people have come to Maurice Blackburn enquiring about civil actions, after having accepted an NRS payment. Prior advice that this is not within the rules is simply not being given at the time of lodging or accepting an NRS offer.

The experience of those who have suffered abuse as a child leads to an understandable distrust of systems and institutions. Firms that work to support survivors in civil claims work hard to win that trust. The actions of an unethical subset of the legal fraternity, seeking to exploit the NRS and its applicants make that even harder.

Term of Reference 5 - The performance and effectiveness of support services for Scheme applicants

As a law firm with a national scope and presence, we are well placed to observe differences in supports available to victim survivors in different jurisdictions.

Maurice Blackburn is concerned that there appears to be a limited number of support services available in Tasmania when compared to the volume of clients that require their support.

Others have shared this concern. Warren Strange from knowmore gave evidence to the Commission of Inquiry that:²

The State of Tasmania is overrepresented in knowmore's client base with around 4% of knowmore's clients residing in Tasmania, compared to Tasmania's population, which constitutes only around 2% of the Australian population.

Worryingly, and to our knowledge, there are no services currently funded as Redress Support Services to specifically support First Nations victim survivors in Tasmania.

Services specifically aimed at supporting men also appear to be less readily available in Tasmania, despite male victim survivors being over-represented.

Unassisted survivors with serious criminal convictions may not know they are eligible to submit a redress application, and there are lengthy delays in the Tasmanian process to

² Ref: https://www.commissionofinquiry.tas.gov.au/_data/assets/pdf_file/0008/660572/Statement-of-Warren-Strange,-Chief-Executive-Officer,-knowmore-Legal-Service,-28-April-2022.pdf, para 45

determine if they can proceed with their applications. The evidence of knowmore to the Commission of Inquiry included that:³

We have seen examples where the Tasmanian Attorney-General has opposed the potential eligibility of claims, in circumstances where we would have anticipated that at least some other State Attorneys would not have opposed an application on those same facts.

The lack of support services available to alert survivors to the availability of government funded assistance with the application process means victim survivors may feel compelled to attempt it without support, or to engage with unscrupulous legal support providers who will offer support at a cost.

The application process is fraught with complex legal issues. The quality and quantity of supports available to an applicant should not vary according to where he/she lives.

We urge the Committee to satisfy itself that supports available to applicants are equally distributed across jurisdictions, and that a process exists to identify and rectify any potential deficiency.

Term of Reference 7 - Any other relevant matters

Delays in Record Provision

We note that Term of Reference 2c refers to the time taken to process applications for persons with disability and First Nations Australians.

The time taken to process an NRS claim in Tasmania, for some clients, is unnecessarily long. This is particularly pronounced in cases where records from the former Department of Communities are required. In our experience, the provision of records is currently taking up to 18 months to 2 years. This is clearly unacceptable. The majority of the claims which Maurice Blackburn is assisting in Tasmania require records from this department.

This, of course, means that the overall time required to process an application, and for compensation to be offered, is unnecessarily long.

We urge the Committee to ensure that proper benchmarks are in place across jurisdictions to ensure that requests for the production of records are responded to within a reasonable timeframe.

Extension of redress offer deadlines

We appreciate the NRS' flexibility in extending redress offer deadlines for a number of clients who are exploring civil claims as an alternative to redress.

It is invaluable that victim survivors have the opportunity to thoroughly explore alternatives to redress to ensure they are making an informed decision as to which option best suits them.

We commend the NRS for allowing this by being willing to extend deadlines, sometimes more than once.

³ Ibid, para 37

2027 Finalisation of the NRS

Maurice Blackburn is concerned about the imminent finalisation of the NRS – especially in relation to claims by victim survivors in Tasmania.

Many childhood sexual abuse claims in Tasmania are not historical in nature. Many of the experiences of abuse occurred post 2000.

This was brought to public attention during the Commission of Inquiry (and in associated media). For example, the Launceston General Hospital were receiving complaints concerning notorious paedophile nurse James Griffin as late as 2017.

As survivors generally take on average 22 years to disclose, we are concerned that many survivors of this offender, and others in Tasmania, may run out of time to make an application through the NRS.

Where a civil claim is not viable, that would leave no alternative option available to victim survivors.

We urge the Committee to consider what options may be available to extend the deadline for applications, where circumstances dictate that that would be the fair thing to do.

Yours faithfully,

John Rule
Principal Lawyer
Maurice Blackburn