Second Interim Report of the Joint Select Committee on Implementation of the National Redress Scheme, November 2021

Joint Select Committee on Implementation of the National Redress Scheme

November 2021
CANBERRA
Content Warning

This report contains material that can be confronting and disturbing. Sometimes words can cause sadness or distress, or trigger traumatic memories for people, particularly survivors of past abuse, violence or childhood trauma.

For some people, these responses can be overwhelming. If you need to talk to someone, support is available through redress support services. The following services are available 24 hours a day:

beyondblue: 1300 224 636
1800RESPECT: 1800 737 732
MensLine Australia: 1300 789 978
Lifeline: 13 11 14
Suicide Call Back Service: 1300 659 467

The Committee thank Find&Connect for assistance developing this page.
Acknowledgments

The Joint Select Committee on the Implementation of the National Redress Scheme (the Committee) continues to benefit from the co-operation of survivors, redress support services, state and territory governments and other stakeholders in preparing this second interim report.

The Committee is particularly grateful for the willingness of Ms Robyn Kruk AO to engage with the Committee during the consultation process while also preparing the report of the Second Anniversary Legislated Review.

The Committee believes the work contained in the First Interim Report of this Committee provided a valuable resource for the Second Anniversary Legislated Review, providing a credible and informative additional source of commentary on the current operation and future improvements to the National Redress Scheme.

We also extend our appreciation to representatives from the Department of Social Services who consistently made themselves available to the Committee through participation in both private and public hearings and responding to the many questions arising from Committee Members during these inquiries.

Most importantly, the Committee extends its deepest appreciation to the many survivors and survivor groups who have continued to share their stories – these insights have been invaluable.

The Committee cannot express its appreciation strongly enough.

The work of the Committee is always for your benefit, and through our work to improve the National Redress Scheme we hope to honour your honesty and bravery.

You are heard. You are valued. You are believed.
Members

Chair

Senator Dean Smith

Deputy Chair

Ms Sharon Claydon MP

Members

Mr Milton Dick MP

Senator the Hon Sarah Henderson

Dr Katie Allen MP

Ms Celia Hammond MP

Mr Dave Sharma MP

Senator Louise Pratt (from 8 October 2020)

Senator Janet Rice (from 7 September 2021)

Dr Anne Webster MP (to 23 April 2020)

Senator Marielle Smith (to 8 October 2020)
## Committee Secretariat

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<th>Position</th>
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<td>Committee Secretary</td>
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<td>Inquiry Secretary</td>
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Terms of Reference

The Joint Select Committee on Implementation of the National Redress Scheme (the Committee) was appointed pursuant to a resolution of the Senate on 9 September 2019, as amended and agreed by the House of Representatives on 10 September 2019 and agreed as amended by the Senate on 11 September 2019.

The Committee has been established to inquire into and report on:

- the Australian Government policy, program and legal response to the redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, including the establishment and operation of the Commonwealth Redress Scheme and ongoing support of survivors; and
- any matter in relation to the Royal Commission’s redress related recommendations referred to the Committee by a resolution of either House of the Parliament.
Chair's Foreword

Since its establishment in 2018, the National Redress Scheme has made both a symbolic and practical contribution to the pursuit of justice by survivors of institutional child sexual abuse.

The Scheme acknowledges the many children who were sexually abused, recognises their suffering, holds institutions to account, and helps survivors secure access to counselling, a direct personal response, and a redress payment.

But it remains obvious, including to this Committee, that the Scheme requires regular recalibration to meet the needs and expectations of both survivors and the wider community.

It is important to acknowledge the Scheme does not operate in isolation and its attractiveness as a redress resource is influenced by State legislative changes facilitating broader access to civil compensation.

The Committee’s observations have been echoed by Ms Robyn Kruk AO and the work undertaken in the Second Anniversary Review, published on 23 June 2021. The report remarked that “significant momentum was lost before the Scheme formally commenced and awareness of its existence is now limited” but there remains “a strong and shared acknowledgement of and commitment among government partners to the need for change based on the experience of the past two years.”

The Committee also agrees with the Review findings that “the window for making meaningful changes to the Scheme is now extremely limited”.

The focus of this second interim report is to identify reforms that will have the greatest, most timely potential for improving survivor participation and experience, and to highlight the importance of increasing Scheme awareness and access among First Nations people.
But it is incorrect to say the Scheme is failing.

Thus far, 12,305 applications have been received, 7,093 offers made and 6,703 applications finalised. The 6,448 payments to survivors total approximately $551.2 million, with the average Redress payment now approximately $85,481.

The work of this Committee has been pivotal in driving improvements to the Scheme.

Over the last year, Scheme reform has included encouraging institutions to join by removing tax concessions and Federal grants, legislating of $10,000 ‘advance payments’ to elderly and terminally ill applicants and expansion of the Funder of Last Resort provisions for defunct and financially incapable institutions.

However, the Scheme continues to be more complex to administer than originally envisaged.

This has been a recurring theme expressed by survivors and redress support service providers, and it cannot be ignored.

While the design of the Scheme gave careful consideration to the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse, its lived experience has not reflected the Royal Commission’s predictions.

For example, it was estimated around 23 per cent of applications would name multiple institutions, whereas to date around 85 per cent have done so, with around 38 per cent naming four or more.

These more complex applications meant Scheme staff had a more challenging workload than anticipated, requiring greater investigation and follow up.

If one or more institutions named in an application was recalcitrant, progressing these applications became even more difficult.

This is not intended to be a poor reflection on the Royal Commission’s outcomes, but instead highlights the need for the Scheme to be dynamic enough to successfully serve the people it exists for, the survivors.

The work of this Committee has never lost sight of its primary purpose, to reassure survivors and their supporters that their voices are being heard – and, crucially, that their experiences are not being diminished by the passage of time.
I would like to finish by acknowledging the collegiate, non-partisan approach taken by all members of the Committee and their continued, genuine interest in all its operations.

Senator Dean Smith

Chair
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List of Recommendations

Recommendation 1

2.109 The Committee recommends the establishment of a First Nations panel to provide specific advice to the National Redress Scheme on:

- the design and implementation of cultural safety principles and practice; and

- the development and implementation of an intensive education campaign across regional, rural, and remote communities to drive awareness and improve access to the National Redress Scheme for First Nations people.

Recommendation 2

2.140 The Committee recommends that formal evaluation of redress support services be established to ensure that the needs of survivors and their families are being met through professional and timely engagement.

Recommendation 3

2.141 The Committee recommends that the National Redress Scheme engage additional redress support services in regional, rural and remote areas that offer face-to-face support.

Recommendation 4

2.142 The Committee recommends that the National Redress Scheme consider expanding current funding arrangements to provide after hours and weekend specialist services.
Recommendation 5

3.25 The Committee recommends that the National Redress Scheme produce public education materials to clearly explain and demonstrate how the assessment framework is applied to applications by Independent Decision Makers.

Recommendation 6

3.35 The Committee recommends that the National Redress Scheme introduce annual mandatory training requirements for Independent Decision Makers and that the agreed minimum training requirements are published for survivors to understand.

Recommendation 7

3.36 The Committee recommends that the National Redress Scheme implement an internal moderation and review process for all application determinations prior to being finalised.

Recommendation 8

3.44 The Committee recommends that the National Redress Scheme amend current review processes to:

- ensure that applications are only reviewed by senior Independent Decision Makers, and
- allow for survivors to provide additional materials on matters raised by Independent Decision Makers.

Recommendation 9

3.52 The Committee recommends that the National Redress Scheme eliminate the practice of indexing prior payments made to survivors.

Recommendation 10

3.53 The Committee recommends that the National Redress Scheme commence indexing awards to an inflation measure.
Recommendation 11

3.61 The Committee recommends that the National Redress Scheme consider amending the National Redress Scheme Rules so that the total financial award limit applies to each institution found responsible for institutional child sexual abuse, instead of each application.

Recommendation 12

3.79 The Committee recommends that the National Redress Scheme undertake work with survivors and redress support services to determine appropriate alternative methods for the initiation of Direct Personal Responses and best practice guidelines.

Recommendation 13

3.91 The Committee recommends that the National Redress Scheme undertake consultation to amend the application form as a matter of priority. The amended form should be designed for survivors who may have low levels of literacy and allow care leavers to self-identify.

Recommendation 14

3.92 The Committee recommends that the National Redress Scheme commence a series of face-to-face education sessions across Australia targeting known under-represented groups and regions. All sessions should be run by senior National Redress Scheme employees and make provision for a question and answer component.

Recommendation 15

4.28 The Committee recommends that the National Redress Scheme engage additional free legal services for survivors to access.

Recommendation 16

4.29 The Committee recommends that the National Redress Scheme identify and fund legal services that can provide face-to-face, culturally diverse and trauma informed legal advice across regional, rural, and remote centres.
**Recommendation 17**

4.30 The Committee recommends that the Minister’s Redress Scheme Governance Board prioritise preventing the exploitation of survivors by private law firms and works to immediately implement the following measures:

- Make it unlawful for lawyers to charge contingency fees for services delivered with respect to National Redress Scheme applications;

- 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 a National Redress Scheme application;

- Considering a cap on fees that lawyers can charge for services delivered with respect to National Redress Scheme applications;

- Make it an offence for any person to:
  - contact a person without their consent and solicit or induce them to make a National Redress Scheme application; or
  - give or receive any money or other benefit in exchange for a referral to make a National Redress Scheme application;

- Establish a set of expected practice standards for lawyers and survivor advocates providing services with respect to National Redress Scheme applications; and

- Establish a specific complaints process within the National Redress Scheme to deal with concerns about the conduct of lawyers and representatives from survivor advocacy businesses.

**Recommendation 18**

5.52 The Committee recommends that the Australian Government work with all Australian states and territories to examine child safety measures in relation to institutions that refuse to join the National Redress Scheme.
Recommendation 19

5.53 The Committee recommends that funder of last resort arrangements are expanded to ensure that survivors of institutions who are unable or unwilling to join the National Redress Scheme are able to receive all components of redress.

Recommendation 20

5.103 The Committee recommends that funder of last resort provisions be expanded to ensure that all survivors can access the National Redress Scheme if they wish to do so.

Recommendation 21

6.215 The Committee recommends that the future Parliament consider the establishment of a parliamentary committee to continue the work of providing oversight on the administration and operation of the National Redress Scheme.
## Abbreviations

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<tr>
<th>Abbreviation</th>
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<tr>
<td>Aboriginal Controlled Community Health Organisation</td>
<td>ACCHO</td>
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<td>Australian Charities and Not-for-Profits Commission</td>
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<td>Australian Public Service</td>
<td>APS</td>
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<td>Care Leavers Australasia Network</td>
<td>CLAN</td>
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<td>Christian Congregation of Jehovah’s Witnesses</td>
<td>CCJW</td>
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<td>Clinical Prioritisation Criteria</td>
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<td>Cultural and Linguistically Diverse</td>
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<td>2020</td>
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<td>Term</td>
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<td>In Good Faith Foundation</td>
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<td>Joint Committee on Implementation of the National Redress Scheme</td>
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<td>Kimberly Stolen Generation Aboriginal Corporation</td>
<td>KSGAC</td>
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<td>National Debt Helpline</td>
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<td>The Final Report: Second Year Review of the National Redress Scheme</td>
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<td>Minister’s Redress Scheme Governance</td>
<td>Minister’s Board</td>
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<td>Victorian Aboriginal Child Care Agency</td>
<td>VACCA</td>
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<td>West Australian Stolen Generations</td>
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1. Introduction

Background to the Second Interim Report

1.1 The Joint Select Committee on Implementation of the National Redress Scheme (the Committee) was formed in 2019 to inquire into the Australian Government policy, program and legal response to the redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), including the establishment and operation of the Commonwealth Redress Scheme and ongoing support of survivors. The Committee is required to table its final report before May 2022.

1.2 On 1 May 2020, the Committee tabled First Interim Report on Implementation of the National Redress Scheme April 2020 (First Interim Report) that made 14 recommendations. The recommendations identified aspects of the National Redress Scheme (NRS) that required immediate reform, and highlighted matters that needed to be considered as priority areas for future consideration.

1.3 The First Interim Report identified areas that required immediate remedy to improve the survivor experience, including: removing the requirement for a Statutory Declaration to accompany each application for redress; and amendment to the indexation of prior payments, so that indexation is applied up until the date an application is submitted, rather than the date of payment offer.

1.4 The report also made recommendations to improve the transparency of the NRS for survivors, including providing each applicant with an
individualised application flowchart which maps out next steps and approximate timeframes, to keep survivors and their nominees better informed about the progress of their application; publishing the Assessment Framework Policy Guidelines; and establishing a direct complaint avenue for survivors, their nominees, and advocates.

1.5 The work of the Committee in the 46th Parliament has coincided with the National Redress Scheme’s legislated review mechanism.

1.6 Section 192 of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (the Act) provides that the relevant Minister must conduct a review of the NRS as soon as possible after the second anniversary of NRS operation (Second Year Review).

1.7 The Committee notes that the Second Year Review commenced on 1 July 2020. The final report was provided to the Minister for Families and Social Services, Senator the Hon. Anne Ruston (the Minister) on 26 March 2021.

1.8 The Minister provided the Committee’s recommendations to the Ministers’ Redress Scheme Governance Board (Ministers’ Board) for consideration on 8 July 2020. The Ministers’ Board agreed the Second Year Review should consider the recommendations made by the Committee.¹

1.9 The Department of Social Services (DSS) confirmed that the Minister would not be providing a response to the recommendations until the conclusion of the review.

1.10 The Second Year Review was finalised and provided to the Minister in March 2021.² The review was initially shared with state and territory governments to enable detailed consideration by the Ministers’ Board in April 2021.³

1.11 The Committee was not provided with a copy of the Second Year Review prior to the report’s public release. The Second Year Review and the interim government response were made public on 23 June 2021.


² Ms Liz Hefren-Webb, Deputy Secretary Families and Communities, Department of Social Services (DSS), Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, Official Committee Hansard, 3 June 2021, p. 28.

³ Ms Hefren-Webb, DSS, Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, Official Committee Hansard, 3 June 2021, p. 28.
On 30 September 2021, the government tabled its response to the Committee’s First Interim Report. Of the 14 recommendations made, the government response supported six, supported two in part, supported one in principle and five recommendations were noted. Appendix A provides a table detailing the response to each recommendation.

Objective and Scope

The Committee’s Second Interim Report seeks to build on the findings made in the First Interim Report. The Second Interim Report examined the impact of the COVID-19 pandemic on survivors, the experience of First Nations survivors, operational considerations in respect of decision-making, findings of the Second Year Review and the interim government response.

Given the final government response to the Second Year Review is not expected to be released until early 2022, the Committee’s final report is expected to be tabled following consideration of that response.

Conduct

On 3 August 2020, the Committee issued a media release announcing the initial public hearing program. Subsequently, ten public hearings were held. Transcripts can be found on the Committee’s website and a list of witnesses that appeared is at Appendix C.

The Committee invited submissions to be received by 30 October 2020, noting that submissions could be received after that date. The Committee also informed people that confidential and name withheld submissions would also be received. Following the finalisation of the First Interim Report, the Committee received 43 submissions and 12 supplementary submissions, which are listed at Appendix C.

Report Outline

Chapter 1 details the scope of the activities conducted to undertake the Second Interim Report.

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1.18 Chapter 2 considers the continued survivor experience of the NRS, with particular consideration of First Nations peoples experience, the effectiveness of redress support services, the impact of COVID-19 upon survivors, and privacy matters.

1.19 Chapter 3 examines the operation of the NRS; including the suitability of the assessment framework, role of the Independent Decision Makers and existing arrangements in relation to payments and indexation.

1.20 Chapter 4 considers the provision of legal advice and behaviour of private law firms in relation to the NRS.

1.21 Chapter 5 discusses participation in the NRS by both institutions and survivors, including discussion of the adequacy of current funder of last resort provisions.

1.22 Chapter 6 considers the recommendations made in the Second Year Review and the government response to those recommendations.

1.23 Throughout this report the Committee has included quotes that refer to the NRS as the scheme or redress scheme. The Committee has not amended these references.

1.24 A copy of this report, transcripts of hearings and submissions received are available on the Committee’s website at www.aph.gov.au/redress.

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5 The Committee recognises that First Nations peoples may refer to themselves and be referred to by others in a variety of ways: collectively as Aboriginal and Torres Strait Islander peoples, First or Indigenous Australians, Australia’s first peoples, traditional owners; and individually according to language or geo-cultural community groups.
2. Survivor Experience

2.1 Since the First Interim Report was finalised in May 2020, the Committee continued to receive evidence from survivors that the National Redress Scheme (NRS) was not meeting their expectations. Noting the need for improvement, the Department of Social Services (DSS) continues to make efforts to improve survivor experience. The DSS has committed to decrease processing times and improve communication and engagement between survivors and the NRS.

2.2 This chapter examines changes introduced by DSS, the engagement with First Nations survivors, and the effectiveness of redress support services as they relate to overall survivor experience.

Strategic Success Measures

2.3 One way the NRS has sought to improve survivor experience is through the introduction of strategic success measures (the measures). The measures collect data and identify where more research is needed in relation to improving survivor experience, health of the NRS and equity of access.\(^1\) Specific elements include data on application timelines, application progress, and participation for both survivors and institutions. The measures were agreed in April 2020 by the Ministers’ Redress Scheme Governance Board (Ministers’ Board) and are available to view on the NRS website.\(^2\) Since that time, two sets of data have been released. The first in October

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2020, and the second in July 2021. NRS operational data is also included in DSS Annual Reports.

2.4 A clear trend has not yet emerged in relation to the number of applications received by the NRS. In the first year, 4,180 applications were received, with numbers falling to 3,125 in the second year, and increasing to 3,773 in the third year of operation, bringing the total number of applications to 11,078. The lower number of applications received in the second year of operations may reflect the challenges survivors faced with submitting applications during COVID-19.

2.5 The NRS engaged an actuarial firm that used the first two years of operating data to provide advice on the expected total number of expected applications to be received. The advice estimates that 32,000 applications may be expected during the life of the NRS. This represents a notable difference from the Royal Commission into Institutional Responses to Child Sexual Abuse’s finding that 60,000 survivors would be eligible to access a redress scheme.

2.6 Application determination timelines are improving, although not currently meeting the DSS identified metric for success which is that ‘at least 80 per cent of applications that name institutions that participate in the NRS have a decision communicated within six months’. In the first year of operation only 11 per cent of applications were determined within six months, 19 per cent of applications were determined within nine months and 23 per cent were finalised within a year of being received.

2.7 In the second year of operation, the rate of applications determined within six months fell slightly to 10 per cent, but the rate of determinations for nine and 12 months both increased to 27 and 46 per cent respectively. While this represents improvement, total NRS average waiting periods remain at 12.5 months for a standard application and 13.4 months for a priority application.

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3 Department of Social Services (DSS), Annual Report 2020-21, p. 160.

4 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 46.

5 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 53.

6 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 43.

7 National Redress Scheme, Strategic Success Measures, October 2020, p. 4.

8 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 43.
2.8 In the third year of operation a total of 3,240 determinations were made.\(^9\) This is consistent with the 3,195 determinations made within the second year of operation.\(^10\) Despite an increase in determinations, the number of applications deemed ineligible did not increase, and dropped from 136 in the second year to 66 ineligible applications in the third year.\(^11\)

2.9 As at 10 September 2021, a total of 1,909 applications had been received by the NRS, 5,210 are being processed, and 6,307 have been finalised, with 3,283 applications finalised during the third year of NRS operation.\(^12\)

2.10 The NRS commissioned research so that the strategic success measures could report on the survivor journey. In October 2020, the measures stated that a survey developed by DSS and WhereTo Research would collect the data needed for the NRS to measure key elements of the survivor journey.\(^13\) The update in July 2021 notes that the survey failed to be statistically valid due to a low response rate:

The redress survivors survey, part of the measure for the survivor journey, was conducted in March 2021. The survey has seen low uptake among survivors, and as a result there are not enough responses to the survey to be statistically valid.

To address the low participation in the survey, the Scheme has amended the acceptance documents inviting survivors to opt-in to the survivor survey. The survey will be more accessible, better communicated and promoted. The Scheme believes this will increase uptake for the new survey.\(^14\)

2.11 The DSS confirmed that as of September 2021, WhereTo Research has been paid $146,833.50 to work on the survey.\(^15\)

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15 DSS, answer to question on notice IQ21-000096, 13 September 2021 (received 1 October 2021).
Application and Determination Process

2.12 Evidence to the inquiry noted that the introduction of a specialist care leaver team and a case management model were positive changes in the survivor experience of the NRS.\(^{16}\) Redress support services Micah Projects and the Child Migrants Trust agreed that the NRS is maturing and has improved in its second year of operation.\(^{17}\)

2.13 The increasing number of applications being resolved is one aspect that can contribute to positive outcomes for survivors. Micah Projects explained:

> I can tell you about an individual who recently received the maximum payment and has commenced plans to start his own small business. He says this is something he would never have had the opportunity to pursue if it hadn’t been for an offer of redress. So I would suggest that, for him, that has the potential to be life-changing.\(^{18}\)

2.14 Despite improvements, many survivors continue to experience trauma as a result of engaging with the NRS. Evidence noted that survivors can experience harm at every stage of the application process, and the subsequent long determination timelines. Survivor advocates such as Care Leavers Australasia Network (CLAN) suggest that a majority of survivors struggle with poorer mental health while engaging with the NRS:

> There’s a lot of depression. There’s a lot of feeling that they’re powerless, that they’re worthless.\(^{19}\)

2.15 Relationships Australia National Office (Relationships Australia) noted that the NRS practice of asking for specific abuse details and the significant amount of detailed documentation sought from survivors in applications contribute to survivors feeling that Independent Decision Makers (IDMs) do not believe survivor accounts.\(^{20}\)

\(^{16}\) Mrs Leonie Sheedy, Chief Executive Officer, Care Leavers Australasia Network (CLAN), Official Committee Hansard, 25 September 2020, p. 3.

\(^{17}\) Dr Margaret Humphreys, International Director and Mr Ian Thwaites, Assistance Director (Services), Child Migrant Trust, Committee Hansard, 11 March 2021, p. 20 and Mr Orr, Micah Projects, Official Committee Hansard, 11 March 2021, p. 26.


\(^{19}\) Mrs Sheedy, CLAN, Official Committee Hansard, 25 September 2020, p. 2.

2.16 A survivor who was excluded from the NRS due to her foster care arrangement not being formally recognised by a state government, described the pain of being repeatedly asked personal questions by NRS staff:

I have had to relive traumatic childhood experiences and recall painful memories to explain my fostering and family situation time and time again to the people processing my claim at the redress scheme. It’s like I’m not being believed all over again. I am telling the truth. I had several unbelievable childhood experiences, some of which I’d rather not have to continue to recall, but it is what I experienced and endured as a child. I provided the relevant information in my application.21

2.17 The Victorian Aboriginal Child Care Agency (VACCA) outlined that there is a sense that claims are being tested to a beyond reasonable doubt standard, similar to that of a criminal matter.22 This is contrary to section 29 (2)(a) of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (the Act) which provides that IDMs should approve an application if there is a ‘reasonable likelihood that the person is eligible for redress’.23

2.18 Relationships Australia suggested that the fear of an increased burden of proof starts to develop when survivors begin completing the application form:

The application form is premised on applicants discharging an onus of proof that echoes the widespread disbelief with which their earlier disclosures of abuse were too often met; the degree of particularisation urged on applicants seems excessive having regard to the threshold of ‘reasonable likelihood’ legislated by Parliament.24

2.19 The Final Report: Second Year Review of the National Redress Scheme (Second Year Review) heard similar feedback and considered the guidelines and policy documents used by IDMs. This is discussed in Chapter 6.

2.20 The In Good Faith Foundation (IGFF) observed that a person’s experience of the NRS can be determined by their first point of contact. IGFF suggested

21 Name Withheld, Submission 51, p. 1.
22 Ms Hanina Rind, Senior Program Manager, Ngarra Jarra Noun, Victorian Aboriginal Child Care Agency (VACCA), Official Committee Hansard, 25 September 2020, p. 19.
23 National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth).
24 Relationships Australia National Office, Submission 56, p. 3.
that this finding highlights the importance of NRS staff being appropriately trained and resourced.\textsuperscript{25}

2.21 Contract based staff previously formed the majority of employees in the NRS. As at 31 October 2020, 214 of the 349 staff in the Redress Group of DSS were employed through labour hire arrangements. Only 130 were ongoing Australian Public Service (APS) employees.\textsuperscript{26} By August 2021, the number of permanent APS employees increased to 229. Additionally, 17 APS staff were engaged in a non-ongoing capacity. The number of non-APS contract staff had fallen to 77.\textsuperscript{27}

2.22 Evidence suggested that survivor mental health can significantly deteriorate when an application is not approved. CLAN highlighted that a negative determination can make an applicant feel like they were not believed about the abuse or are at fault for what happened. CLAN explained the effect that this has on survivor mental health:

One of our members was going to kill herself the day she got a letter that was telling her she was not eligible for a redress payment and she’d waited two years for that.\textsuperscript{28}

2.23 A large number of redress applicants spoke about the ongoing harm that arises from poor NRS communication practice. One survivor spoke about the difficulties he had when trying to understand who in the NRS was writing to him, and highlighted the challenges he faced when he tried to seek further information on the redress offer he received. The survivor also told the Committee that many of the letters he sent asking for clarification were never answered by the NRS.\textsuperscript{29}

2.24 Survivors have repeatedly raised concerns that when they call the NRS they never get to speak to the same person and that they need to recount their information numerous times. DSS confirmed that although the case management model was suspended temporarily during the early phase of COVID-19, it has resumed. DSS state that ‘applicants are able to request to

\textsuperscript{25} Ms Clare Leaney, Chief Executive Officer, In Good Faith Foundation (IGFF), \textit{Official Committee Hansard}, 26 November 2020, p. 15.

\textsuperscript{26} DSS, answer to question on notice DSSSQ20-000913, Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, 28 October 2021 (received 23 February 2021).

\textsuperscript{27} DSS, answer to question on notice IQ21-000100, 13 September 2021 (received 1 October 2021).

\textsuperscript{28} Mrs Sheedy, CLAN, \textit{Official Committee Hansard}, 25 September 2020, p. 1.

\textsuperscript{29} Mr John Everett, private capacity, \textit{Official Committee Hansard}, 26 November 2020, p. 11.
speak to their allocated case coordinator if they call the Scheme. All inbound calls are taken by the call handling team who are able to transfer the call to the relevant case coordinator. This evidence does not reflect the experiences shared by survivors to the Committee.

2.25 The effect of re-traumatisation is not limited to applicants. CLAN highlighted that survivor’s families can also be impacted:

Redress is very traumatising for care leavers and their families who are the silent victims. We don’t hear enough about the families who have to pick up the pieces or the care leavers who are not eligible for redress, who get rejected by redress, and those people need to be heard as well.

2.26 IGFF explained that as there is no detailed threshold information publicly available on what behaviours meet the ‘exceptional circumstances’ test, most survivors understandably believe that their experience of sexual abuse justifies the maximum payment amount. This can create trauma when an offer is received and it is less than expected:

Survivors who were made offers that fall far short of this highest level of redress are often deeply disturbed by this. Almost universally, those survivors are profoundly damaged by their abuse and many struggle with what they see as a failure to truly acknowledge the damage that’s been done. IGFF works actively with the survivors to manage their expectations, and this would be much easier if the eligibility for the payout levels was communicated more clearly, published and made available to survivors.

2.27 The Queensland Law Society suggested that the ‘absence of guidance for survivors explaining how determinations are made fuels concerns about a lack of transparency in the decision making process’.

2.28 Divergent decisions and apparent inconsistency of decision-making contribute to fears of a lack of transparency within the NRS. VACCA explained:

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30 DSS, answer to question on notice DSSSQ21-000083, Senate Community Affairs Legislation Committee Additional Estimates 2020-2021, 25 March 2021 (received 12 August 2021).


32 Mr Philip Lindenmayer, Head of Governance, IGFF, Official Committee Hansard, 26 November 2020, p. 16.

33 Queensland Law Society, Submission 49, p. 2.
We’re seeing a very strange kind of inconsistency. Some clients will receive $100,000. Some clients will receive $150,000. When we compare applications, we think: 'What was the extreme circumstance? How did they define that?'

2.29 CLAN provided another example of institutional child sexual abuse that would appear to meet the threshold of extreme circumstances that was not determined as such:

We put in the revocation ... It stayed the same. He was seven years of age when he was sodomized 12 times. How can that not be seen as extreme circumstances? I don’t understand it.

2.30 knowmore confirmed that they are also concerned about consistency with practitioners noting that ‘there are some survivors from similar institutions that experienced similar abuse but not the consistency in the payments that you would expect.’

2.31 Between the start of the NRS and 31 December 2020, approximately 230 reviews were sought. This equates to almost 10 per cent of total applications. Of the finalised reviews, there were 13 decisions amended on the basis of eligibility and 26 reviews resulted in an increased award payment. One review has resulted in a decrease due to an error in calculating the indexation on a prior payment in the original decision.

2.32 A revocation allows a survivor to make a new application with additional information. DSS confirmed that at 16 September 2021, there have been 93 revocations accepted by the NRS. Of these, 65 have led to an increase in the redress payment, six have led to a decrease in the redress payment, 10 have led to no change in the redress payment and 12 are currently being determined.

2.33 DSS confirmed that of the six revocations that have led to a decrease in the offer of redress payment, one was due to the applicant providing further information as they believed the offer of redress reflected a level of abuse

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34 Ms Rind, Victorian Aboriginal Child Care Agency (VACCA), Official Committee Hansard, 25 September 2020, p. 19.
35 Mrs Sheedy, CLAN, Official Committee Hansard, 25 September 2020, p. 4.
36 Ms Nicole Peyton-Smith, Aboriginal Engagement Advisor, knowmore Legal Service (knowmore), Official Committee Hansard, 25 September 2020, p. 15.
39 DSS, answer to question on notice IQ21-000102, 13 September 2021 (received 1 October 2021).
that was higher than that which they experienced. The remaining five were
due to the applicant receiving a larger financial redress payment in a
settlement with the relevant institution after their initial offer of redress from
the NRS.40

2.34 The appropriateness of current review processes is considered in Chapter 3.
Review processes were also considered by the Second Year Review, which is
discussed in Chapter 6.

2.35 In the second year of NRS operation, 10 survivors declined an offer of
redress, while in the third year of operation, from 1 July 2020 to 30 June 2021
that figure rose slightly to 13.41 Further, 320 applications have been
withdrawn by survivors to December 2020.42 No reasons have been provided
to explain the high number of withdrawals.

2.36 The Second Year Review found that 424 applications are on hold due to
reasons other than institutions not participating, 135 are on hold at the
request of the applicant, and 114 applicants are not contactable to the NRS.43
This raises equity concerns for survivors that might live in areas without a
phone or internet access.

2.37 As of 30 June 2021, 1,054 of applications received within the first two years
of the NRS have yet to progress to an outcome.44 This is largely due to
institutions that have not yet, or only recently joined the NRS, as well as
survivors placing their applications on hold, or difficulty contacting
survivors.

Privacy Concerns

2.38 The Committee heard that survivors held fears related to applicant privacy.
Concerns related to standard processes which, in some cases, may allow an
institution’s insurance company to view part three of the application form.
Part three often contains intimate details that are highly sensitive.
Additionally, media reports of administrative privacy breaches may also be
impacting survivor perceptions.

40 DSS, answer to question on notice IQ21-000102, 13 September 2021 (received 1 October 2021).
43 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 252.
2.39 CLAN highlighted that not knowing who may see your story has a negative impact on survivors:

They don’t like the fact their part 3 goes to the insurance companies and the institutions, because they don’t know how many pairs of eyes see their most personal and private information.\(^{45}\)

2.40 The Second Year Review confirmed that there are ‘no guarantees’.\(^{46}\) DSS noted that while institutions are not prohibited from sharing information with their insurance companies, DSS are not aware of any occasions where this has occurred.\(^{47}\)

2.41 In October 2020, DSS provided detail around the 10 notifiable privacy breaches that had occurred. In these cases, there were instances of personal information being sent to the incorrect applicant, personal information being sent to the incorrect institution, and information not being appropriately redacted prior to being sent to the intended recipient.\(^{48}\) By March 2021, the number of notifiable breaches had increased to 13.\(^{49}\) All breaches were identified as unauthorised disclosures of both personal and protected information in accordance with the Privacy Act 1988.

2.42 In the first two years of operation there were 98 occasions where some information was provided to the wrong institution.\(^{50}\) Mrs Silvia Skinner from Bravehearts detailed some concerning experiences:

We’ve seen some really concerning things happening, with our clients receiving letters from other survivors or our own clients. There have been serious breaches of privacy because of some mistakes that we believe might be due to the ICT system.\(^{51}\)

2.43 In response to the breaches, DSS wrote letters of apology to applicants and introduced the following measures to prevent further breaches occurring:

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\(^{51}\) Mrs Silvia Skinner, National Manager of Advocacy and Supports Services, Beyond Brave, Bravehearts Foundation, *Proof Committee Hansard*, 16 August 2021, p. 16.
Refresher training for staff on application processing processes and privacy.

Directives to staff, reiterating the importance of appropriate handling of information, and obligations relating to privacy.

Enhanced quality assurance processes at various application processing stages.

Changes to the application forms to clarify applicant intent.\(^{52}\)

2.44 In September 2021, the Committee sought updated information regarding privacy breaches. DSS did not provide a response to the Committee prior to the publication of this report.

**Committee Comment**

2.45 The Committee appreciates that are NRS officials are committed to improving the operation of the NRS and actively working towards ensuring that engagement does no harm to survivors or their families. Despite ongoing efforts, many survivors continue to report that engaging with the NRS is harmful to their mental wellbeing. The Committee strongly agrees that reform is needed to improve survivor experience.

2.46 The Committee also acknowledges the efforts undertaken to improve data collection and transparency through the production of strategic success measures. It is disappointing to note that despite a significant financial investment, the survivor experience journey failed to capture useful information that could have provided helpful insight on how to improve the NRS.

2.47 Additionally, the Committee considers that NRS performance measures need to be broadened to include basic operational matters such as how long it is taking staff to return survivor phone calls, and monitoring how many different staff are speaking to a survivor throughout the application lifecycle. These smaller elements come together to collectively have a significant impact on overall survivor experience of the NRS. The Committee believes that DSS should use the commissioned survivor journey research to guide the collection of additional data and performance indicators.

2.48 The Committee agrees that inconsistency of decisions is a concern that can have significant impacts upon survivor mental health and public perceptions of the NRS. DSS should actively consider current guidelines,

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\(^{52}\) DSS, answer to question on notice DSSSQ20-000870, Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, 28 October 2020 (received 24 March 2021).
procedures and community education materials to ensure that survivors understand what is being considered and how decisions are made.

2.49 The Committee also agrees that further investigation is needed to understand why survivors are withdrawing from the NRS, requesting that their application be put on hold or ceasing communication with the NRS. It should be in the interest of the NRS to determine whether applicants are making these decisions for self-identified positive reasons, rather than a need to disengage with the NRS for the sake of their mental health.

2.50 Whilst there is a detailed discussion of the Second Year Review findings in Chapter 6, the Committee notes the review received evidence that aligns with the evidence presented to the Committee during the inquiry period. The Committee agrees with the Second Year Review conclusion that the need for improvement is urgent. Areas that require priority consideration include addressing the ongoing concerns associated with the application form, clarifying the standard of proof and level of evidence required by IDMs in determining an application and improving the collection of data.

2.51 The Committee acknowledges that many changes require agreement from state and territory jurisdictions and that this can take time. However, not all changes need to be implemented at once. The Committee strongly encourages DSS to identify the simple reforms that would improve survivor engagement most and expedite implementation of these measures. Reforms such as making the application form more accessible for people with disabilities and more culturally appropriate for First Nations survivors should be implemented immediately.

First Nations Survivor Experience

Aboriginal people are not applying because they are not being supported to apply.\textsuperscript{53}

2.52 Many redress support services including both First Nations specific organisations and general support services raised concerns in relation to the operation of the NRS for First Nations survivors.

2.53 A low level of cultural awareness within the NRS was identified as an underlying problem. Relationships Australia Northern Territory suggested that the panel of IDMs may understand trauma in a general sense, but lack an ‘understanding of the lived experience of First Nations people,

\textsuperscript{53} Kimberley Stolen Generation Aboriginal Corporation, \textit{Submission 53}, p. 2.
particularly in remote communities'. Relationships Australia Northern Territory explained that this creates concerns ‘given the historical context and connection between independent decision-makers, their lived experience, their family links and historical links to colonists’. The Healing Foundation also raised concerns, stating:

Unfortunately, our experience is that not all aspects of the redress process are survivor focused, accessible, culturally safe and meet the needs of particularly vulnerable survivors.

2.54 knowmore agreed with this sentiment, suggesting that IDMs need cultural awareness training to ensure they possess the requisite skills to assess applications through a cultural lens. VACCA noted that any training should be provided by Aboriginal Community Controlled Organisations.

2.55 Relationships Australia suggested that current arrangements are not adequate due to a lack of appropriate cultural consideration when the NRS was established:

A national Aboriginal and Torres Strait Islander Engagement Strategy should have been developed at the outset. Instead, Redress Support Services are now being asked by the Scheme to develop regional engagement strategies within the existing service delivery funding.

2.56 This was also expressed by the Healing Foundation who highlighted that the situation has changed, and the NRS is now in a position to make positive change:

We’re fortunate now it’s all there. We’ve got the lived experience viewpoints, we’ve got the data analysis from experts in the health and wellbeing space, and we’ve got views on what needs to happen. But we’re all working with a

54 Miss Mary Wellington, Manager, Relationships Australia Northern Territory (RANT), Official Committee Hansard, 11 March 2021, p. 1.
56 Ms Fiona Petersen, Chief Executive Officer, The Healing Foundation, Official Committee Hansard, 28 September 2020, p. 6.
57 Mr Warren Strange, Executive Officer, knowmore, Official Committee Hansard, 6 April 2020, p. 37.
58 VACCA, Submission 34, p. 7.
scheme that didn’t have this information in its design phase, so the opportunity to redesign is important.\footnote{Ms Fiona Cornforth, Chief Executive Officer, The Healing Foundation, \textit{Official Committee Hansard}, 18 August 2021, p. 9.}

2.57 It was also suggested that the NRS does not fully understand the practical challenges facing survivors who live in remote communities who may not have reliable access to support services, internet, or government shopfronts:

A lot of our survivors are actually homeless, so it may take us a day just to find where they are actually living at any one time. Plus, they can move from house to house or shift between communities as well. So it can often take hours or days to locate them. During COVID-19 and also during the wet season, this can become even more difficult.\footnote{Mrs Tania Bin Bakar, Chief Executive Officer, Kimberley Stolen Generations Aboriginal Corporation (KSGAC), \textit{Official Committee Hansard}, 26 November 2020, p. 25.}

2.58 The need for survivors to produce identification documentation was provided as an example of how the administration practices underpinning the NRS can disproportionately disincentive First Nations survivors from applying. It was suggested that up to 25 potential First Nations applicants in the Northern Territory were impacted at the beginning of the application process.\footnote{Miss Wellington, RANT, \textit{Official Committee Hansard}, 11 March 2021, p. 5.} Kimberley Stolen Generation Aboriginal Corporation (KSGAC) illustrated:

For us, providing ID would be a simple thing to do, but, for a lot of Aboriginal people, it isn’t. They don't have birth certificates. Some weren't even born in hospitals. Getting a birth certificate, especially in remote areas like the Kimberley, is a journey that we have to work through with them. They can't do it on their own. It's too difficult for them. Remote communities have no support whatsoever. … Living in a remote community, there’s no way that you could get that information unless somebody was there helping you through that process, and that's not always the case. This is the reason why Aboriginal people are finding it difficult to apply and why the number of applications is so low.\footnote{Mrs Bin Bakar, KSGAC, \textit{Official Committee Hansard}, 26 November 2020, p. 25.}

2.59 Relationships Australia Northern Territory shared two additional concerning examples where the NRS did not fully account for cultural sensitivities. The first involved a woman who was told to receive her direct personal representation from a state-based government department which
had a poor historical connection to First Nations culture. The NRS did not take into account that the historical link may be a trigger for the survivor.\(^{64}\)

2.60 The second example was a serious privacy breach. In this case, it was suggested that the NRS failed to recognise the very significant impact that this breach had, firstly, on the client and, secondly, on her support network and those people that she was institutionalised with.\(^{65}\) It was suggested that the effect of the privacy breach in the community resulted in widespread distrust of the NRS within the region.

2.61 KSGAC suggested that First Nations survivors are not being provided enough time and support to understand what details the NRS requires and why certain information is important. This is leading to misunderstanding and poor outcomes that could easily be avoided:

Contact from the NRS is often more traumatising for Aboriginal survivors because they don’t always understand what is being said and often misinterpret or just agree and say that they do understand, for fear of being thought of as stupid. What I mean there is that the NRS will call the survivor directly and ask them questions that they don’t understand, when we’ve put in the application that they have to go through with our redress officer because the survivors don’t understand the questions.\(^{66}\)

2.62 Relationships Australia Northern Territory identified that improvements are needed in relation to communication tools and resources, suggesting that existing communication resources are text dense and are not accessible to people with limited numeracy and literacy. The creation of ‘audio visual or visual aids and resources such as story cards and the development of videos would be useful in communicating the message of the scheme’.\(^{67}\)

2.63 The NRS is attempting to address this shortcoming. On 17 May 2021, a new set of resources was added to the NRS website. It includes posters with information about the NRS and a video called ‘Martin’s Story’ which discusses a First Nations survivor navigating the NRS.\(^{68}\)

2.64 In December 2020, DSS confirmed that a specialised team had been formed to address the issues identified. The team commenced in June 2020:


\(^{67}\) Miss Wellington, RANT, *Official Committee Hansard*, 11 March 2021, p. 3.

The National Redress Scheme (Scheme) has established an Indigenous Service Delivery Stream (ISDS). This positions the Scheme to be culturally understanding when working with Indigenous applicants, and builds trust and understanding with the Scheme, responding to the cultural needs of applicants. The ISDS team comprises staff who identify as Aboriginal and/or Torres Strait Islander who provide specialist case handling for Aboriginal and Torres Strait Islander peoples. The ISDS also engages with the Scheme’s Redress Support Services to provide coordinated support for Indigenous applicants.69

2.65 VACCA agreed that the creation of the specialist team has helped engagement stating:

Ngarra Jarra Noun was assigned two case managers who are committed and available. The scheme has taken on board our specific requests on how to engage with our clients. An example of this is starting off the phone calls with an acknowledgement of country.70

2.66 Mr Jahmayne Coolwell, Team Leader for the culturally specific service, Danila Dilba based in Darwin, also noted that engagement on a personal level with NRS staff is effective and responsive:

I found that my engagement with regard to DSS and the team there—they’ve been really open to hearing feedback and adjusting as we’ve gone along.71

2.67 The Healing Foundation also noted that some positive feedback had been received in relation to redress support services developing their own new networks:

Feedback from survivors and support services suggests that the implementation of the scheme has been most effective in creating referral pathways, generally promoting the scheme, acknowledging trauma and making support and counselling more available to survivors.72

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69 DSS, answer to question on notice DSSSQ20-000636, Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, 28 October 2020 (received 17 December 2020).

70 Ms Rind, VACCA, Official Committee Hansard, 25 September 2020, pp. 18-19.

71 Mr Jahmayne Coolwell, Team Leader Social and Emotional Well-Being Team Leader, Danila Dilba Health Service, Proof Committee Hansard, 11 October 2021, p. 3.

Participation

2.68 Submissions suggest that low levels of cultural awareness within the NRS have contributed to poor First Nations participation rates. KSGAC explained how applying for redress sits within the broader context of previous government compensation programs, and how this affects current participation rates:

Even though they’re still given the opportunity to apply, they don’t want to do that. A lot of them, especially the stolen generation mob, have given their stories to the Bringing them home report and they’ve given their stories to other things that have come about. They’re just tired of telling their stories with very little outcome. … So, when you ask them to tell their story again and say, yes, they’re going to be compensated, they’re very wary about those statements, and rightly so.73

2.69 Relationships Australia noted that the rate of survivor participation from the Northern Territory does not correlate with the rate of previous institutional involvement suggesting that this raises questions about the adequateness of the NRS engagement with First Nations communities.74 For example, there are cultural prohibitions which prevent some First Nations applicants from disclosing sexual abuse to people who are not First Nations people, of the same or other genders, from certain family groups or a person who is younger than the applicant.75 At present, it is unclear how the NRS takes these considerations into account.

2.70 Mr Coolwell highlighted that service provider choice is essential to increasing participation due to cultural norms relating to the disclosure of abuse. Mr Coolwell stated:

Talking with members of the community, they’ve appreciated the fact that in Darwin there is that option. We acknowledge that there might be community members that don’t feel comfortable coming and talking to us directly, whether it’s because they have family that work here et cetera, but then that option of going to Relationships Australia is a valuable one because they’re still able to get that assistance. Likewise, the other way around, there may be conflicts within Relationships Australia and so they can come to us.76

73 Mrs Bin Bakar, KSGAC, Official Committee Hansard, 26 November 2020, p. 27.
76 Mr Coolwell, Danila Dilba Health Service, Proof Committee Hansard, 11 October 2021, p. 1
2.71 There was a suggestion that more First Nations survivors would apply if increased communication and support was extended to regional and remote areas.\textsuperscript{77} It was noted that this would result in redress support services needing to spend more time in communities to build relationships.\textsuperscript{78} As with all survivors, support would need to continue for the whole application cycle, including the direct personal representation. These considerations are further discussed in relation to redress support service funding arrangements.

2.72 Relationships Australia also raised that healthy participation in the NRS requires a baseline level of needs, such as housing, first being met:

If we have a client who has unstable housing or there is domestic and family violence present, we will often try and address this with the client through collaborative case management with other services before we start unpacking their childhood trauma, to ensure that people are in the best place they could be to talk about a really difficult subject.\textsuperscript{79}

2.73 The NRS has expanded upon initial Aboriginal and Torres Strait Islander survivor engagement efforts. Actions taken have included:

- Establishing a specialist engagement team for Aboriginal and Torres Strait Islander applicants.
- Launching more accessible communication materials on the Scheme website.
- Implementing a communication and engagement plan for Indigenous Australians living in Northern Australia.
- Hosting a Survivor Roundtable in Darwin on 15 June 2021 focused on Indigenous engagement.
- Engaging the Healing Foundation to provide advice, assistance and culturally appropriate community-based support and materials to other support services, including access to interpreting and cultural translation services.
- Developing a national toolkit for redress support services.\textsuperscript{80}

2.74 As part of this work, DSS engaged an Indigenous public relations consultant to undertake media and community engagement activities. DSS state that the outcomes of this work included:


\textsuperscript{78} Mr Orr, Micah Projects, \textit{Official Committee Hansard}, 11 March 2021, p. 29.

\textsuperscript{79} Miss Wellington, RANT, \textit{Official Committee Hansard}, 11 March 2021, p. 6.

\textsuperscript{80} DSS, answer to question on notice IQ21-000105, 13 September 2021 (received 1 October 2021).
- English-language community service announcements on over 112 Indigenous radio stations throughout northern Australia.
- Translated community service announcements on over 63 Indigenous radio stations in the NT and Kimberley.
- Live reads on over 96 Indigenous radio stations throughout northern Australia
- Redress Support Service interviews with four key national or regional radio programs, reaching over 102 Indigenous radio stations nationally.\(^{81}\)

**Direct Personal Response**

2.75 KSGAC explained that asking First Nations survivors about receiving a direct personal response can affect them significantly given the complex history with institutions and government agencies.\(^ {82}\) Due to this, it was suggested that separate DPR processes and guidelines need to be considered for First Nations survivors.

2.76 Whilst there have not been a lot of DPRs undertaken with First Nations survivors due to the low number of finalised applications, the Committee heard that lessons have been learnt in relation to delivery. Relationships Australia Northern Territory provided an example which highlighted the need for flexibility and understanding:

> Whilst most institutions are flexible in their delivery of a direct personal response, we have certainly had experiences where institutions have been poorly trained in the delivery and in engaging with clients. So in an attempt to provide greater emotional safety, we make that first contact so that clients are not offended or not spoken to harshly. Certainly we had one applicant who had requested a slightly out-of-the-normal direct personal response. When we contacted that institution to discuss this and see whether it might be possible, the response was: what more do these people want?\(^ {83}\)

**Specialised Redress Support Services**

2.77 There are urgent calls for the increased provision of specialist redress support services for First Nations survivors. KSGAC stated:

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\(^{81}\) DSS, answer to question on notice IQ21-000105, 13 September 2021 (received 1 October 2021).

\(^{82}\) Mrs Bin Bakar, KSGAC, *Official Committee Hansard*, 26 November 2020, p. 28.

\(^{83}\) Miss Wellington, RANT, *Official Committee Hansard*, 11 March 2021, p. 3.
Support and training for staff and support services has been ad hoc. This, in turn, has impacted our ability to provide the best possible support, advice and advocacy in their application process.\textsuperscript{84}

2.78 DSS provided detail on the support offered to First Nations applicants through First Nations specific providers. In the first two years of operation, First Nations redress support services assisted 814 clients, which comprised 6,296 support sessions.\textsuperscript{85} In a positive trend, this increased in the third year of operation with the eight First Nations redress support services assisting 1,131 clients, through 12,238 support sessions, including healing camps.\textsuperscript{86}

2.79 DSS notes that many First Nations survivors receive support from mainstream services. In the first two years of operation almost 1,000 First Nations applicants accessed mainstream services.\textsuperscript{87}

\textbf{Counselling and psychological care}

2.80 In relation to the provision of counselling and psychological support services for First Nations survivors two primary concerns emerged. The first is the lack of culturally appropriate services available, and the second is the limited scope of services provided. VACCA explained:

To provide the full benefit to survivors on their healing journey, counselling and psychological care must be available from the beginning of their rigorous journey, it must be available across the lifetime of the survivor, and it must be available to survivors' family.\textsuperscript{88}

2.81 Noting that redress support services can seek permission and funding from the NRS to provide culturally sensitive models,\textsuperscript{89} the widespread introduction of culturally specific counselling and psychological care services was identified as an urgent need:

Aboriginal people don’t see counselling the same way non-Indigenous people do. They’re not going to go to a counsellor and sit down and talk about their

\textsuperscript{84} Ms Bin Bakar, KSGAC, \textit{Official Committee Hansard}, 18 August 2021, p. 5.
\textsuperscript{85} DSS, answer to question on notice DSSSQ20-000636, Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, 28 October 2020 (received 17 December 2020).
\textsuperscript{86} DSS, answer to question on notice IQ21-000105, 13 September 2021 (received 1 October 2021).
\textsuperscript{87} DSS, answer to question on notice DSSSQ20-000636, Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, 28 October 2020 (received 17 December 2020).
\textsuperscript{89} VACCA, \textit{Submission 34}, p. 16.
issues. That's not what works for them and it's not culturally appropriate for them either.\textsuperscript{90}

2.82 VACCA submitted research conducted by La Trobe University which concluded that ‘cultural healing has positive impacts on the social and emotional wellbeing of Aboriginal survivors.’\textsuperscript{91}

2.83 The shortage of specialist psychological service providers in regional and remote areas was also identified as a need, with details of current shortages across Australia. Yokai provided an example from Western Australia:

There are issues around the remote areas and regional areas of Western Australia. We understand that there aren't any service providers capable of dealing with the counselling and psychological needs of some...\textsuperscript{92}

2.84 The flow on effect of a shortage of specialist services is an increase of pressure on existing health services. This was illustrated by People with Disability Australia (PWDA) in relation to NSW:

We’ve managed to make really good connections with the Aboriginal health services in Broken Hill and Tamworth, and they’re very excited to be working with us. The big issue in these areas is the lack of victim services counsellors to provide psychological support for people going through the process. Both these medical services have offered to provide counselling. They’ve promoted the work that we’re doing and have got the word out to all of their clients. They realise that these people need psychological support. So while they’re not funded through the scheme to provide that support, they have taken it on, off their own bat, because they think this is something that’s really important. They will provide the psychological support and counselling and we as an advocacy service can assist people with the nitty-gritty of filling out the applications.\textsuperscript{93}

2.85 There is also significant need for the provision of specialised financial counselling services, as explained by VACCA:


\textsuperscript{91} VACCA, \textit{Submission 34}, p. 16.

\textsuperscript{92} Mr Brendan Loizou, Legal Consultant, Bringing Them Home Committee Western Australia and the West Australian Stolen Generations Aboriginal Corporation (Yokai), \textit{Official Committee Hansard}, 26 November 2020, p. 21.

\textsuperscript{93} Ms Karen Kobier, Manager and Specialist Advocate, Redress Project, People with Disability Australia (PWDA), \textit{Proof Committee Hansard}, 16 August 2021, p. 28.
Culturally informed and culturally safe financial counselling provided by Aboriginal organisations is desperately needed, and timing is critical. Having access to counselling prior to a determination is what is needed.\(^\text{94}\)

2.86 The Healing Foundation noted that First Nations redress support services would benefit from extra knowledge around financial options in order to provide survivors with general advice.\(^\text{95}\) KSGAC highlighted that the consequences of not providing financial counselling can include elder abuse and bullying so services need to be able to work with survivors before payments are made to prevent issues arising.\(^\text{96}\)

**Legal advice**

2.87 The need for culturally specific legal providers was raised. The Healing Foundation reported that First Nations survivors experience harm when dealing with legal firms that are not culturally aware:

> We hear from the service providers and survivors after the fact about the additional trauma that legal firms have added to them or provided them. While they have offered to hold their hand, these legal firms know very little about trauma and its origins for Aboriginal and Torres Strait Islander people and are ill equipped to provide healing centred approaches.\(^\text{97}\)

2.88 The Northern Territory (NT) government noted that ‘many survivors want to sit down, face-to-face, and discuss their eligibility, especially with legal services, but there are no legal services or redress support services available to people in rural and remote areas’.\(^\text{98}\)

2.89 There was also evidence that private law firms may be targeting First Nations survivors in the absence of culturally appropriate local options being known within communities. While discussed in depth in Chapter 4, the Healing Foundation noted that exploitative practice is widespread and a result of poor community education:

> Stolen Generation survivors have reported that private law firms have been proactively contacting them to promote their services in a predatory manner.

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\(^\text{96}\) Mrs Bin Bakar, KSGAC, *Official Committee Hansard*, 26 November 2020, p. 25.


\(^\text{98}\) The Hon. Selena Uibo, Northern Territory (NT) Attorney-General, *Correspondence*, 18 October 2021, p. 8.
Unfortunately, many survivors are unaware there are other alternatives available to them.\(^99\)

2.90 VACCA suggested that a specialist First Nations legal service would be able to ensure that First Nations survivors are supported in a culturally appropriate manner, and that applications are written in a way that is understood by IDMs who may not appreciate some cultural nuances within applications from First Nations survivors.\(^100\) Yokai highlighted that accessibility of current and future services must be a consideration:

… generally speaking knowmore is an online service provider. This is very tricky for some of our members who don’t have the ability to interface online or struggle to access the information online.\(^101\)

**Cultural awareness**

2.91 There are tangible negative consequences for both survivors and their communities when redress support services are not provided in a culturally aware manner. The multitude of effects were explained by Micah Projects:

For a mainstream organisation to enter into a community and advertise their remit, a potential applicant in a smaller community knows that, if someone sees them engaging with a redress support service, they do so detailing a history of sexual abuse. We’ve encountered issues on a number of occasions where the perpetrator is still a member of that community and could easily identify their victim’s level of engagement in the process. That’s why I think it’s essential to work in partnership with members and organisations of those relevant communities and Indigenous services to navigate through these difficulties.\(^102\)

2.92 There were concerns about how redress service providers have been chosen, particularly in regional and remote areas, noting that mainstream services may not be able to provide the service needed. KSGAC stated:

DSS have funded organisations with little to no experience working with Aboriginal people, especially those who may speak English as a second, third or even fourth language. The dissemination of information was done with no


\(^100\) VACCA, *Submission 34*, p. 7.

\(^101\) Mr Loizou, Yokai, *Official Committee Hansard*, 26 November 2020, p. 20.

\(^102\) Mr Orr, Micah Projects, *Official Committee Hansard*, 11 March 2021, p. 27.
interaction with Aboriginal people around the wording of the brochures or media campaigns to ensure that they were relevant.\(^\text{103}\)

2.93 Concerns about how providers were chosen to work with First Nations survivors were echoed by VACCA who noted that funding to culturally specific redress support services is less than 25 per cent of all funding provided to redress support services despite First Nations survivors making up 25 per cent of all applicants.\(^\text{104}\)

2.94 The Healing Foundation suggested that future improvements should include both building workforce capacity and the provision of additional resources to ensure culturally safe responses to address complex needs:

Organisations supporting Stolen Generation survivors are resilient and resourceful, but they are struggling to meet demand.\(^\text{105}\)

2.95 There were also concerns raised that while mainstream redress support services try to work in a culturally appropriate way, there are ongoing challenges in relation to both accessibility and cultural awareness for First Nations survivors. KSGAC highlighted what this means for survivors in practice with the following example:

Organisations such as Relationships Australia, expect survivors to apply for the National Redress Scheme either online or over the phone. Internet or phone access in some communities is problematic. Kalumburu, for example, has one public phone box. An application through RAWA [Relationships Australia Western Australia] would be via a computer at the business centre or public phone. There is no privacy.\(^\text{106}\)

**Funding**

2.96 The need for specialised funding streams to meet the needs of First Nations survivors was consistently raised by First Nations service providers.

2.97 Link Up Queensland gave an example of their counselling service working across the breadth of Queensland with only one staff member.\(^\text{107}\) Link-Up NSW also only has one counsellor working across most of the state.\(^\text{108}\)

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\(^{104}\) VACCA, *Submission 34*, p. 7.


\(^{107}\) Ms Patricia Thompson, Chief Executive Officer, Link Up Queensland, *Official Committee Hansard*, 18 August 2021, p. 2.
The need for funding to recognise that applying for redress is a long, circular, and traumatic process was strongly supported by all First Nations redress support services who gave evidence.  

Further, it was suggested that current funding does not recognise that First Nations survivors have additional needs which require additional support in the redress application process given the history of forced removal.

KSCAG also spoke of the confusion that surrounds funding and the poor outcomes that have arisen as a result. They gave the following example when the NRS asked them to expand their service area:

We were asked to put in a budget for the additional funds. We did that, but we didn’t include the funds that we had already been in receipt of, because we didn’t know that we had to. So they have given us the money for the additional scope of work but have taken away the existing funding that we had previously. To me, that’s nonsensical. Now they’ve given us a job to do, but they’ve tied our hands behind our back.

KSCAG highlighted that the funding limitations affect both survivors and the staff who support them:

We have one team leader and two redress support officers who are funded, and one counsellor that we’re funding at the moment through rollover funding that we have. The counsellor position isn’t funded through the scheme, and that’s not good enough. Everybody knows that when you’re going through this type of thing there needs to be a counsellor on hand to assist not just the survivor but also the staff who are hearing these stories. Most of the survivors we work with are either illiterate or semi-illiterate, so our staff have to actually transcribe their stories. They are hearing these stories. So we have to provide a lot of counselling not just to the survivors but also to our staff.

KSGAC explained the effect limited funding has on the ground for people who wish to apply with the support of a First Nations specific provider:

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108 Ms Lisa Polyblank, Redress Counsellor, Link Up NSW, Official Committee Hansard, 18 August 2021, p. 3.

109 Including Mrs Sarah Gafforini, Director, Office of the Chief Executive Officer, VACCA, Official Committee Hansard, 18 August 2021, p. 6 and Ms Polyblank, Link Up NSW, Official Committee Hansard, 18 August 2021, p. 7.

110 Mr Loizou, Yokai, Official Committee Hansard, 18 August 2021, p. 6.

111 Ms Bin Bakar, KSGAC, Official Committee Hansard, 18 August 2021, pp. 7-8.

112 Ms Bin Bakar, KSGAC, Official Committee Hansard, 18 August 2021, p. 5.
We have one community, based in east Kimberley, where there are between 12 and 15 survivors who are waiting for us to receive the funding so that they can put an application in with us because they don’t want to use the current two service providers. That’s just one community.\textsuperscript{113}

2.103 Additionally, when acknowledging the need for additional specific community education materials, it was suggested that First Nations redress support services need to be given primary consideration for any project and design grants:

\begin{quote}
[T]here is a tendency to fund mainstream organisations to do this on behalf of us as ACCHOs [Aboriginal Controlled Community Health Organisations]. Then they reach out to us and say: ‘Oh, by the way, we’ve got all this funding. We’re not going to give you any of it, but can you run some groups, co-design messaging and test it for us?’ If you don’t give us the money, we end up doing all this volunteer work for mainstream... they have written an amazing tender and then we do all the legwork for them. ... I would highly recommend that we cut out the middleman, ask our own communities what they want and need, and test the messaging ourselves.\textsuperscript{114}
\end{quote}

\textbf{Committee Comment}

2.104 The Committee agrees that the lack of cultural awareness within the NRS contributes to lower participation numbers and poorer engagement outcomes for First Nations survivors. It is important that DSS has recognised this shortcoming and has taken action to address deficiencies in culturally appropriate community education materials and activities.

2.105 At the core of trauma informed practice is choice. While some First Nations survivors seek culturally specific services, the Committee acknowledges that cultural practices, such as not disclosing abuse to family members, may also be a reason for applicants feeling more comfortable with mainstream support options. The Committee agrees that there is currently limited choice available for First Nations survivors.

2.106 The Committee does not agree that it is a reasonable expectation for any survivor to choose between the local service that may be connected to family, or having to complete the process on the one public phone within the community. The Committee strongly agrees that greater consideration of

\textsuperscript{113} Ms Bin Bakar, KSGAC, \textit{Official Committee Hansard}, 18 August 2021, p. 8.

\textsuperscript{114} Mrs Gafforini, VACCA, \textit{Official Committee Hansard}, 18 August 2021, p. 10.
locally accessible services is needed in regional and rural areas to ensure that survivors are able to make a considered choice of service support provider.

2.107 Equally, the Committee is highly concerned by administrative barriers preventing First Nations access to the NRS. Consideration of what identification documents are required by the NRS must be examined. If a person is known to other government services, the NRS should be able to use that existing information to move forward. The Committee believes that there is merit in examining the application form and the potential of creating a form specifically designed to reflect cultural needs.

2.108 Funding arrangements for all redress support services must be reconsidered in this context. All services need to be funded in a way that adequately supports fulsome on the ground support of both survivors and staff.

**Recommendation 1**

2.109 The Committee recommends the establishment of a First Nations panel to provide specific advice to the National Redress Scheme on:

- the design and implementation of cultural safety principles and practice; and
- the development and implementation of an intensive education campaign across regional, rural, and remote communities to drive awareness and improve access to the National Redress Scheme for First Nations people.

**Effectiveness of Redress Support Services**

2.110 It is essential that redress support services are able to meet the varied and often complex needs of survivors. Evidence presented suggests that current services are not adequately supported to be accessible to all survivors or provide holistic assistance from the time of first inquiry to the provision of a DPR. For example, PWDA raised that:

... we have found that disability tends to be treated in certain contexts as an ‘add-on’ or ‘special’ category by the Scheme and mainstream support services rather than being rightly acknowledged as central to the Scheme. There is a sense that the needs of people with disability can be largely met through
specialist Redress support services such as PWDA. Limited funding and resources make this impossible’.\textsuperscript{115}

**Availability and Accessibility**

2.111 The strategic success measures include a redress support service accessibility heatmap, that overlays applicant locations to the service reach of redress support services. The map shows where larger numbers of applicants live and where services are concentrated.\textsuperscript{116} The heatmap shows large parts of Australia do not have access to services which are predominantly based in capital cities.

2.112 The suggestion of discrimination was raised by PWDA in light of the limited services available in regional and rural areas.\textsuperscript{117}

2.113 Further, consecutive strategic success measures highlight a concerning trend. While there were very low levels of survivors engaging with support services in 2020, the percentages of applicants accessing services fell in 2021.\textsuperscript{118}

**Table 2.1 Percentage of applicants engaging redress support services**

<table>
<thead>
<tr>
<th>Applicants</th>
<th>October 2020</th>
<th>July 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aged 70 or older</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>First Nations</td>
<td>15%</td>
<td>12%</td>
</tr>
<tr>
<td>People with a disability</td>
<td>28%</td>
<td>22%</td>
</tr>
<tr>
<td>People living in a rural or remote location</td>
<td>18%</td>
<td>14%</td>
</tr>
</tbody>
</table>

*Source: DSS, Strategic Success Measures October 2020 and July 2021.*

2.114 The DSS 2020-21 Annual Report state that over half of applicants were supported to apply for the NRS. Approximately 30 per cent were supported by a redress support service, and approximately 25 per cent were supported

\textsuperscript{115} PWDA, *Submission 50*, p. 16.

\textsuperscript{116} National Redress Scheme, *Strategic Success Measures*, October 2020, p. 10.

\textsuperscript{117} PWDA, *Submission 50*, p. 20.

\textsuperscript{118} National Redress Scheme, *Strategic Success Measures*, October 2020, p. 10.
by knowmore.\textsuperscript{119} Two thirds of survivors supported self-identified as being a care leaver, having a disability or being a First Nations survivor.

2.115 Community education continues to be identified as requiring an urgent focus and greater resource allocation. PWDA highlighted that between July 2020 and July 2021, it conducted a range of education and awareness activities to 895 people from 286 different organisations, and of those only 21 people had ever heard of the NRS.\textsuperscript{120} Relationships Australia Northern Territory echoed this:

[T]here has been an improvement in engagement, but I believe that is more closely linked to the work of the support services around Australia rather than the Commonwealth government. We have worked very hard to raise awareness outside of the scope of our funding in terms of outreach, and awareness-raising has been a priority because if we don’t do it, we don’t have clients.\textsuperscript{121}

2.116 KSGAC suggested that greater alignment with existing programs of work could have significant efficiency benefits, especially in regional and remote areas. KSGAC provided an example based on its current operations:

KSGAC already provide two regional programs, both of which include a service to many potential survivors outside our current scope. There was no thought process in rolling out the scheme. We’ve had lots and lots of conversations about being provided with the funding to roll out the scheme regionally, like our other two programs, and have been knocked back on every occasion.\textsuperscript{122}

2.117 A psychologist noted concerns with current counselling and psychological services available for survivors. Ms Christabel Chamarette noted that she has ‘grave concerns about the quality of counselling’ available.\textsuperscript{123} Ms Chamarette suggested that there should be a pool of practitioners available for survivors and their families to access. The pool should include therapists who engage in a wide range of approaches so that survivors can self-determine what type of support they access.\textsuperscript{124}

\textsuperscript{119} DSS, \textit{Annual Report 2020-21}, p. 162.

\textsuperscript{120} Ms Kobier, PWDA, \textit{Proof Committee Hansard}, 16 August 2021, p. 24.

\textsuperscript{121} Miss Wellington, RANT, \textit{Official Committee Hansard}, 11 March 2021, p. 5.

\textsuperscript{122} Ms Bin Bakar, KSGAC, \textit{Official Committee Hansard}, 18 August 2021, p. 5.

\textsuperscript{123} Ms Christabel Chamarette, Psychologist, \textit{Proof Committee Hansard}, 11 October 2021, p. 9.

\textsuperscript{124} Ms Christabel Chamarette, \textit{Proof Committee Hansard}, 11 October 2021, p. 9.
Financial Counselling

2.118 The lack of specialised financial counselling services for survivors was identified as an area requiring urgent consideration.

2.119 knowmore explained the role that financial counsellors play in a survivor journey:

> It helps people to manage debt issues and to safeguard their payments and ultimately to get the maximum benefit out of any redress payment that they receive, which we think is the policy outcome that of course everyone wants to see.\(^{125}\)

2.120 The National Debt Helpline (NDH) was listed as a redress support service in the first two years of the NRS operating without receiving any funding from DSS in order to provide a specialised service to survivors. The NDH was included on the list of support services solely as an acknowledgement that the existing service scope may assist survivors.

2.121 Representatives from Financial Counselling Australia (FCA), who operate the NDH, explained that the advertised 1800 phone line is managed by a number of mostly state-based organisations under the national banner of the NDH. Data on how many survivors have accessed the resource is unclear as it is held by the organisation that takes the initial call, but is likely to be around 60 a year.\(^{126}\)

2.122 FCA noted that survivors represent complex engagements and that the level of service required to meet their needs is not able to be supported by the NDH without specific funding provided.\(^{127}\)

2.123 When DSS confirmed that additional funding would not be provided, FCA supported the creation of a charity to fund a financial counselling service for survivors. knowmore was selected as the beneficiary. It provided client services directly to survivors, and offered professional development to other redress support services to strengthen their capacity to provide financial counselling services.\(^{128}\) knowmore also undertook systemic advocacy and stakeholder engagement with key bodies including the Australian Banking

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\(^{125}\) Mr Strange, knowmore, *Official Committee Hansard*, 25 September 2020, p. 10.

\(^{126}\) Ms Fiona Guthrie, Chief Executive Officer, Financial Counselling Australia (FCA), *Official Committee Hansard*, 25 September 2020, p. 23.


Association, major banks, and other peak bodies including hardship entities and hardship units in various financial and utility entities through the charitable grant.\(^{129}\)

2.124 On 1 June 2021, a grant to knowmore for the provision of a financial counselling service was published on GrantConnect.\(^{130}\) DSS state:

> The department has funded knowmore Legal Services $4.5 million over four years to 30 June 2024 to deliver free and independent financial counselling services to specifically support participants in the Scheme.\(^{131}\)

2.125 Financial counselling was identified by knowmore as one tool to prevent bullying, abuse and manipulation following the receipt of a redress payment.

> We’ve been hugely concerned around elder abuse as well and other kinds of stand-over tactics where we’re seeing the pressure that’s applied to people—emotional, physical or otherwise—about accessing their money.\(^{132}\)

2.126 knowmore noted that even with its current service provision, gaps remain for survivors and in some of the redress support services that are dealing either with large numbers of redress applications or supporting specialist client groups including Aboriginal community controlled organisations.\(^{133}\)

2.127 Mr Frank Golding suggested that the application or redress acceptance form could be amended to include a tick box, where survivors could indicate that they would like to receive financial counselling.\(^{134}\)

**Funding**

2.128 As of 30 June 2021, $90 million has been provided for redress support services.\(^{135}\) A competitive grants round is currently open for the next four years of operation.

\(^{129}\) Mr Strange, knowmore, *Official Committee Hansard*, 25 September 2020, p. 10.

\(^{130}\) DSS, answer to question on notice IQ21-000089, 13 September 2021 (received 1 October 2021).

\(^{131}\) DSS, answer to question on notice IQ21-000088, 13 September 2021 (received 1 October 2021).

\(^{132}\) Ms Amanda Whelan, Director of Client Services, knowmore, *Official Committee Hansard*, 25 September 2020, p. 16.

\(^{133}\) Mr Strange, knowmore, *Official Committee Hansard*, 25 September 2020, p. 10.

\(^{134}\) Mr Frank Golding, private capacity, *Official Committee Hansard*, 26 November 2020, p. 3.

\(^{135}\) DSS, answer to question on notice IQ21-000099, 13 September 2021 (received 1 October 2021).
2.129 Redress support services suggested that current funding arrangements make it difficult to provide the level of service required, both in relation to the scope of support offered to survivors currently engaging with the NRS and promoting the NRS through community education.\(^{136}\)

2.130 Micah Projects suggested that funding agreements need to recognise that community education is delicate work that requires long-term investment and dedicated resources. It is not a function that is ancillary to existing services. Noting that some redress support services received short-term funding designed to increase participation, it was questioned if a short term approach is the best way to engage with community education activities:

> I think a service agreement that lasts for six months—it would be irresponsible for us or any service to engage with an Indigenous community, for example, or the deaf community or contemporary care leavers and say, 'This is what we're able to do; we can support you,' to then, potentially, find out that in six months time the funding won't continue, is a dangerous game to play, to really engage in that work when there's no security.\(^{137}\)

2.131 Once the community is aware of the NRS, and survivors choose to pursue an application, services need the appropriate provision of resources to support applicants. Balancing community education and the provision of support is challenging. Micah Projects explained:

> [W]e've been maintaining a waitlist that has been sitting at about the 100- or 110-person mark for the last six to seven months.\(^{138}\)

> The risk we run is that you go out and establish connections with people and then say, 'We've got a waitlist and it might be three or four months before we get back to you'.\(^{139}\)

2.132 Micah Projects also highlighted that funding arrangements need to reflect the level of service required, noting that support does not stop when an offer of redress is made:

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\(^{137}\) Mr Orr, Micah Projects, *Official Committee Hansard*, 11 March 2021, p. 28.

\(^{138}\) Mr Orr, Micah Projects, *Official Committee Hansard*, 11 March 2021, p. 27.

\(^{139}\) Mr Orr, Micah Projects, *Official Committee Hansard*, 11 March 2021, p. 27.
Initially, we were funded primarily to support people with their applications. But we’ve seen, over time, that that work has expanded to include supporting people through DPR processes, CPC [clinical prioritisation criteria] processes, and also supporting people with everything that comes up as a product of opening that Pandora’s box and having to confront these histories of childhood sexual abuse.140

2.133 Victims Support Services South Australia highlighted that survivors need certainty and time to build trusting relationships. Current funding arrangements do not provide certainty for either the survivor or the service provider. This can impact the effectiveness of a trauma informed response.141

2.134 Relationships Australia spoke of how limited resourcing has a practical effect on survivors seeking psychological care:

[T]hey often want to continue counselling, post-outcome, with the practitioners with whom they have built trust and rapport during the course of their application. Some of our services are at capacity, but are ethically unable to discharge clients to free up capacity for new claimants. This has a flow on effect for wait times for all clients. Sometimes, clients want to at least continue while they weigh up the option of seeking a direct personal response. Some of our workers are carrying up to 100 clients each, at differing stages of progress through the application process.142

2.135 Relationships Australia noted that small changes, such as the introduction of a phone line for redress support services to access NRS staff would provide significant benefits, including efficiency.143

2.136 The NT government noted the challenges faced by redress support services operating in the NT, but considered the low rate of survivor access to redress support services of concern.144 The NT government also highlighted that currently funding is not linked to the amount of contact time with survivors or the number of applications processed.145

140 Mr Orr, Micah Projects, Official Committee Hansard, 11 March 2021, p. 27.
144 The Hon. Selena Uibo, NT Attorney-General, Correspondence, 18 October 2021, p. 10.
145 The Hon. Selena Uibo, NT Attorney-General, Correspondence, 18 October 2021, p. 10.
Committee Comment

2.137 The Committee is concerned at the current operation of redress support services. Current funding arrangements are not enabling services to adequately support the mental health and wellbeing of survivors for the application lifecycle. The need to adequately support staff is also paramount to the sustainability of the NRS. The Committee agrees that funding must be adequate for the period starting with consistent community-based education activities that are targeted and sensitive to local needs. Appropriate support must then be available for survivors, and their families, until the successful provision of a direct personal representation.

2.138 Given the low rate of survivor engagement with redress support services, the Committee considers that there would be value in a formal evaluation of redress support services with a view to costing appropriate funding for regional and rural provision, after-hours and weekend support, and ensuring that culturally appropriate support is available.

2.139 The Committee also agrees that there is merit in DSS considering a dedicated contact point for support services within the NRS. Significant efficiencies and greater clarity for survivors may be achieved through direct communication channels.

Recommendation 2

2.140 The Committee recommends that formal evaluation of redress support services be established to ensure that the needs of survivors and their families are being met through professional and timely engagement.

Recommendation 3

2.141 The Committee recommends that the National Redress Scheme engage additional redress support services in regional, rural and remote areas that offer face-to-face support.

Recommendation 4

2.142 The Committee recommends that the National Redress Scheme consider expanding current funding arrangements to provide after hours and weekend specialist services.
3. Operation of the National Redress Scheme

... survivors want a trauma informed approach throughout the system, not just in our system but in working with government systems as well. They want to not have to repeat their story over and over. They want the information about them to be confidential. They also want to have consistency of the person they’re working with. They want choice in the system.¹

3.1 The National Redress Scheme (NRS) had to quickly adapt operations during March and April 2020 in response to the COVID-19 pandemic. Since that time, administrative and staffing arrangements continue to be flexible to ensure that operations are maintained in a way that upholds NRS staff safety and maintains privacy standards.

3.2 Ongoing concerns in relation to fundamental operational aspects of the NRS continue to be raised by survivors, redress support services and advocates. Primary areas raised for consideration include the lack of transparency, inconsistent application of the assessment framework and the indexation of prior payments.

Impact of COVID-19

3.3 The Department of Social Services (DSS) initiated a dynamic response to COVID-19 that aimed to respond to the changing operational environment in a manner that protected staff and maintained operations. As noted by Tuart Place, early in the pandemic the 1800 helpline was temporarily

suspended. While the phone line is now operating again, the temporary closure did affect survivors. Tuart Place highlighted that ‘at a time of heightened social anxiety and uncertainty, applicants need greater access to reassurance and connection with the NRS not less’.²

3.4 A serious consideration raised by knowmore was the flow on effect to survivors from internal changes made in DSS operations. knowmore highlighted staff movement as an example:

Probably one of the major impacts of the pandemic has been the turnover of staff at the National Redress Scheme, which has impacted on continuity of contacts and relationships and also on the types of approach taken in response to queries and the information provided, as staff are moving in and out of those key roles and don’t always necessarily have the full range of information that more experienced people have had about the scheme.³

3.5 In Good Faith Foundation (IGFF) highlighted the case manager model was also suspended, which resulted in multiple staff contacting applicants for ‘differing and overlapping purposes within a fortnight’s period’.⁴

3.6 Timelines were also affected during the initial stages of the COVID response as institutions requested extensions for the provision of institutional information and documentation necessary for applications to progress to IDMs.⁵ The most current wait time data suggests that this may have been a temporary concern.⁶

3.7 In relation to participation rates, applicant numbers dropped significantly during the middle of 2020, but rebounded to pre-pandemic levels towards the end of 2020.⁷ knowmore stated:

[W]e have seen a very significant increase in the numbers of applications that are being determined, and that’s flowing through to offers and payments that are being made to survivors. That’s great to see.⁸

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² Tuart Place, Submission 25, p. 1.
³ Mr Warren Strange, Executive Officer, knowmore Legal Service (knowmore), Official Committee Hansard, 25 September 2020, p. 9.
⁴ In Good Faith Foundation (IGFF), Submission 45, pp. 6-7.
⁵ Ms Hanina Rind, Senior Program Manager, Ngarra Jarra Noun, Victorian Aboriginal Child Care Agency (VACCA), Official Committee Hansard, 25 September 2020, p. 18.
⁶ National Redress Scheme, Strategic Success Measures, October 2020, p. 4.
⁷ Mr Strange, knowmore, Official Committee Hansard, 25 September 2020, p. 9.
⁸ Mr Strange, knowmore, Official Committee Hansard, 25 September 2020, p. 9.
3.8 Redress support services also pivoted quickly, supporting survivors through phone and video options where possible.

Committee Comment

3.9 The Committee appreciates the efforts of the NRS, redress support services, and advocacy organisations for their adaptive and supportive response to the rapidly changing operating environment.

3.10 The Committee notes that initial operational changes did limit the ability of survivors to engage with the NRS, and that this has largely been rectified. The Committee appreciates that operating requirements will always need to be responsive to changing local conditions given the nature of the pandemic.

3.11 Evidence suggests that despite lower participation numbers during the initial phase of the pandemic, it is positive that application rates have returned to pre-pandemic levels.

3.12 The Committee agrees that institutions should now be well placed to respond to NRS requests for information and have less need to seek extensions for the production of materials. The Committee believes that the NRS should continue to monitor institutional compliance with required timeframes.

Assessment Framework

3.13 Survivor advocates and redress support services maintain concerns in relation to the NRS assessment framework as originally identified in the First Interim Report. Primary concerns relate to the current framework being inconsistent with the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) and the framework remaining confidential to the NRS and IDMs.

3.14 The First Interim Report broadly noted concerns with the level of secrecy surrounding the assessment framework. Only limited details about the assessment framework is publicly known due to strict confidentiality clauses:

- Section 32 of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (the Act) allows the Minister to determine a method for working out the amount of redress and counselling awards for applicants to be known as the assessment framework.
- Section 33 allows the Minister to make guidelines to assist with the application of the assessment framework.
• Section 104 makes it an offence for any person to obtain, copy, disclose or use information in the assessment framework or the guidelines, if not authorised to do so. The penalty for such an offence is imprisonment for 2 years, 120 penalty units, or both.

3.15 Knowledge of the framework and its application is consequently very limited. Redress support services have gained an imperfect understanding of the assessment framework, noting trends in their role as nominees.\(^9\)

3.16 Advocates noted that the lack of transparency in relation to the assessment framework contributes to re-traumatisation for survivors.\(^10\) This reflects evidence noted in Chapter 2 from IGFF who explained that the lack of detailed threshold information available on what behaviours meet the ‘exceptional circumstances’ test, means survivors understandably believe that their experience of sexual abuse justifies the maximum payment amount.\(^11\)

3.17 The government, when introducing the original NRS legislation to Parliament in 2018, noted that maintaining the secrecy of the assessment framework helps prevent application fraud. The explanatory statement for the Act states:

> [P]rotecting the assessment framework policy guidelines from unauthorised use and disclosure will assist with mitigating the risk of fraudulent and enhanced applications, as unauthorised disclosure of the guidelines could enable people to understand how payments are attributed and calculated.\(^12\)

3.18 Mr Golding submitted that instead of preventing fraud, secrecy had resulted in ‘people misunderstanding the process, misunderstanding the important elements of their application, and in fact doing themselves a disservice because they omit particular things.’ \(^13\)

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3.19 Mr Golding clarified that for the mental wellbeing of survivors, and procedural fairness, the NRS ‘need[s] desperately to be more transparent about what the rules are and what the key terms are.’

3.20 Mr Golding also provided the Committee with information in respect to the rate of fraud identified within comparative international redress schemes. In Nova Scotia, there were widespread accusations of fraud prompting an external investigation. Of the 1100 cases considered, the investigation concluded with one charge issued for fraud. A similar situation arose in the Irish scheme. Mr Golding told the Committee that from 16,650 claims, 9 applications were referred to the police, and resulted in one criminal conviction. Mr Golding suggested that these figures highlight that fraud prevention should not be a significant factor in the design of the NRS.

3.21 The Baptist Ministries of Australia held a different view, stating that it did not support publication of the assessment framework, as publication could have a negative impact on the design and effective operation of the NRS.

3.22 IGFF were also very concerned that despite the widely understood concerns and limitations of the assessment framework, it was still being used to determine the level of psychological support being offered to survivors.

3.23 Similarly, Tuart Place highlighted that there are concerns about procedural fairness when institutional information is provided to the NRS but not shared with applicants:

Information released to the NRS by a participating institution for the purpose of a redress claim is deemed a protected disclosure, and cannot be released to the applicant… Firstly, it is fundamentally unfair that applicants do not have access to the information used to assess their claims of abuse; and, secondly, applicants are denied access to potentially significant personal records of childhood and early family history.

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14 Mr Golding, private capacity, Official Committee Hansard, 26 November 2020, p. 1.
15 Mr Golding, private capacity, Official Committee Hansard, 26 November 2020, p. 1.
16 Mr Golding, private capacity, Official Committee Hansard, 26 November 2020, p. 1.
17 Australian Baptist Ministries, Submission 57, p. 2.
18 IGFF, Submission 45, p. 8.
19 Tuart Place, Submission 25, p. 3.
Committee Comment

3.24 The Committee agrees that a balance needs to be found between transparency and NRS administration practice to ensure procedural fairness. Given that there are currently informal information sharing channels, the Committee believes that it would be suitable for the NRS to publicly share more information on how the assessment framework is applied. Education materials could take the form of case studies or interactive examples on the NRS website. Stakeholder consultation would be necessary to determine how best to share this information.

Recommendation 5

3.25 The Committee recommends that the National Redress Scheme produce public education materials to clearly explain and demonstrate how the assessment framework is applied to applications by Independent Decision Makers.

Independent Decision Makers

3.26 There were a number of concerns raised in relation to the functions of Independent Decision Makers (IDMs). Concerns ranged from those that can be easily rectified such as the suggestion that letters to survivors with their redress determination be amended to become shorter and personalised. Critically, survivors believe that letters should also be signed by the IDM.20

3.27 Relationships Australia highlighted that ‘in the view of survivors’ the letter of offer is ‘coming from yet another faceless official making decisions about intimate matters in the applicant’s life’.21 This often reflects a survivor’s previous trauma experience within institutions. Care Leavers Australasia Network (CLAN) also noted that in comparable schemes, the decision-maker’s name is public.22

3.28 The introduction of broad minimum training requirements for IDMs was raised by several stakeholders who questioned if IDMs have enough specialised training to accurately interpret applications from particular

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20 Mr John H. Everett, Submission 33, p. 5; Relationships Australia National Office, Submission 56, p. 10.
22 Ms Leonie Sheedy, Chief Executive Officer, Care Leavers Australasia Network (CLAN), Proof Committee Hansard, 16 August 2021, p. 6.
groups of survivors. CLAN stated that ‘we have been asking for the last two years for the IDMs to have care leaver training, and it still has not been taken up.’  

The Victorian Aboriginal Child Care Agency (VACCA) stated that specific Aboriginal survivor training is required. Relationships Australia also highlighted the need for IDMs to undertake continuous training.

3.29 The creation of a moderation and review process was identified as the primary way to increase consistency in decision-making. The Committee considered inconsistent decision-making in Chapter 2. CLAN stated:

[T]he independent decision-maker seems to be operating individually and it seems to me that there’s scope for some sort of a mediation process so that, if somebody’s decision appears to another independent decision-maker to be extraordinary in some way, a second opinion is given before the decision is final.

3.30 The Northern Territory (NT) Government highlighted the importance of an internal review process prior to the finalisation of a decision. On two occasions, IDMs have sent decision letters to survivors determining that the NT Government was responsible for respective NRS claims. Unfortunately, in both cases, the claims related to matters that occurred before the establishment of the NT in 1978. DSS told the NT Government that even if an error had been made in the determination, there was no legislative mechanism to allow a determination to be revoked.

3.31 There have been some positive stories shared with the Committee, highlighting that the current system does have flexibility for IDMs to use if they wish. Relationships Australia provided an example which highlighted the importance of both IDM training and moderation to ensure that all survivors receive a fair outcome:

One survivor, for example, simply could not bring himself to disclose the details of his abuse, but received a Redress payment in excess of $100,000. The outcome letter observed that it was clear to the independent decision-maker that there was much more to the story than was traversed in the application, and that the client just could not tell that story in its fullest form. The

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23 Mrs Sheedy, CLAN, Official Committee Hansard, 25 September 2020, p. 5.
24 VACCA, Submission 34, p. 7.
26 Mr Golding, Vice-President, CLAN, Official Committee Hansard, 25 September 2020, p. 7.
27 The Hon. Ms Selena Uibo, Northern Territory (NT) Attorney-General, Correspondence, 18 October 2021, p. 5.
validation that our client experienced on receiving this letter has provided a foundation on which he has reconciled with his spouse, children and grandchildren, become drug and alcohol free, and has embarked on a suite of new, healthy pursuits.28

Committee Comment

3.32 The Committee agrees that all IDMs should receive specialist training in relation to disability, care leaver and First Nations cultural awareness. The list of compulsory training undertaken by IDMs should be publicly available to build confidence in the decision-making aspects of the NRS.

3.33 The Committee is also concerned that if an error is made by an IDM or in the determination, there is no legislative mechanism to allow the determination to be revoked.

3.34 The Committee notes that the Second Year Review made a number of concerning findings in relation to inconsistencies of policy guidance materials used by IDMs. Commentary and recommendations in relation to this are discussed in Chapter 6.

Recommendation 6

3.35 The Committee recommends that the National Redress Scheme introduce annual mandatory training requirements for Independent Decision Makers and that the agreed minimum training requirements are published for survivors to understand.

Recommendation 7

3.36 The Committee recommends that the National Redress Scheme implement an internal moderation and review process for all application determinations prior to being finalised.

Review of Decisions

3.37 The Committee heard evidence in relation to current internal review processes and limited external review avenues. VACCA suggested that internal reviews sought by applicants after receiving a determination are not adequate:

The National Redress Scheme does not have a genuine review process. If a survivor seeks a “review” of the final determination what actually happens is that a different IDM will assess the application, blind from the initial assessment findings. This equates to a second assessment not a review. Department of Social Services (DSS) staff have confirmed that the result of this “review” could be that the payment is reduced or even that the survivor is deemed ineligible to apply for redress. This is unacceptable.29

3.38 Avenues for external or judicial review are very limited. The NRS is exempt from consideration by the Administrative Appeals Tribunal under the Administrative Decisions (Judicial Review) Act 1977. This means that the only avenues remaining for judicial appeal may be to the Federal Court under section 39B of the Judiciary Act 1903 or the High Court of Australia under section 75 of the Australian Constitution.

3.39 The judicial process would be very difficult for survivors to pursue. In addition to stress and legal costs, section 105(3) of the NRS Act allows the NRS to share protected information with courts or tribunals, but not with the applicant in the matter.30

3.40 One survivor suggested that limiting the right of review, along with other elements of the NRS operation, may breach human rights law principles. The survivor sought advice from the Australian Human Rights Commission and was informed that the Commission is also excluded from considering matters associated with the operation of the NRS.31

3.41 CLAN also raised a concern in relation to the processes surrounding a revocation. It suggested when a revocation is granted, the NRS provide a second opportunity to the institution to provide relevant information. While this may be appropriate in some situations, if the revocation is limited to the nature of events, it seems unnecessary to extend the process by months when it is likely that the same information will be provided by the institution.32

29 VACCA, Submission 34, p. 12.


31 Name withheld, Supplementary submission 10B, p. 1.

32 Ms Sheedy, CLAN, Proof Committee Hansard, 16 August 2020, pp. 4-5.
Committee Comment

3.42 The Committee agrees that a review process conducted without the survivor being able to clarify statements or provide additional evidence is of limited benefit to the survivor or the IDM. Additionally, it raises significant equity issues in relation to survivors who may not have been able to seek support when initially making an application.

3.43 DSS should consider options such as establishing a separate stream of IDMs who are responsible for considering reviews; allow additional materials to be submitted to support existing claims in applications; and the possibility of allowing a survivor to make a verbal statement if appropriate. These changes would increase procedural fairness, reduce decision-making timeframes, and may also lead to a reduction of revocations being sought.

Recommendation 8

3.44 The Committee recommends that the National Redress Scheme amend current review processes to:

- ensure that applications are only reviewed by senior Independent Decision Makers, and

- allow for survivors to provide additional materials on matters raised by Independent Decision Makers.

Indexation

3.45 There were two primary issues raised in relation to indexation in evidence to the Committee. The first is that prior payments made to survivors should not be indexed prior to being deducted from a redress payment. The second is that payments made by the NRS should be indexed to inflation to ensure that a survivor is not disadvantaged by the length of time to determine an application or time that the application is submitted prior to 2028. Both issues raised reflect concerns previously considered in the *First Interim Report*.

3.46 From the commencement of the NRS to December 2020, a total of 2,095 survivors had their redress payment reduced due to a prior payment. The
average reduction to the final award has been $41,912. The indexation effect on the total amount deducted would vary according to the value and the date of the prior payment.

3.47 Relationships Australia suggested that survivors engaging with the NRS have difficulty understanding how indexation on prior payments work in practice. Additionally, Relationships Australia raised concerns that some payments have been indexed despite the payments not relating to sexual abuse incidents.

3.48 knowmore recommended the introduction of ‘legislative amendments to ensure that redress payments are indexed over the life of the Scheme to account for inflation.’ knowmore was also careful to note that these amendments need to be applied retrospectively so that survivors who have already received their redress offers do not suffer an undue disadvantage.

3.49 knowmore demonstrated the realised effect for survivors:

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

3.50 The Second Year Review costed both options. It concluded that removing the indexation of prior payments would increase the average redress payment by $2,194 per applicant. Applying indexation at the time of the application, instead of the time of decision, would increase the average redress payment by $158 per applicant. Other considerations of the Review in relation to indexation are considered in Chapter 6.

35 knowmore, Submission 20B, p. 12.
36 knowmore, Submission 20B, p. 12.
37 knowmore, Submission 20B, pp. 11 and 12.
Committee Comment

3.51 In the First Interim Report, the Committee recommended that the practice of indexation of prior payments be removed. The Committee continues to strongly agree with this view. The Committee also agrees that payments made to survivors should be linked to inflation. Both recommendations increase equity within the NRS, and these measures should be applied retrospectively to include those that have already accepted offers.

Recommendation 9

3.52 The Committee recommends that the National Redress Scheme eliminate the practice of indexing prior payments made to survivors.

Recommendation 10

3.53 The Committee recommends that the National Redress Scheme commence indexing awards to an inflation measure.

Payments

3.54 Relationships Australia suggested further administrative and legislative amendments are required to ensure that NRS payments do not negatively affect survivors in relation to other government or administrative processes. An example provided included an NRS payment being considered an assessable asset for the purposes of the Aged Care Act 1997. Relationships Australia reported that despite NRS payments not being treated as income within tax legislation, some survivors report being required to pay more for their public housing, or having payments misinterpreted as a social security award.39

3.55 Ms Christine Gow, a survivor living in the United Kingdom, highlighted that whilst NRS payments do not influence a survivor’s social security payments in Australia, there is no international application of this principle. Ms Gow was informed that if she accepted her offer of redress, it would be considered a ‘personal injury payment’ and therefore be included in any eligibility assessment for social security support in the United Kingdom.40

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40 Ms Christine Gow, Submission 59, p. 2.
Secondly, Relationships Australia recommended that the government ‘re-negotiate the Scheme to provide that where an applicant has been abused across multiple institutions, the cap on redress payments should apply to each institution, rather than the cap being distributed among perpetrating institutions’.\footnote{Relationships Australia National Office, \textit{Submission 56}, p. 13.}

**Committee Comment**

The Committee strongly agrees that legislative clarification is required to ensure that a redress payment is never considered an asset or income for the purposes of any other test, including aged care.

The Committee acknowledges that DSS has limited scope to influence the treatment of redress payments in external jurisdictions. However, this does not reduce the responsibility of DSS to undertake all possible measures to educate and advocate for survivors living in other countries.

The Committee urges DSS to consider what additional steps can be taken to ensure that survivors do not encounter penalties arising from the receipt of a redress payment.

In relation to awards being capped per application rather than per institution responsible for abuse, the Committee agrees that there is merit in a discussion to further consider the appropriateness of this approach. The real effect of the current cap is that in some cases, institutions are only responsible for meeting 30 or 25 per cent of a total award. This is true even in cases of extreme circumstances.

**Recommendation 11**

The Committee recommends that the National Redress Scheme consider amending the National Redress Scheme Rules so that the total financial award limit applies to each institution found responsible for institutional child sexual abuse, instead of each application.

**Direct Personal Responses**

Direct personal responses (DPRs) have the potential to assist survivor healing and encourage institutions to take responsibility for historical abuse. As highlighted by Relationships Australia, ‘direct personal responses, when
done well, have been powerfully healing. Lives have been transformed for the better.\textsuperscript{42}

3.63 Currently, survivors must tick a box on the redress offer acceptance form indicating that they wish to receive a DPR from the institution, or institutions, found responsible. The survivor must then contact the institution directly to start the arrangements. The institution is prohibited from approaching the survivor, even after the relevant box has been ticked.

3.64 There are low levels of engagement with DPRs. Table 3.1 shows that since the NRS commenced, less than 4 per cent of survivors have received a DPR. This is despite 80 per cent ticking the box on the offer acceptance form.

**Table 3.1** Survivor acceptance of and uptake of direct personal responses by financial year 2018 - 2020

<table>
<thead>
<tr>
<th>Acceptance offers and requests for DPR</th>
<th>2018-19 applicants</th>
<th>2019-20 applicants</th>
<th>Total applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accepted offer of redress</td>
<td>239 (100%)</td>
<td>2,568 (100%)</td>
<td>2,807 (100%)</td>
</tr>
<tr>
<td>Accepted DPR offer</td>
<td>130 (54.5%)</td>
<td>2,129 (82.9%)</td>
<td>2,259 (80.5%)</td>
</tr>
<tr>
<td>Requested DPR</td>
<td>21 (8.8%)</td>
<td>157 (6.1%)</td>
<td>178 (6.3%)</td>
</tr>
<tr>
<td>Received DPR</td>
<td>8 (3.3%)</td>
<td>88 (3.4%)</td>
<td>96 (3.4%)</td>
</tr>
<tr>
<td>In progress</td>
<td>7 (2.9)</td>
<td>41 (1.6%)</td>
<td>48 (1.7%)</td>
</tr>
<tr>
<td>On hold</td>
<td>6 (2.5%)</td>
<td>25 (1.0%)</td>
<td>31 (1.1%)</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>0</td>
<td>3 (0.1%)</td>
<td>3 (0.1%)</td>
</tr>
</tbody>
</table>

*Source: Ms Kruk AO, Second Year Review, p. 137.*

3.65 Third year operation data shows that between 1 July 2020 and 30 June 2021, 1,922 survivors indicated interest in a DPR. Of these, 188 people received a DPR. A further 284 people contacted an institution to begin the process to receive their direct personal response.

3.66 DPRs are undertaken using a variety of means as shown in Table 3.2.

Table 3.2 Type of DPR Completed 2018-2021

<table>
<thead>
<tr>
<th>Engagement type</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Face to face meeting</td>
<td>45</td>
</tr>
<tr>
<td>Face to face meeting and written apology</td>
<td>58</td>
</tr>
<tr>
<td>Face to face meeting, written apology, and video</td>
<td>1</td>
</tr>
<tr>
<td>Phone call</td>
<td>5</td>
</tr>
<tr>
<td>Phone call and written apology</td>
<td>8</td>
</tr>
<tr>
<td>Virtual face to face meeting and written apology</td>
<td>2</td>
</tr>
<tr>
<td>Written apology</td>
<td>165</td>
</tr>
<tr>
<td><strong>Total DPR completed</strong></td>
<td><strong>284</strong></td>
</tr>
</tbody>
</table>

Source: DSS, Consultation Paper, Second Year review of the National Redress Scheme Recommendation 4.7 Increasing the uptake and quality of direct personal response, 6 October 2021, p. 27.

3.67 Knowmore suggested that the onus being put on the survivor to make the initial contact is not always best practice. This view was shared by advocacy bodies and participating institutions. The Salvation Army submission stated:

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43 DSS, answer to question on notice IQ21-000093, 13 September 2021 (received 1 October 2021).
44 DSS, answer to question on notice IQ21-000094, 13 September 2021 (received 1 October 2021).
45 Ms Amanda Whelan, Director of Client Services, Knowmore, Official Committee Hansard, 25 September 2020, p. 11.
46 People with Disability Australia (PWDA), Submission 50, November 2020, p. 31; Kimberley Stolen Generation Aboriginal Corporation, Submission 52, 2020, p. 4; Relationships Australia National Office, Submission 56, p. 6.
[The] prohibition on contact by the institution is preventing redress applicants from receiving the full benefit of the originally designed key element of redress and as such, has the potential of re-traumatising survivors by leaving them with the impression that the institution does not care about them and hence, does not wish to have a DPR session with them (which is the opposite of the reality). 47

3.68 The Salvation Army noted that of the 212 applications finalised prior to May 2020, 67 survivors indicated that they would like to participate in a DPR, however only three applicants had contacted the institution to commence arrangements. 48

3.69 knowmore suggested that when DPRs take place, survivor experiences greatly vary:

We are overwhelmingly seeing early very positive feedback about the experiences of survivors attending state governments based DPRs, but we are seeing quite mixed responses to those by private institutions, unfortunately. 49

3.70 This feedback reflects broader concerns about the lack of systems in place to ensure that DPRs are a healing experience. One survivor stated:

When there is no independent facilitator, no structure, no agenda, no preparation, no understanding of the expectations by either party nor a clear articulation of the needs and aspirations of the parties, then there is plenty that can and will go wrong. In my case, nothing was discussed beforehand. Such an environment or “setup” is psychologically unsafe for survivors. In the absence of an independent facilitator or convener, who can prepare both sides for an open and honest communication, there is the potential for further suffering and re-traumatisation. 50

3.71 Examples of poor practice includes survivors being asked to sign non-disparagement clauses as part of the DPR, knowmore stated:

[W]e have heard of instances of that. It is completely inappropriate and absolutely counterproductive to the purpose of a DPR. 51

47 The Salvation Army, Submission 23, p. 3.
48 The Salvation Army, Submission 23, p. 2.
50 Mr Mark Jones, Submission 43, p. 5.
51 Mr Strange, knowmore, Official Committee Hansard, 25 September 2020, p. 12.
3.72 DSS has only received a small amount of feedback on DPRs. While unable to give specific examples due to protected information requirements, DSS was able to confirm that feedback has involved discussion of:

- the quality, preparation and delivery of DPRs by participating governments and some non-government institutions;
- professional facilitation;
- seniority of officers delivering DPR; and
- the value of authenticity in the delivery of the DPR.\(^{52}\)

3.73 DSS confirmed that feedback is being used to inform education and training resources for participating institutions and communications materials for applicants.\(^{53}\)

3.74 When negative feedback is received, DSS contacts the relevant institution to discuss the applicant’s concerns and follows this up in writing. Where an applicant is seeking a response to their feedback, a clinical advisor contacts the applicant. The NRS also seeks a written response from the institution, detailing the steps taken to address the applicant’s feedback.\(^{54}\)

3.75 The Second Year Review made a number of conclusions in relation to DPRs, including the development of a DPR action plan. DSS confirmed that consultation is now underway for the development of that plan.\(^{55}\) Findings and recommendations of the Second Year Review are discussed in Chapter 6.

**Committee Comment**

3.76 DPRs are an essential component of the NRS, and if done effectively, contribute to healing for survivors and their support network. It is imperative that DPRs are conducted in a manner that reflects the principles identified in the Royal Commission. The NRS must ensure that it actively monitors any feedback received from survivors, and provides thorough high quality training and advice to any institution that requests assistance.

3.77 Current data suggests that further consideration needs to be given to how DPRs are initiated. Alternative models must be considered to ensure the prevention of harm for survivors.

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\(^{52}\) DSS, answer to question on notice IQ21-000094, 13 September 2021 (received 1 October 2021).

\(^{53}\) DSS, answer to question on notice IQ21-000095, 13 September 2021 (received 1 October 2021).

\(^{54}\) DSS, answer to question on notice IQ21-000095, 13 September 2021 (received 1 October 2021).

\(^{55}\) DSS, answer to question on notice IQ21-000095, 13 September 2021 (received 1 October 2021).
3.78 The Committee agrees that a targeted consultation process should be undertaken to explore how alternative options could operate. Any new model would always need to maintain survivor determination as a key principle.

**Recommendation 12**

3.79 The Committee recommends that the National Redress Scheme undertake work with survivors and redress support services to determine appropriate alternative methods for the initiation of Direct Personal Responses and best practice guidelines.

**Care Leavers**

3.80 CLAN suggested that the NRS create a separate stream within the NRS for care leavers to adequately respond to their specific needs.\(^56\) It was highlighted that despite the NRS having incomplete data, it is believed that care leavers represent the largest cohort of applicants.\(^57\)

3.81 CLAN believes that a separate stream is needed as there is ‘no respect for care leavers and the childhood they endured in those orphanages that the churches, charities and state governments ran,’ and ‘no real understanding of the trauma upon trauma upon trauma’\(^58\) within current operations. CLAN suggested that a separate stream with specialist NRS staff and decision-makers would help address some negative perception of the NRS currently held within the care leaver community.\(^59\)

3.82 The need for a separate care leavers stream was also identified by Mr Frank Golding when he gave evidence in his personal capacity. Mr Golding suggested that a separate stream is necessary as care leavers have additional barriers to applying and engaging with the NRS:

> I’ll say that the key feature of care leavers that makes it important to consider a separate stream is that they have very low levels of literacy. Reading and writing skills are really quite poor. Surveys show that more than half of Australian care leavers didn’t complete the first certificate level of schooling, and fewer than 20 per cent have actually attained a final certificate. And many

\(^{56}\) Dr Golding, CLAN, *Proof Committee Hansard*, 16 August 2021, p. 6.

\(^{57}\) Dr Golding, CLAN, *Proof Committee Hansard*, 16 August 2021, p. 1.

\(^{58}\) Ms Sheedy, CLAN, *Proof Committee Hansard*, 16 August 2021, p. 4.

of those people are now old and frail. They're pensioners with low levels of family support and so on. So they need to be treated not as equals to non-care leavers in the scheme, but in fact as people with special needs.\(^6^0\)

3.83 Mr Golding clarified that a separate stream could operate within existing frameworks and rules, running parallel to other applicants. He suggested that the four essential elements of a separate stream would include specific resources for care leavers, including:

- an application form designed to recognise average levels of education and streamlining the nominee process;
- a specialist team being established to liaise with care leavers;
- face-to-face information provided directly to care leavers with the opportunity for questions; and
- specialist IDMs to consider care leaver applications.\(^6^1\)

3.84 CLAN believed that a separate stream may help data collection, as the NRS would be able to generate care leaver specific information which it currently is unable to do easily:

While [the NRS] regularly reports data on Aboriginal and Torres Strait Islander survivors and those with a disability—and so it should—it routinely fails to report data about survivors who are care leavers, state wards or in foster care. We’ve asked for this data numerous times in the past. When some statistics were finally given to a stakeholders’ meeting a few months ago they were confusing and of dubious value. Categories were ill-defined and military service personnel were even included as state wards—that’s just extraordinary!\(^6^2\)

3.85 CLAN highlighted the issues that poor data collection and reporting can create for care leaver survivors:

There are lots of care leavers who are saying, ‘I think we’re being dudged in this scheme. We’re getting lower payments than non care leavers.' We don’t know whether that’s true, but that’s certainly a strong feeling that’s developing in the care-leaver community. It’s not necessary that it happens. If the data were publicly available and broken down by categories, then we’d be able to

\(^6^0\) Mr Golding, private capacity, *Official Committee Hansard*, 26 November 2020, p. 2.

\(^6^1\) Mr Golding, private capacity, *Official Committee Hansard*, 26 November 2020, pp. 2-3.

see what was going on and take the steps necessary, if we believed that the data was tracking in the wrong direction.\textsuperscript{63}

3.86 DSS confirmed that there is no ‘care leavers box’ for survivors to tick on the application form. DSS noted that survivors can self-identify as having been in a state ward or orphanage which gives the NRS a sense of care leaver participation.

3.87 DSS also noted that concerns about care leavers receiving a lower average payment to non-care leavers and confirmed that this perception does not reflect average payments. In the first two years of NRS operation, the average redress award for people who identified as a care leaver was $88,489.30 compared to $81,699.25 for non-care leavers.\textsuperscript{64}

**Committee Comment**

3.88 The Committee strongly agrees that data collection and reporting could be improved with the introduction of a care leaver self-identification box on the application form. The Committee believes that a negative perception has arisen due to the current lack of clarity and low levels of transparency. The Committee has made a number of findings and recommendations relating to transparency and broader data collection considerations throughout this report.

3.89 Further, the Committee strongly supports the amendment of the application form, care leavers training for IDMs and the introduction of community education sessions. These changes would benefit all survivors, including care leavers, to engage with the NRS.

3.90 The Committee understands that a specific care leaver case management model has been reinstated following the initial pandemic response. Despite staff turnover, the Committee understands this team has improved information sharing for care leavers.

\textsuperscript{63} Mr Golding, CLAN, *Official Committee Hansard*, 25 September 2020, p. 2.

\textsuperscript{64} DSS, answer to question on notice DSSSQ20-000887, Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, 28 October 2020 (received 18 December 2020).
Recommendation 13

3.91 The Committee recommends that the National Redress Scheme undertake consultation to amend the application form as a matter of priority. The amended form should be designed for survivors who may have low levels of literacy and allow care leavers to self-identify.

Recommendation 14

3.92 The Committee recommends that the National Redress Scheme commence a series of face-to-face education sessions across Australia targeting known under-represented groups and regions. All sessions should be run by senior National Redress Scheme employees and make provision for a question and answer component.

Advance Payment Scheme Options

3.93 Survivor advocates have strongly supported the adoption of an early payment for survivors who have applied to the NRS, and are waiting for a determination. As explained by Tuart Place:

Advance (or interim) payment is a mechanism used by redress schemes to assist elderly or ill applicants at risk of dying before their claim can be fully assessed.65

3.94 The requirement for an interim payment arises from the practical need to address the ongoing lengthy delays in the NRS which, due to the age and health profile of many survivors, means that there is a possibility that they will not be alive when a final determination is made. DSS confirmed that as of 3 June 2021, 95 payments have been made to beneficiaries in respect of 90 deceased applicants.66 It is expected that this number will grow as the Second Year Review highlighted that there are a significant number of applications currently being processed where the applicant is now deceased.67

3.95 Additionally, many advocates, including PWDA suggested that an early payment option would improve survivor mental health and engagement

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65 Tuart Place, Submission 25, p. 2.

66 Ms Emma Kate McGuirk, Group Manager Redress, DSS, Senate Community Affairs Legislation Committee Budget Estimates 2021-2022, Official Committee Hansard, 3 June 2021, p. 125.

67 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, p. 111.
with the NRS generally, but particularly for those in ill health.\textsuperscript{68} Professor Kathleen Daly and Research Fellow Juliet Davis stated:

[Re]ceiving at least a partial payment would help to give elderly or terminally ill claimants some sense of justice before they die or lose their mental capacity. This process needs to be carried out expeditiously and with little additional burden on survivors.\textsuperscript{69}

3.96 VACCA suggested that the introduction of an advanced payment would provide a particular benefit to First Nations survivors:

The majority of clients Ngarra Jarra Noun are supporting have particular vulnerabilities, including living in poverty, homelessness, caring responsibilities for grandchildren, chronic health conditions, and advanced age. An advance payment could relieve some acute financial stress for these clients while they wait for a determination.\textsuperscript{70}

3.97 The Child Migrants Trust confirmed that ‘where schemes have paid an interim payment, that has been very well received and taken up fairly quickly’.\textsuperscript{71} The Trust stated:

We’ve assisted about 40 former child migrants to apply for the advance payment from the Scottish government ahead of their scheme. It feels like it takes the heat out of the anxiety. Sometimes it’s an amount about which they’ll say: ‘Well, at least I can pay for my funeral. I can have some of the most fundamental things that I’m worried about sorted.’ It’s also like a mark of confidence that this isn’t just going to go away, that it will develop. That has been received very positively.\textsuperscript{72}

\textbf{Committee Comment}

3.98 The Committee notes that a number of redress schemes including Scotland,\textsuperscript{73} New Zealand,\textsuperscript{74} Ireland,\textsuperscript{75} and Western Australia\textsuperscript{76} included interim payment

\begin{footnotesize}
\begin{itemize}
  \item PWDA, Submission 50, p. 31.
  \item Kathleen Daly and Juliet Davis, Submission 46, p. 1.
  \item VACCA, Submission 34, p. 21.
  \item Dr Margaret Humphreys, International Director, Child Migrant Trust, Official Committee Hansard, 11 March 2021, p. 19.
  \item Mr Ian Thwaites, Assistant Director Services, Child Migrant Trust, Official Committee Hansard, 11 March 2020, p. 19.
  \item Scottish Government, Financial Redress for Survivors of Historical Child Sexual Abuse in Care: Review of the Advance Payment Scheme, December 2019, p. 1
\end{itemize}
\end{footnotesize}
options. While all slightly different in nature and scope, such a varied cross-section shows that redress schemes can successfully manage an advanced payment element.

3.99 The Committee agrees with evidence presented that the introduction of an early payment, which is deducted from the final payment, provides benefit to survivors and would be a positive reform.

3.100 The Committee notes that the introduction of an advanced payment was a recommendation in the Second Year Review. The Committee is very pleased to see the interim government response agree with this recommendation. The Committee commends the speed of the government introducing legislation to enact this change and notes that advanced payments will be made to eligible survivors from 2022.

**Cost of Operating the National Redress Scheme**

3.101 The total cost of administering the NRS for the first three years of operation is close to $129 million. This excludes Australian Government costs associated with meeting funder of last resort obligations, which are discussed in Chapter 5.

3.102 The total amount of redress payments to survivors at 31 March 2021 was approximately $445 million. This includes the contributions made by responsible institutions.

3.103 Budget papers provide guidance on the expected ongoing costs of administering the NRS. For the forward years, the following is currently budgeted:

<table>
<thead>
<tr>
<th>Table 3.3 National Redress Scheme – Administration Funding</th>
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<td>Funding</td>
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76 Tuart Place, *Submission 25*, p. 2.

77 DSS, answer to question on notice IQ21-000099, 13 September 2021 (received October 2021).

3.104 DSS stated that:

The funding provides for the processing of applications including costs for the Independent Decision Makers, ongoing engagement with jurisdictions and participating institutions, policy and legislative activities to support Scheme operations, training and wellbeing for the Scheme workforce, and the implementation and ongoing management of funding arrangements for redress support services and legal support for applicants.

The higher level of funding in 2020–21 represents costs associated with the second anniversary review, surge support to on-board the significant number of institutions who provided a commitment to join the Scheme prior to 31 December 2020 and increased resources to process the claims coming off hold as institutions join the Scheme.79

3.105 From 1 July 2018 to 30 June 2021, participating institutions (including jurisdictions) have contributed $38.6 million for the NRS administration charge and $10 million for the contribution to legal costs.80 DSS confirmed that despite the contribution of institutions, there are numerous expenses not reclaimed by the government:

After deducting the administrative contributions received from institutions, in the 2019-20 financial year, the average cost of processing a redress application to the Commonwealth was around $12,000.81

**Committee Comment**

3.106 The Committee notes the additional budget measures being committed to support the operations of the NRS. It is hoped that a subsequent investment in community education and redress support services will enable more survivors to participate in the Scheme. Greater participation will work towards ensuring that there is an adequate balance between investment and survivor outcomes.

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79 DSS, answer to question on notice DSSSQ20-000880, Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, 28 October 2020 (received 23 February 2021).

80 DSS, answer to question on notice IQ21-000099, 13 September 2021, (received 1 October 2021).

81 DSS, answer to question on notice DSSSQ20-000881, Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, 28 October 2020 (received 24 March 2021).
Governance Arrangements

3.107 The NRS has complex governance arrangements underpinning its operation. While Minister Ruston acknowledges that this can affect timeframes for the implementation of reform, DSS does not consider this an ‘impediment,’ and noted that the Ministers’ Board could make decisions either at scheduled meetings or out-of-session, which can expedite matters.

3.108 As discussed in the First Interim Report, the Inter-governmental Agreement (IGA) provides the foundation for jurisdictions to work together to implement and operate the NRS. The IGA establishes the Ministers’ Board which has decision-making powers in relation to legislative amendments, rules and policy guidelines. Major design decisions require unanimous agreement.

3.109 In contrast, the Second Year Review found that the IGA’s decision-making model is a barrier to increased efficiency, as any changes requiring consideration by the Minister’s Board can take around 6 to 12 months to achieve:

This acts to the detriment of significant change and is a source of frustration to the Australian Government’s partners and the department. Given that a number of decisions regarding the Scheme were rolled into this Review, the department needs to consider, in consultation with the Australian Government and state and territory governments, the means to quickly and efficiently act on recommendations that are agreed.

3.110 The Second Year Review confirmed that although there was some frustration about the timeliness of decisions, most jurisdictions were satisfied with current governance arrangements.

3.111 When discussing reform, the Minister reinforced that any change to the Act requires the agreement of all states and territories. For example, in relation to funder of last resort provisions, Minister Ruston highlighted that the

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82 Senator the Hon. Anne Ruston, Minister for Families and Social Services, Senate Proof Hansard, 2 September 2021, p. 41.
83 DSS, answer to question on notice IQI21-000081, 26 August 2021 (received 9 September 2021).
84 DSS, answer to question on notice SQ20-000332, 19 March 2020 (received 24 April 2020).
85 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, p. 37.
Australian Government decision to expand the rules is contingent on state and territory consensus.87

Committee Comment

3.112 The Committee is concerned that existing governance arrangements are cumbersome and may delay decision-making and the subsequent implementation of reform.

3.113 The Committee sought the views of all state and territory governments regarding their perspective on governance arrangements. Each jurisdiction that responded highlighted its commitment to survivors and the success of the NRS.

3.114 The South Australian Government raised two issues. The first related to the need to ensure that institutions do not leave the NRS if reform results in greater financial contributions. Attorney-General, Ms Vickie Chapman MP highlighted that the Federal Government could guarantee to cover any additional expenses arising. Secondly, a concern was raised in relation to the current delay in referring recommendations to the Inter-Jurisdictional Committee for consideration.88

3.115 The NT Government raised a number of operational issues that are considered throughout this report. In relation to governance, the NT Government highlighted that all decisions made must recognise unique needs of the NT and its often very vulnerable population.89 The NT Government stated:

The fact that the process of redress is being viewed as traumatising as opposed to therapeutic or restorative should ring alarm bells for the Scheme Operator and cause an absolute need for the reconsideration of how the Scheme is both communicated and implemented.90

3.116 The Committee also contacted relevant State and Territory parliamentary committees to understand if any other parliamentary body had considered

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87 Senator Ruston, Minister for Families and Social Services, Senate Proof Hansard, 2 September 2021, p. 41.

88 The Hon. Ms Vickie Chapman MP, South Australia Attorney-General, Correspondence, 28 September 2021.

89 The Hon. Ms Selena Uibo, NT Attorney-General, Correspondence, 18 October 2021, p. 5.

90 The Hon. Ms Selena Uibo, NT Attorney-General, Correspondence, 18 October 2021, p. 10.
the appropriateness of existing governance arrangements. No Committees identified relevant findings to this inquiry.

Legislative Amendments

3.117 The Federal Government passed two Acts in 2021 that aimed to strengthen the operation of the NRS.

3.118 The first, *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021*, made minor technical amendments to the NRS. The bill was introduced in October 2020 and passed both houses on 15 February 2021. Changes were designed to clarify matters that may be unclear rather than introduce new or additional measures. Amendments clarified that:

- participating institutions that are associates of a responsible institution can be determined and specified;
- where there is more than one funder of last resort, the defunct institution's share of the redress cost is to be divided equally between the government institutions;
- the names and symbols used in connection with the NRS are protected;
- a payment can be made to a person who has been appointed by a court, tribunal or board to manage the financial affairs of a person entitled to redress;
- DSS can extend the timeframe for payment of a funding contribution by an institution; and
- DSS can authorise the disclosure of certain protected information to institutions on-boarding to the NRS.  

3.119 One amendment also changed the approval process for recruiting independent decision makers to ensure it was as fast as possible.

3.120 Of note is the amendment to protect the name and symbols of the NRS. This was designed to frustrate measures taken by law and advocacy firms that were not advertising in good faith.  

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91 *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021*.

3.121 The second, *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021*, implemented five recommendations of the Second Year Review. This Act is considered in Chapter 6.

**Committee Comment**

3.122 While acknowledging that there is essential reform outstanding, the Committee strongly commends the Federal Government for passing legislation to implement aspects identified in the *First Interim Report* and the Second Year Review in a timely manner.

3.123 The Committee hopes that DSS continues to engage with stakeholders about how best to implement all outstanding recommendations.
4. Legal advice and private law firms

4.1 A fundamental principle underpinning the National Redress Scheme (NRS) is that survivors engage in the NRS with freely given, informed consent. To achieve this, survivors and their advocates require free, high-quality, trauma informed legal advice at all stages of the application process.

4.2 Survivors require access to personalised and culturally appropriate legal advice that can assist them to understand:

- how the NRS operates and if they are eligible;
- the differences between pursuing redress or civil options;
- which option may be suitable for their circumstances;
- how to complete an application form;
- the obligations of accepting an offer; and
- considering any offer received.

4.3 Maurice Blackburn highlighted the importance of receiving legal advice when accepting an offer of redress:

The existence of the deed of release requirement makes it essential that the survivor is able to make an informed decision as to whether the determination is credible. The only way they can make an informed decision is through being offered expert, objective, professional advice.\(^1\)

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\(^1\) Maurice Blackburn Lawyers, Submission 26, p. 3.
Availability and Suitability of Free Legal Advice Services

4.4 The NRS advises on its website that knowmore provides free legal advice, stating:

The knowmore legal service is for anyone who is considering applying for redress under the National Redress Scheme. It is free, confidential and independent. …. You may want to use your own legal service to obtain advice and assistance. It may not be free.²

4.5 Concerns were raised regarding current levels of community education about the availability of free legal services. A low level of knowledge can lead to survivors being targeted by private legal or advocacy firms. knowmore stated:

[I]t is clear that many survivors are not being advised about the availability of free and specialist services or are being openly dissuaded from seeking help from such sources and, in some instances, are paying a high price for services that are objectively not of an appropriate professional standard’.³

4.6 Further, knowmore provided an example of a private law firm that acknowledges the availability of free legal advice but states on its website that “[t]he free lawyers are not experts in child sexual abuse. They may miss something a specialist would pick up”.⁴

4.7 Any legal advice provided to survivors must be trauma informed to ensure that survivors are not harmed by engagement with the NRS. The Kimberley Stolen Generation Aboriginal Corporation raised concerns that free legal service providers are not always culturally informed. It provided an example of one service that recently started operating in the Kimberley region to illustrate how harm can be caused:

There was no discussions around how they would provide wrap around support to potential Survivors if they chose to make application. No thought process around the difficulties involved in survivors getting identification and other relevant documents required before making application, no plan around

³ Knowmore Legal Services (knowmore), Submission 20, p. 33.
⁴ knowmore, Submission 20A, p. 5.
building a trusting relationship with the Survivors before asking them to tell their horror stories of abuse. No plan around ensuring that there is wrap around support for these survivors living in remote areas after they have relived their trauma to ensure they have access to a safe environment.5

4.8 One survivor confidentially shared their views on the legal services and communication practice provided by knowmore. The survivor noted that even after being assigned a lawyer, all communications are through the generic email, and no confirmation is given to acknowledge receipt of correspondence. The survivor also raised concerns about the limited amount of information they are able to receive about their lawyer. For example, there is no information on what type of trauma or specialist legal training the assigned lawyer has completed. The survivor shared that they would have, if been able to afford it, engaged private legal advice.6

**Provision of Legal Services by Private Law Firms**

4.9 Many legal firms offer services relating to institutional child sexual abuse. Law firm, Maurice Blackburn said that survivors come to private firms in relation to the NRS for two main reasons; the first is that they are seeking advice when deciding whether the NRS is the right option for them, or they have lodged an application with the NRS and are frustrated with delays or unsure of the offer received.7

4.10 Knowmore is aware of some firms charging up to $15,000 plus GST to act for survivors in NRS applications, with fees contingent upon the redress payment the survivor receives. Such reports have been received in relation to a small number of law firms, some of which are alleged to be targeting particular groups of clients, including First Nations survivors.8

4.11 Relationships Australia provided a comprehensive list of examples it is aware of private law firms undertaking in relation to survivors seeking redress:

- securing domain names that appear designed to divert people from official sites in favour of sites operated by law firms seeking fees;

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6 Name withheld, *Correspondence*, pp. 1 - 3.
• joining Facebook groups and engaging with them to discourage participation in the Scheme and aggressively pursue contracts with members of the group;
• giving inaccurate advice about the scope and operation of the Scheme – such as representations that applications cannot be made in relation to abuse by a defunct institution or in relation to abuse perpetrated by a deceased person, or that the Scheme requires legal representation;
• offering survivors financial inducements to refer other clients;
• signing survivors to contracts securing up to 30-40% of the ultimate redress payment as legal fees; and
• being persuaded to sign contracts that they do not understand (including in relation to consequences if a client changes their mind and decides to pursue remedy through the Scheme, rather than civil litigation).  

4.12 Bravehearts provided an example of how First Nations communities are one group being targeted:

We go to Palm Island every six weeks to support survivors to do their application forms. There’s a particular law firm that goes up to Palm Island as well and has been trying to pass themselves off as working with us. They go in there and they say, ‘The redress support for this can’t get you the outcomes we can get you; we can get you more money,’ which is not true because, obviously, the matrix is what it is.  

4.13 Disturbing reports are not limited to law firms, but extend to survivor advocacy businesses. An example was provided by knowmore:

[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”.  

4.14 Another highly concerning example provided by knowmore involved a survivor advocacy business sending unsolicited mail to survivors in prison. Based on what knowmore has seen, these letters:

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10 Mrs Silvia Skinner, National Manager of Advocacy and Supports Services, Beyond Brave, Proof Committee Hansard, 16 August 2021, p. 15.

11 knowmore, Submission 20B, p. 52.
• 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”.
• 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”.  

4.15 Bravehearts also confirmed that they are aware of both law firms and advocacy organisations targeting men appearing in court or in gaol to pursue civil claims without providing fulsome information on the range of options available to them.

4.16 Unfortunately, these concerning examples reflect similar instances of unprofessional and unethical conduct by lawyers in institutional redress schemes in Ireland and Canada.

4.17 People with Disability Australia highlighted that survivors are a vulnerable group and that some law firms could take advantage of any such vulnerability:

> Some child abuse survivors are particularly vulnerable to exploitation by private law firms wishing to profit from providing advice about and preparing Redress applications, including people in prison and some people with intellectual, cognitive and psychosocial disability. Child abuse often produces intense and ongoing psychological impacts which intensify such vulnerability’.

4.18 The need for free culturally appropriate service provision was also highlighted:

> …VACCA believes a more realistic and workable solution is to ensure Aboriginal survivors get the culturally-safe and culturally-informed support they need at the time of completing the application to ensure the application reflects the full extent of their abuse experienced. This would require funding Aboriginal Legal Services.

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12 knowmore, Submission 20B, p. 52.
13 Mrs Skinner, Bravehearts, Proof Committee Hansard, 16 August 2021, p. 13.
14 knowmore, Submission 20A, p. 5.
15 People with Disability Australia, Submission 50, p. 28.
16 Victorian Aboriginal Child Care Agency, Submission 34, p. 7.
4.19 The Department of Social Services (DSS) is aware of the concerning practices and has taken steps to address the matters identified. Actions include:

- amending the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* to protect the name and logos of the NRS to ensure that private companies do not use them to confuse survivors;
- sponsoring key search terms and making website updates to improve the NRS website’s search results position in relation to private law-firms (both commenced in October 2020); and
- updating the NRS website and other letters and forms to emphasise the availability of free legal support through knowmore legal services.\(^{17}\)

4.20 DSS is currently also developing a fact sheet containing information for survivors to consider if hiring a lawyer is the best option for them and how to make a complaint to a professional body about a private law firm’s practice.\(^{18}\)

4.21 knowmore strongly advocated for reform to address exploitative practices must be done at a policy level:

> In terms of addressing it, we are very much of the view that it needs systemic and legislative reform. Trying to address it on a case-by-case basis is not going to ultimately be successful or mitigate all of the forms of behaviour that we’re seeing. It needs legislative reform... It requires certification around representation, charging of fees and those sorts of things.\(^{19}\)

4.22 DSS highlighted that many of the reforms identified by knowmore fall within the remit of state and territory governments rather than the Federal Government.\(^{20}\)

4.23 One suggestion for reform from Relationships Australia was that:

> The Attorney-General’s Department should work with State and Territory legal professional conduct regulators to develop … model contract terms, and non-derogable terms in contracts to ameliorate the significant asymmetry of

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\(^{17}\) DSS, answer to question on notice IQ21-000103, 13 September 2021 (received 1 October 2021).

\(^{18}\) DSS, answer to question on notice IQ21-000103, 13 September 2021 (received 1 October 2021).

\(^{19}\) Mr Warren Strange, Chief Executive Officer, knowmore Legal Services (knowmore), *Prove Committee Hansard*, 16 August 2021, p. 18.

\(^{20}\) DSS, answer to question on notice IQ21-000103, 13 September 2021 (received 1 October 2021).
power and knowledge that exists between legal practitioners and many survivors.21

Committee Comment

4.24 The Committee is very concerned that the practices of some private law firms and advocacy services are designed to take advantage of a vulnerable group. The Committee agrees that responding to these practices is essential. An adequate response must be multifaceted with both increased community education alongside the introduction of policy or legislation that restricts exploitative practice.

4.25 The Committee appreciates that the NRS has taken steps to mitigate the risks of exploitative practice. The Committee encourages the government to use the Ministerial Governance Board arrangements to continue working with state and territory governments to consider reforms.

4.26 Key to ensuring that survivors have access to appropriate legal advice is choice. At present there are no options available for survivors who wish to access free legal advice. Survivors may be impeded due to a number of reasons including potentially having personal connections to staff, not being able to make timely contact with the service or perceptions that the service may not be able to respond to the diversity of survivors. Additionally, while some face-to-face services are available, they are limited. This makes a difference to survivors who initially engage with very low levels of administrative trust.

4.27 The Committee acknowledges that there are many private law firms and legal practitioners engaging in appropriate practices, who provide valuable trauma informed care to survivors.

Recommendation 15

4.28 The Committee recommends that the National Redress Scheme engage additional free legal services for survivors to access.

Recommendation 16

4.29 The Committee recommends that the National Redress Scheme identify and fund legal services that can provide face-to-face, culturally diverse and trauma informed legal advice across regional, rural, and remote centres.

Recommendation 17

4.30 The Committee recommends that the Minister’s Redress Scheme Governance Board prioritise preventing the exploitation of survivors by private law firms and works to immediately implement the following measures:

- Make it unlawful for lawyers to charge contingency fees for services delivered with respect to National Redress Scheme applications;

- 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 a National Redress Scheme application;

- Considering a cap on fees that lawyers can charge for services delivered with respect to National Redress Scheme applications;

- Make it an offence for any person to:
  - contact a person without their consent and solicit or induce them to make a National Redress Scheme application; or
  - give or receive any money or other benefit in exchange for a referral to make a National Redress Scheme application;

- Establish a set of expected practice standards for lawyers and survivor advocates providing services with respect to National Redress Scheme applications; and

- Establish a specific complaints process within the National Redress Scheme to deal with concerns about the conduct of lawyers and representatives from survivor advocacy businesses.
5. Participation in the National Redress Scheme

5.1 For the operation of the National Redress Scheme (NRS) to meet its intended purpose, strong participation from both survivors and institutions is essential. There was lower than anticipated survivor participation in the first three years of NRS operation, and the on boarding of many responsible institutions identified in the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) took significantly longer than expected. This chapter examines participation for both survivors and institutions, with a particular focus on actions taken to encourage participation.

5.2 All information regarding participation numbers and status within this chapter was correct as at 1 November 2021. The Committee notes that there are regular changes in relation to the status of institutions participating in the NRS.

Institutions

5.3 The Australian Government has made significant reforms since the Committee’s First Interim Report was tabled in May 2020, which are designed to encourage institutions to join the NRS. Primary reforms included the introduction of grant prohibitions and the removal of charity tax concessions for institutions that refused to join the NRS.

5.4 Grant prohibitions mean that institutions responsible for a NRS claim that has been, or is likely to be, made against them and refuse to join the NRS are unable to apply for any type of Australian Government grant. This
prohibition has significant consequences for organisations that operate with the assistance of community or sport based funding for example.

5.5 Charitable tax concessions save religious organisations significant amounts every year, as they ensure that relevant institutions are taxed as a charity instead of a business enterprise. The Federal Government introduced changes to Australian Charities and Not-for-profits Commission (ACNC) regulations which mean that religious institutions that refuse to join the NRS are unable to maintain their charity status in respect of tax concessions. This change was achieved through the introduction of a new governance standard and legislation.

5.6 The governance standard requires registered charities to take all reasonable steps necessary to become a participating non-government institution in the NRS if a claim has been, or is likely to be, made against them.1 Where a registered charity fails to join the NRS or take reasonable steps to participate, it will be subject to possible deregistration which would result in the entity losing access to a range of Commonwealth benefits and tax concessions.2

5.7 Additionally, amendments to the Australian Charities and Not-for-Profits Commission Act 2012 give the ACNC the power to remove a religious group’s classification as a Basic Religious Charity, if it has been named in an application but have not joined the NRS.3

5.8 These changes appear to have worked as intended, with the Jehovah’s Witnesses agreeing to join the NRS following the announcements.4

5.9 There were concerns raised that the various and changing operating names used by the Jehovah’s Witnesses in Australia may in some way prevent the NRS from processing claims. In June 2021, DSS officials said that they are

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4 Rebecca Gredley (Australian Associated Press (AAP) Australian National Newswire), Jehovah’s Witnesses to join Redress Scheme, Australia/New Zealand Reference Centre (74C3696509146), 3 March 2021 (accessed 3 November 2021).
working to prevent such a scenario.\textsuperscript{5} In September 2021, DSS confirmed that the Jehovah’s Witnesses joined the NRS under the name Watchtower Bible & Track Society of Australia, and that all applications previously on hold have been prioritised for action by the NRS.\textsuperscript{6} There has been no indication to the Committee that there are difficulties processing applications in relation to naming conventions.

\textbf{Institutions that Have Declined to Join the National Redress Scheme}

5.10 There are six institutions listed on the NRS website as being named in the Royal Commission which have yet to join the NRS. Of these, the Fairbridge Society has been declared as defunct and is discussed under funder of last resort. Of the remaining five, one is on-boarding. The remaining four institutions are:

- Gold Coast Family Support Group (now FSG Australia);
- Hunter Aboriginal Children’s Services;
- RG Dance Pty Ltd; and
- Yeshiva Centre and the Yeshiva College Bondi – pre 2003.\textsuperscript{7}

5.11 Additionally, there are four institutions that while not specifically mentioned by the Royal Commission, have applications naming them as the responsible institution currently on hold with the NRS. All have declined to participate in the NRS. They include:

- CYMS Basketball Association;
- Devonport Community Church;
- Forrest Tennis Club; and
- Kenja Communication.\textsuperscript{8}

\textsuperscript{5} Ms Liz Hefren-Webb, Deputy Secretary, Department of Social Services (DSS) and Ms Emma Kate McGuirk, Group Manager, Redress, DSS, Senate Community Affairs Legislation Committee Budget Estimates 2021-2022, \textit{Official Committee Hansard}, 3 June 2021, p. 113 and 114.

\textsuperscript{6} DSS, answer to question on notice IQ21-000091, 13 September 2021 (received 1 October 2021).


\textsuperscript{8} National Redress Scheme, \textit{Institutions That Have not Joined or Signified Their Intent to Join the Scheme}, n.d., \url{https://www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined} (accessed 15 October 2021).
5.12 The Forrest Tennis Club is in discussions with DSS and has not ruled out joining the NRS. The Pastor of the Devonport Community Church, Mr Overton, said the church decided not to join the NRS because it could easily be subject to false claims for fraudulent purposes.\(^9\) The CYMS Basketball Association has not made a public statement in relation to joining the NRS. Kenja Communication is discussed in detail further below.

5.13 When institutions responsible for abuse chose not to join the NRS, there are negative consequences for the mental health of survivors. Relationships Australia highlighted that:

> Survivors whose perpetrating institutions have not joined the Scheme report feeling silenced again… it is devastating for survivors.\(^10\)

5.14 There was concerning evidence given to the Committee, that the NRS is encouraging survivors to take on an advocacy role and contact institutions directly when they refuse to join. Relationships Australia submitted that this has the effect of re-traumatising survivors:

> Some survivors have reported that they have been encouraged by Scheme staff to contact institutions themselves to advocate for participation. It is egregiously unfair –and unsafe - to cast this burden on survivors.\(^11\)

**Kenja Communication**

5.15 Kenja Communication continue to refuse to join the NRS. Minister Ruston confirmed that the changes to the grants and taxation systems did not affect the operations of Kenja survivor:

> My understanding is that Kenja Communications do not receive any government funding either by grant or by having tax deductable status. So, unfortunately, neither of those mechanisms were available to us.\(^12\)

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\(^12\) The Hon. Senator Anne Ruston, Minister for Families and Social Services, Senate Community Affairs Legislation Committee Budget Estimates 2021-2022, *Official Committee Hansard*, 3 June 2021, p. 122.
5.16 Ms Michelle Ring, a Kenja survivor, explained that the culture of Kenja is such that it will continue to refuse to join the NRS if penalties continue to fall short of impacting current operations:

The culture in Kenja is complete control. People say and do what they’re told to say and do, and they mostly do that through fear, I would suggest, because the intimidation through the mental, physical and sexual abuse is constant. The separation of individuals from family and community is what allows that ultimate control.\textsuperscript{13}

5.17 The culture of distrust and resistance to outside forces is evidenced in the Kenja public statement on its position and the NRS:

Kenja rejects any claim that sexual abuse of children has ever taken place at this organisation. While acknowledging the vital imperatives behind the National Redress Scheme, we do not consider it appropriate that we join in circumstances where genuine claims against us do not exist. Accordingly, Kenja will not be cajoled or threatened into joining the Scheme.\textsuperscript{14}

5.18 When asked to identify what changes would make a difference, Ms Ring advocated for the Australian Government to act as the funder of last resort for all survivors initially, and then pursue action against responsible institutions. Ms Ring explained that there is a sense of survivors not being believed due to Kenja’s refusal to acknowledge claims and the government choosing not to progress those claims in the interim:

[W]hilst Kenja says, 'No, we didn't do it,' and the government can’t follow through with the Redress Scheme, it means that that is a conditional redress. For those of us who have fallen through the cracks, I think the government—not purely for the sake of compensation at all but for the sake of us being believed—should unconditionally, without asking permission from Kenja, provide compensation and, later, just as importantly, find consequence, whether that be financial, criminal or otherwise.\textsuperscript{15}

5.19 Ms Ring suggested that NRS applications which relate to the behaviour of people who are still alive should trigger a criminal investigation. Ms Ring also suggested that institutions that refuse to the join the NRS should be prevented from being able to work with children. Not only would this be a

\textsuperscript{13} Ms Michelle Ring, private capacity, \textit{Proof Committee Hansard}, 11 October 2021, p. 18.


\textsuperscript{15} Ms Ring, \textit{Proof Committee Hansard}, 11 October 2021, p. 20.
significant incentive for organisations, including Kenja, to join the NRS, it may also contribute to existing child protection measures.\textsuperscript{16}

5.20 Micah Projects noted that one primary reason for people to go through the redress process is the hope that it might contribute to increased protection for children engaging with institutional settings moving forward.\textsuperscript{17} This view was also shared by survivor, Ms Dianne Lynn.\textsuperscript{18}

\textbf{Institutions On-Boarding to the National Redress Scheme}

5.21 The on-boarding process appears to be a very slow administrative endeavour. The NRS website lists 64 institutions as intending to join the NRS. The website is careful to state that the published list does not represent all institutions that are working with the NRS.\textsuperscript{19}

5.22 A number of institutions have been included in the on-boarding list for long time periods. DSS have not provided any explanation for why one institution may take significantly longer to on-board than others.

\textbf{Institutions that are Unable to Join the National Redress Scheme}

5.23 An emerging area of concern relates to institutions who have signalled intent to join the NRS but have been declared ineligible by the NRS. The NRS website states that:

\begin{quote}
To join, as required under the legislation, institutions must demonstrate their capacity to pay redress for current and any possible future applicants over the life of the Scheme. They must further demonstrate how they will provide a meaningful Direct Personal Response, provide details of current and historic institutional information, complete relevant training and sign a Memorandum of Understanding with the Department of Social Services.\textsuperscript{20}
\end{quote}


\textsuperscript{17} Mr Darcy Orr, Team Leader, Micah Projects, \textit{Official Committee Hansard}, 11 March 2021, p. 31.


5.24 The NRS website currently lists 21 institutions as being unable to join.\(^{21}\)

5.25 DSS officials confirmed that the assessment is made using a calculator which estimates institutional liability.\(^{22}\) If the initial calculation is determined as unsustainable by the institution, the NRS then looks to broader means to meet the financial need:

There are a range of different mitigation strategies we would start to explore with an institution who looked as though they didn’t have sufficient funds. It can be anything from other organisations that they may partner with, bank guarantees—a large range of mitigations, so it’s not just one.\(^{23}\)

5.26 DSS officials clarified that an initial decision is not final, with officials re-examining an institution’s ability to meet claims if there are changes made in relation to the institution.\(^{24}\)

**Funder of Last Resort**

5.27 As highlighted in the First Interim Report, the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act) provides that where an Australian, state or territory government institution is responsible for the sexual abuse of a child in a now defunct non-government institution, the relevant government will pay the defunct institution’s share of redress in addition to any existing liability.

5.28 Governments are currently acting as funder of last resort for 57 institutions that are defunct.\(^{25}\) DSS noted that as of March 2021, the Australian Government has been the sole, or partly, responsible institution for 291 redress payments. The average value of these payments is $58,270. DSS note that the average payment only reflects the Commonwealth’s average cost, not the average total payment received by an applicant due to shared

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\(^{21}\) National Redress Scheme, *Institutions that are Unable to Participate the National Redress Scheme*, n.d., (accessed 15 October 2021).


responsibility considerations. The total value of the 291 payments is just under $17 million.\textsuperscript{26}

5.29 DSS also noted that the forward estimates account for ongoing funder of last resort payments:

Around $45 million was provisioned for redress payments where the Commonwealth has been a responsible institution, including for child migrants, with payments expected to be in the order of $19 million at 30 June 2021. Payments are expected to increase next financial year following the recent announcement that applications for five former Fairbridge farm schools can be progressed through the National Redress Scheme with the Commonwealth’s assistance as a funder of last resort with relevant states and territories.\textsuperscript{27}

5.30 DSS confirmed that as of September 2021, it is considering the eligibility of a further 15 defunct institutions to be included in the NRS under funder of last resort provisions and that these institutions account for 29 applications.\textsuperscript{28}

5.31 There was widespread agreement from redress support services that current funder of last resort legislative provisions are too narrow and require urgent amendment.\textsuperscript{29} knowmore stated:

[I]n accordance with the royal commission recommendations, anyone who is a survivor of institutional child sexual abuse should be covered by the National Redress Scheme and there shouldn’t be these technical exceptions that are still in the scheme.\textsuperscript{30}

5.32 The Victorian Aboriginal Child Care Agency (VACCA) suggested that the lack of such an expansion may lead to injustice for some survivors.\textsuperscript{31}

\textsuperscript{26} DSS, answer to question on notice DSS SQ21-000077, Senate Community Affairs Legislation Committee Additional Estimates 2020-2021, 25 March 2021 (received 26 May 2021).

\textsuperscript{27} DSS, answer to question on notice DSS SQ21-000081, Senate Community Additional Estimates 2021-2022, 25 March 2021 (received 13 May 2021).

\textsuperscript{28} DSS, answer to question on notice IQ21 000092, 13 September 2021 (received 1 October 2021).

\textsuperscript{29} Including Dr Frank Golding, Vice President, Care Leavers Australasia Network (CLAN), \textit{Proof Committee Hansard}, 16 August 2021, p. 5; Mr Warren Strange, Chief Executive Officer, knowmore Legal Services (knowmore), \textit{Proof Committee Hansard}, 16 August 2021, p. 21; and Ms Hanina Rind, Senior Program Manager, Victorian Aboriginal Child Care Agency (VACCA), \textit{Official Committee Hansard}, 25 September 2020, p. 18.

\textsuperscript{30} Mr Simon Bruck, Principal Lawyer, knowmore, \textit{Proof Committee Hansard}, 16 August 2021, p. 20.

\textsuperscript{31} Ms Rind, VACCA, \textit{Official Committee Hansard}, 25 September 2020, p. 18.
Relationships Australia Northern Territory explained that some survivors are dying while waiting for funder of last resort declarations to be made:

We have applicants literally passing away before receiving an acknowledgement of harm because the powers that be have not been able to determine who should take responsibility for absolutely horrific sexual abuse, physical abuse, emotional abuse and neglect.\(^{32}\)

5.33 The Australian Government has indicated that it is open to considering expanding funder of last resort arrangements, but that it cannot do so without the agreement of each state and territory government under existing governance arrangements.\(^{33}\)

5.34 Acknowledging that an expansion of arrangements may occur, Relationships Australia Northern Territory and knowmore both highlight that the monetary element is not the only aspect that must be considered:

[O]ften the money is secondary; it’s the acknowledgement that they were not taken care of and that they experienced harm that is the key.\(^{34}\)

5.35 knowmore explained that it is essential that consideration be given to determining how a direct personal representation (DPR) would take place in cases of funder of last resort:

[W]here an institution doesn’t join but still exists, it’s important that there be some process of a direct personal response, if it’s possible … [and] making sure that there’s that responsibility provided.\(^{35}\)

5.36 knowmore also suggested that any expansion should include survivors of institutions that have declined or are ineligible to join the NRS as this would ensure equity for all survivors.\(^{36}\)

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\(^{32}\) Miss Mary Wellington, Manager, Relationships Australia Northern Territory, Official Committee Hansard, 11 March 2020, p. 9.

\(^{33}\) Senator Ruston, Minister for Families and Social Services, Senate Proof Hansard, 2 September 2021, p. 41.

\(^{34}\) Miss Wellington, Relationships Australia Northern Territory, Official Committee Hansard, 11 March 2020, p. 9.

\(^{35}\) Mr Strange, knowmore, Proof Committee Hansard, 16 August 2021, p. 21.

\(^{36}\) Mr Strange, knowmore, Proof Committee Hansard, 16 August 2021, p. 21.


**Fairbridge Farm Schools**

5.37 The complexities associated with Fairbridge Farm Schools on-boarding to the NRS provide an example of how difficult it can be to apply the NRS legislation to different operating structures.

5.38 For the first two and a half years of NRS operation, survivors who attended Fairbridge Farm Schools were unable to access the NRS due to the current legal entity, Fairbridge (Restored) being in receivership in the UK. Despite the best efforts of the Prince’s Trust, who had legal responsibility for Fairbridge claims, complexities associated with UK charity and company law meant that neither Fairbridge (Restored) or the Prince’s Trust were legally able to participate in the NRS.

5.39 Grant Thornton United Kingdom, the administrators of Fairbridge (Restored), made it clear that Fairbridge (Restored) wanted to join the NRS:

> It has always been our intention to try to join the National Redress Scheme. Unfortunately, the legislation which set up the scheme sets out criteria which organisations involved and looking to join must achieve. Chief amongst those criteria are that organisations must provide evidence of funding to meet the financial liabilities and that organisations must agree to participate until 2028, when the scheme will end. As you can appreciate, the scheme criteria and the administration legislation are in direct conflict. In this case, Fairbridge is insolvent and therefore cannot pass the financial test, and the duration to 2028 is not compatible with the statutory period for an administration.\(^{37}\)

5.40 On 24 March 2021 it was announced that the Australian, New South Wales, South Australian, Tasmanian, Victorian and Western Australian Governments would act as funder of last resort for the Molong, Drapers’ Hall, Tresca, Northcote and Pinjarra Fairbridge Farm Schools.\(^{38}\)

5.41 Following this announcement, Fairbridge kid, Mr David Hill informed the Committee that despite survivors appreciating the funder of last resort decision, questions remained in relation to the ongoing liability of Fairbridge (Restored). Mr Hill provided evidence that Fairbridge (Restored) plan to make compensation payments to survivors outside the scope of the NRS as the Prince’s Trust remain committed to making financial payments to

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survivors. Mr Hill questioned why governments would pay funds on behalf of tax payers when the responsible institution has funds to distribute and a commitment to do so.\textsuperscript{39}

5.42 DSS stated that it is aware of the Fairbridge (Restored) plan to make payments to Fairbridge kids and has spoken to the Prince’s Trust to clarify the matter. DSS maintain that any payments made will not represent a redress scheme as applicants will be eligible for payments solely due to their status as creditors.\textsuperscript{40} Mr Hill maintains that this distinction is at most, illusionary:

\begin{quote}
It is Fairbridge Restored that will invite claims from Fairbridge victims of abuse, it is Fairbridge Restored that will determine the eligibility of claimants, it is Fairbridge Restored that will assess abuse claims and it is Fairbridge Restored that will make the redress payments. … In my view, if it looks like a duck, swims like a duck and quacks like a duck, it's likely to be a duck.\textsuperscript{41}
\end{quote}

5.43 Mr Hill also explained why a dual process can create harm and confusion:

\begin{quote}
Most of these people are not able to comply with the process. They need help just filling out the forms, because most of them are ill-educated and most of them are very old now. Added to that is the trauma of revisiting the abuse that’s inherent in these applications. It’s a very difficult, traumatic and trying experience. The simpler the process, the better.\textsuperscript{42}
\end{quote}

5.44 Finally, Mr Hill highlighted that the participating Australian Governments may be able to recoup any funds distributed through funder of last resort payments, with both the Prince’s Trust and Fairbridge (Restored) suggesting that the governments might be creditors in their own right.\textsuperscript{43} In correspondence between Mr Hill and DSS, officials confirmed that the NRS may not be able to receive funds from a non-participating institution as the Act only explicitly allows the NRS to receive funds from participating institutions.\textsuperscript{44}

\begin{footnotesize}
\begin{enumerate}
\item Mr David Hill, Submission 60, p. 1.
\item Mr David Hill, private capacity, Proof Committee Hansard, 11 October 2021, p. 4.
\item Mr Hill, Proof Committee Hansard, 11 October 2021, p. 6.
\item Mr Hill, Proof Committee Hansard, 11 October 2021, p. 6.
\item Mr Hill, Proof Committee Hansard, 11 October 2021, p. 6.
\end{enumerate}
\end{footnotesize}
Future reform

5.45 The National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Bill 2021 (the Bill) was introduced in the House of Representatives on 27 October 2021. The Bill has not been debated in the House of Representatives or introduced to the Senate at the time of writing.

5.46 The Bill makes provision for the expansion of funder of last resort arrangements for institutions that are unable to join the NRS and for defunct institutions. For institutions that are unable to join the NRS, they can choose to partly-participate by fulfilling the DPR element of redress. These organisations would be subject to an annual reassessment of their financial viability.\textsuperscript{45}

Committee Comment

5.47 The Committee commends the Australian Government for introducing penalties to encourage institutional participation in the NRS. However, the Committee maintains concerns in relation to unaffected institutions that continue to refuse to join the NRS. There is a need to continue examining what actions may prove to be influential to those organisations.

5.48 Ongoing refusal also raises questions about the link between the NRS and child safety. The example of Kenja Communication demonstrates the urgent need to consider potential alignment between the NRS with state and territory based child protection measures. Governments must consider if it is appropriate for Kenja staff and volunteers to hold working with children and vulnerable people status whilst the institution refuses to acknowledge or answer institutional child sexual abuse claims. The Committee is aware that survivors of institutional abuse agree that the NRS has a role in keeping children safe.

5.49 The Committee is also concerned at the high number of institutions that have been on-boarding for extensive periods of time. The Committee considers that DSS may need to consider the application of penalties in this situation and at what point repeated delays trigger their application.

5.50 The Committee is also concerned at the high number of institutions that have been assessed as unable to join the NRS. The Committee agrees that the

\textsuperscript{45} National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Bill 2021, Explanatory Memorandum (Explanatory Memorandum), p. 1.
high number of survivors with applications currently on-hold highlights the need to extend the operation of funder of last resort provisions. The Committee notes that the recent introduction of the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Bill 2021 may be a positive development in this regard.

5.51 The Committee is pleased that survivors of Fairbridge Farm Schools are now able to access the NRS. The example highlights that there is scope for governments to act as funder of last resort if there is the political will to do so. It also highlights that funder of last resort provisions must be expanded. Very simply, the NRS will not be equitable or trauma informed if some survivors are unable to access redress solely because of the legal status of the institution responsible for their abuse.

Recommendation 18

5.52 The Committee recommends that the Australian Government work with all Australian states and territories to examine child safety measures in relation to institutions that refuse to join the National Redress Scheme.

Recommendation 19

5.53 The Committee recommends that funder of last resort arrangements are expanded to ensure that survivors of institutions who are unable or unwilling to join the National Redress Scheme are able to receive all components of redress.

Survivors

5.54 The NRS continues to experience lower than expected rates of survivor participation. A number of reasons for this were suggested over the course of the inquiry which included limited eligibility, increased civil options and poor administration practice.

Eligibility Limitations

5.55 There are additional barriers for some survivors who wish to apply to the NRS. Groups unable to apply include people under 18 years of age and people who are in gaol or who have been convicted of a serious offence.
People in gaol

5.56 Relationships Australia highlighted that current provisions restricting survivor access based on incarceration may be partly responsible for lower than anticipated participation numbers:

[W]e have serious concerns about the limits imposed on participation by incarcerated survivors. Further, our practitioners are aware of:

- inconsistent applications of section 20 of the Act;
- obstacles for incarcerated survivors to access their records for the purpose of making an application; and
- difficulties encountered by people who have been in prison for most of their adult life in seeking to quantify, for the purposes of Part 3 of the application form, the impact that the abuse has had on them.46

5.57 Bravehearts highlighted that the exclusion was not a recommendation of the Royal Commission and shared that the exclusion of people in gaol is disappointing as for some survivors, it is a safe environment from which to commence the traumatic application process.47

5.58 VACCA also agreed, highlighting that the exclusion is ‘one of the most devastating barriers to our Aboriginal people’.48

5.59 In September 2021, DSS confirmed that 96 applications had been received from people in gaol citing exceptional circumstances. Of these, 18 exceptional circumstances requests have been granted and seven have not, and 71 remain pending. DSS stated that applications are pending for four primary reasons:

- incomplete exceptional circumstances documentation was provided and the person is unable to be contacted;
- the person requested that their application be placed on hold until they are released from gaol;
- the Scheme Operator is in the process of making a decision; or


48 Mrs Sarah Gafforini, Director, Office of the Chief Executive Officer, VACCA, Official Committee Hansard, 18 August 2021, p. 4.
the Scheme has received an application which indicates the person is in gaol, however no exceptional circumstances application has been provided to the Scheme, and the person is unable to be contacted.49

**Children**

5.60 In Good Faith Foundation (IGFF) suggested that the survivor demographic is changing as the NRS continues and that this must be considered when designing reforms.

[W]e have observed a downward trend in the age of survivors and also their abusers. The age of our clients is shifting to reflect a change in demographics of those engaging in the redress process.50

5.61 The impact of a changing demographic has implications for the NRS. For example, IGFF highlighted that younger survivors are reporting sexual abuse from institutions that operate within the wellness or personal development industry. This type of institution, depending on how it is established can fall outside the scope of the NRS.51

5.62 Tuart Place also emphasised that a younger offender cohort has significant operational considerations for the NRS in relation to mandatory reporting:

... a younger client demographic and increased likelihood of an offender remaining active in the community can result in Mandatory Reporting processes being activated. There is a lack of resources and key supports within the National Redress Scheme for the applicant when a Child Safety Report is triggered by their application.52

5.63 IGFF also highlighted that a younger age of disclosure can require a greater term of counselling and ongoing support being provided to survivors accessing the NRS.53

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49 DSS, answer to question on notice IQ21-000104, 13 September 2021 (received 1 October 2021).

50 Ms Clare Leaney, Chief Executive Officer, In Good Faith Foundation (IGFF), *Official Committee Hansard*, 26 November 2020, p. 15.


53 Mr Joe Stroud, Chief Operating Officer, IGFF, *Official Committee Hansard*, 11 March 2021, p. 11.
Survivors Increasingly Choosing Civil Options

5.64 Some survivors are choosing to pursue civil options rather than engage with the NRS. This is the result of complex and intersecting factors that include recent changes to state laws that remove previous legal limitations and civil actions resulting in larger financial awards. The Committee heard that factors that may influence survivors to pursue civil options include, but are not limited to, greater financial compensation, delays in the NRS, the strict eligibility criteria under the NRS, and a perception that civil options may give survivors a greater sense of justice.

Legal changes

5.65 Since the Royal Commission, every state and territory has removed limitation periods for civil claims in relation to sexual or physical abuse. This means that survivors previously unable to start an action due to the length of time that had passed since the abuse occurred now have this option. Care Leavers Australasia Network (CLAN) noted that ‘reforms in a number of jurisdictions make civil litigation more feasible than before’.

5.66 Additionally, a recent decision in the Victorian Supreme Court suggests that courts are now willing to examine the terms of previous settlements and consider if it is fair that they be upheld. In the case, the court agreed the survivor had agreed to settle for ‘far less than a reasonable assessment of

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54 IGFF, Submission 45, pp. 10-11.
55 Maurice Blackburn Lawyers, Supplementary Submission 26B, p. 7.
57 Maurice Blackburn Lawyers, Supplementary Submission 26B, p. 7.
59 Mr Frank Golding, CLAN, Submission 38, p. 2.
damage’.60 This decision means that other survivors may be able to have their previous settlements set aside and for their claim to be reassessed.61

5.67 It is possible that similar principles will be enacted more broadly across Australia. For example, in New South Wales, the Civil Liability Amendment (Child Abuse) Bill, will allow courts to set aside certain settlements in similar circumstances to the Victorian case.62

5.68 Finally, evidence suggested that civil processes are not considered as traumatic as they once were previously, as many institutions are willing to offer formal acknowledgement of the abuse63 and have a genuine commitment to change.64

**High monetary awards**

5.69 Whilst there is a public perception of civil cases resulting in large awards, there is limited public information available about the average civil award made to survivors.

5.70 IGFF is aware of settlements ‘frequently being awarded in the vicinity of $500,000’.65 Mr Mark Jones, a survivor, explained that his civil award was ‘greater than the maximum amount currently available under the redress scheme, even taking into account a legal fee investment of approximately $120,000’.66 Ms Lisa Flynn from Shine Lawyers separately told the Australian Broadcasting Commission that Shine has represented survivors in around 900 actions resulting in close to $150 million dollars in awards since the

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Royal Commission. Roughly this equates to an average award of over $165,000 per action.

5.71 Professor Kathleen Daly and Research Fellow Juliet Davis of Griffith University studied 4,563 civil justice and redress outcomes received over 35 years and found that the average monetary payment for civil litigation in relation to Australian Catholic Church authorities is $138,755. The Committee notes this may change as earlier settlements are set aside given recent law reform.

5.72 Given the vast scope of these payments, and an acknowledgment that very little is publicly known, IGFF stated that survivors may choose civil action rather than limit themselves to the NRS cap of $150,000:

The Redress Scheme cap is insufficient with many individuals more inclined to consider the far greater compensatory amounts achievable through civil litigation and out of court mediation processes. This disparity between options is streamlining people into litigation options.

5.73 In contrast, the average monetary payment for the NRS to 30 December 2020 was $83,210. For survivors who accessed a redress support service the average was slightly higher at $88,145. Survivors supported by knowmore and no other redress support service received an average payment of $85,200, while survivors assisted by other lawyers received an average of $83,727. The average award for survivors who did not access a support service was $78,924.

5.74 The average monetary payment also varied according to cohort. First Nations survivors received an average payment of $87,844. Care leavers

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68 Professor Kathleen Daly and Juliet Davis, *Civil Justice and Redress Scheme Outcomes for Child Sexual Abuse by the Catholic Church*, 7 April 2021, p. 14.


71 Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 42

received an average payment of $88,489 compared to $81,669 received by a non-care leaver.73

**Administrative Limitations**

5.75 Redress support services suggested that low applicant numbers are likely a result of a combination of factors including poor survivor experience, and ongoing media coverage of poor administrative practices including privacy breaches and long wait times. As knowmore explained:

> It’s very hard for us, when we’re explaining options to survivors, to talk about the Redress Scheme being necessarily a quicker, easier and less traumatising option than civil litigation, when people have applications that haven’t been determined for 18 months.74

5.76 CLAN shared the view that long wait times are also encouraging care leavers to pursue civil options instead of the NRS:

> Redress is not an insurance claim; it is supposed to be less legalistic, less arduous than going down the civil path. But now many care leavers are saying they’re not going to apply for redress; they are going to go down the civil path. They used to have to wait years for a civil case; they’re waiting for their third year [for redress] now.75

5.77 This is clearly reflected in the administration of priority applications. Tuart Place stated:

> Currently, applications in the ‘priority’ category do not appear to be processed any more quickly than non-priority cases, seemingly because the assessment process is no different, and still often involves waiting for responses from multiple past provider institutions.76

5.78 There was no evidence heard by the Committee to suggest that priority applications are being resolved faster than other applications in order to ensure those with greater need have their application processed prior to death. As VACCA explained:

73 DSS, answer to question on notice DSSSQ20-000887, Senate Community Affairs Legislation Committee Budget Estimates 2020-2021, 28 October 2020, (received 18 December 2021).


76 Tuart Place, *Submission 25*, p. 2.
[W]e have so many people who are unwell, who could die at any moment and who are just waiting for their outcome. We really need to see the scheme up the ante a bit and get these applications assessed really quickly.\textsuperscript{77}

5.79 This view was also shared by CLAN:

For people who are terminally ill there’s supposed to be a priority scheme. But we don’t see that working effectively at all.\textsuperscript{78}

5.80 CLAN also confirmed that the application form does not allow an applicant to self-identify as requiring priority.\textsuperscript{79}

5.81 DSS confirmed that as of 3 June 2021, 95 payments have been made to beneficiaries in respect of 90 deceased applicants.\textsuperscript{80} It is expected that this number will grow as the Second Year Review highlighted that there are a significant number of applications currently being processed where the applicant is now deceased.\textsuperscript{81}

5.82 The Queensland Law Society highlighted how long waiting times affect survivor engagement with the NRS:

The lack of informative and timely updates and the absence of guidance about the process causes greater anxiety for clients who worry their case has been forgotten and will never be decided. It is paramount this issue is addressed as the abuse survivors who are claiming, are already vulnerable… in addition to informed guidance being provided, NRS administrators could provide timely meaningful updates on what has been progressed or what is awaiting finalisation.\textsuperscript{82}

5.83 knowmore suggested that a large number of survivors are choosing to proceed with civil litigation instead of the NRS due to ongoing issues relating to the participation of institutions which also leads to long waiting times:

People would understand that it's effectively pointless to do so if the institution that is responsible for their abuse is not participating and there is


\textsuperscript{78} Mrs Sheedy, CLAN, \textit{Official Committee Hansard}, 25 September 2020, p. 6.

\textsuperscript{79} Mr Golding, CLAN, \textit{Official Committee Hansard}, 25 September 2020, p. 6.


\textsuperscript{81} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 111.

\textsuperscript{82} Queensland Law Society, \textit{Submission 49}, p. 2.
no indication that it’s going to participate. That’s another factor and it’s one that, I think, particularly resonates with many survivors who have adopted a wait-and-see attitude with the scheme.\textsuperscript{83}

5.84 Poor data collection may make it difficult to comprehensively understand where survivor participation gaps may be. For example, the NRS data collection methods mean that it is not possible to say with certainty how many people with disability are engaging with the NRS or whether people with disability are underrepresented amongst applicants.\textsuperscript{84} This is also the case for care leavers.\textsuperscript{85}

5.85 The Queensland Law Society suggested that practical changes in NRS administration practice would support greater survivor engagement. It identified simple changes such as allowing survivors to write to staff at the NRS instead of being compelled to call and speak with someone they do not know, or making the online application form PDF fillable to ensure that survivors can file their application without a printer or scanner.\textsuperscript{86}

5.86 People with Disability Australia (PWDA) noted that NRS services are ‘not always accessible, which can leave people in a position where they give up rather than pressing on through with the process.’\textsuperscript{87}

5.87 DSS agreed that more can be done to ensure that survivors are adequately supported throughout the application process, stating:

> The department is committed to providing outreach support to assist applicants in the completion of their applications. This includes better access to enhanced front-end financial, legal, psychological, Indigenous and disability support services to minimise trauma and assist survivors to obtain better outcomes. As part of the current Grants process, the Scheme is funding support services that meet the diversity of survivors’ needs with regard to disability, gender, sexuality, culture and language. The Scheme is also taking proactive steps to better communicate the availability of all support services, including access to free legal services to survivors, nominees, advocates and institutions.\textsuperscript{88}


\textsuperscript{84} People with Disability Australia (PWDA), \textit{Submission 50}, pp. 10-11.

\textsuperscript{85} Dr Golding, CLAN, \textit{Proof Committee Hansard}, 16 August 2021, pp. 1-2.

\textsuperscript{86} Queensland Law Society, \textit{Submission 49}, p. 3.

\textsuperscript{87} PWDA, \textit{Submission 50}, p. 21.

\textsuperscript{88} DSS, answer to question on notice IQ21-000106, 13 September 2021 (received 1 October 2021).
As noted in Chapter 2, actuarial firm, Finity Consulting considered potential NRS participant numbers based on the first two years of operation. The advice estimates that a total of 32,000 applications may be expected during the life of the scheme. This is a significant departure from the 60,000 that the Royal Commission anticipated as eligible to apply.

Low Public Awareness of the National Redress Scheme

There was evidence to the Committee that suggested existing community education materials are not meeting the need of survivors who are currently unaware of the NRS, or service providers that might be well placed to make referrals. Additionally, survivors shared that existing resources available on the NRS website to help survivors throughout the application process are long, boring and generic.

The Northern Territory (NT) Government highlighted that the June 2020 actuarial report from Finity Consulting found that the number of NRS claims from the NT are 80 per cent lower than initially expected. The NT Government’s submission to the Second Year Review noted that ‘the NT routinely requested that an overarching communication strategy be developed for the Scheme’, further noting that:

[A] major contributing factor to the low number of applications from NT residents is the limited communication about the Scheme and general community knowledges of the Scheme’s existence, rather than the paucity of eligible applicants in the Territory.

The NT Government’s submission highlights how poor community education significantly impacts First Nations communities:

This is particularly amplified in remote areas where many Aboriginal Territorians may have English as a second or third language. Communication, marketing and information sharing about the Scheme is the responsibility of the Scheme Operator, however in the NT there appears to be very little knowledge sharing about the Scheme, particularly knowledge sharing in a culturally informed manner. It is the NT Government’s view that the lack of

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90 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 46.

91 The Hon. Selena Uibo, Northern Territory (NT) Attorney-General, Correspondence, 18 October 2021, p. 7.

92 The Hon. Selena Uibo, NT Attorney-General, Correspondence, 18 October 2021, p. 6.
understanding of the Scheme is one of the main reasons for the significantly reduced 2020/2021 estimates for the NT Government liability.93

5.92 The NT Government concluded that the risks of a continued poor approach to community awareness and education has the potential to escalate risks across the operation of the NRS:

The delay in implementing a comprehensive communications strategy is likely to have two serious consequences. The significant shorter life expectancy rates of Aboriginal Territorians means there is a potential risk of vulnerable eligible Territorians not living long enough to learn about and access the Scheme. Secondly, leaving a void of information may allow the space for other agents to move into the space and charge redress recipients for assisting with redress applications.94

5.93 In response, the NT Government, in partnership with redress support services, commenced delivery of training and information sessions for stakeholders, service providers and staff who work at the grassroots. Since the commencement of the NRS, the team has presented to over 1,344 stakeholders.95

5.94 PWDA highlighted that there are significant barriers for people with disabilities accessing the NRS, and subsequently there is a need for existing disability service providers being supported to make referrals to redress support services. Effective community education materials play a vital role in supporting access:

We are finding that many helping professionals across the disability, health, housing and justice sectors are unaware of the scheme or have very limited information, and generally are not proactive in providing accessible information to people with disability about the Scheme when disclosures of potentially relevant child sexual abuse are made. This lack of awareness and proactivity present significant barriers to raising awareness of the Scheme among people with disability’.96

5.95 This was mirrored by Micah Projects who highlighted that the group of survivors they are supporting is quite limited. Micah suggested that this is a

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93 The Hon. Selena Uibo, NT Attorney-General, Correspondence, 18 October 2021, p. 6.
94 The Hon. Selena Uibo, NT Attorney-General, Correspondence, 18 October 2021, p. 7.
95 The Hon. Selena Uibo, NT Attorney-General, Correspondence, 18 October 2021, p. 7.
96 People with Disability Australia, Submission 50, p. 12.
reflection of poor community education activities undertaken in diverse communities:

[O]ur redress service has not supported one member of the deaf community nor anyone under the age of 30. While this is due, in part, to our lack of resources and our inability to divert personnel to at least these cohorts, we know these cohorts are entitled to access redress. I think we have an ethical obligation, as does the scheme and the department, to make sure that we’re providing information to these members that are marginalised and aren’t engaging in the processes.\(^{97}\)

5.96 When considering how to improve community education activities and materials, VACCA emphasised the need for First Nations outreach to be led by community:

Another critical priority is our outreach service to survivors in the community, which is aboriginal led. As an Aboriginal service provider, we need to ensure that we build trust and we keep that trust in our community. That is why we believe this messaging should come from us, the Aboriginal community. Outreach from an Aboriginal led service is [inaudible] and more effective than coming from government.\(^{98}\)

5.97 DSS acknowledged that improvement is needed and has engaged a program of work to address identified needs:

The Government has committed $4.1 million over four years for targeted communication activities to improve awareness of the Scheme, increase engagement with support services, and increase access to redress amongst Aboriginal and Torres Strait Islander peoples, people with a disability, culturally and linguistically diverse populations and other vulnerable cohorts.\(^{99}\)

**Committee Comment**

5.98 The Committee notes that estimates of survivor participation have been reduced to almost half of the originally anticipated 60,000. The Committee agrees that this is due to a broad range of complex reasons and that increased civil litigation options are one element. The Committee supports the broadening of options that uphold choice and self-determination for survivors.

\(^{97}\) Mr Orr, Micah Projects, *Official Committee Hansard*, 11 March 2020, p. 27.


\(^{99}\) DSS, answer to question on notice IQ21-000106, 13 September 2021 (received 1 October 2021).
5.99 For the NRS to meet the needs of survivors who wish to avoid a civil claim, the NRS must be less traumatic and offer procedural ease. If survivors can reasonably expect similar administrative timeframes and associated trauma, the Committee understands that many survivors rightfully choose to pursue a civil claim for an increased award which can then fund ongoing therapeutic care as chosen by the survivor.

5.100 The Committee is concerned that poor community education has affected participation rates. Firstly, current materials are not fit for purpose. Secondly, redress support services need to be given the tools and skills to deliver community education materials. These services are largely funded to provide direct support to survivors who are already aware of the NRS. For many, providing education is an additional and separate task to other support programs. Support from DSS is essential for this work to be effective.

5.101 The Committee is concerned that survivors in gaol are being excluded from the NRS and agrees that the current limitations require reconsideration. There should also be consideration given to existing processes as the length of time it currently takes for special exemptions to be granted can be excessive.

5.102 The Committee notes evidence of younger survivors who are reporting abuse in personal development environments that may not represent traditional institutions. The Committee agrees that this needs to be considered by DSS to ensure that there is clear information for people prior to submitting an application.

**Recommendation 20**

5.103 The Committee recommends that funder of last resort provisions be expanded to ensure that all survivors can access the National Redress Scheme if they wish to do so.
6. Independent Second Year Review

6.1 Section 192 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act) provides that the responsible Minister must initiate a review of the operation of the National Redress Scheme (NRS) as soon as possible after the second anniversary of the start day.

6.2 On 17 June 2020 the Minister for Families and Social Services, Senator the Hon. Anne Ruston (the Minister) announced Ms Robyn Kruk AO as the independent reviewer for the Legislated Second Anniversary Review (the Second Year Review). Minister Ruston said that the Review would be provided to the Federal Government by the end of February 2021. The Minister later confirmed that Ms Kruk had requested an extension to the end of March 2021 and that this had been agreed.

Background

6.3 On 14 July 2020, Ms Kruk shared an open letter with interested parties about the Second Year Review and invited interested stakeholders including survivors, nominees, redress service providers and other interested parties to make a submission, complete a feedback survey, or both.

6.4 During the course of the Second Year Review, Ms Kruk met with 81 survivors, support services, government agencies and Ministers. Additionally, there were 226 submissions made and 503 responses to the feedback survey.¹

¹ Department of Social Services, *Direct Personal Response Consultation Paper*, 6 October 2021, p. 5.
Key Findings

6.5 Ms Kruk had access to data not previously shared with stakeholders or the Committee. Subsequently a range of key findings and insights were made across the scope of the NRS. Each part of the Second Year Review is discussed below.

The Survivor Experience

6.6 The Second Year Review received feedback that the NRS had failed to protect applicants and provided examples of instances where the NRS ‘has harmed them in their journey for redress’.2

6.7 The Second Year Review noted that the issues raised cut across all aspects of the NRS including:

- initial contact by survivors
- the lack of trauma informed responses
- incorrect identification of institutions
- long waiting periods with no contact at all
- inconsistent and incorrect advice from case officers
- the loss of personal records and applications
- significant privacy breaches
- inconsistent IDM determinations
- poorly conducted direct personal responses
- the inadequacy of provision and availability of counselling and psychological services in non-metropolitan locations.3

6.8 The Second Year Review found that the emphasis placed on the need for trauma informed practice and provision of appropriate support for survivors by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) had not been effectively implemented by the NRS.4

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4 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 54.
6.9 The Second Year Review concluded that ‘a trauma informed approach supported by appropriately scoped recruitment strategies and training is critical if the Scheme is to improve and deliver on its statutory objectives’.\(^5\)

6.10 The Second Year Review noted that the Department of Social Services (DSS) had identified this as a key area for improvement and created ‘specialised case teams that would have sole responsibility for direct contact with survivors’.\(^6\) Additionally, the Blue Knot Foundation had been engaged to run staff training.\(^7\)

6.11 While acknowledging the efforts made, the Second Year Review recommended that DSS implement a change process to help the NRS to understand what it means to be trauma informed and consider how this might change operations to ensure they ‘do no harm’ and improve the experience of survivors.\(^8\)

6.12 The Second Year Review received feedback indicating that the NRS lacks transparency in key areas. Specifically, survivors felt that ‘there are few opportunities for ongoing systematised engagement’. This in turn ‘facilitates a climate of mistrust’, which is difficult to resolve given the high level of mistrust in institutions among survivors.\(^9\)

6.13 These findings reflect evidence presented to the Committee and considered in chapter 2. The evidence received by both the Second Year Review and the Committee clearly indicates that fundamental improvements to the survivor experience of the NRS is required, and that in order to achieve improvement some deeply considered reform of the NRS is necessary.

6.14 The Second Year Review also suggested an approach that is more systematised in applying improvements across the operations of the NRS.\(^10\) Specifically, the Second Year Review noted that improvements in NRS operations need to be based on a commitment from all governments to success measures for ‘driving integrated changes and increasing survivor confidence in the Scheme.’ In this regard, the Second Year Review stated


\(^7\) Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 56.

\(^8\) Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 56.


that focusing ‘on the survivor journey is also a very sound basis for improvement’.\(^\text{11}\)

6.15 These considerations led the Second Year Review to recommend the development and implementation of a Survivors’ Service Improvement Charter by the end of 2021. According to the Review, this Charter should:

- include service standards to improve survivor experience
- be reflected in Scheme rules, the inter-governmental agreement and key governance and performance documents and contracts with support services
- provide a service guarantee to survivors including:
  - guaranteeing survivor information is safe and secure
  - setting expectations regarding service delivery, transparency and accountability
  - giving surety regarding responsiveness and resolution of issues
- establish a robust feedback loop to ensure the survivor voice is embedded throughout the Scheme.\(^\text{12}\)

**Applying for Redress**

6.16 In discussing the process of applying to the NRS, the Second Year Review identified a number of issues that require consideration and reform.

**Eligibility**

6.17 The Second Year Review found that the criteria for eligibility ‘appear arbitrary and unjust’.\(^\text{13}\) Specifically, the Review noted that certain categories of survivor have been excluded from seeking redress for childhood abuse through the NRS. For example:

The Act states that survivors in gaol cannot make an application for redress. The expectation was that survivors in gaol could make an application on release from gaol.\(^\text{14}\)

6.18 The Second Year Review noted that the ‘restriction against prisoners applying was in part a response to concerns that confidentiality and access

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by support services would be difficult’. However, according to the Review, this restriction ‘is perceived as unjust’ particularly in light of the fact that the Royal Commission found that ‘people in gaol are more likely than the general population to have been victims of child sexual abuse’.15

6.19 People with Disability Australia (PWDA) agreed with the need to examine eligibly for people in gaol noting that existing rules may be ‘disproportionately affecting people with disabilities, because … around 29 per cent of the prison population compared to 18 percent of the general population’ have a disability.16 PWDA emphasised that any change must be implemented alongside targeted NRS education for the gaol population who may face additional barriers to applying.

6.20 The Second Year Review noted its support for processes accommodating prisoners’ participation in the NRS, and set out the trauma informed requirements for facilitating this.17

6.21 Similarly, the Second Year Review also examined the participation of survivors who have subsequently been convicted of serious criminal convictions. It noted that ‘survivors with a single serious criminal conviction of five years or more for an offence against the Commonwealth, a state or territory, or a foreign country’ are able to access a separate assessment process.18

6.22 The Second Year Review stated of the 309 applications from survivors with serious criminal convictions and/or in gaol, 120 had received determinations, the majority of which resulted in the applicants receiving redress payments.19

6.23 In terms of the participation of people with disability, the Second Year Review noted concerns that DSS has ‘a lack of visibility of applications from survivors in disability institutions’, and additionally, the Review had received ‘no submissions from disability institutions or guardians in relation to’ survivors in disability institutions.20

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16 Ms Karen Kobier, Manager and Specialist Advocate, Redress Project, People with Disability Australia, Committee Hansard, 16 August 2021, p. 24.
17 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 66.
18 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 66.
20 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 70.
6.24 Following consultation with the disability sector, the Second Year Review put forward possible reasons for the lack of representation including reliance on others for access to information, privacy issues, potential exploitation, general lack of awareness of the NRS, and difficulties with the application process.\(^{21}\)

6.25 As a result, the Second Year Review concluded that ‘the Australian Government should consider introducing additional specialist support services to assist with applications and increasing awareness within these supported institutions and their residents’.\(^{22}\)

6.26 Non-citizens and people living outside Australia are explicitly excluded from apply for redress through the NRS, despite the fact that they were abused in institutional settings in Australia as children.\(^{23}\) This exclusion was justified in the legislation on the basis that it was to ‘mitigate the risk of fraudulent claims and to maintain the integrity of the Scheme’ as it ‘would be very difficult to verify the identity of those who are not citizens, permanent residents, or within the other classes’ deemed eligible to apply for redress.\(^{24}\)

6.27 The Second Year Review disagreed with this assertion, noting that:

…it would be possible to minimise the risk of fraud which could arise from non-citizen/permanent resident applicants by using alternative methods to confirm identity. This could include using international passports or immigration records where available.\(^{25}\)

6.28 According to the Second Year Review, some survivors have been excluded from the NRS on the basis that their abuse took place after they turned 18 years old. The Review noted that this eligibility restriction applies current legal standards on the age of majority, when until 1974, there was ‘no possibility’ that those in care could be released until they turned 21.\(^{26}\)

6.29 The Second Year Review concluded that ‘the Scheme should recognise these care leavers if they were abused in care over the age of 18 and under the age

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\(^{22}\) Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 70.

\(^{23}\) Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 64.

\(^{24}\) Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 64.


\(^{26}\) Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 70.
of 21 prior to 1 November 1974’ because these care leavers were still required to remain in care.27

6.30 As a result of these perceived omissions in eligibility, the Second Year Review took the view that access to the NRS should be significantly expanded to include prisoners, those with serious criminal convictions, non-citizens and non-permanent residents, and care leavers abused between the ages of 18 and 21 prior to November 1974.28

**Standard of proof**

6.31 During its investigation, the Second Year Review found that the standard of proof used in assessing claims resulted ‘in difficulties for decision makers, applicants and support services’, and that the standards used in ‘different decisions vary’.29

6.32 The Second Year Review noted that ‘the standard of proof for eligibility for redress’ is the ‘reasonable likelihood test’, which includes indicators such as the person stating the abuse took place, the institutions agreeing they should be treated as responsible, a report of the abuse occurring, any prior payments made, and similar claims against the abuser or institution being found eligible.30

6.33 The Second Year Review quoted the National Redress Guide to highlight the differences in guidance materials provided to independent decision makers IDM:

> In determining reasonable likelihood, the Operator must also consider that the Scheme was established in recognition that some people:

- Have never disclosed their abuse and disclosure to the Scheme may be the first time they have done so.
- Would be unable to establish their presence at the institution at the relevant time (the institution’s records may have been destroyed, record keeping practices may have been poor, or the person may have attended institutional events where no attendance record would have been taken).

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• Do not have corroborating evidence of the abuse they suffered.\(^{31}\)

6.34 Despite these published standards, the Second Year Review noted that IDMs have the following indicators of ‘reasonable likelihood’ included in their training material:

• a signed statutory declaration
• confirmation of identity
• whether the relevant institutions believe they should be treated as responsible
• medical treatment or therapeutic support sought
• witnesses to the abuse
• criminal charges or convictions in relation to the abuse or the abuser
• prior report of the abuse
• information provided in the request for information process.\(^{32}\)

6.35 The Second Year Review found that reasonable likelihood is the appropriate standard of proof, but that the policy guidelines and training material for IDMs should be reviewed to ensure that inconsistencies are avoided.\(^{33}\)

6.36 In terms of the Assessment Framework used by decision makers in determining the calculation of entitlement for survivor applicants, the Second Year Review noted that a ‘different and higher standard of proof to reasonable likelihood applies’.\(^{34}\) Specifically:

The Assessment Framework currently provides that a decision-maker can find institutional vulnerability and extreme circumstances where it is ‘reasonable to conclude’ that particular circumstances exist. This imposes a higher and more objective standard than the ‘reasonable likelihood’ standard of proof applied when assessing a person’s eligibility for redress under section 29 of the Act.\(^{35}\)

6.37 According to the Second Year Review, this ‘imposes two different standards’, which ‘results in unnecessary complication for the IDMs’.\(^{36}\) This further led to inconsistency in the determinations made by IDMs:

The Review found differences in application – some IDMs strictly apply the Assessment Framework Policy Guidelines and others apply the Assessment Framework. This disparity in the weight given to the Assessment Framework Policy Guidelines means that IDMs are using different measures for the assessment of extreme circumstances, creating inconsistency.\textsuperscript{37}

6.38 Additionally, the Second Year Review noted that inconsistencies in guidance materials lead to inconsistencies of decisions, including decisions about the application of extreme circumstances:

The inconsistency of the assessment outcomes for the extreme circumstances payment arises out of confusion on the part of IDMs because of the differences in content of the Assessment Framework Policy Guidance for extreme circumstances (advisory only) and the Assessment Framework (legislation).\textsuperscript{38}

6.39 This has serious consequences for survivors, with the Second Year Review finding that there ‘is potential for survivors to not receive fair and equal treatment under the Act,’ and that ‘it is likely that fewer people are receiving payments for extreme circumstances than there should be’.\textsuperscript{39}

6.40 The Second Year Review was concerned ‘that these varying objective tests and standards of proof are difficult for decision-makers, applicants and support services’, and recommended that ‘a prescribed and consistent standard of proof – preferably the reasonable likelihood standard – to apply to each relevant decision point under the Act’.\textsuperscript{40}

6.41 Additionally, the Second Year Review concluded that there are ‘serious inconsistencies’ between the Internal Assessment Guide and the Assessment Framework Policy Guidelines, which ‘result in inconsistent decision-making under the Assessment Framework’.\textsuperscript{41}

6.42 As a result, the Second Year Review called for the simplification and clarification of the assessment process to assist both applicants and IDMs. The Review noted the need to give consideration to implementing any changes retrospectively and the funding ramifications of this action.\textsuperscript{42}

\textsuperscript{37} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 95.

\textsuperscript{38} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 94.

\textsuperscript{39} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 95.

\textsuperscript{40} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 64.

\textsuperscript{41} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 95.

\textsuperscript{42} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 95.
The Second Year Review also found that, similar to the work undertaken by the Committee in its *First Interim Report*, there was benefit in making the Assessment Framework Policy Guidelines a public document. The Review identified a number of reasons to make the assessment framework public:

It is the Review’s view that making the Assessment Framework Policy Guidelines a publicly available document will also improve the application process, as applicants have clear guidance as to how their application will be assessed. This in turn should also approve the timeliness of processing applications, as more relevant information can be provided. The publication of the Assessment Framework Policy Guidelines would not remove or reduce the discretion of an IDM in making their determination.

**Protected information and privacy**

The Act contains provisions designed to protect information provided to the NRS, and defining who can obtain, record, and disclose this protected information. As noted by the Second Year Review, these provisions ‘afford the same protection to an institution’s information as to an individual’s information’.

The Second Year Review characterised these provisions’ application to institutions as ‘overreach’, and argued that:

Only where it is reasonable and necessary to maintain the integrity of the Scheme should institutional information attract the protection of the legislation. Further, institutional information that is to be protected should be specifically identified in the legislation.

In certain circumstances it is possible for the NRS to disclose protected information when it is in the public interest to do so. Additionally, the Act contains provisions which ‘allows participating institutions to provide protected information to an insurer to facilitate a claim under an insurance policy’.

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6.47 In the course of its work, survivors told the Second Year Review that ‘too much information is shared’. In relation to sharing protected information with insurers, the Second Year Review argued that it should be minimal and de-identified, although it acknowledged that this may cause ‘difficulties where an insurer requires specific information’.

6.48 More generally, the Second Year Review noted that ‘the sharing of applicant information should be more closely protected’, and that any information about the impact of abuse on a survivor’s life should not be shared with institutions ‘unless and until the survivor requests a direct personal response’.

6.49 The Second Year Review took the view that the informed consent of applicants should be ensured in relation to the disclosure of any protected information. In terms of the application form, the Second Year Review considered it necessary to make changes to ensure applicants understand and consent to the ‘future use of protected information about them by institutions’.

6.50 Further, the Second Year Review argued that survivor permission should be required to share any information provided in an application form with institutions, to ensure they are ‘specifically aware of what information is being provided’.

6.51 The Second Year Review stated that there have been ’13 eligible data breaches during the operation of the NRS, all of which amounted to unauthorised disclosures of personal and protected information under the Act’. Additionally, the NRS ‘provided a request for information containing protected information to the wrong institution on 98 occasions between 2018 and 2021’.

6.52 Given the issues identified, the Second Year Review recommended that:

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48 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 98.
49 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 100.
50 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 100.
52 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 100.
The Australian Government review the scope and content of the protected information provisions in the legislation, and have specific regard to the protection of information provided by applicants and the permitted use by the Scheme Operator and institutions of that information, including the appropriateness of protections provided to institutions...\(^{55}\)

**The Elements of Redress**

*The monetary payment*

6.53 The Second Year Review conducted a detailed examination of both the payment cap, and the matrix for calculating payments, as recommended by the Committee in its *First Interim Report*.

6.54 Ultimately, the Second Year Review did not recommend any increase to the existing payment cap of $150,000, despite a $200,000 cap aligning with the recommendation of the Royal Commission and the disappointment expressed by survivors over this difference.\(^{56}\)

6.55 In this regard, the Second Year Review raised the lack of support from governments for a revised payment cap, noting that ‘its adoption had been fundamental in the negotiations moving to a national scheme’, and that an increase could risk ‘the maintenance and overall viability of a national voluntary opt-in scheme’.\(^{57}\)

6.56 In considering the benefits and risks to survivors of a revised cap, the Second Year Review noted that a revision ‘would require reassessment of applicants, significantly extending timelines and increasing uncertainty for most applicants’.\(^{58}\) The Review argued that ‘significantly more focus and consensus’ had been placed on ‘the need to address fundamental issues about the Scheme’s operation’ in order to make it a ‘more viable and less traumatic experience for survivors’.\(^{59}\)

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6.57 On balance, the Second Year Review concluded that governments should ‘direct their energy and additional resources towards issues that will improve the integrity and fairness of the Scheme’, including:

...expansion of funder of last resort, improvements to the consistency of decision-making, additional specialist support services for applicants, bespoke outreach, and more communication about progress of applications and how determinations are reached.\(^{60}\)

**Prior payments**

6.58 In examining the role of prior payments, the Second Year Review noted that the NRS’s application of the ‘policy causes confusion and significant distress for applicants’, specifically in cases where prior payments for neglect and physical abuse are taken into account.\(^{61}\)

6.59 The Second Year Review noted that there are some instances where prior payments for non-sexual abuse are deducted from redress payments, specifically in cases where prior payments cannot be separated into sexual and non-sexual abuse, and in cases where prior payments for non-sexual abuse have been made by the same institution found liable for sexual abuse through a redress application.\(^{62}\)

6.60 Additionally, the $5,000 payment for non-sexual abuse under the Assessment Framework was a cause for concern. According to the Second Year Review:

In circumstances... where there has been a prior payment for both non-sexual and sexual abuse which cannot be broken into components, or where there was a prior payment for non-sexual abuse only but a subsequent redress application for sexual abuse by the same institution, the result would be that reduction to the redress payment due to the prior payment could far exceed $5,000.\(^{63}\)

6.61 As a result, the Second Year Review concluded that, ‘applicants are disadvantaged if they identify related non-sexual abuse in their application for which they have received a prior payment’.\(^{64}\)

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\(^{60}\) Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 103.


\(^{64}\) Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 104
6.62 The risk of inconsistency in decisions and outcomes is increased by the lack of clarity on the application of prior payments. An example highlighted by the Second Year Review was in relation to prior Stolen Generation payments:

Applicants who have received Stolen Generation payments should not have those payments taken into consideration as a prior payment. However, the Review was advised that this has occurred on occasion. The reason they should not be considered is that those payments are not intended to relate to or compensate for sexual abuse.

6.63 Nonetheless, the Second Year Review noted that it ‘was made aware of certain prior Stolen Generation payments which may be taken into account for the purposes of the calculation of redress payments’. Specifically:

These include payments relating to the New South Wales class action concerning the Stolen Generation. It is understood that these settlements may include a component for sexual abuse. In this situation, the amount paid for the sexual abuse is separated from the total settlement amount and only that component is taken into account as a relevant prior payment.

6.64 As a result of this inconsistency, the Second Year Review recommended that the application and understanding of prior payments be addressed via legislative amendments that ‘achieve a fair and transparent outcome’ for those who received prior payments, and the provision of clear guidance to both the public and IDMs on the operation of the prior payment provisions.

6.65 The Second Year Review also examined the practice of indexation on prior payments, noting that indexation was a recommendation of the Royal Commission, but that there is nonetheless ‘strong consistency in the opposition to the policy’.

6.66 In its First Interim Report, the Committee recommended either the cessation of the practice of indexation of prior payments, or that it only be applied to the redress application date, rather than the award determination date.

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6.67 The Second Year Review noted that a wide range of stakeholders raised concerns about the practice of indexation, including survivors, redress support groups, the Australian Government, and state and territory governments. The Review was supportive of these concerns, and costed the two options recommended by the Committee.\textsuperscript{70}

6.68 The Second Year Review found that the cessation of indexation would mean an average increase of $2,194 per applicant, while calculating indexation up to the date of application would increase the average increase to $158 per applicant.\textsuperscript{71}

6.69 The cost to NRS operations of removing indexation was approximately 2.59 per cent of total costs or almost $70 million. Applying indexation to the date of application would cost $5.5 million, which equates to 0.17 per cent of the total NRS operation cost.\textsuperscript{72}

6.70 The Second Year Review ultimately recommended the removal of indexation, but failing this that the date of application, rather than the date of offer, be the basis for indexation. Additionally, the Review argued that any changes should be retrospectively applied in the interests of equity.\textsuperscript{73}

\textit{Advance payments}

6.71 The Second Year Review examined current processes for priority applications, noting that the age of applicants had emerged as a significant issue with many priority applications being received by the NRS. Specifically, in its first 18 months of operation, NRS data showed that:

- 19.7 per cent of all applicants were aged 70 or older
- the Scheme had made 69 payments to beneficiaries in respect of 66 deceased applicants; and
- a further 66 applicants were deceased but their application had not been finalised.\textsuperscript{74}

\textsuperscript{70} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 107.

\textsuperscript{71} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, pp. 107-108.

\textsuperscript{72} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 107-108.

\textsuperscript{73} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 117.

\textsuperscript{74} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 111.
6.72 The Second Year Review found that the advice on which applicants require priority processing has been ineffective in ensuring that vulnerable applicants had their applications processed in a timely manner. According to the Review, between July 2018 and December 2020, 57.6 per cent of applications received were granted priority status.\textsuperscript{75}

6.73 The Second Year Review noted that ‘redress staff have encountered significant challenges in implementing and managing the applications prioritisation policy’.\textsuperscript{76} This is evidenced by the average time taken to process priority applications being higher than the overall average processing determination time.\textsuperscript{77}

6.74 In addition to the problems with establishing an effective priority system for urgent applications, the Second Year Review noted that many survivors have lodged applications relating to institutions that have not joined the NRS, or no longer exist. At the time of the Review’s final report, there were 443 applications on hold, including 98 applications lodged between July and September 2018. The Review noted that these applicants ‘have waited a very long time’.\textsuperscript{78}

6.75 These factors led the Second Year Review to recommend the provision of advance payments of $10,000 to eligible survivors who meet certain criteria, including those born before 1944 (1964 for Aboriginal and Torres Strait Islanders) and those with terminal illnesses.\textsuperscript{79}

**Minimum payments**

6.76 At present, there is no set minimum payment under the NRS. According to NRS data provided to the Second Year Review, 42 applicants received redress offers of less than $10,000.\textsuperscript{80}

6.77 The Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse during the 45\textsuperscript{th} Parliament recommended a minimum monetary payment of $10,000, as did the Royal Commission. Two

\textsuperscript{75} Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 111.

\textsuperscript{76} Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 112.

\textsuperscript{77} Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 113.

\textsuperscript{78} Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 114.

\textsuperscript{79} Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 117.

\textsuperscript{80} Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 115.
state and territory governments supported this in their submissions to the Second Year Review, as it would acknowledge ‘the abuse as well as the effort involved in making an application and to date, the lengthy delays in receiving a determination’. 81

6.78 The Second Year Review took a similar view:

Applicants should not wait 13.4 months or more for an outcome – to wait this time for a nil outcome is even more distressing. Acknowledging the impact of child sexual abuse, the Scheme should recognise a standard minimum payment to recognise the abuse and its effects on applicants. 82

6.79 The Second Year Review recommended a minimum redress payment of $10,000 ‘even where a relevant prior payment would otherwise have reduced the redress payment to a lesser amount’. 83

**Payments by instalments**

6.80 The ability to receive redress payments in instalments was recommended by the Royal Commission on the basis that some survivors may not be used to handling such large, lump-sum payments. The Second Year Review examined this issue in its report and agreed that ‘there is benefit in exploring the merits’ of payment by instalment, and noted that this would complement the provision of financial counselling. 84

6.81 While the Royal Commission acknowledged that Aboriginal and Torres Strait Islander survivors were vulnerable to being pressured into spending payments ‘against their wishes and intentions’, the Second Year Review noted that:

...this is not an issue exclusively for the Aboriginal and Torres Strait Islander community – it affects all vulnerable survivor groups. Specific concerns were raised with the Review regarding potential elder abuse in these situations. 85

6.82 According to the Second Year Review, the provision of flexible payment options along with financial counselling would act in a complementary way.

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The Review determined that flexible payments should be explored through the Survivor Roundtable and ‘in consultation with banking institutions’.  

### Counselling and psychological care

**6.83** Consistent with the findings of both the Royal Commission and the Committee, the Second Year Review found that access to redress support services was required ‘before, during and after making an application’.  

**6.84** The Second Year Review noted that the offer of redress counselling came as part of the acceptance documentation. Counselling and psychological care are one component of redress offered to applicants (along with monetary redress and a direct personal response), and no counselling services are offered by the NRS prior to a redress offer being made.  

**6.85** Once the acceptance offer has been submitted, the Second Year Review noted that there is ‘no legal avenue for applicants to subsequently amend their decision’. According to the Review, 67.6 per cent of applicants had opted to accept the offer of redress counselling to 31 December 2020.  

**6.86** After accepting the offer, applicants are provided with counselling and psychological care based on where they live. For Western Australian, South Australian, and overseas residents this component is provided as a lump sum payment, while in New South Wales, Victoria, Queensland, Tasmania, the Northern Territory and the Australian Capital Territory, survivors are referred to a government-funded service.  

**6.87** The Second Year Review noted that in cases where applicants are offered a lump sum payment, the acceptance rates are much higher than in cases where a referral to government-funding services is provided. Between July 2018 and December 2020, more than 90 per cent of applicants accepted lump sum counselling payment offers while in jurisdictions offering referrals acceptance rates sat between 45 and 60 per cent.

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88 Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 120.  
89 Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 120.  
6.88 In the jurisdictions offering referrals, the Second Year Review received data showing that of the 2,008 survivors who accepted offers of redress, only 1,025 of those who accepted offers of redress counselling had sought to access the service. It further noted:

Of these 1,025 survivors, only 204 survivors, or 20% have actually accessed counselling. The Review supports further analysis of this uptake to better shape this redress component and its offering to better understand and meet survivor needs.\textsuperscript{92}

6.89 The Second Year Review sought feedback from survivors on the redress counselling and psychological services offered, which showed that many survivors and survivor advocates believed that the monetary value of the counselling offered was insufficient for complex trauma, and did not accord with the recommendations of the Royal Commission.\textsuperscript{93}

6.90 The Second Year Review noted that survivors in jurisdictions with a lump sum payment are disadvantaged, as the payment ‘may cover the cost of episodic counselling but not ongoing, lifelong counselling’.\textsuperscript{94}

6.91 In states and territories where survivors receive referrals to redress counselling and psychological services, the Second Year Review noted the considerable variation between jurisdictions. The variation covers a wide range of aspects of the counselling services offered, including the amount of counselling offered, the process for accessing more than 20 hours, the accessibility of counselling for survivors who move between jurisdictions, the availability of alternative and culturally appropriate services, the availability of counselling for family members, and consistency between metropolitan, rural and remote areas.\textsuperscript{95}

6.92 The Second Year Review concluded that action needed to be taken to ‘improve the equity, scope and quality of counselling support’.\textsuperscript{96}

6.93 Consequently, the Second Year Review recommended that:

- All survivors have lifelong access to trauma informed redress counselling.

\textsuperscript{92} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 123.

\textsuperscript{93} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 125.

\textsuperscript{94} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 128.

\textsuperscript{95} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, pp. 128-130.

\textsuperscript{96} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 132.
Access to redress counselling should not be determined by the state or territory in which the abuse occurred or where the survivor resides.

The Australian Government should work with state and territory governments to review the current support services and counselling models to ensure survivors receive seamless support.

The Australian Government should work with state and territory governments to ensure that counselling services are culturally appropriate, including Aboriginal and Torres Strait Islander healing approaches, and meet the diversity of survivors’ needs, such as to disability, gender, sexuality and language, consistent with the requirements of the national service standards.

The national service standards should be amended to provide access to redress counselling for families of survivors.97

**Direct personal response**

6.94 According to the Second Year Review, ‘a direct personal response is a foundational NRS element’, which:

…has the potential to provide a unique opportunity for a restorative engagement between a survivor and a representative from the institution(s) responsible for their abuse.98

6.95 In its First Interim Report, the Committee found that survivor uptake of direct personal responses by applicants was extremely low. The Second Year Review received data from the NRS which showed this continues to be the case.99 According to the Second Year Review:

Between 1 July 2018 and 31 June 2020, 2,259 (80.5%) of the 2,807 applicants that accepted an offer of redress also accepted the offer of a direct personal response. Of these, only 178 (or 6.3% of) survivors had requested a direct personal response from the relevant institution, and just over half of these (96 out of 178 applicants) had received a direct personal response (or 3.4% of all accepted offers of redress).100

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99 Joint Standing Committee on Implementation of the National Redress Scheme, *First Interim Report*, p. 43.

6.96 In its consultations, the Second Year Review found that this low rate of uptake was influenced by a range of factors, including a lack of understanding of its purpose and benefits, the possibility of further significant trauma, survivor exhaustion and re-traumatisation from the application process, the need to contact the institution, a lack of trust in institutions, and the COVID-19 pandemic.\textsuperscript{101}

6.97 According to all three surveys commissioned by the Second Year Review, the direct personal response emerged as the ‘most problematic redress element’.\textsuperscript{102} Survey data from survivors who received a direct personal response shed light on this perception:

- 26\% indicated they were not provided with institution contact details
- 41\% did not consider the delivery of the response was in an acceptable form
- 34\% disagreed that they were able to influence the form of the response
- 31\% disagreed with the statement, ‘The direct personal response was extended to me with the courtesy, genuineness and respect intended by the Royal Commission’.\textsuperscript{103}

6.98 The Second Year Review concluded that ‘major revitalisation and process improvements’ are needed to maximise the potential offered by the direct personal response as an element of redress.\textsuperscript{104} Major stakeholders consulted by the Review identified the factors where change is necessary:

- more effective communication to survivors, institutions and scheme staff
- arrangements that better support survivors to request and receive a direct personal response
- coordinated and ongoing training of institutional representatives
- effective oversight of direct personal response delivery and outcomes.\textsuperscript{105}

6.99 To increase both the uptake and quality of direct personal responses, the Second Year Review recommended that governments work with survivors,
advocates, support services, institutions and restorative engagement experts to design an improved process and action plan by 30 November 2021.\textsuperscript{106}

**Access to Review, Funder of Last Resort, Civil Litigation**

*Reviews of decisions and revocation of determinations*

6.100 Applicants for redress are able to have decisions about their eligibility and application outcomes reviewed internally if they are found ineligible or are not satisfied with the redress determination. Institutions do not have this right.\textsuperscript{107}

6.101 The Second Year Review accessed NRS data which showed that approximately 80 per cent of reviews affirmed the original decision, with a small percentage resulting in an increased award, and a small number resulting in a decrease in the redress payment offered to the applicant.\textsuperscript{108}

6.102 During its consultation, the Second Year Review found that there was ‘a high level of hesitation to apply for a review’, as the current approach leaves applicants open to having their redress payment reduced. The Review saw value in addressing this hesitance through legislative changes to ‘provide that all review applications will be on a without prejudice basis’.\textsuperscript{109}

6.103 The Second Year Review noted that requesting a review ‘without having the detailed information about the basis for the decision is a severe handicap for the applicant’. While this information is provided on request by the applicant:

\[\ldots\text{the statement of reasons, as it is currently structured, does not provide sufficient information to communicate the reasons for determinations to survivors. The statement of reasons requires development to ensure survivors are better informed about their decision and the grounds on which they can request a review.}\textsuperscript{110}]

6.104 This in turn requires changes in the way that IDMs develop and present their statements of reasons for decisions. At present, IDMs use an internal policy document which the Second Year Review found contained some

\[\textsuperscript{106} \text{Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 151.}\]

\[\textsuperscript{107} \text{Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 152.}\]

\[\textsuperscript{108} \text{Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 154.}\]

\[\textsuperscript{109} \text{Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 155.}\]

\[\textsuperscript{110} \text{Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 156.}\]
terminology that is ‘unhelpful’, and populate a template with standard phrases to prepare a statement of reasons.\textsuperscript{111} The Review found that allowing more flexibility for IDMs in preparing their statements of reasons would provide applicants with a better understanding of the basic aspects of the decision including ‘how their outcome was arrived at, what was taken into account, what was not considered and why’.\textsuperscript{112}

6.105 Currently, when applicants request a review, they are prohibited ‘from providing additional information’, which means ‘the review decision may not be made on all relevant and available information at the time of the review’.\textsuperscript{113}

6.106 There are separate revocation processes for occasions when ‘the Scheme Operator receives new information that, had the IDM had the information at the time of making the original decision, would have resulted in a different determination’.\textsuperscript{114}

6.107 Less than 80 revocations had been requested in the first two years of NRS operation with limited data being available on many key aspects. The Second Year Review found that better data collection is necessary ‘to inform and contribute to quality assurance in relation to assessment decisions and determinations’.\textsuperscript{115}

6.108 The lack of comprehensive data was attributed to ‘ICT systems not having the functionality to report on review or revocation determinations’, which led the Second Year Review to recommend that functionality be developed to produce data on who initiated requests, the basis for the request, the basis for new decisions, and the period of time taken to process revocations.\textsuperscript{116}

6.109 Additionally, the Second Year Review recommended that the NRS ‘publish and make easily accessible an approved mandatory template for review requests’.\textsuperscript{117}

\textsuperscript{111} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 156.

\textsuperscript{112} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, pp. 156-157.

\textsuperscript{113} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 155.

\textsuperscript{114} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 157.


\textsuperscript{117} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 159.
Funder of last resort

6.110 In the Committee’s First Interim Report, the expansion of funder of last resort provisions was a key consideration, with the Committee both recommending an expansion, and recommending that the Second Year Review consider the matter.

6.111 The Second Year Review noted that there are currently limited circumstances where a jurisdiction can act as the funder of last resort. Institutions must be defunct, a participating government must be equally responsible for the abuse and agree to act as funder of last resort, and the Minister must make a declaration.118

6.112 The NRS supplied the Second Year Review with data indicating that there had been 117 cases where jurisdictions had agreed to be funder of last resort between July 2018 and December 2020. Additionally, 443 applications were on hold as there was no participating institution and no funder of last resort arrangement.119

6.113 This situation left survivors feeling ‘excluded and let down’, and the Second Year Review noted that survivor advocates and redress support services were unanimous in calling for ‘one or more governments [to] act as funder of last resort’.120 State and territory governments expressed ‘some support for a review of the funder of last resort policy’, but also noted the need for comprehensive information on the number of institutions and survivors that are affected, and the estimated costs of expanding funder of last resort provisions.121

6.114 The Second Year Review noted the efforts made by the Australian Government to ensure that all institutions named in applications joined the NRS,122 and supported these measures.123 These measures are discussed in chapter 5.

120 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 162.
122 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 166.
6.115 While reform is helpful for many survivors, there remains institutions that are unable to join the NRS because they are either defunct, or because they have been assessed as not possessing the financial means to join despite being willing to do so. In these circumstances, the Second Year Review recommended that:

The Australian Government and state and territory governments consider a decide how to meet funder of last resort obligations in order to ensure that survivors receive their redress and are not subject to ongoing delays and uncertainty.\(^\text{124}\)

6.116 As discussed in Chapter 5, the recently introduced National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) 2021 seeks to achieve this.

**Civil litigation**

6.117 The Committee’s First Interim Report identified that survivors can choose whether to seek redress for abuse through the NRS, or to seek compensation through civil proceedings. As noted in chapter 5, it is thought that greater numbers of survivors are now choosing to pursue civil options.

6.118 The Second Year Review received feedback from a range of stakeholders on this issue which was consistent with evidence received by the Committee. There are many divergent views. For example, survivors told the Review that the additional stress and trauma involved in civil proceedings made them unattractive, while others highlighted that ‘a civil claim would result in a better outcome’.\(^\text{125}\)

6.119 Redress support services told the Second Year Review that changes in state and territory laws ‘have created significant uncertainty for survivors about the most appropriate avenue for redress’, and that while civil proceedings may result in ‘more appropriate compensation’, there ‘was a lack of support services’ for survivors engaging in this process.\(^\text{126}\)

6.120 The requirement for applicants to waive future rights to take legal action against institutions when accepting an offer of redress was described as

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‘manifestly unfair’ by some submitters to the Second Year Review, whereas institutions argued for the retention of this requirement.\textsuperscript{127}

6.121 The Second Year Review ultimately did not make recommendations on this matter. In its conclusions, it noted that little information is available on trends in civil cases outside Victoria, and that collecting information on these trends ‘would be desirable’. The Second Year Review noted that the Supreme Court of Victoria Institutional Liability List offers one possible model.\textsuperscript{128}

**National Redress Scheme Management**

*National Redress Scheme staffing*

6.122 The Second Year Review identified serious issues in relation to the staffing of the NRS.

6.123 In recognising the work undertaken by DSS in assessing the risks to NRS staff, the Second Year Review noted that it received feedback indicating that ‘the Scheme has yet to address identified staffing and work health and safety issues to the extent necessary’.\textsuperscript{129}

6.124 Further, the Second Year Review found that ‘measures taken by the Scheme to date have not addressed the issues of staff health and wellbeing’, and that some staff felt unsupported by ‘the lack of a unified approach to the delivery of health and wellbeing measures’.\textsuperscript{130}

6.125 Feedback suggested that high levels of staff turnover led to feedback from participants that raised numerous issues with the administration of the NRS. The feedback indicated that the high turnover had:

- caused skills retention problems, leading to confusion, inconsistencies and trauma for both survivors and nominees;
- negatively impacted survivors who had to repeat their story and contributed to some not continuing with the applications; and

\textsuperscript{127} Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 171.

\textsuperscript{128} Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 172.

\textsuperscript{129} Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 177.

\textsuperscript{130} Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 177.
• created an unsustainable situation that lacks a trauma informed approach, and does not provide a single point of contact for applicants.\textsuperscript{131}

6.126 In trying to examine staffing data, the Second Year Review noted that ‘it was very difficult to obtain good quality and timely Scheme staffing data and analytics in response to numerous requests’. According to the Review, the NRS was unable to provide data on key staffing metrics for specific periods, such as permanent and contract staff turnover prior to the machinery of government changes, and the reasons for staff separations between February 2020 and January 2021.\textsuperscript{132}

6.127 As a result, the Second Year Review was unable to report on or analyse staffing turnover for the life of the NRS’s operation.\textsuperscript{133}

6.128 This lack of data notwithstanding, the Second Year Review did note that the ‘dependency on short-term contract staff is a significant risk to the Scheme’. Survivors and support services ‘found high staff turnover both traumatising and distressing’, and all key stakeholders – including NRS staff - expressed ‘a very high level of frustration and disappointment regarding the lack of a sufficient, trauma informed, permanent and stable staff workforce’.\textsuperscript{134}

6.129 While the Second Year Review was unable to provide a detailed analysis regarding contract staff due to a lack of information provided by the NRS, it did note that the information that was provided indicated that a very high proportion – up to 83 per cent – of the Service Delivery staff were on short-term contracts, and that turnover was perhaps as high as 49 per cent over approximately seven months in some areas.\textsuperscript{135}

6.130 The Second Year Review found significant shortcomings in terms of both the application of trauma informed principles, and the broader training provided to staff. Specifically, while the Review noted that staff ‘are often well intentioned’, the approach taken is ‘not trauma informed and has been ill-informed, not understood, haphazard in delivery and communicated poorly to staff’.\textsuperscript{136}

\textsuperscript{131} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 179.
\textsuperscript{133} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 180.
\textsuperscript{136} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 181.
6.131 The Second Year Review found that significant changes were required to ‘eliminate or minimise harm to staff and survivors’. Specifically it noted:

The Scheme should mandate, implement and monitor the provision of clinically designed and delivered training for all redress staff; embed trauma informed principles across the Redress Group; and realign and redefine operational instructions using the experience of clinicians to provide a better experience for redress applicants and survivors.\(^{137}\)

6.132 The Second Year Review’s recommendations on NRS staffing provide a comprehensive pathway to improvement focusing on embedding trauma informed practice, and included:

- formalising the development and implementation of a trauma informed framework;
- analysis of the efficacy of current staff health and wellbeing measures against the trauma informed guidelines;
- finalisation and regular review of the annual Workforce Plan, Risk Management Plan, Mental Health and Wellbeing Plan and Business Plan;
- co-development and implementation of clinically designed selection and recruitment processes;
- mandatory and regular auditing and reporting on the participation of staff in training programs;
- implementation of reflective practices training for all supervisors; and
- significant increases to the cap on staffing levels based on both workforce planning and NRS projections that includes an appropriate skilled surge capacity.\(^{138}\)

**National Redress Scheme management and the redress ICT system**

6.133 The Second Year Review’s examination of the ICT system used by the NRS also identified significant concerns.

6.134 Specifically, the Second Year Review found that the system ‘is not fit for purpose’, and ‘relies on manual workarounds for key operational data’.\(^{139}\)

The Review noted that the current system does not include an end-to-end case management system; allow for online case progression to


\(^{139}\) Ms Kruk AO, *Final Report: Second Year Review of the National Redress Scheme*, March 2021, p. 185.
determinations; minimise the need to rework; or create a single view of applicants. Further, it does not allow for real-time auditable reporting or offer full transparency on workloads.\textsuperscript{140}

6.135 Survivors, redress support services and institutions all reported a range of errors caused by the ICT system that are exacerbated by the case management system and human error. These included:

- incorrect advice and recording of survivors’ information;
- phone calls often not being returned;
- anxiety and frustration caused by high staff turnover;
- unsatisfactory resolution of queries relating to applications;
- a lack of trauma informed principles and cultural sensitivity in processing applications and staff training;
- breaches of protected information including sharing of survivors’ personal stories and information being sent to the incorrect institution;
- and
- insufficient explanation for the basis of a determination.\textsuperscript{141}

6.136 According to the Second Year Review, ‘greater financial investment is required to develop a redress ICT system’ with both the capacity and capability to ‘deliver an end-to-end case management trauma informed service’ that includes the provision of transparency and accountability’.\textsuperscript{142}

6.137 The Second Year Review made recommendations for an independent review of the ICT system that would allow:

- end-to-end business processes with supportable audit function;
- automated workflows which allow concurrent processing and prevent errors passing through sections;
- provide a single point where applications are stored, accessible on a ‘need to know’ basis;
- enable reporting on key performance indicators such as processing times, productivity, workloads and costs; and
- greater transparency, accountability, and guidance for users.\textsuperscript{143}

\textsuperscript{140} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 188.

\textsuperscript{141} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 188.

\textsuperscript{142} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 189.

\textsuperscript{143} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, pp. 192-193.


**Complaints**

6.138 The Second Year Review noted that the NRS received 829 complaints and 308 enquiries in the 15 months to September 2020, placing it in the top three areas of complaints to DSS.\(^{144}\)

6.139 Redress support services told the Second Year Review that survivors ‘interpret delays as a deliberate strategy by government’ to reduce expenses by ‘waiting for them to die’. According to redress support services, ‘survivors need to know how their application is progressing’, and responses like ‘you do not need to do anything else’ need to be improved.\(^{145}\)

6.140 Similarly, DSS reviews of the complaint handling process identified a number of issues. It found that the process which involves up to 11 sections of DSS is fragmented, and that data is poor quality. Further, complaints made often failed to result in a satisfactory response, and the approach taken was considered to lack empathy.\(^{146}\)

6.141 The Second Year Review noted that a number of improvement processes are in place as a result, and recommended that:

> The Australian Government commit to continue improvements in complaint management and reflect these in the Survivors’ Service Improvement Charter. Improvements should include shortening institutional reporting obligation time frames on survivor feedback and complaints received from 12 to six months to allow greater opportunities to identify and address areas of concern in a timely manner.\(^{147}\)

**Institutional responsibility**

6.142 Noting the voluntary nature of participation in the NRS by institutions, the Second Year Review examined the capacity of institutions to effectively participate.

6.143 The Second Year Review recognised that ‘there are a myriad of factors, financial and non-financial, influencing non-government institutions’

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decisions to join the Scheme’, and highlighted a series of key factors and impediments.148

6.144 The financial capacity and liability risk to institutions present a challenge to institutions that are willing to join, but whose ‘financial circumstances mean that they are not eligible to do so’. Specifically:

Submissions from some institutions made the point that, unlike large educational and religious institutions, many of the smaller organisations do not have assets available to underwrite current and/or future applications. They were concerned about the impact of increased civil actions on their overall sustainability.149

6.145 The Second Year Review stated that the liability estimator tool, designed to assist institutions in determining their total redress liability over the life of the NRS, may have overestimated these liabilities and prevented some institutions from joining.150

6.146 In addition, the administrative distinction between lone institutions and participating groups led to concerns about the time and complexity of joining the NRS. Institutions may join the NRS as a lone institution where it is a non-government institution that joins the NRS as a single entity, while participating groups are established by ministerial declaration and involve two or more participating institutions.151

6.147 The Second Year Review concluded that consideration of the factors perceived as causing difficulties for institutions joining the NRS is necessary, and stated its strong support for continuing engagement with key stakeholders to investigate financial arrangements that facilitate participatory smaller institutions. The Review also saw a need for further modelling to understand the impact of increases in applicant numbers after the addition of participating institutions, and a refinement of the on-boarding process and liability estimator tool.152

149 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 199.
152 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 203.
Financial Arrangements

Funding the National Redress Scheme

6.148 Of significant concern is the fact that a specialist consultant told the Second Year Review that the quality of the financial data provided by Services Australia was low. Further, despite making multiple requests over a 10 week period, the consultancy was not provided with a range of key cost data for the first two years of operation of the NRS. ¹⁵³

6.149 The Second Year Review noted that the estimates made by the consultancy on the total departmental costs were ‘not based on data which the Review would have preferred to rely on’. ¹⁵⁴

6.150 The Second Year Review was unable to make recommendations on the appropriateness of institutions’ contribution to the administration of the NRS ‘as it was not provided with actual detailed expenditure data across the life of the Scheme to date’. ¹⁵⁵

Funding and evaluation of redress support services

6.151 Encouragingly, the Second Year Review stated that feedback received on survivors’ experience with redress support services is generally positive. However, according to the Review:

...there is little data about the efficacy of the various services and no completed Scheme data on survivor satisfaction. The findings of the survey of survivors commissioned by the Review are not generalizable given the small sample size and are not a substitute for more systematic analysis. ¹⁵⁶

6.152 The Second Year Review was unable to comment on ‘the efficacy or relative value of the various [redress] support services’, and identified:

...an urgent need to embed survivor experience of all the components of the Scheme into the governance and reporting structures and to undertake rigorous analysis to inform the service mix and distribution of support and specialist services. ¹⁵⁷

¹⁵⁴ Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 205.
6.153 Picking up on the Committee’s identification of ineffective communication with First Nations survivors, the Second Year Review conducted an examination of ‘the extent to which the Scheme may unfairly exclude Aboriginal and Torres Strait Islanders from redress’.  

6.154 The Second Year Review found that the recommendations of the Royal Commission on accessibility to the NRS for First Nations peoples had yet to be implemented, and that eligibility for redress ‘of children living in missions and institutions post 1967 warrants immediate clarification by the Scheme’.  

6.155 In general, the Second Year Review received submissions suggesting that ‘communication methods are not appropriate’ for First Nations survivors, that current material ‘lacks cultural sensitivity’ and that it may not be reaching these survivors through website-based communication methods. For example:

...consultants to the Review reported that Aboriginal and Torres Strait Islander applicants can struggle to explain their abuse, preferring to use nuanced language or slang. This presents a dilemma to support services, as questions seeking clarification such as ‘did it involve penetration?’ are considered leading, and the information gathered is therefore not credible.

6.156 Redress support services told the Second Year Review that in order to complete applications and understand NRS advertising, many First Nations survivors required translation, literacy services and support. The Review noted that of the nine common languages available on the Scheme webpage, none are Indigenous.  

6.157 Similar to findings made by the Committee in chapter 2, the Second Year Review urged the NRS to ‘consider and implement measures to overcome these issues with the current Scheme design’, stating that:

The expectation of unprompted, specific, unfamiliar language to describe abuse raises a significant dilemma for support services dedicated to ensuring that applicants receive appropriate redress. The Scheme should alter the application form to better cater to the needs of Aboriginal and Torres Strait

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159 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 218.
161 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 221.
162 Ms Kruk AO, Final Report: Second Year Review of the National Redress Scheme, March 2021, p. 220.
Islander survivors, such as simplifying the language used, reducing the length and complexity of the form, and including additional information about redress support services.\textsuperscript{163}

6.158 In order to achieve increased engagement and better outcomes for First Nations survivors, the Second Year Review found that:

The Scheme should also take immediate protective steps to co-develop and reset its communications strategy and products through trauma informed and culturally appropriate consultation with the Aboriginal and Torres Strait Islander community to reach Aboriginal and Torres Strait Islander survivors. This is essential to ensure that the redress journey for survivors is trauma informed and culturally appropriate and that survivors are supported through appropriately targeted and funded services in order to achieve a just determination.\textsuperscript{164}

6.159 Similarly, the Second Year Review noted that survivors with disability ‘are significantly disadvantaged by the Scheme application process’, and found that the ‘number of funded disability-specific redress support services’ was inadequate.\textsuperscript{165} According to the Second Year Review:

\ldots some applicants with disability will not have appropriate access to the counselling and psychological care component, due to the limited availability of counsellors who are skilled in working specifically with people with a disability via the Scheme…\textsuperscript{166}

6.160 Many applicants with disability ‘will need support throughout the application process’, and that:

The Scheme should employ designated staff, who represent the target communities, to engage with and support applicants from these communities. Each of the three components of redress should be analysed and adapted so that the Scheme can offer each component in ways that better meet the needs of people with disability.\textsuperscript{167}

6.161 In regard to communication, the Second Year Review raised feedback stating, ‘information and communications technologies and systems used by

\begin{itemize}
\item \textsuperscript{163} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, pp. 222-223.
\item \textsuperscript{164} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 219.
\item \textsuperscript{165} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 215.
\item \textsuperscript{166} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 216.
\item \textsuperscript{167} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 216.
\end{itemize}
the NRS were inaccessible for many people with disability’, and argued that:

…the Scheme must allow a variety of communication methods for people to record their experience of abuse. For example, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability invites people to share their experiences through a range of media, including in writing, over the phone and in a video or audio recording. The National Disability Insurance Scheme allows participants to communicate their needs through Auslan interpreters and symbol-based communication tools such as Proloquo2Go.

6.162 Concerns about the role of ‘gatekeepers’ such as guardians were raised with the Second Year Review, particularly in terms of their role in choices about whether to apply to the NRS. Similarly, survivors in supported accommodation face a situation where ‘the institution that cares for them, may also be the place where they experience abuse’. This raises concerns, as ‘institutions may have a conflict of interest in raising awareness of the Scheme with their clients’, or survivors may hold fears about the quality of their ongoing care should they make an application. The Second Year Review concluded that:

…the Scheme should redesign its application process to accommodate the diversity of communication methods used by survivors. Furthermore, the Scheme should develop a communications plan that targets both survivors with disability, their carers and wider support services. The application process should acknowledge the need for support that many survivors require to complete and recover from the process of documenting their abusive experiences. Furthermore, the application form should include questions that allow applicants to elect the supports they will need to complete their application and to evaluate the Scheme’s trauma informed performance against those requirements.

6.163 As with First Nations survivors and survivors with disability, the Second Year Review noted that the NRS should ‘urgently co-develop a bespoke’

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communication strategy directed towards culturally and linguistically diverse (CALD) survivors.\textsuperscript{172}

6.164 The Second Year Review found that:

The current 2020-21 communication plan identifies the CALD ‘equity of access’ issue. However, the only action highlighted by the Scheme currently to address this issue is to consider the key needs and barriers in this space, and scope possible options forward. The Review found that the Scheme has been advised previously of the key needs and barriers and that what is needed is action.\textsuperscript{173}

6.165 According to the reports commissioned by the Second Year Review:

…electronic and print-based communications are not mindful of access issues or culturally sensitive, Scheme support services are not culturally sensitive, and there is a lack of trauma informed training for staff. Together they found the counselling and psychological services do not account for the cultural needs of people from the CALD community, who would benefit from culturally relevant and sensitive practices and the Scheme promoting culturally sensitive and community controlled support services.\textsuperscript{174}

6.166 Despite this, the Second Year Review noted that ‘there is no Scheme commitment to a bespoke communications strategy, communication products or information relating to the allocation and targeting of funding’ to address this issue. Without such a commitment, the Review stated that the ‘continuation of this gap will maintain the status quo’, and the understanding of the needs of CALD communities and survivors will allow the current perceived lack of CALD applications to continue.\textsuperscript{175}

6.167 The Second Year Review argued that a range of amendments to NRS processes are required to better engage with the CALD community, including:

- amending the application form to make it more culturally sensitive;
- providing information and application forms in a wider range of languages;
- creating linkages between bespoke communication products and survivors to appropriate CALD support services; and

\textsuperscript{172} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 223.

\textsuperscript{173} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 225.

\textsuperscript{174} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 224.

\textsuperscript{175} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 226.
- amending data collection methods so they better capture the diversity of CALD survivors and meet their specific needs.\textsuperscript{176}

6.168 As a result of these findings, the Second Year Review made extensive recommendations on strategies to improve communication and engagement. These included:

- targeted communication strategies to build trust and increase awareness in vulnerable cohorts;
- proactive steps to communicate support service availability; and
- funding for services facilitating First Nations healing approaches, which also meet the diverse disability, gender, sexuality, cultural and language needs of survivors.\textsuperscript{177}

6.169 In addition, the Second Year Review saw a need for expanding access to support services and interventions, recommending that funding go towards improving the scope, quality and geographic spread of support services, including financial counselling. The Review also identified a need for an external evaluation of existing support services, and funding for ‘tailored and targeted responses, including outreach, to vulnerable individuals and cohorts.\textsuperscript{178}

Australian Government Interim Response

6.170 The Federal Government released the interim government response (Interim Response) on the same day as the review was made public.

6.171 The Federal Government has indicated that the final response will be made public in the beginning of 2022, following further consultation with states and territories, and redress support services.

6.172 The Interim Response noted that 25 of the 38 Second Year Review recommendations are being prioritised in full or in part, and that $80 million has been invested over four years to support their implementation.\textsuperscript{179}

6.173 The Interim Response made the point that, where relevant, the agreement of state and territory governments will be sought to support the

\textsuperscript{176} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 225.

\textsuperscript{177} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 228.

\textsuperscript{178} Ms Kruk AO, \textit{Final Report: Second Year Review of the National Redress Scheme}, March 2021, p. 228.

implementation of the accepted recommendations.\textsuperscript{180} The steps taken to implement the accepted recommendations are outlined below.

6.174 In regard to the remaining 13 recommendations, the Interim Report stated that ‘further detailed development work and consultation with survivors, institutions and other stakeholders’ is required, as they ‘constitute major changes to the Scheme’.\textsuperscript{181} A full list of responses to the Second Year Review recommendations is available in Appendix A.

6.175 Bravehearts considered it disappointing that the Federal Government is not prioritising all the recommendations and expressed concern that the decision not to review eligibility criteria, reform the matrix, or make the assessment framework public undermines the overall goal of improving survivor experience of the NRS.\textsuperscript{182}

6.176 CLAN also expressed frustration at the recommendations being prioritised for implementation, stating:

> Basically, it supports those recommendations that are the easiest, cheapest and least disruptive to the entrenched status quo. The Australian government merely noted but did not support 10 recommendations, and we note that were they to be implemented they would be likely to address many of the most common complaints that survivors have with the National Redress Scheme.\textsuperscript{183}

### Implementation

6.177 Both Houses of Parliament passed the *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021* (the September 2021 Act) on 2 September 2021.

6.178 The following sections refer to statements made in both the House of Representatives and the Senate as the bill was debated in both chambers before being passed. Minister Ruston can only speak to the amendments in the Senate, while in the House of Representatives, Minister Tudge represented the government during most of the debate.


\textsuperscript{182} Mrs Silvia Skinner, National Manager of Advocacy and Supports Services, Beyond Bravehearts Foundation, *Proof Committee Hansard*, 16 August 2021, p. 13.

\textsuperscript{183} Dr Frank Golding, Vice President, Care Leavers Australasia Network (CLAN), *Proof Committee Hansard*, 16 August 2021, p. 2.
6.179 The September 2021 Act implements five recommendations made in the second anniversary review. It:

 Introduces advance payments of $10,000;
 amends the calculation process for the indexation of prior payments;
 extends the redress offer acceptance period, and subsequent review timelines;
 removes the need for a statutory declaration when submitting an application; and
 allows redress payments to be made in instalments if requested by the survivor.  

6.180 The Federal Government acknowledged that this is one step towards implementing the agreed recommendations and highlighted the voluntary nature of institutional participation:

…this is a scheme that is voluntarily contributed to and also requires the agreement of states and territories for any changes to the Act. To do otherwise would be in breach of our intergovernmental agreement with the states and territories. This bill reflects the initial action of the government. We have managed to get agreement for five amendments in order to progress five of the recommendations of the two-year review.  

6.181 There is a staged timeline for commencement. Starting with the extension of the review and acceptance periods, all other measures will commence when appropriate arrangements are in place to support their implementation. Minister Tudge noted that all measures will be treated with urgency by DSS. 

6.182 In accordance with recommendation 4.2, the September 2021 Act contains provisions allowing for advance payments, funded by government, to survivors ‘aged 70 years and over, or 55 years and over for Aboriginal and Torres Strait Islander applicants, or terminally ill applicants, or where there are other exceptional circumstances for particularly vulnerable people’.  

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185 The Hon. Senator Anne Ruston, Minister for Families and Social Services, Proof Senate Hansard, 2 September 2021, p. 41.

186 The Hon. Alan Tudge MP, Minister for Education and Youth, Proof House of Representatives Hansard, 26 August 2021, p. 7.

6.183 The advance payments would be available to both new applicants and to survivors who have already lodged applications and are awaiting a determination, with the amount then deducted from the survivor’s final redress payment.\textsuperscript{188}

6.184 The September 2021 Act allows applicants to elect to receive redress payments by instalments and to provide more control of the management of their finances, as per recommendation 4.4. This measure does not impact responsible institutions financial liability.\textsuperscript{189}

6.185 Indexation calculation is also amended, providing for prior payments to be indexed up to the date of application, rather than the date of determination. This reflects recommendation 4.5, and ensures that the time taken to process an application does not negatively effect the amount in the final redress payment. Again, this change does not impact the financial liability for institutions, as the Commonwealth will fund the increase to redress payments. This change applies to all applications, including those made prior to the commencement of this measure.\textsuperscript{190}

6.186 In accordance with recommendation 3.6, the September 2021 Act removes the requirement for a statutory declaration to be submitted with applications, removing an unnecessary barrier that may stop some survivors from applying.\textsuperscript{191}

6.187 Subsequently, on 27 October 2021, the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Bill 2021 (the Bill) was introduced in the House of Representatives, and at the time of writing this report, the Bill was currently being debated.

6.188 This Bill contains two key measures. It implements, in part, recommendation 5.1 by extending funder of last resort arrangements to defunct institutions.

\textsuperscript{188} The Hon. Alan Tudge MP, Minister for Education and Youth, \textit{Proof House of Representatives Hansard}, 26 August 2021, p. 7.


\textsuperscript{190} The Hon. Alan Tudge MP, Minister for Education and Youth, \textit{Proof House of Representatives Hansard}, 26 August 2021, p. 6.

where jurisdictions do not share responsibility for the abuse, and where the relevant jurisdictions agree to act as funder of last resort.\textsuperscript{192}

6.189 The Bill also provides a legislative basis for the public naming of institutions by amending the protected information provisions. It allows for the public disclosure of the participating status of institutions named in applications, thereby providing ‘a stronger, clearer and more administratively efficient basis for the current practice of publicly naming institutions.’\textsuperscript{193}

6.190 The Federal Government was also clear that legislation was not the only way the Department would be implementing the recommendations. Minister Tudge confirmed that work had commenced on simplifying the application form and letters, the provision of increased support to survivors to engage in a direct personal response, and the introduction of more personalised and meaningful engagement with survivors in the early stages of application and throughout the process.\textsuperscript{194}

**First Interim Report commentary**

6.191 The Committee made 14 wide ranging recommendations in the *First Interim Report*.\textsuperscript{195} All recommendations were designed to improve survivor experience, participation rates and improve NRS administration practices, either through recommendations for specific actions or through deeper examination by the Second Year Review. There was widespread support from survivors, advocates, and redress support services for the recommendations in the *First Interim Report*.\textsuperscript{196}

6.192 Catholic Religious Australia noted some concerns regarding recommendation 6, stating that it did not support the removal of a deed of release, or a change to current indexation practices.\textsuperscript{197}

\begin{itemize}
\item \textsuperscript{192} National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funder of Last Resort and Other Measures) Bill 2021, *Explanatory Memorandum* (*Explanatory Memorandum*) p. 6.
\item \textsuperscript{193} National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funder of Last Resort and Other Measures) Bill 2021, *Explanatory Memorandum*, p. 2.
\item \textsuperscript{194} The Hon. Alan Tudge MP, Minister for Education and Youth, *Proof House of Representatives Hansard*, 26 August 2021, p. 8.
\item \textsuperscript{196} Submissions from Mr Mark Jones, Mr Frank Golding, Victorian Aboriginal Child Care Agency, Relationships Australia National Office and Maurice Blackburn Lawyers are examples.
\item \textsuperscript{197} Catholic Religious Australia, *Submission 28*, 29 May 2020, pp. 2-3.
\end{itemize}
The Federal Government indicated that it would not initially respond to the recommendations, but instead refer them for consideration as part of the Second Year Review. The Committee notes that this is not standard practice and resulted in the response being delayed for over 12 months. As clearly stipulated in the First Interim Report, many survivors do not have an additional 12 months to wait for reform of the NRS to begin. In response, one survivor stated, ‘one fails to understand why they haven't been picked up. Why do we have to wait another lengthy period of time for those fairly simple recommendations which are largely procedural.’

The Government Response was tabled in the Senate in September 2021, and supports six of the Committee’s 14 recommendations. Two recommendations are supported in part, one recommendation is supported in principle, and five recommendations were noted.

The Government Response noted that ‘many of the Committee’s key recommendations are being considered under action proposed in response to the Review’, and also highlighted the legislative amendments enacted, which are discussed earlier in this chapter.

Specifically, the expansion of funder of last resort provisions, and the removal of the requirement for statutory declarations were both the subject of equivalent recommendations by the Review and have been supported by Government, and in the case of statutory declarations, addressed through legislative amendment.

Similarly, the Committee recommended that the Second Year Review examine the appropriateness of the use of advance payments, and the Government Response stated that it supported the Review’s recommendation.

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198 Mr Frank Golding, CLAN, Official Committee Hansard, 25 September 2020, p. 2.
200 Australian Government, Australian Government Response to the Joint Select Committee on Implementation of the National Redress Scheme First Interim Report, September 2021, p. 3.
201 Australian Government, Australian Government Response to the Joint Select Committee on Implementation of the National Redress Scheme First Interim Report, September 2021, p. 10.
Six of the Committee’s recommendations relate to areas of focus for the Second Year Review, and the Committee notes that regardless of whether these recommendations were supported or noted in the Government Response, the Review took action to examine these issues and make recommendations accordingly.

A key recommendation of the *First Interim Report* concerning participation of named institutions was supported in part in the Government Response.\(^{204}\)

**Committee Comment**

The Committee sincerely appreciates the work of Ms Kruk, and supports the findings and recommendations of the Second Year Review.

The Second Year Review provides a comprehensive, detailed and well justified pathway to fundamental reform of the NRS. The Committee is pleased that its *First Interim Report* has made a useful contribution to the work of the Second Year Review, and commends Ms Kruk for developing the work of both the current Committee and the Committee of the 45th Parliament, ensuring that the various oversight mechanisms examining the implementation of the NRS work effectively in tandem.

While many of the findings of the Second Year Review are cause for serious concern, the Committee notes that the Second Year Review has set out a clear path to reform. In cases where reform has not been recommended, the Second Year Review identified the issues and gaps encountered. This analysis will provide useful guidance to the NRS as it continues to review its operations.

While the Interim Response and Government Response take steps towards implementing the recommendations of both the *First Interim Report* and the Second Year Review, the Committee notes that a reasonably large number of recommendations have been noted and will be the subject of further consideration.

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6.204 While the Committee acknowledges that many of these recommendations will require unanimous agreement from all participating jurisdictions (state and territory) or make fundamental changes to the NRS, it also recognises that this may be a source of disappointment for many survivors and survivor advocates.

6.205 However, some key measures will act to significantly improve key aspects of the survivor experience of seeking redress through the NRS. For example, legislative changes that introduce advance payments is an important reform, and one that the Committee strongly supports.

6.206 Further, the expansion of funder of last resort provisions will assist many survivors who have made applications that are currently on hold, including former residents of the five Fairbridge farms that will be covered under the provisions. The Committee urges the Government to continue working with states and territories to ensure that as many survivors as possible are covered by these provisions, and welcomes recent legislation aimed at providing a clear legal basis for this.

6.207 Another key outcome from the government response are the actions taken against institutions that decline to join the NRS. In addition to the Jehovah’s Witnesses, these actions further led to another 158 institutions committing to join the NRS. This action alone would have provided welcome relief to hundreds of survivors with applications ‘on hold’ due to having named non-participating institutions.

6.208 In this regard, the Committee welcomes recently introduced legislative amendments aimed at changing the protected information provisions applying to institutions, allowing the practice of public naming to be clarified and strengthened. The application of protected information provisions to institutions has, at times, been a source of frustration to the Committee, and it hopes that these changes will lead to greater transparency in relation to the participation status of institutions named in applications.

6.209 The successes of the Interim Report and the Second Year Review notwithstanding, the Committee has serious concerns regarding many of the findings in the Second Year Review. The inability of the NRS to provide comprehensive and accurate data in many areas, preventing the Second Year Review from being able to draw conclusions and make recommendations in some areas, raises serious questions about the administration of the NRS.

6.210 Additionally, the matters raised in the Second Year Review relating to NRS staffing details a picture of an organisation in need of internal reform. Similarly, the lack of clarity achieved by the Second Year Review around the
costs of administering the NRS are of significant concern. Both aspects demonstrate the need for ongoing scrutiny to ensure that the administration of the NRS improves, and bring to light any failure to achieve meaningful improvement.

6.211 The Second Year Review also highlighted the comprehensive need for reforming the way that vulnerable groups, such as the CALD, First Nations, and disability communities, engage with the NRS. Again, in the Committee’s view, this is a matter that requires rigorous, ongoing scrutiny. Further, it is vital that this scrutiny continue to include a public component.

6.212 Now that the Second Year Review is completed, there is no legislative requirement for future a review of the operation of the Scheme until the conclusion of the eighth year of operation. The Committee believes that continued parliamentary scrutiny is required in the interim period.

6.213 Additionally, parliamentary scrutiny brings advantages that the Second Year Review was unable to realise. The Review was always designed to provide a point-in-time perspective on the administration and operation of the NRS. By its very design, the Review examined the first two years of operation of the NRS, and while valuable, does not necessarily provide the ongoing scrutiny and continuity that will be required to effectively reform the NRS and ensure that the journey of survivors to redress is as positive as it can possibly be.

6.214 In this regard, the Committee sees immense value in a future Parliament establishing a committee to continue monitoring the implementation of the recommendations of the Committee of the 45th Parliament, this Committee, and the Second Year Review.

**Recommendation 21**

6.215 The Committee recommends that the future Parliament consider the establishment of a parliamentary committee to continue the work of providing oversight on the administration and operation of the National Redress Scheme.
Senator Dean Smith
Chair
23 November 2021
## A. Interim Australian Government Response to the Second Year Review

The following table provides a plain English overview of the recommendations made in the Final Report of the Second Year review of the National Redress Scheme, the Interim Australian Government response to the Second Year Review, and a summary of the government commentary to the recommendations. Both documents can be found at [www.nationalredress.gov.au](http://www.nationalredress.gov.au).

<table>
<thead>
<tr>
<th>No.</th>
<th>Recommendation</th>
<th>Government Response</th>
<th>Government Implementation Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Amend the Intergovernmental Agreement so that both survivors and non-government</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td></td>
<td>institutions have formal input into the Nation Redress Scheme’s (NRS) operation.</td>
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<tr>
<td>2.1</td>
<td>Develop and implement a Survivors’ Service Improvement Charter by the end of 2021.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>3.1</td>
<td>Review current application rules, including not being able to apply more than once and not being able to provide additional information.</td>
<td>Notes</td>
<td>This recommendation is a fundamental change and requires further consideration.</td>
</tr>
<tr>
<td>3.2</td>
<td>Amend the eligibility criteria.</td>
<td>Notes</td>
<td>This recommendation requires legislative change and agreement by all jurisdictions via the Ministers’ Board. Further consideration is needed.</td>
</tr>
<tr>
<td>3.3</td>
<td>Review policy guidance for child sexual abuse in a medical setting.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>3.4</td>
<td>Ensure that a ‘reasonable likelihood’ is the standard of proof for all decisions.</td>
<td>Notes</td>
<td>This recommendation is a fundamental change and requires further consideration.</td>
</tr>
<tr>
<td>3.5</td>
<td>End-to-end support for survivors from experienced, culturally appropriate, and trauma-informed professionals.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>3.6</td>
<td>Create a significantly simplified application form.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>3.7</td>
<td>Provide more outreach support for survivors</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
</tbody>
</table>
making an application.

| 3.8 | Explore support options for more vulnerable individuals, Aboriginal and Torres Strait Islander, culturally and linguistically diverse and applicants with disability to apply. | Supports | The Australian Government will explore alternative mechanisms to increase access to the NRS for underrepresented groups. |
| 3.9 | Provide improved guidance, training and resources for Independent Decision Makers. Introduce a Chief independent decision maker. | Supports | Priority for implementation. |
| 3.10 | Improve the outcome letter and statement of reasons. The outcome letter should include the name of the independent decision maker. | Supports in part | Priority for implementation. |
| 3.11 | Change the Assessment Framework to:  
- remove penetrative sexual abuse as the key indicator for extreme circumstances.  
- combine the payment for the impact of sexual abuse with the recognition payment for sexual abuse.  
- acknowledge severe trauma is not exclusively penetrative, but is often equally severe and life-altering. | Notes | This recommendation requires legislative change and agreement by all jurisdictions via the Ministers’ Board. Further consideration is needed. |
<p>| 3.12 | Change the Internal Assessment Guide and the Assessment Framework Policy Guidelines so that they work together. | Notes | This recommendation is a fundamental change and requires further consideration. |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Recommendation</th>
<th>Support</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.13</td>
<td>Make the Assessment Framework Policy Guidelines publicly available.</td>
<td>Notes</td>
<td>This recommendation is a fundamental change and requires further consideration.</td>
</tr>
<tr>
<td>3.14</td>
<td>Review the scope of the protected information provisions in the NRS Law.</td>
<td>Supports</td>
<td>This recommendation requires agreement by all jurisdictions via the Ministers’ Board. Further consideration is needed.</td>
</tr>
<tr>
<td>4.1</td>
<td>Ensure prior payments, including Stolen Generation payments, are treated consistently and that only relevant prior payments are considered by decision makers.</td>
<td>Supports in principle</td>
<td>This recommendation requires legislative change and agreement by all jurisdictions via the Ministers’ Board. Further consideration is needed.</td>
</tr>
<tr>
<td>4.2</td>
<td>Provide advance payments of $10,000 to eligible survivors.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>4.3</td>
<td>Introduce a minimum monetary redress payment of $10,000.</td>
<td>Notes</td>
<td>This recommendation requires legislative change and agreement by all jurisdictions via the Ministers’ Board. Further consideration is needed.</td>
</tr>
<tr>
<td>4.4</td>
<td>Offer payments by instalments.</td>
<td>Supports</td>
<td>This recommendation requires legislative change and agreement by all jurisdictions via the Ministers’ Board. Further consideration is needed.</td>
</tr>
<tr>
<td>4.5</td>
<td>Remove the indexation of relevant prior payments.</td>
<td>Notes</td>
<td>This recommendation requires legislative change and agreement by all jurisdictions via the Ministers’ Board. Further consideration is needed.</td>
</tr>
<tr>
<td>4.6</td>
<td>Introduce equal and lifelong access to redress counselling for survivors and their families. Review current support services and counselling models. Provide culturally appropriate and diverse counselling options.</td>
<td>Supports in principle</td>
<td>Progressing this recommendation requires agreement by all jurisdictions, via the Ministers’ Board. Further consideration is needed.</td>
</tr>
<tr>
<td>4.7</td>
<td>Improve direct personal response processes and options.</td>
<td>Supports in principle</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>5.1</td>
<td>Allow survivors to provide additional information with an internal review request. Publish a template for review requests.</td>
<td>Notes</td>
<td>This recommendation requires legislative change and agreement by all jurisdictions via the Ministers’ Board. Further consideration is needed.</td>
</tr>
<tr>
<td>5.2</td>
<td>Expand funder of last resort provisions.</td>
<td>Supports</td>
<td>Priority for implementation. Progressing this recommendation requires agreement by all jurisdictions, via the Ministers’ Board.</td>
</tr>
<tr>
<td>6.1</td>
<td>Implement a trauma informed framework to inform all actions, policies and interactions within the Scheme.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>6.2</td>
<td>Analyse existing NRS staff mental health and</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
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<td></td>
<td>wellbeing supports.</td>
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<td>6.4</td>
<td>Implement a clinically designed recruitment and selection process for all new NRS staff.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>6.5</td>
<td>Mandate training programs on trauma informed and culturally safe practices; work health, safety and wellbeing; privacy; and protected information for all NRS staff.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>6.6</td>
<td>Implement reflective practices supervision training for all supervisors in the NRS.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>6.7</td>
<td>Increase staffing levels of the NRS.</td>
<td>Notes</td>
<td>The Australian Government is considering current and future resourcing demands for the NRS.</td>
</tr>
<tr>
<td>6.8</td>
<td>Improve the ICT system.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>6.9</td>
<td>Develop an information management strategy including a Minimum Data Set to capture ‘whole of client data’ and key performance indicators.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>6.10</td>
<td>Develop the redress ICT system to ensure ‘whole of client data’ analytics and to enable</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td></td>
<td>real-time reporting and prioritisation of applications.</td>
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<tr>
<td>6.11</td>
<td>Improve complaint management.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>7.1</td>
<td>Fund and develop a targeted communication strategy.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
<tr>
<td>7.2</td>
<td>Provide additional funding to improve the quality, scope and geographic spread of redress support services.</td>
<td>Supports</td>
<td>Priority for implementation.</td>
</tr>
</tbody>
</table>

*Source: Interim Australian Government response to the Final Report of the Second Year review of the National Redress Scheme*
B. Witnesses

Friday, 25 September 2020
via Teleconference

Care Leavers Australasia Network
- Mrs Leonie Sheedy, CEO
- Mr Frank Golding, Vice President

knowmore
- Mr Warren Strange, Executive Officer
- Ms Anna Swain, Acting Principal Lawyer
- Ms Amanda Whelan, Director of Client Services
- Ms Nicole Peyton-Smith, Aboriginal Engagement Advisor
- Ms Lauren Hancock, Law Reform and Advocacy Officer

Victorian Aboriginal Child Care Agency
- Ms Hanina Rind, Senior Program Manager

Financial Counselling Australia
- Ms Fiona Guthrie, CEO
- Mr Peter Gartlan, Project Manager
Monday, 28 September 2020  
via Teleconference  
*Grant Thornton UK – Fairbridge (Restored) Limited (in Administration)*  
- Mr Trevor O’Sullivan, Joint Administrator  
- Mr Chris Laverty, Joint Administrator  
*Healing Foundation*  
- Ms Fiona Peterson, CEO

Friday, 16 October 2020  
via Teleconference  
*Attorney-General’s Department*  
- Mr Michael Kingston, Australian Government Solicitor  
- Mr Michael Johnson, Assistant Secretary  
- Ms Emma Gill, Senior Executive Lawyer  
*Australian Border Force*  
- Mr Daniel Caldwell, Acting Assistant Secretary, Child Wellbeing Branch  
*Department of Social Services*  
- Ms Liz Hefren-Webb, Deputy Secretary, Families and Communities  
- Ms Emma Kate McGuirk, Group Manager, Redress  
- Mr John Riley, Branch Manager, Redress External Engagement  
- Ms Sharon Stuart, Branch Manager, Redress Policy Strategy and Design

Thursday, 26 November 2020  
via Teleconference  
*Private capacity*  
- Mr Frank Golding  
- Mrs Diane Lynn  
- Mr John Everett
In Good Faith Foundation

- Ms Clare Leaney, CEO
- Mr Phillip Lindenmayer, Head of Governance
- Mr Joe Stroud, Head of Government Relations
- Ms Rachel Last, Advocacy and Redress Manager

West Australian Stolen Generations Aboriginal Corporation (Yokai)

- Mr James (Jim) Morrison, Chair
- Mr Keith Bodman, Executive Secretary
- Mr Brendan Loizou, Legal Consultant

Kimberley Stolen Generation Aboriginal Corporation

- Mrs Tania Bin Bakar, CEO

Tuesday, 8 December 2020

Parliament House, Canberra

Department of Social Services

- Ms Kathryn Campbell AO CSC, Secretary
- Ms Emma Kate McGuirk, Group Manager, Redress
- Mr John Riley, Branch Manager, Redress External Engagement and Communications

Friday, 22 January 2021

via Videoconference/Teleconference

Department of Social Services

- Ms Liz Hefren-Webb, Deputy Secretary, Families and Communities
- Ms Emma Kate McGuirk, Group Manager, Redress
- Ms Sharon Stuart, Branch Manager, Redress Policy Strategy and Design
- Mr John Riley, Branch Manager, Redress External Engagement and Communications
Thursday, 11 March 2021
via Teleconference

*Relationships Australia Northern Territory*

- Ms Mary Wellington, Manager, Adult Specialist Support Services

*In Good Faith Foundation*

- Ms Clare Leaney, CEO
- Mr Joe Stroud, Chief Operating Officer
- Mr Phillip Lindenmayer, Head of Governance
- Ms Rachel Last, Advocacy and Redress Manager

*Child Migrant Trust Inc.*

- Dr Margaret Humphreys, International Director
- Mr Ian Thwaites, Assistant Director (Services)

*Private capacity*

- Mr Mark Jones

*Micah Projects*

- Mr Darcy Orr, Team Leader

Monday, 16 August 2021
via Teleconference

*Care Leavers Australasia Network*

- Mrs Leonie Sheedy, CEO
- Dr Frank Golding, Vice President

*Private capacity*

- Mr David Hill

*Beyond Brave*

- Mrs Silvia Skinner, National Manager of Advocacy and Support Services
knowmore Legal Service

- Mr Warren Strange, CEO
- Mr Simon Bruck, Principal Lawyer
- Mrs Amanda Whelan, Director of Client Services
- Mr Dean Bell, Manager - Aboriginal and Torres Strait Islander Engagement Team
- Ms Jasmine Jevaherjian, Acting Law Reform and Advocacy Officer
- Ms Lisa van Toor, Lawyer and Acting Law Reform and Advocacy Officer

People with Disability Australia

- Ms Karen Kobier, Manager and Specialist Advocate, Redress Project

Wednesday, 18 August 2021

via Teleconference

The Healing Foundation

- Ms Fiona Cornforth, CEO

Link-Up QLD

- Ms Patricia Thompson, CEO
- Ms Virginia Clarke, Redress Counsellor

Yokai

- Mr Keith Bodman, Executive Secretary
- Mr Brendan Loizou, Consultant/Project Consultant

Victorian Aboriginal Child Care Agency

- Mrs Bindi Jose, Executive Manager - Statewide Programs
- Mrs Sarah Gafforini, Director, Office of the CEO

Link-Up NSW

- Mrs Lisa Polyblank, Redress Counsellor

Kimberley Stolen Generation Aboriginal Corporation

- Mrs Tania Bin Bakar, CEO
Private capacity

- Ms Robyn Kruk AO, Independent Reviewer

Department of Social Services

- Ms Liz Hefren-Webb, Deputy Secretary, Families and Communities
- Ms Emma Kate McGuirk, Group Manager, Redress
- Mr John Riley, Branch Manager, Redress External Engagement

Monday, 11 October 2021

via Teleconference

Danila Dilba Health Service

- Mr Jahmayne Coolwell, SEWB Team Leader

Private capacity

- Mr David Hill

Helping Families Heal

- Ms Christabel Chamarette, Clinical Director

Victim Support Service

- Ms Sarah Scammell, General Manager
- Mrs Helena Van Schalkwyk, Acting Team Leader Client Services/Counsellor

Private capacity

- Ms Michelle Ring
C. Submissions

1. Ms Ellen Bucello*
2. Carolyn U*
3. Pourus Barucha*
4. Name Withheld*
5. Mr John Skewes*
6. Mr Philip Hodges*
7. Name Withheld*
8. Pastor Bob Cotton*
9. Mr Frank Golding*
   - 9.1 Supplementary to submission 9
10. Confidential*
   - 10.1 Supplementary to submission 10
11. Mr Nick Webster*
12. Dr Anandashila Saraswati*
13. Shine Lawyers*
14. Uniting Church Australia Redress Ltd*
   - 14.1 Supplementary to submission 14
15. Saines Lucas Solicitors*
16. Anglican Church Australia *
17. CLAN - Care Leavers Australasia Network *
17.1 Supplementary to submission 17
18 Jesuit Social Services*
19 Relationships Australia Victoria*
20 knowmore*
   20.1 Supplementary to submission 20
   20.2 Supplementary to submission 20
21 Yokai
   21.1 Supplementary to submission 21
22 Mrs Diane Lynn
   22.1 Supplementary to submission 22
23 The Salvation Army Australia Territory
24 Rationalist Society of Australia
25 Tuart Place
26 Maurice Blackburn Lawyers
   26.1 Supplementary to submission 26
   26.2 Supplementary to submission 26
27 Australian Catholic Redress Ltd
28 Catholic Religious Australia
29 Irene Shea
30 Healing Foundation
31 Say Sorry
33 John Everett
   33.1 Supplementary to submission 33
34 Victorian Aboriginal Child Care Agency
35 John Dallimore
37 The Prince’s Trust
38 Frank Golding
39 Children in Care Collective
40 Mr Warren Porter
41 Name Withheld
Robert Sherriff
Mark Jones
In Good Faith Foundation
Prof Kathleen Daly and Juliet Davis
Christian Congregation of Jehovah’s Witnesses (Australasia)
Tammy Hamers
Queensland Law Society
People with Disability Australia
  50.1 Supplementary to submission 50
Name Withheld
Kimberley Stolen Generation Aboriginal Corporation
Mr Jason Starling
Tracie Oldham
Relationships Australia
Australian Baptist Ministries
Name Withheld
Christine Gow
Mr David Hill
Ms Michelle Ring

Note: All submissions received prior to the First Interim Report being tabled are marked with an asterisk (*)