

# FINAL REPORT

## Second year review of the National Redress Scheme

Ms Robyn Kruk AO

# Letter of transmittal

Senator the Hon. Anne Ruston MP  
Minister for Families and Social Services  
CANBERRA ACT 2600

Kathryn Campbell AO CSC  
Secretary, Department of Social Services  
GREENWAY ACT 2900

Dear Minister and Secretary

Following my appointment to conduct the second anniversary review of the National Redress Scheme, I am pleased to provide you with my report and recommendations according to the terms of reference outlined in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act). The report and recommendations also have regard to the findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse in the *Redress and civil litigation report 2015*, the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and the Joint Select Committee on Implementation of the National Redress Scheme.

In undertaking this Review, I have consulted with key stakeholders of the Scheme, including; representatives of the survivor community, Aboriginal and Torres Strait Islander survivors, survivors with disability, care leavers, advocacy groups, support services provider groups, institutions, the Ministers' Redress Scheme Governance Board, and the Commonwealth and state and territory governments.

My Review concludes that the National Redress Scheme is strongly committed to assisting survivors of institutional child sexual abuse. The Review identifies a number of significant administrative, policy and procedural matters that need to be improved to ensure that the Scheme meets its statutory objectives, facilitates greater accessibility and support to survivors and provides a more trauma informed experience that is responsive to survivors of institutional sexual abuse.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Robyn Kruk', with a large, stylized initial 'R' and a long horizontal stroke extending to the right.

Robyn Kruk AO

26 March 2021

**Trigger warning: This report contains explicit references to material that may be traumatising or upsetting. Reader discretion is advised.**

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# Acronyms and abbreviations

AAT:	Administrative Appeals Tribunal.
The Act:	<i>National Redress Scheme for Institutional Child Sexual Abuse Act 2018.</i>
Assessment Framework:	<i>National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018.</i>
CALD:	Culturally and linguistically diverse.
CLAN:	Care Leavers Australasia Network.
COAG:	Council of Australian Governments.
CPC:	Counselling and psychological care.
department:	Department of Social Services.
DPR:	Direct personal response.
DPR Framework:	<i>National Redress Scheme for institutional Child Sexual Abuse Direct Personal Response Framework 2018.</i>
IDM:	Independent decision maker.
IGA:	Inter-governmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse.
Independent Reviewer:	Ms Robyn Kruk AO, appointed as the Independent Reviewer for the purpose of conducting the Second Year Review.
Minister:	The Minister for Families and Social Services, Senator the Hon. Anne Ruston.
Ministers' Board:	Ministers' Redress Scheme Governance Board.
NRS:	National Redress Scheme.
Review:	The Second Year Review of the National Redress Scheme, led by the Independent Reviewer.
Review Report:	The final report of the Second Year Review of the National Redress Scheme.
RFI:	Request for information.
Royal Commission:	Royal Commission into Institutional Responses to Child Sexual Abuse.
RSS:	Redress support service.

The Rules: *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018.*

Scheme: National Redress Scheme for Institutional Child Sexual Abuse.

Scheme Operator: Kathryn Campbell AO CSC, the Secretary of the Department of Social Services.

# Executive summary

The Royal Commission into Institutional Responses to Child Sexual Abuse recommended a national redress scheme that is survivor-focused, trauma informed and accessible to all survivors. The Review concludes that a significant and urgent reset of the National Redress Scheme (the Scheme) is required to deliver on the commitments of governments, provide survivors with an acknowledgment that the abuse should not have occurred and confirm that the Scheme is a survivor-centred, humane and less onerous option than civil action.

## ***Maintaining shared commitment to a National Redress Scheme***

The establishment of the Scheme was a significant achievement which has been described as requiring unprecedented cooperation between Commonwealth, state and territory governments and institutions. The referral of state and territory powers to the Commonwealth is not something that happens frequently, easily or without careful consideration. This demonstrated shared preparedness to take responsibility for past abuse and to commit to child safe practices contributes to the healing of survivors by acknowledging that the abuse should not have occurred and that it should not occur again.

Significant momentum was lost before the Scheme formally commenced and awareness of its existence is now limited. Governments have also introduced changes to facilitate access to civil compensation processes and have made alternative pathways for compensation more accessible, with potentially more lucrative outcomes, but subject to higher standards of proof. The Review concludes that there remains a strong commitment to the original objectives that led to the set-up of the Scheme.

The Review acknowledges the extensive and vital input from survivors and the cooperation it received from all key stakeholders and Scheme staff. The work of the parliamentary joint select committees and access to their public submissions is also appreciated and made it possible to engage broadly despite COVID-19 constraints.

Problems identified are not new to survivors and key stakeholders and have been extensively diagnosed. Many are systemic in nature. In some instances, strategies have been developed and ministerially supported and changes are being progressed. Others may have been overshadowed in earlier processes to address significant backlogs or are awaiting the outcome of this Review.

There is 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. There is consensus in many key areas of the need to improve survivor experience; hold institutions accountable; strengthen the levers being utilised to facilitate non-government institutions signing on; support Scheme integrity; increase transparency; drive ongoing improvement of Scheme operation and performance; and address unintended or negative survivor

consequences identified in the Scheme's early conduct linked to legislation, policy and practice.

There is also a strong recognition of the importance of maintaining the underpinning elements that enabled a national Scheme to be developed. There was strong opposition to changes that potentially require wholesale reassessment and risk traumatisation of survivors or threaten the viability and ongoing engagement of all jurisdictions in the opt-in Scheme.

The window for making meaningful changes to the Scheme is now extremely limited. The Review has focused on those issues that have the most potential for improving survivor participation and experience with the Scheme and sustaining scheme viability. This includes facilitating greater access for people who are likely to be eligible and are not aware of the Scheme or reluctant to access it because of negative reports about its operation.

### ***Improving survivor experience***

The Scheme's enabling legislation states, 'Redress under the Scheme should be survivor-focussed'. It currently is not. Findings acknowledge the significant work underway and the commitment of the Scheme Operator and key redress staff to drive improvement. However, they strongly reaffirm that the Scheme processes need a fundamental reset at this point if it is to be a viable avenue that survivors are prepared to use in line with the vision of the federated partnership and the Royal Commission.

### ***Access and applying for redress***

Recommendations acknowledge that significant changes are required to meet current statutory obligations to survivors and to meet the key Royal Commission objective that the process be simpler, more flexible, easier to use and fair and that it should achieve the right balance between detail and flexibility, where flexibility is consistent with achieving justice for victims.

The Review reaffirms the importance of more assertively increasing awareness of the Scheme and explaining how it differs from other redress schemes and civil litigation. It recommends targeted communication strategies to reach Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities and people with disability. This is based on strong feedback from those communities and the lower than anticipated participation of some of these communities in the Scheme. Only 30% of survivors currently receive support from funded support services during the application process. End-to-end support for survivors is recommended, acknowledging the inherent trauma involved in making the application. Counselling, legal and financial support should be available from the outset and throughout the process, including during requests for direct personal responses.

The Review recommends significant streamlining and simplification of the application process and streamlining of the decision-making processes to ensure they are more consistent and reflect a standard of proof less onerous (reasonable likelihood) than applied in civil action. It recommends various measures to ensure that the Scheme gives greater prominence to

survivor-focused and trauma informed practices and holds itself publicly accountable for their achievement. It recommends the removal of the requirement for a statutory declaration in line with contemporary practice. It specifically identifies some simple measures that can be implemented immediately to signal the acknowledgment of change, making the website and portal clearer and simpler to use, putting the name of the Scheme contact person and/or decision-maker on any letters and providing assurances that survivors will have a current contact name for all their future interactions with the Scheme. It recommends ways of ensuring that decision letters about redress payments have reasons for the Scheme's decisions written in plain English.

It strongly recommends embedding the survivor voice in governance structures, formalising the Survivor Roundtable, providing strengthened complaint processes and facilitating public reporting through a Survivors' Service Improvement Charter, which would be a mechanism that allows funding partners to publicly commit to improving and facilitates ongoing feedback on the survivor experience.

### ***Assessing abuse***

The Review heard very strong and consistent concerns about the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2019* (Assessment Framework) that related to its adequacy in assessing the severity and impact of abuse, the lack of transparency and inconsistency in its application (including consideration of prior payments) and the lack of reasons being provided for decisions. The Review also tested and modelled various options to address specific concerns raised by survivors. Based on the experience of survivors and other key stakeholders, the Review recommends specific amendments to the Assessment Framework and supporting policies to improve Scheme integrity and consistency of decision-making and survivor experience. The Review believes the recommended changes will address some, but not all, of the limitations of the current Assessment Framework. The recommendations focus on those issues that have the most potentially deleterious impacts on survivors and Scheme integrity and therefore merit urgent consideration. The focus of the recommended changes is on providing greater clarity about the level of required proof throughout the whole process, the assessment of the type and severity of abuse, and the consideration of the appropriateness and necessity of medical procedures; and achieving greater consistency in defining and applying the prior payments provisions. The Review also recommends that the Assessment Framework and key operational documents be made public in line with contemporary practice.

The Review acknowledges the practical challenges and significant personal impacts and risks to Scheme viability of changing the fundamental rules underpinning the Scheme. There is no indication that these changes will receive the required consensus from state and territory governments and non-government institutions, and this potentially poses the risk of further delay and trauma for applicants. The Review has identified a need for legislative change and

clarification of policy to improve the efficiency of the Scheme and the survivor experience and to improve consistency of decision-making and the integrity of the Scheme.

The Review does not support increasing the existing payment cap from \$150,000 to \$200,000; however, it notes that average survivor payments have been larger than initially anticipated by the Royal Commission. The Review recommends a minimum payment in accord with Royal Commission and joint select committee recommendations and advance payments of \$10,000 for eligible survivors born before 1944, or 1964 for applicants that identify as Aboriginal and Torres Strait Islander; and those with terminal illness.

### ***Eligibility***

In contrast to the Royal Commission recommendations, the Scheme included restrictions on eligibility that particularly disadvantage children, non-citizens without permanent residency status and prisoners. The last-mentioned group is of significant and immediate concern given the representation of child abuse survivors in the prison population. The Review understands that some of these restrictions reflected concerns regarding Scheme reputation and integrity and uncertainties at the time regarding projected numbers of applicants. The downgrading of the anticipated number of applicants likely to apply for the Scheme over two successive years supports the need for more proactive promotion of the Scheme and a re-examination of Scheme eligibility settings.

The Review heard the restrictions on prisoners potentially deny individuals who were the subject of institutional child sexual abuse the opportunity to apply for redress. The restrictions are confusing and poorly understood and appear to be deterring eligible applicants from applying. This has a differentially adverse impact on Aboriginal and Torres Strait Islander survivors. Given the experience over the past two years, there is now greater certainty about the predicted number of applicants and the unintended consequences of some of the current restrictions. The Review makes a number of recommendations to amend eligibility criteria for prison inmates, non-citizens and non-permanent residents who were abused in Australia.

Recommendations also identify measures to achieve greater consistency in the application of a balance of proof that was intended to be lesser than the common law standard. Policy advice on the definition of child sexual abuse and abuse in medical settings also needs to be amended.

### ***Redress payments, counselling and apologies (direct personal responses)***

The Review recommends greater clarity on what prior payments to survivors are considered relevant and defining those that are not, including Stolen Generation payments. It recommends the removal of indexation of prior payments.

The Review notes the low uptake of both counselling supports and direct personal responses and reaffirms the need for greater Scheme oversight and reporting of these two important redress components. The lack of readily accessible, culturally appropriate and safe support services contributes to ongoing trauma and poor survivor experiences. A number of

recommendations are made to provide greater counselling support throughout the entire application process and increasing access, especially in regional and remote areas, flexibility, cultural relevance and equity in counselling supports, noting the variations between states and territories. All key stakeholders, while very supportive of the direct personal response model, considered it the most problematic redress element. Recommendations are made to improve the very low uptake and quality of direct personal responses and apologies, building on the very high initial rate of interest from survivors in pursuing this option.

### ***Funder of last resort***

The Royal Commission recommended that governments provide ‘funder of last resort’ funding to meet any shortfall where an institution no longer exist. The current legislative arrangements limit funder of last resort obligations to where an institution is defunct and participating state/territory governments share equal responsibility. This has a significant impact on survivors, with 4.9% of applications (443) currently on hold for up to two and half years because the responsible institution no longer exists, there is no funder of last resort or the responsible institution has declined or been unable to join the Scheme. Over 63% (of the 443 applications currently on hold) were lodged in 2018 to 19.

The Review notes that over 117 funder of last resort payments have been made by state/territory governments to date.

On 24 March 2021, the Australian Government announced that five former Fairbridge farm schools across five states will now be covered by the National Redress Scheme allowing survivors of these institutions to have their applications progressed. The Commonwealth, New South Wales, South Australian, Tasmanian, Victorian and Western Australian governments have agreed to be a funder of last resort for the Molong, Drapers’ Hall, Tresca, Northcote and Pinjarra Fairbridge farm schools. The Review supports the strong action being taken by governments to encourage remaining institutions to sign up to the Scheme. The Review notes the recent commitment by Jehovah’s Witnesses to join the Scheme.

The Review recommends that governments agree to share responsibility to provide funder of last resort funding, with priority being given to cases where there is no responsible institution and where institutions are willing to join but unable to meet the requirement to join the Scheme, in most cases due to financial constraints, recognising a broader social responsibility for institutional child sexual abuse. The Review believes every effort should be made by governments to minimise the length of time survivors are waiting to receive redress.

### ***Staffing capability and support***

The Review makes a number of recommendations regarding upskilling and support of staff and management information systems to support an effective Scheme.

It reaffirms that, for the Scheme to be survivor focused and trauma informed, it is critical that staff be appropriately skilled and supported. Reliance on short-term contract staff, with extremely high turnovers and training overheads, is neither effective nor efficient in providing

a consistent operating framework to meet Scheme integrity requirements and a truly survivor-focused service. The Review recommends that permanent Average Staffing Level caps be lifted for the Scheme's duration. A suite of measures is recommended to strengthen recruitment, training, support and supervision to improve both survivor and staff health and wellbeing.

The Review specifically highlights the importance of uplifting capability and support of front-line staff and staff in decision-making positions in relation to the Scheme's prescribed level of proof, reasonable likelihood. It emphasises the importance of staff training to improve the quality of conversations they have with survivors and highlights the importance of building capability and lifting organisational performance.

It acknowledges that many of the Scheme's applicants will have little trust in government institutions and are very vulnerable. This reinforces the need to embed a diverse workforce that is understanding and able to provide a culturally safe and appropriate entry point to the Scheme. The Review supports the employment of designated staff who represent the target communities, to engage with and support applicants from these communities.

### ***Scheme information management systems***

Survivors, support services, non-government institutions and state and territory governments place high value on the need for robust administrative processes and information management systems that can effectively track applications; provide accurate information; and assist in improving quality, consistency and timeliness of decision-making. The current system, the redress ICT system, cannot do so. Of concern to the Review were the number of off-system workarounds and the inability to readily provide data in some areas. The Review recommends further investment in program and information management systems to effectively assist with planning, improve quality of data and support the Scheme into maturity.

### ***Funding arrangements***

The Review identified that funding arrangements and internal evaluation processes in respect of support services are inadequate. The Review recommends increased communication in relation to the Scheme and changes to improve accessibility and engagement of support services, including additional funding to improve the quality, scope and geographic spread of support services to ensure all vulnerable individuals and cohorts can access support services.

### ***Conclusions***

The feedback of survivors has been consistent about the need for change. It is reinforced by survivor support organisations, departmentally commissioned work, institutions, state and territory governments and two parliamentary reviews. As the Scheme is approaching its third year of operation, the window to effectively and meaningfully introduce change is extremely limited. It will require the same unprecedented cooperation by all governments that enabled the Scheme's establishment. The Scheme's value to survivors needs to be highlighted,

commitment to change demonstrated and the survivor voice embedded into Scheme governance to ensure ongoing responsiveness to change.

# Recommendations

## Improving survivor experience

### ***Recommendation***

The Australian Government provide all survivors with end-to-end support by experienced, culturally appropriate, and trauma-informed professionals. (Recommendation 3.5)

### ***Recommendation***

The Australian Government develop a significantly simplified application form that:

- a. Includes the provision of more assertive support, including culturally appropriate and easily understood information, to assist in the completion of the application.
- b. Includes the nominee form.
- c. Removes the statutory declaration requirement and simplifies identity checks.
- d. Removes the requirement to provide banking details in the application form, deferring this requirement until a determination is made. (Recommendation 3.6)

### ***Recommendation***

The Australian Government provide more assertive outreach support or assist applicants in the completion of their applications. This should include better access to enhanced front-end financial, legal, psychological, Indigenous and disability support services to minimise trauma and assist survivors to obtain better outcomes. (Recommendation 3.7)

### ***Recommendation***

The Australian Government explore, for consideration, alternative mechanisms to facilitate access to the Scheme for more vulnerable individuals, Aboriginal and Torres Strait Islander, culturally and linguistically diverse and applicants with disability, including but not limited to face-to-face application assistance. (Recommendation 3.8)

### ***Recommendation***

The Australian Government undertake the following actions to improve the equity, scope and quality of counselling support:

- a. All survivors have lifelong access to trauma informed redress counselling.
- b. Access to redress counselling should not be determined by the state or territory in which the abuse occurred or where the survivor resides.
- c. 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.
- d. 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.
- e. The national service standards should be amended to provide access to redress counselling for families of survivors. (Recommendation 4.6)

### ***Recommendation***

In order to increase the uptake and quality of direct personal response, the Australian Government work with state and territory governments together with survivors, nominees, advocates, support services, institutions and restorative engagement experts to co-design an improved direct personal response process. This work needs to consider:

- a. Identifying and removing barriers (legislative or otherwise) to allow facilitation of a direct personal response by someone other than the survivor.
- b. Offering better support to survivors by providing for the appointment of dedicated liaison officers to individual survivors, where requested by the survivor.
- c. The merits of professional facilitation of face-to-face direct personal responses, particularly where there is survivor feedback regarding the quality of the delivery.
- d. The Inter-jurisdictional Committee taking responsibility for developing, implementing, monitoring and reporting on these changes.
- e. Developing a direct personal response action plan for implementation by 30 November 2021. (Recommendation 4.7)

### ***Recommendation***

The Australian Government provide greater access to survivor support services and interventions including:

- a. Additional funding to improve the quality, scope and geographic spread of appropriately skilled and relevant support services. This should include financial counselling.
- b. The commissioning of an external impact evaluation of all existing support services to ensure they are trauma informed and survivor focused.
- c. The funding of services that are able to provide tailored and targeted responses, including outreach, to vulnerable individuals and cohorts. (Recommendation 7.2)

### ***Recommendation***

The Australian Government develop and implement through a co-design process a Survivors' Service Improvement Charter by the end of 2021. The Charter should:

- a. Include service standards to improve survivor experience.
- b. Be reflected in Scheme rules, the inter-governmental agreement and key governance and performance documents and contracts with support services.
- c. Provide a service guarantee to survivors including:
  - i. Guaranteeing survivor information is safe and secure.
  - ii. Setting expectations regarding service delivery, transparency and accountability.
  - iii. Providing surety regarding responsiveness and resolution of issues.
- d. Establish a robust feedback loop to ensure the survivor voice is embedded throughout the Scheme. (Recommendation 2.1)

### ***Recommendation***

The Australian Government review the current restriction on survivors making a single application, and assess this requirement to ensure fairness to the survivor and to acknowledge any changes in their circumstances or additional available information. (Recommendation 3.1)

### ***Recommendation***

The Australian Government amend the eligibility criteria to include a single application process for all applicants. This process should also allow for applications to be made by the following survivors:

- a. Non-citizens.
- b. Non-permanent residents.
- c. Prisoners.
- d. Those with serious criminal convictions.
- e. Care leavers if they were abused in care over the age of 18 and under the age of 21 prior to 1 November 1974. (Recommendation 3.2)

### ***Recommendation***

The Australian Government amend the Act, the Assessment Framework, policy and guidelines to establish a 'reasonable likelihood' standard of proof for all decisions relating to an application. (Recommendation 3.4)

## **Delivering better outcomes and enhancing fairness and integrity**

### ***Recommendation***

The Australian Government amend the Assessment Framework to:

- a. Remove the sole requirement for the existence of penetrative sexual abuse as the key indicator of severity of abuse and for the existence of extreme circumstances.
- b. Combine the separate payment for the impact of sexual abuse with the recognition payment for sexual abuse, recognising the impacts of child sexual abuse on the lives of every survivor.
- c. Avoid the use of the term 'penetrative' to acknowledge severe trauma is not exclusively penetrative, but is often equally severe and life-altering. (Recommendation 3.11)

### ***Recommendation***

The Australian Government provide advance payments of \$10,000 to eligible survivors born before 1944, or 1964 for applicants that identified as Aboriginal and Torres Strait islander, and those with terminal illnesses. The Scheme will adjust gross redress payments for these survivors by a corresponding amount. (Recommendation 4.2)

### ***Recommendation***

To acknowledge the impact of child sexual abuse, the Australian Government provide a minimum monetary redress payment of \$10,000, even where a relevant prior payment would otherwise have reduced the redress payment to a lesser amount. (Recommendation 4.3)

**Recommendation**

The Australian Government investigate the demand for payment by instalments and other flexible payment measures that support survivor interests, in consultation with survivors, their advocates and support services. (Recommendation 4.4)

**Recommendation**

The Australian Government make the Assessment Framework Policy Guidelines publicly available through removal of existing legislative protections to achieve greater transparency in decision-making and consistency with contemporary practices of other government schemes. (Recommendation 3.13)

**Recommendation**

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. (Recommendation 3.14)

**Recommendation**

The Australian Government remove the indexation of relevant prior payments.

In the case where the Australian Government determines the indexation of prior payments should remain, the Review recommends the calculation of indexing at the date of receipt of an application and not the date of offer. For reasons of equity, any change should be applied retrospectively to 1 July 2018. (Recommendation 4.5)

**Recommendation**

The Australian Government review the process for redress internal review and amend the legislation to:

- a. Allow for the provision of additional information with an internal review request.
- b. Ensure all reviews are to be without prejudice to the original determination (i.e. original payment determination cannot be reduced on review).
- c. Publish and make easily accessible an approved mandatory template for review requests. (Recommendation 5.1)

### ***Recommendation***

The Australian Government and state and territory governments consider and 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. Where an application names a responsible institution that is not participating in the Scheme and a determination would otherwise be suspended or delayed, governments should prioritise declaring themselves as the funder of last resort for:

- a. Named institutions that are defunct and where no link to a parent or government institution can be found.
- b. Those named institutions that have been assessed to not possess the financial means to join the Scheme but are willing to do so. (Recommendation 5.2)

### ***Recommendation***

The Australian Government review the application of policy guidance regarding child sexual abuse in a medical setting, amend inconsistencies and provide greater clarity for independent decision makers in the exercise of their judgement. (Recommendation 3.3)

### ***Recommendation***

The Australian Government strengthen consistency and integrity in decision-making through actions including but not limited to:

- a. The Australian Government providing accurate and clear policy guidance to independent decision makers.
- b. The Australian Government, as a priority, reviewing and improving the information and training resources provided to independent decision makers.
- c. The Australian Government creating the position of a Chief independent decision maker to provide a systemic focus on Scheme integrity, quality assurance and consistency in decision-making.
- d. The development of a de-identified case database, available to assist independent decision makers. (Recommendation 3.9)

### ***Recommendation***

The Australian Government review the format and content of the outcome letter and statement of reasons template with a view to removing legalese and ensure independent decision makers provide detailed information to justify their decisions in plain English.

The outcome letter should include the name of the independent decision maker. (Recommendation 3.10)

### ***Recommendation***

The Australian Government amend key policy guidance, including the Internal Assessment Guide and the Assessment Framework Policy Guidelines, to:

- a. Ensure clarity for independent decision makers in applying the Assessment Framework. This recommendation includes ensuring the Assessment Framework Policy Guidelines do not include any additional criteria which may, if applied, result in a higher threshold being required to be satisfied for a payment of extreme circumstances or limits the discretion of the independent decision maker
- b. Provide clarity to independent decision makers about the weight of any guidance material provided by the Scheme in their making decisions under the Assessment Framework and ensure their discretion is not limited. (Recommendation 3.12)

### ***Recommendation***

The National Redress Scheme Inter-governmental Agreement be amended so that both survivors and non-government institutions have formal input into the Scheme's operation. (Recommendation 1.1)

### ***Recommendation***

The Australian Government consider the inconsistent application and understanding of the prior payments provisions in the legislation, with specific reference to Stolen Generation payments and:

- a. Amend the legislation relating to prior payments for related non-sexual abuse to achieve a fair and transparent outcome for applicants who have received a prior payment.
- b. Provide clear guidance and policy materials to the public and to independent decision makers on how the provisions are to operate, with a view to consistent application of the provisions. (Recommendation 4.1)

### ***Recommendation***

The Australian Government urgently assess whether the redress ICT system is fit for purpose: to support the effective management of the Scheme; provide survivors with timely and accurate information on their application; reduce the current manual workarounds and off-system processes; and improve quality checks. This independent assessment should also identify necessary priorities for upgrades. Thereafter, the Australian Government commit to investment to improve the redress ICT system. (Recommendation 6.8)

### ***Recommendation***

The Australian Government develop an information management strategy including a Minimum Data Set to capture ‘whole of client data’ and key performance indicators that realign transactional outputs with trauma informed outcomes and enhance the functionality of the redress ICT system to support the additional data capture and reporting requirements. (Recommendation 6.9)

### ***Recommendation***

The Australian Government develop the redress ICT system to ensure ‘whole of client data’ analytics and to enable real-time reporting and prioritisation of applications and allow projections for future Scheme operational requirements and the collection of specific disaggregated data that provides analysis of the socio-demographic characteristics of the survivor cohort. This systems redevelopment must include bringing off-system processes, which currently require ‘system work around’, into the redress ICT system. (Recommendation 6.10)

## **Staff capability and support**

### ***Recommendation***

The Australian Government mandate and regularly audit and report on the participation by all staff in a clinically designed and delivered training programs that include modules on trauma informed and culturally safe practices; work health, safety and wellbeing; privacy; and protected information. The efficacy of these measures should be monitored through survivor feedback mechanisms. (Recommendation 6.5)

### ***Recommendation***

The Australian Government implement reflective practices supervision training for all supervisors to improve staff support and the survivor experience. (Recommendation 6.6)

### ***Recommendation***

The Australian Government significantly increase its cap on Average Staffing Levels (ASL) in the Scheme based on workforce planning and scheme projections and not continue to rely on contract staff across the Redress Group. Provision should be included for appropriate skilled surge capacity to ensure timeliness is maintained. (Recommendation 6.7)

### ***Recommendation***

The Australian Government review, co-develop and implement a clinically designed recruitment and selection process for all new staff to ensure staff are trauma aware and possess the capability and capacity to provide a trauma informed redress service to survivors. (Recommendation 6.4)

### ***Recommendation***

The Australian Government formalise the development and implementation of a trauma informed framework to inform all actions, policies and interactions within the Scheme. The Australian Government should then develop the framework with reference to the current clinical education on trauma informed guidelines and cultural sensitivity. (Recommendation 6.1)

### ***Recommendation***

The Australian Government analyse the efficacy of existing staff mental health and wellbeing mechanisms against these trauma informed guidelines to ensure staff are supported and to reduce the risk of mental health issues and burnout. (Recommendation 6.2)

### ***Recommendation***

The Australian Government finalise and regularly review and report on its annual Workforce Plan, Risk Management Plan, Mental Health and Wellbeing Plan and Business Plan to reflect clinically developed trauma informed principles and mitigate risks to staff and survivors. (Recommendation 6.3)

## **Improving communications**

### ***Recommendation***

In 2021 to 22 and 2022 to 23 financial years, the Australian Government improve communication and engagement by:

- a. Funding a targeted communication strategy to build trust and increase awareness of the Scheme among survivors, including; specific strategies to reach vulnerable people; Aboriginal and Torres Strait Islander people; people with disability; and regional, remote, and culturally and linguistically diverse communities.
- b. Taking proactive steps to better communicate the availability of all support services, including access to free legal services, to survivors, nominees, advocates and institutions.
- c. Where appropriate, the Scheme funding support services that facilitate Aboriginal and Torres Strait Islander healing approaches and which also meet the diversity of survivors' needs with regard to disability, gender, sexuality, culture and language. (Recommendation 7.1)

***Recommendation***

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. (Recommendation 6.11)

# Chapter 1 Introduction to redress

## Section 1.1 Introduction to the Review

This section sets out the approach to the Review, including the primary sources of information and activities undertaken to provide the evidentiary basis for the Review findings and recommendations.

### ***Scope of the Review***

**Appendix A** sets out the Review's terms of reference, s 192(2) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act).

In addition, the Review has had regard to:

- a. The recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse in their *Redress and civil litigation report* (2015).
- b. Recommendations made in reports on the implementation of the Scheme by two joint select committees of the Australian Parliament:
  - i. The Joint Select Committee (JSC) on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse 2019 (JSC 2019).
  - ii. The first interim report of the JSC on Implementation of the National Redress Scheme 2020 (JSC 2020).
- c. Current Scheme operational reforms.

On 17 June 2020, the Minister for Families and Social Services, the Senator the Hon. Anne Ruston, announced the Second Year Review of the Scheme would commence on 1 July 2020. The press release advised information about the Review was available on the Scheme website.

The Review was required to deliver the final report in March 2021. The COVID-19 pandemic restrictions meant that almost all Review consultation activities were undertaken via teleconference. The Review sought the views of key stakeholders throughout the process. This involved the public submission process; surveys; interviews; 'deep dive' consultancies into specific issues; interviews with survivors, support groups, institutions, stakeholders and advocacy groups from across the redress spectrum; and a consultancy to examine the financial management of the Scheme. The Review is satisfied there has been sufficient engagement by all stakeholder groups.

### ***Review consultation activities***

The Review undertook broad consultation with survivors of child sexual abuse; their supporters and advocates; redress support services; Commonwealth, state and territory ministers and government officials; and non-government institutions (see **Appendix B**). The

Review sought to understand the perspectives and experiences of key stakeholders within the Scheme.

Throughout this report, the Review references the objectives and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, as well as the recommendations of the JSCs, to bring the desired outcomes of the Scheme into focus.

**Appendix C** cross-references the terms of reference for the Review and the JSC recommendations. A list of submissions received by the Review is contained at **Appendix D**.

The Review refers to ‘survivors’ and ‘applicants’ throughout the Review Report. Generally, references to ‘survivors’ refers to survivors of institutional child abuse who have not applied to the Scheme, or have applied and received an outcome, therefore their application is finalised. References to applicants, generally refers to those survivors who have made an application and their application is in the process of being processed. The Review notes however that there are some instances where the terms are used interchangeably.

**Table 1: Review stakeholder engagement, July to December 2020 (six months)**

Table 1 presents the data regarding the number of stakeholders the review met with, received survey responses, and received submissions from. The breakdown of these numbers are below.

**Survivors.** Submissions, 135. Survey Responses, 322. Consultations, 6.

**Community and advocates (Note a).** Submissions, 5. Survey Responses, 0. Consultations, 0.

**Redress support services.** Submissions, 26. Survey Responses, 78. Consultations, 15.

**Lawyers.** Submissions: 7. Survey Responses, 0. Consultations, 0.

**Institutions.** Submissions, 28. Survey Responses, 103. Consultations, 13.

**Commonwealth, state and territory government (including DSS Staff).** Submissions, 14. Survey Responses, 0. Consultations, 23.

**Scheme partners and parliamentarians (Note b).** Submissions, 8. Survey Responses, 0. Consultations, 15.

**Others e.g. academics.** Submissions, 3. Survey Responses, 0. Consultations, 9.

**Totals.** Submissions, 226. Survey Responses, 503. Consultations, 81.

Note a: For example, friends or community members of an applicant/survivor.

Note b: This includes members of the opposition and cross bench.

The Independent Reviewer met with the Scheme Operator, the Minister, and the Ministers’ Redress Scheme Governance Board members, providing updates, information and advice on key issues and directions as the Review progressed to facilitate early progression of recommendations.

The Review provided opportunities for survivors, advocates, redress support services and institutions to contribute to the Review through a submission process and/or a user survey. The Scheme promoted both options on the National Redress Scheme website. The Review received 222 written submissions and the survey received responses from 320 survivors, 78 support services and advocates, and 103 institutions. The Independent Reviewer hosted 81 stakeholder consultations. The Independent Reviewer met with members of the JSC and members of the Australian Labor Party Shadow Cabinet.

The Review notes the recent debates in parliament concerning amendments to the Redress legislation and the Australian Government's response that it will release the Review report publicly and to consider the Review report prior to making further legislative amendment.

The Review held discussions with, and sought performance data from, the two Australian Government entities responsible for the Scheme's data holdings since inception, the Department of Social Services (the department) and Services Australia. Although the department administers, delivers and operates the Scheme, Services Australia now provides residual services to the Scheme, including:

- ICT systems.
- Identity services.
- Postal and scanning services.
- Front of house services.
- Telephony services.
- Social work services.
- Forms design.
- Payments to applicants.
- Business integrity services.
- Shared premises arrangements.
- Training.
- Privacy incident management.

The Review undertook 'deep dives' into focus areas including survivor experience, equity of access, vulnerable survivors, financial arrangements, fairness and funder of last resort, prior payments, uptake of direct personal responses and counselling supports.

The Review commissioned two pieces of research on the awareness of, and experience with, the Scheme by people with disability and Aboriginal and Torres Strait Islander peoples. The Review has incorporated the findings of these reports into the body of this report.

The Review engaged financial consultants to provide assessment of the financial performance of the Scheme.

## Section 1.2 Structure of this report

- Letter of transmittal.** The letter of transmittal of the Final Report of the Second Year Review of the National Redress Scheme to the Minister for Social Services, Senator the Hon. Anne Ruston and the Scheme Operator, Ms Kathryn Campbell AO.
- Glossary.** A list of the words and acronyms frequently used in the Review report.
- Executive summary.** Executive summary of the Review report.
- Recommendations.** The consolidated recommendations of the Review report.
- Chapter 1.** **Chapter 1** establishes the Review, refers the reader to the terms of reference (**Appendix A**) and provides context and background for the Scheme, as well as the establishment of the Second Year Review. It also provides some quantitative Scheme performance data.
- Chapter 2.** **Chapter 2** summarises the key survivor experiences of the Scheme and sets out the rationale for a Survivor Service Improvement Charter.
- Chapter 3.** **Chapter 3** analyses the entire Scheme application process for survivors. This includes the issues of protected information provisions, eligibility requirements, the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Assessment Framework) and determinations.
- Chapter 4.** **Chapter 4** looks at all of the elements of redress: the redress payment, counselling and psychological care, and the direct personal response.
- Chapter 5.** **Chapter 5** discusses the access to review that survivors have, as well as the revocation provisions that are available to the Scheme Operator and civil litigation issues.
- Chapter 6.** **Chapter 6** discusses the administration of the Scheme, including the various levels of governance required to operate the National Redress Scheme. The chapter explains the Inter-governmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse (IGA), necessary to establish the Scheme. The Review also discusses the staffing arrangements throughout the Scheme's lifetime and issues relating to ICT systems capability.
- Chapter 7.** **Chapter 7** presents the information on the financial arrangements in place for the Scheme, as well as the funding of redress support services and the Scheme's methods for evaluating these services.

## Section 1.3 Historical context, Scheme establishment and accountabilities

On 11 January 2013, then Prime Minister the Hon. Julia Gillard AC announced the appointment of a Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). The Royal Commission was required, amongst other things, to investigate:

*What institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions ...*

Royal Commission, *Terms of reference*.

The Royal Commission's key recommendation on the establishment of redress was:

*A process for redress must provide equal access and equal treatment for survivors – regardless of the location, operator, type, continued existence or assets of the institution in which they were abused, if it is to be regarded by survivors as being capable of delivering justice.*

Royal Commission, *Redress and civil litigation report* (2015), Recommendation 1.

On 29 January 2016 the Hon. Christian Porter MP, then Minister for Social Services, announced the Australian Government would lead the development of a national scheme and subsequently, on 4 November 2016, that a Commonwealth redress scheme, known as the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme) would commence in early 2018.

In announcing the Scheme, the Minister also acknowledged the extensive negotiations that had taken place between the Australian Government and state and territory governments.

In March 2018, the New South Wales, Victorian and Australian Capital Territory governments announced that they would join a national scheme.

The creation of a national scheme required state governments to refer powers to the Australian Government to operate the Scheme and to enable non-government institutions to join the Scheme.

These requirements are set out in the Inter-governmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse (IGA), which provides the foundation for the Australian, state and territory governments to work together to implement the Scheme. The Council of Australian Governments (COAG) established the IGA.

The IGA sets out the roles and responsibilities of each party, the Australian Government and state and territory governments, in relation to the Scheme. The IGA provides for the key aspects of the overarching Scheme governance framework, including referral legislation, decision-making powers, and financial and operational arrangements.

On 10 May 2018, the Minister for Social Services introduced draft legislation to establish the National Redress Scheme (the Scheme). On 19 June 2018, the legislation passed both houses of parliament and on 21 June 2018 received Royal Assent. The *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act) sets out how the Scheme will operate.

The Scheme received its first applications on Sunday, 1 July 2018.

The Scheme:

- a. Acknowledges that many children were sexually abused in Australian institutions.
- b. Holds institutions accountable for this abuse.
- c. Helps people who have experienced institutional child sexual abuse gain access to counselling, a direct personal response, and a redress payment.

The Scheme provides three elements of redress to eligible recipients: access to counselling and psychological care; a monetary payment; and a direct personal response (an apology from the responsible institution).

A number of factors affected the establishment of the Scheme:

- a. The desire to be a national Scheme and engage all state and territory governments and institutions as part of a national approach with supporting legislation.
- b. The commitment to operationalise the Scheme to commence in July 2018.
- c. The quality of the application processes and information management systems available to the Scheme at that time.
- d. The need for rapid deployment of an appropriately skilled workforce to implement the Scheme.

The Scheme mandates that the institutions (government and non-government) responsible for the child sexual abuse are liable to provide redress to survivors. Responsible institutions must elect to join the Scheme in order to provide redress to survivors under the Scheme. The responsible entity pays the cost of the monetary payment, the costs for access to counselling and psychological care and the costs associated with delivering direct personal responses. Their membership is subject to a financial assessment to determine if they can afford to pay their estimated liabilities over the life of the Scheme.

Day-to-day responsibility for the Scheme resides with the Scheme Operator based in the department. At the outset of the Scheme, the department had responsibility for policy for the Scheme, and Services Australia (formerly the Department of Human Services) had responsibility for processing applications.

In February 2020, a machinery of government change resulted in the parts of redress shared across two departments coming together as the Redress Group in the department. The department continues to be reliant on Services Australia for residual services described above.

During the first two years of the Scheme, there have been a number of structural and operational shifts affecting the focus and delivery of the Scheme, including the following:

- a. The Scheme commenced on 1 July 2018 as a National Redress Scheme, jointly delivered by the Department of Human Services and the Department of Social Services.
- b. All states and territories passed legislation by December 2018 ensuring that the Scheme could operate in their jurisdiction. The last of the states joined the Scheme by February 2019.
- c. In 2019, the Scheme focused upon piloting case coordination, implementing end-to-end application processing and addressing a backlog of applications and processing delays.
- d. The Scheme implemented a new organisation structure in July 2020 after the machinery of government changes earlier that year, with subsequent changes to the leadership team.
- e. Redress Operations, formerly located within Services Australia, joined the department in February 2020, making the department wholly responsible for the Scheme.

The Review notes that, despite the Scheme commencing in July 2018, there has been little communication to promote the Scheme.

Since commencement, the department has made a number of significant investments to improve Scheme performance. Most significantly, from September 2019 to June 2020, consultants were engaged to work with the department to make operational and other performance improvements with a strong focus on improving the timeliness of decisions. Subsequent consultancies focused on the quality of calls made to applicants from the Scheme, review of Child Safe reporting, costs and funding requirements of the Scheme, and satisfaction performance surveys of Scheme applicants.

## **Table 2: Chronology of the establishment of the National Redress Scheme**

**Table 2** contains the following information about the date on which an event occurred, and the details of the event.

- 12 November 2012. Announcement of the establishment of the Royal Commission into Institutional Child Sexual Abuse.
- September 2014. Extension of Royal Commission until 15 December 2017.
- 23 April 2014. Royal Commission issues paper 6, Redress schemes.
- September 2015. Release of Redress and civil litigation report by the Royal Commission.
- 20 June 2017. Establishment of Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.
- 15 December 2017. Final report of the Royal Commission.
- 21 June 2018. National Redress Scheme for Institutional Child Sexual Abuse Act 2018.
- 1 July 2018. Commencement of National Redress Scheme.
- July 2020. Commencement of Second Year Review.

An outline of the history of the Scheme, including introduction of legislation, participation by states and territories and the Royal Commission report and implementation is detailed at **Appendix E**.

### ***Applying to the Scheme***

Eligibility under the Scheme is a multi-stage process. To be entitled to redress, applicants are required to submit a valid application to the Scheme, in accordance with section 19 of the Act. In addition, the Operator must consider there is a reasonable likelihood that the person is eligible for redress under the Scheme; the application must be approved and an offer of redress made to the person; and the offer of redress must be accepted.

The eligibility criteria as set out in section 13 of the Act states that a person is eligible for redress if:

- a. They were sexually abused.
- b. And the sexual abuse is within the scope of the Scheme.
- c. And the sexual abuse is of a kind for which the maximum amount of redress payment that could be payable to the person would be more than nil.
- d. And one or more participating institutions are responsible for the abuse.
- e. And the person is an Australian citizen or permanent resident at the time the person applies for redress.

Under the Act, an offer of redress may consist of three elements:

- a. A monetary payment of up to \$150,000.
- b. A counselling and psychological care element.
- c. A direct personal response from each participating institution responsible for the abuse.

An eligible applicant who receives an offer of redress can accept all three components, choose which components to accept, or decline the offer.

However, for a person to be eligible for redress, at least one participating institution must be responsible for the abuse of the person. There are four types of participating institutions:

- a. Commonwealth institutions, such as Commonwealth departments and bodies established under Commonwealth law.
- b. State institutions, such as state departments and certain bodies established under state law.
- c. Territory institutions, such as territory departments and certain bodies established under territory law.
- d. Non-government institutions, such as religious institutions and sporting clubs.

While all Commonwealth institutions are participating institutions, state, territory and non-government institutions are only participating institutions if they agree to participate in the Scheme and the Minister makes a declaration under the Act that they are participating institutions.

As of 24 March 2021, 450 non-government institutions, or groups of institutions, were participating in the Scheme, covering more than 63,000 sites across Australia. The department informed the Review that applications named approximately 180 institutions that are yet to be onboarded, not including defunct institutions. As the Scheme receives additional applications naming non-participating institutions, further onboarding is required.

## Section 1.4 Inter-governmental agreement, Scheme legislation and governance

In order for the Commonwealth to have the constitutional authority to provide redress to a person from institutions in a jurisdiction, the states must have referred the relevant constitutional powers to the Commonwealth. Territories are not required to refer powers, as the Commonwealth Parliament has the power to make laws for the government of a territory, under section 122 of the Australian Constitution.

In committing to join the Scheme the Commonwealth, state and territory governments put in place the IGA through COAG. The IGA sets out arrangements for all jurisdictions to work together, including:

- a. Roles and responsibility of the Commonwealth, state and territory governments.
- b. Governance arrangements.
- c. Financial arrangements.
- d. Implementation arrangements and Scheme operational arrangements.

The IGA was made in May 2018 in conjunction with the Act and other relevant Commonwealth, state and territory legislation.

The Minister is responsible for the Act. Under the Act, the Secretary of the department is the Scheme Operator. The Minister is able to delegate their powers and functions under the Act to the Scheme Operator, or a person who holds or performs the duties of a Senior Executive Service (SES) Band 3 position, or an equivalent position, in the department. The exceptions to this are the powers and functions relating to making the *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (the Rules) and approving independent decision makers, which may not be delegated.

The Scheme Operator is able to delegate all of their powers and functions under the Act to officers of the Scheme. The exceptions to this are the powers and functions relating to making a redress determination and conducting an internal review, which the Scheme Operator can only delegate to independent decision makers. The Scheme Operator cannot delegate powers in relation to civil penalty provisions. Delegates must comply with any directions of the Minister or Scheme Operator, with the exception of independent decision makers, who cannot be directed in undertaking their duties.

The department is progressing a number of technical amendments to the Act and implementing changes to subordinate legislation. The National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020 was passed in parliament on 15 February 2021. The Bill addresses technical issues with the current

operation of the Act and will address unintended consequences or oversights in the initial drafting of the primary legislation. **Chapter 2** contains further discussion on this issue.

The amendments contained in the Bill will:

- a. Clarify how participating institutions that are associates of a responsible institution are to be determined and specified.
- b. Clarify the proportional amount for which a funder of last resort is liable in relation to a responsible defunct institution.
- c. Provide for greater efficiency in engaging independent decision makers (IDMs).
- d. Introduce protections for the names and symbols used in connection with the Scheme.
- e. Permit a redress payment to 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.
- f. Permit the Scheme Operator to extend the time frame for payment of a funding contribution by an institution.
- g. Authorise disclosure of protected information about a non-participating institution for the purpose of encouraging the institution to become a participating institution.

A number of the amendments take effect immediately on Royal Assent of the Bill, while others require additional implementation steps or a subsequent change to the Rules. Changes to the Rules could not be made until the amendments to the Act were passed.

In particular, a change to the Rules is needed before the Scheme can pay a survivor's monetary payment to a Public Trustee, in essence to remove the restriction that payments can only be paid to the applicant. The Review understands that the department is working to expedite this necessary change.

### ***Scheme governance***

The Scheme governance arrangements include:

- a. The Inter-jurisdictional Committee (IJC), comprising senior officials of Commonwealth and state and territory governments.
- b. The Redress Scheme Committee (RSC), consisting of senior officials of Commonwealth and state and territory governments and non-government institutions.

The RSC is included in the IGA and the memorandum of understanding between the Commonwealth and each participating institution. The Scheme invites institutions with an estimated liability of \$10 million to attend RSC meetings, but all participating institutions are 'members' of the RSC. The Review notes that the Survivor Roundtable is not accorded the same status as institutions in the governance structure.

## **Figure 1: Diagram of the redress governance arrangements**

Figure 1 shows the decision making is controlled by the Minister for Families and Social Services, alongside the Ministers' Redress Scheme Governance Board.

The Scheme Operator is the DSS Secretary, who reports and consults with the Minister.

The Inter-jurisdictional committee and the Redress Scheme Committee provide advisory services to the Ministers' Redress Scheme Governance Board. The Survivor Roundtable informs the Committees of issues.

The Department of Social Services is responsible for the operation of the Scheme.

### ***Ministers' Redress Scheme Governance Board***

The role of the Ministers' Redress Scheme Governance Board (the Ministers' Board) includes discussion of key issues relating to implementation and operational matters; and emerging policy and communication issues relating to survivor and institution participation in the Scheme. The Ministers' Board must approve proposed amendments to primary legislation, rules and policy guidelines; and manage cost risks. The Minister chairs the Ministers' Board, with participation by ministers from each state and territory.

The voting processes of the Ministers' Board vary depending on the subject matter. A unanimous vote is required for changes that result in increased costs to participating states and territories or for any major design decisions. Other changes to the Act and subordinate legislation require a complex two-stage voting process. These arrangements were part of the negotiated arrangements for states and territories to join the Scheme.

### ***The Conran review of COAG Councils and Ministerial Forums***

On 23 October 2020, National Cabinet agreed to the recommendations of the Review of COAG Councils and Ministerial Forums (the Conran review). It recommended streamlining inter-governmental meetings, making meetings time limited to convene for specific tasks with specified decisions, and sunset time frames of no longer than 12 months.

In response, the Ministers' Board has determined that meetings are to be time limited and they will occur when needed, convening for specific tasks, with sunset time frames of no longer than 12 months. The Minister has confirmed the agreed arrangements strategic priorities for 2021 are:

- a. Consider key recommendations of the final report of the Review.
- b. Engage with and onboard non-participating institutions to the Scheme and implement financial consequences against institutions that fail to fulfil their moral obligations to join.

- c. Improve Scheme outcomes in relation to direct personal responses, counselling and psychological care and engagement with specific community groups of survivors, including Indigenous Australians, people with disability and unconnected survivors.

The Review welcomes the strong alignment with strategic priorities raised in the Conran review.

The department has advised that decision-making arrangements set out in the IGA have not been an impediment to the operation of the Scheme. Most jurisdictions indicate that the governance arrangements are satisfactory. However, there was some frustration regarding the time taken to make decisions on some matters and move forward. There was a perception that, even where there are 'quick wins' for the Scheme, various processes mean it takes a long time to implement even small changes.

The decision-making model is a potential barrier to increased Scheme efficiency. Any modifications requiring Ministers' Board consideration take between six and 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.

### ***The Inter-jurisdictional Committee***

The IJC supports the Ministers' Board to identify emerging issues and make decisions under the Scheme during its period of operation. The four working groups support and provide advice to the IJC on:

- a. Communications and engagement.
- b. Data and reporting.
- c. Non-government engagement strategy.
- d. Child Safe reporting.

### ***The Redress Scheme Committee***

Under the Scheme's governance arrangements, institutions have an advisory role through the Redress Scheme Committee (the Committee). The Committee is included in the IGA with jurisdictions and the memorandum of understanding with participating institutions, and convenes quarterly. The Committee includes the jurisdictions as well as non-government institutions. The Committee provides all non-government institutions (not members of the Committee) with agenda papers and an outcomes record; and has sought their views.

Submissions from institutional stakeholders argued for:

- a. A greater voice in the application process and increased rights of appeal.

- b. Increased frequency, and improved quality, of communications and engagement with institutions, including regular Scheme performance reports and, where appropriate, individualised data about institutions' participation in the Scheme.

### ***Survivor Roundtable***

In 2018, the Scheme established a Survivor Roundtable to provide a mechanism for survivors and their advocates to give feedback on Scheme policies, processes and operations. To date, the survivor roundtable has held three meetings, with up to 30 survivors invited to participate. The Survivor Roundtable is not a part of the Scheme's formal governance arrangements. The review understands that a fourth Survivor Roundtable was held on 9 March 2021 in Canberra.

# Recommendations

## ***Recommendation 1.1***

The National Redress Scheme Inter-governmental Agreement be amended so that both survivors and non-government institutions have formal input into the Scheme's operation.

# Section 1.5 Scheme performance data

## *Survivors who have applied for redress*

At 31 December 2020, the Scheme had received 9,117 applications. Of these:

- a. 3,528 (or 38.7%) were from female applicants and 5,559 (or 61%) were from male applicants. Thirty applicants did not specify a gender.
- b. 2,685 (or 29.5%) identified as Aboriginal and Torres Strait Islander.
- c. 4,356 (or 47.8%) identified as a person with disability.

Approximately 5,130 (or 56%) of all applicants were aged 50 to 69 years and almost 1,798 (or almost 20%) were aged 70 years or more (**Appendix Table 1**). The youngest applicant was 12 and the oldest 100. The Scheme puts child applications on hold until they turn 18.

The Review notes that the proportion of applicants with a disability may not be accurate. Question 25 on the redress application form asks: 'Do you have a disability?' Respondents may answer 'Yes', 'No', or 'I choose not to answer this question'. The form also asks applicants to describe the nature of their disability. Some applicants have included medical conditions in their response to this question; however, it is unclear whether the medical condition relates to or gives rise to disability for the purposes of receiving additional specialised support from the Scheme.

## *Number of applications received and application outcomes*

As noted above, between 1 July 2018 and 31 December 2020, the Scheme received 9,117 applications. Over the same period, the Scheme finalised 4,569 applications, or just over 50% of all applications received (**Table 3**). See also **Appendix Table 2** for determination outcomes.

A significant concern of the Review is the time taken for applications to be finalised. The Review is aware of 98 applications that the Scheme received in the first three months of operation that are still currently on hold, due to an institution not joining the Scheme. Survivors from this cohort have been waiting up to two and a half years for a redress outcome and six applicants from this cohort have become deceased while their applications remain 'on hold' since the Scheme began.

Once an institution joins the Scheme it still may be some months before a redress outcome is determined.

Of the 867 applications that are currently on hold as of 31 December 2020, 37 applications named an institution that is defunct and no link to a parent or government institution can be found. A further 29 applications named institutions that have been assessed to not possess the financial means to join the Scheme. Four hundred and forty three of the on-hold applications were due to a named institution not having joined the Scheme or being defunct.

The process within the Scheme is to advise the applicant and place the application on hold if an institution has not joined the Scheme or is defunct, as there is no possibility of an outcome until institutional responsibility can be determined. Institutional responsibility is discussed in **Chapter 6**.

**Table 3: Number of applications received, finalised and on hold, 1 July 2018 to 31 December 2020 (30 months)**

**Table 3** breaks down the number of applications received, finalised, on hand, on hold, and withdrawn, across the life of the Scheme.

**In 2018 to 19.** 4,180 applications were received. 239 applications were finalised. 3,255 applications were on hand. 454 applications were on hold. 232 applications were withdrawn.

**In 2019 to 20.** 3,125 applications were received. 2,537 applications were finalised. 3,446 applications were on hand. 324 applications were on hold. 73 applications were withdrawn.

**In 2020 to 21.** 1,812 applications were received. 1,793 applications were finalised. 3,461 applications were on hand. 89 applications were on hold. 15 applications were withdrawn.

**In total.** 9,117 applications have been received. 4,569 applications have been finalised. 4,228 applications have been on hand. 867 applications have been on hold. 320 applications have been withdrawn.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Note b: On hand refers to applications that have not been finalised. The 'Total' column is not the sum of 2019 to 2021 columns. It is calculated using the number of additional applications put on hold each year.

Note c: On hold refers to applications that are not currently progressing. Reasons for this include; no participating institution; not able to identify the institution; requested to be put on hold by the applicant; the applicant is not contactable; documents are missing; or the applicant is under 18 years of age. 'On hold' applications are still considered on hand.

Source: Scheme data.

Of the 4,569 finalised applications, 4,554 (or 99.7%) survivors accepted the outcome of their application, which could include a redress payment, direct personal response, counselling and psychological care, or the outcome that they are ineligible for redress (**Appendix Table 3**).

Approximately 54.5% of all applicants that accepted an offer of redress accepted the direct personal response element. The uptake of direct personal response is low at 3.9%. Direct personal response is discussed further in **Chapter 4**.

Approximately 67.6% of all applicants that accepted an offer of redress accepted the counselling and psychological care element. Approximately 20% of these applicants are accessing counselling and psychological care. Counselling and psychological care is discussed further in **Chapter 4**. As at 31 December 2020, the Scheme had paid a total of \$376.9 million in redress payments, excluding payments for redress counselling (**Table 4**).

**Table 4: Total amount of redress payments made 1 July 2018 to 31 December 2020 (30 months)**

**Table 4** breaks down the amount that has been spent on redress payments across the life of the Scheme. This information is presented below by year.

In 2018 to 19, redress payments totalled \$19,757,885.

In 2019 to 20, redress payments totalled \$205,016,984.

In 2020 to 21, redress payments totalled \$152,164,942.

In total, as at 31 December 2020, redress payments totalled \$376,939,811.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Note b: Excludes redress counselling payments.

Source: Scheme data.

As at 31 December 2020, the average monetary payment was \$83,210. The average payment to survivors supported by redress services was \$88,145. **Table 5** compares the redress monetary outcomes of survivors who received support and those who did not. Applicants who completed their application without support had lower average redress monetary outcomes than those who received support. The Review suggests this outcome warrants further analysis to determine its significance. As the Review cannot access individual applications, it is not able to assess whether the difference in payments is in part also attributable to the nature of the abuse.

**Table 5: Redress monetary outcomes for supported and unsupported applicants, 1 July 2018 to 31 December 2020 (30 months)**

**Table 5** identifies the number of applicants that fit within a category of survivors, and the average redress outcome for those applicants. This is to identify whether support services assist applicants to achieve higher redress outcomes. The information is presented by survivor category.

**Survivors who accepted an offer of redress.** 4,554 applicants. Average payment \$83,210.

**Survivors supported by a redress support service, including knowmore.** 1,396 applicants. Average payment \$88,145.

**Survivors supported by knowmore.** 711 applicants. Average payment \$85,200.

**Survivors supported by other lawyer.** 545 applicants. Average payment \$83,727.

**Survivors with no identified support.** 1,889 applicants. Average payment \$78,924.

Note a: The data in **Table 5** comes from responses to question 59 on the application form.

Source: Scheme data.

This is a complex area and warrants further consideration by the Scheme to better understand the components of support services that offer the most significant benefits to survivors. The Review heard that in general redress support services are helpful in assisting vulnerable survivors. This is particularly true for survivors contemplating applying for redress. Support for survivors included provision of practical support in completing applications and support for applicants through the wait from application processing to determination.

The Review strongly believes there are significant benefits to both survivors and the Scheme in ensuring that survivors have access to and use appropriately skilled and relevant redress support services. The Review discusses redress support services further in **Chapter 7**.

The Review understands that there will be survivors who may elect to apply to the Scheme without support. However, it is important to provide survivors with the option to seek support and for support services to be widely available, including in regional and more remote areas. The Review also recommends that redress support services should be available from the beginning to the end of the process. Where a survivor chooses, their redress support service should also assist in arranging counselling and in the facilitation of the direct personal response.

### ***Time frames for processing applications***

The Scheme has yet to achieve business as usual with application processing. On average, the Scheme takes 12.5 months to process an application and 13.4 months to process a priority application (**Table 6**).

#### **Table 6: Average application processing time frames, 1 July 2018 to 1 July 2020 (24 months)**

**Table 6** identifies the average processing time for different application types, presented in months, across 2018 to 19 and 2019 to 20. The table also identifies the average across the entire Scheme's duration. This data is presented by the financial year.

**2018 to 20.** Average application processing time, 14.3 months. Average processing time for applications accorded priority status, 15.1 months. Average processing time for applicants who identify as Aboriginal and Torres Strait islander, 14.3 months. Average processing time for applicants who identify as living with a disability, 14.0 months. Average processing time for applications where a government has agreed to be a funder of last resort, 19.2 months.

**2019 to 20.** Average application processing time, 9.2 months. Average processing time for applications accorded priority status, 8.7 months. Average processing time for applicants who identify as Aboriginal and Torres Strait islander, 8.6 months. Average processing time for applicants who identify as living with a disability, 9.0 months. Average processing time for applications where a government has agreed to be a funder of last resort, 10.5 months.

**Average across Scheme's duration.** Average application processing time, 12.5 months. Average processing time for applications accorded priority status, 13.4 months. Average processing time for applicants who identify as Aboriginal and Torres Strait islander, 11.6

months. Average processing time for applicants who identify as living with a disability, 12.2 months. Average processing time for applications where a government has agreed to be a funder of last resort, 16.1 months.

Note a: Average processing time means the time from the date an application was received by the scheme until the date the application was finalised, including the redress payment where relevant, grouped by the date the application was received. This does not adjust for any time for an institution to join the Scheme.

Note b: Average processing times for priority applications received in Year 1 of the Scheme is higher than the Scheme average processing time because all applications that were received on or before 31 December 2019 have now been given priority status due to the age of the application.

Source: Scheme data.

There are a range of reasons why applications progress at different rates, these reasons might include: priority status and the point at which this is applied; request for information sometimes present challenges for institutions retrieval of records; incomplete applications; complex applications; institutions which have not joined the scheme or are taking time join.

The Scheme's efforts to improve timeliness are beginning to show some positive results in the 2020 to 21 data (**Appendix F** is a summary of reforms implemented to date by the department). However, the average timelines remain high and there is a need to put the Scheme on a more sustainable footing to be able to respond to increases in applications, for example where institutions are joining the scheme and where there may be more promotion of the Scheme to increase applications. The Review believes that without a significant reset to the application processes and provision of appropriate support throughout the process, there is a very high risk that improvements in timeliness are not sustainable and will deteriorate.

Initial delays in processing applications were due, in part, to the onboarding of institutions. Onboarding of institutions is the entire process of an institution becoming a member of the Scheme, which then enables them to fund redress for eligible applicants. Although the Scheme commenced operation on 1 July 2018, only 76 institutions were onboarded in the first year of the Scheme.

Another unexpected delay in processing applications was the number of applications that named two or more institutions. The Royal Commission reported that approximately 20% of survivors indicated that they had been sexually abused in more than one institution, and 5.6% indicated three or more institutions.

As at 31 December 2020, approximately 84% of applications named more than one institution and 58.6% named three or more institutions (**Table 7**).

**Table 7: Number of applications naming one or more institutions, 1 July 2018 to 31 December 2020 (30 months)**

**Table 7** identifies the number of applications that name institutions, broken down into categories of the number of institutions they name. This is presented as a total across the Scheme's life only, and is not broken down by financial year. The table also identifies the proportion of the whole the category of number of institutions name makes up. The data is presented by category of the number of applications naming a number of institutions.

**Number of applications naming one institution.** Total, 1,363. Proportion of the total number of applications, 15.9%.

**Number of applications naming two institutions.** Total, 2,190. Proportion of the total number of applications, 25.5%.

**Number of applications naming three or more institutions.** Total, 5,028. Proportion of the total number of applications, 58.6%.

**Total.** Total, 8,581. Proportion of the total number of applications, 100%.

Note a: The total number of applications in this table does not add up to 9,117 as at the time of the Review, not all applications had progressed to a sufficient stage to be captured in this data.

Source: Scheme data.

**Appendix Table 4** summarises why the remaining 424 applications on hold are unable to be progressed.

### ***Types of institutions named by applications***

Applications may name government and non-government institutions. As at 31 December 2020, 7,327 applications named a government institution; 9,084 applications named a non-government institution (see **Appendix Table 5**); and 3,106 applications named both government and non-government institutions.

The Royal Commission published data on the number and proportion of survivors they interviewed by institution type.

## Section 1.6 The extent to which eligible survivors are accessing redress

The terms of reference (See **Appendix A**) require the Review to consider the extent to which survivors who are eligible for redress under the Scheme have applied for redress.

The JSC 2020 recommended that the Review examine law reform in states and territories in opening alternative pathways to justice for survivors. The context for this recommendation was the low numbers of applications to the Scheme.

### ***Estimates of survivor numbers***

The Royal Commission estimated that 60,000 survivors would be potentially eligible to make a redress claim under a national Scheme. However, it also acknowledged that there were likely to be many survivors of child sexual abuse in institutional settings in Australia who were not included in this number.

The JSC 2020 considered that the number of applications received by the Scheme in its first two years of operation was lower than expected. However, the report noted that the committee had not received supporting empirical research and did not specify what the number of applications should have been.

In 2020, the Scheme's actuarial advice revised the original Royal Commission estimate downwards, from 60,000 to 40,000. This reduction was on the basis of:

- a. Non-participation by responsible institutions.
- b. The number and characteristics of Scheme applicants to date.
- c. The impact of recent changes in the law that has made it easier to pursue civil claims.

Financial advice commissioned by the Review estimated that the Scheme would only receive 32,300 applications, based on data from the first two years of operation. The consultancy estimate is based on the current uptake, which has involved limited Scheme promotion, and does not factor in the possible effects of the Review recommendations and the impacts of the institutions joining the scheme at December 2020.

**Table 8** (below) highlights the importance of getting institutions signed onto the Scheme in order to attract applicants. Historically, data shows that there is a significant jump in the number of applications received following an institution joining the scheme. This would appear to indicate that many survivors will hold back on putting an application into the scheme but watch closely. Once the institution responsible for their abuse joins, they then lodge an application.

The table therefore shows that the Scheme has received the majority of applications on or after the opt-in date across all application number increments for named institutions. This highlights the positive effect institutions joining the Scheme has had on application numbers.

**Table 8: The number and proportion of applications to the Scheme, received on or after the opt-in date (31 December 2021)**

**Table 8** includes information from all institutions that signed onto the Scheme on the opt-in date, the last day for named institutions (institutions named in an application for redress) to sign onto the Scheme without being subject to the possibility of sanctions against the institution.

For these specific institutions, applications had been lodged prior to their opting into the Scheme. The table represents the proportion of applications for redress that the Scheme has received for these specific institutions after the opt-in date (31 December 2021).

**Table 8** shows a trend that the number of applications received by the Scheme increases as institutions sign onto the Scheme.

Survivors may not have accessed redress for a range of reasons. The JSC 2020 cited reasons provided in submissions as:

- a. Survivors were still deciding whether to make an application for redress and responsible institutions were still in the process of joining the Scheme.
- b. A higher monetary outcome is often achieved in civil claims.
- c. A high proportion of claims are being settled out of court and within time frames similar to those of the Scheme.

The Review's consultation processes sought to determine why the number of survivors accessing the Scheme was lower than predicted by the Royal Commission. These largely affirm the JSC 2020 findings. A number of consistent themes emerged relating to the Scheme's very low visibility and lack of promotion; and the loss of momentum associated with the lengthy establishment processes for the national Scheme.

Survivors and their support groups consistently indicated that the lack of promotion of the Scheme and the more recent establishment of other state/territory-based victim compensation schemes meant that many survivors were unaware of the redress Scheme or their potential eligibility. Feedback suggested there was also considerable confusion about a number of the Scheme's eligibility criteria, especially relating to survivors who are in jail or have a criminal record. Survivors, support groups and institutions all commented on the apparent increase in the number of survivors who are choosing to pursue alternative pathways such as civil litigation. They strongly affirmed the need for the Scheme to be more proactively promoted and ensure that it remains a less legalistic and traumatic avenue for survivors.

### ***Institutional onboarding***

**Figure 2** shows the number of applications received against the number of institutions onboarded. The Review was unable to draw significant conclusions from the data. However, the high-level insights of the information in **Figure 2** suggest the Scheme has received a constant, steady stream of applications across the two and a half years of its operation. The

Review notes that the number of institutions onboarded in the first year of operation was significantly less than in the last 18 months of the Scheme.

Interpreting the results of **Table 8**, the Review has concluded that the steady stream of applications may be a result of the increased number of institutions onboarded. The Scheme was predicted to have an influx of applications in the first year, thereafter dropping off. However, this has not been the case. The Review therefore attributes this to the efforts of the Scheme to onboard institutions, resulting in more applications being received relative to the predictions of the Royal Commission and their actuarial consultants.

**Figure 2: Comparison of applications received and institutions onboarding, 1 July 2018 to 31 October 2020**

Figure 2 shows the total number of applications received throughout the Scheme's duration has remained fairly consistent.

The figure also shows another line, indicating the number of institutions on board with the Scheme. This line is inconsistent, with significant increases over short periods of time, particularly in October 2020.

The figure is marked at 31 July 2019 with 4,180 applications received and 76 institutions on board with the Scheme.

The figure is also marked at 31 July 2020 with 7,305 applications to the Scheme and 253 institutions on board with the Scheme.

The figure is finally marked at 31 October 2020 with 9,117 applications to the Scheme and approximately 440 institutions on board with the Scheme.

### ***Conclusion***

The Review acknowledges the importance of establishing a national Scheme and the substantial work that was involved in national and state partners agreeing to and co-managing the implementation of a national Scheme. The Review also acknowledges the legislative, administrative and operational complexities of the Scheme. However, to achieve the desired outcomes of the Royal Commission and meet community and survivor expectations, further work is required. The Review recognises the commitment made by institutions to join the Scheme and be responsive to survivor's applications, thereby taking responsibility for past abuses that occurred in their organisations.

The Review also acknowledges that not all survivors will seek to access redress for personal, eligibility or other reasons. In addition, survivors may choose to pursue a civil claim, following changes to legislation introduced after the Royal Commission which provide avenues for survivors to seek compensation for their abuse. Civil litigation is discussed in **Chapter 5**.

However, the Review believes that the significant downgrading of almost 50% of the expected number of applicants to the Scheme in two successive years warrants urgent attention from the Australian Government and state and territory governments. This trend appears

inconsistent with the predicted demand and aspirations that led to the establishment of the Scheme. Data suggests that the recent opt-in by a large number of institutions may increase the number of applicants. However, appropriate strategies need to be agreed to ensure that survivors who are eligible for redress have all the necessary information and appropriate support to participate in the Scheme.

The Review acknowledges ongoing efforts to improve the length of time it takes for applicants to receive redress. However, more needs to be done to drive down the current average wait time and improve the survivor experience. Improvement will only be sustainable if there is a fundamental reset of the application process and the quality and availability of appropriately skilled and culturally appropriate support to survivors throughout the entire process.

# Chapter 2 The survivors' experience

## Section 2.1 Survivors' Improvement Charter Service

### **Key findings**

- There is a need for the Scheme to systematise its efforts to improve survivor experience in all elements of redress, monetary, counselling and psychological care, and direct personal responses.
- The Scheme has developed and recently commenced reporting key performance indicators through Strategic Success Measures. As part of these measures, the results of a survey of survivor's experience of the Scheme will soon be available.
- The Scheme requires significant ongoing improvement in the current processes to improve survivor experience, equity and scheme integrity.
- The Scheme requires action to address the negative experiences and bad publicity about the Scheme that may deter survivors from wishing to participate.
- The department should reaffirm its commitment to survivors and embed the survivor voice into the Scheme's future operation.
- The Scheme needs to demonstrate good practice in the adoption and implementation of trauma informed approaches for survivors and staff.

### **Background**

The requirement for a statutory review after two years of the Scheme's operation acknowledges that the experience and insights gained in the initial years are vital in ensuring that the Australian Government and the department can modify the Scheme to meet its potential.

The Review acknowledges there were legacy issues in the Scheme's set-up that have diminished the maturation of a survivor-focused approach. Interviews conducted as part of the Review found these legacy issues are a function of the rushed 2018 implementation of the Scheme, the adoption of the Services Australia redress ICT system; legislative changes and amendments to the Act, the *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (the Rules) and the *National Redress Scheme for Institutional Child Sexual Abuse Framework 2018* (the Assessment Framework); and the 2020 machinery of government changes. The machinery of government changes relating to redress were introduced to integrate redress-related services into one agency and reduce fragmentation. On 5 December 2019, the Australian Government announced the Department of Social Services (the department) would manage the operations of the Scheme. The department commenced this role on 6 February 2020.

There have been two changes made to the Act since its commencement, the first in 2018 relating to terminology change after the machinery of government; and the second through the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020 (the Bill). The Bill passed in the Senate on 15 February 2021 and was registered on 10 March 2021. The Bill made amendments to the Act to clarify the operation of certain provisions and provide greater administrative efficiency. The amendments do not change how survivors or institutions deal with the Scheme.

In addition, there have been a number of amendments to the Rules and one change to the Assessment Framework. In 2019, the department amended the Assessment Framework to address an oversight in the initial drafting to capture different acts or circumstances where a child may have been forced to penetrate another person or object.

### ***The objects of the Act***

The Review found the Scheme needs to adopt evidence-based, trauma informed practices or be at risk of not complying with the objects and general principles of the Act as they relate to survivors.

The Review also found the current redress policy settings and operating model are a potential risk to the integrity of the Scheme.

In order to deliver redress, and achieve the objects of the Act, the Australian Government has introduced financial sanctions for institutions that refuse to join the Scheme. Where the Scheme receives an application that names a previously non-participating institution, the institution will have six months to join before they are publicly named, and financial sanctions may apply. Sanctions are discussed in further detail in **Chapter 5**.

From 1 January 2021, institutions named in applications to the Scheme or the Royal Commission that have not joined the Scheme or signified their intent to join within the required time frames are ineligible to access Australian Government grant funding.

From 25 February 2021, a new governance standard is in place whereby registered charities are required to take all reasonable steps to become a participating institution in the Scheme if they have been named, or are likely to be named, in redress applications. Where a registered charity fails to do so, they will be subject to a suite of the Australian Charities and Not-for-profits Commission's existing compliance powers, including deregistration. Deregistration would result in the entity losing access to a range of Commonwealth benefits, including tax and other concessions.

### ***Survivor engagement and experience***

Review consultations confirm there is a strong commitment among the Australian Government, state and territory governments and Scheme staff to drive the necessary improvements. Many of the concerns raised by survivors were also raised by institutions as they relate to communications, continuity of contact points, ambiguity about thresholds of

proof and consistency of decision-making. The Scheme has initiated work to address many of the issues being identified in this Review.

The Scheme has put in place a range of measures to improve the timeliness of the application process and increasing the number of participating institutions, including increasing the number of independent decision makers (IDMs) to address the backlog of applications; identifying process improvements; improving quality assurance; and extending the deadline for institutions to join the Scheme.

The Review found that survivors and their redress support services welcomed the changes specifically designed to provide designated contact staff for both survivors and institutions. Stakeholders were of the opinion that this would provide greater certainty about the handling of survivor applications and prompt resolution of issues.

In November 2020, the department endorsed the 2020 to 21 Scheme Management Plan (the Management Plan). The purpose of this Management Plan is to set out the priorities, milestones, governance arrangements, structure, risk and issues management, and reporting obligations for the Scheme.

However, the Review found more work needs to be done to ensure that the current emphasis in the Management Plan on operational and transactional performance gives equal weight to commitments to improve survivor focus and ensure the process is trauma informed. This will require a significant increase in targeted trauma informed training for contact staff and Scheme managers dealing with survivors (see **Chapter 6** for further detail). Furthermore, the Scheme needs to collect meaningful data on the quality of the survivor experience and give it appropriate prominence in performance reporting.

The Review found there is significant confusion from both survivors and institutional stakeholders alike regarding the directions the Scheme is pursuing, such as the adoption of case coordination and ICT systems.

Since the Royal Commission released its recommendations, awareness of the Scheme has diminished. The complexity of the current processes will pose enduring difficulties for both staff and survivors if left unaddressed. Encouraging improvements in the timeliness of handling applications will prove difficult to continue to sustain in the absence of more fundamental changes to the Scheme.

Based on new actuarial projections of the total application numbers and on the number of applications now on hand, the Scheme is no longer in its infancy and defence of the Scheme's shortcomings on this basis is no longer tenable. Rather, in its third year of operation the Scheme Operator should realign its policy settings and operational processes to address identified problems to meet its statutory objectives as they relate to survivors' health, safety and wellbeing and broader scheme management priorities of equity and integrity.

## ***Measuring success***

In April 2020, the Ministers' Redress Scheme Governance Board (the Ministers' Board) commissioned the establishment of a set of success measures for the Scheme. The Ministers' Board developed the success measures in consultation with all state and territory governments and a sample of redress support services and advocacy groups. The measures are reflected in the Inter-governmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse (IGA). The measures can be found on the National Redress Scheme website. The measures focus on three priority areas within the Scheme: survivor experience, health of the Scheme, and equity of access. The first release of the success measures in October 2020 represents the initial step to measuring the overall performance of the Scheme.

Further, the Review notes the Scheme's commitment of aiming to ensure that at least 80% of applications that name institutions that participate in the Scheme have a decision communicated to the applicant within six months of the application being received by the Scheme. Data available to the Review indicates that, for the 2019 to 2020 financial year, the Scheme advised only 10% of outcomes within six months of application receipt. This reaffirms the need for significant improvement and change to existing processes.

The success measures include a measure titled 'survivor journey'. This measure aims to capture the survivor experience of the Scheme, including Scheme responsiveness; degree of respectful, dignified, knowledgeable and trauma informed interactions; ease of understanding; level of proactivity; and consistency of service quality. The Review welcomes the Scheme's commitment to the success measures.

The department has commenced work with appropriate stakeholders to develop a survey to report on the survivor journey. This includes surveying and testing approaches and instruments that are trauma informed, safe and respectful for survivors. The Scheme will report on the survivor journey survey in the first half of 2021.

The Review notes the importance of this survey in hearing and responding to the survivor's voice, which has been substantially absent up until this point. The survey results will provide the Scheme with important information to use in service improvement.

## ***Feedback loops***

The Review believes there is significant merit in the Scheme developing and implementing feedback loops for identified and emerging problems. This will improve Scheme design and operation and ensure that the survivor voice is 'hardwired' into Scheme governance.

Consultancies commissioned and interviews conducted by the Review found:

*The current complaints handling approach can lack empathy and a survivor focus, and is not being used as a means to learn and drive process and policy improvement.*

*[There are] concerns about confidentiality and fear of stigma.*

*[There is] an inherent danger of asking people to disclose their experiences of child sexual abuse without the appropriate counselling and psychological care to support the survivor and their family members on the long journey towards healing.*

*Many survivors found contact with Scheme staff felt impersonal rather than individualised, caring, trauma-informed and survivor-centred. Contact often did not resolve concerns. Substantial proportions disagreed that contact with Scheme staff had been helpful, timely, or that contact resulted in a satisfactory response.*

*The Scheme is little known and understood by people with disability and in the disability sector [and] does not have a pervasive public profile because it was deliberately under-promoted from the outset.*

*Engagement with the Scheme is siloed, requiring multiple contacts at different points, resulting in confusing and conflicting information.*

The Review found that most external stakeholders, including survivors, were aware and supportive of changes the Scheme was making to be more efficient and survivor focused. Survivors in many instances acknowledged the positive actions of specific Scheme staff to resolve issues and behave professionally and humanely when they were very vulnerable.

However, the consistency of the feedback from survivors, support organisations and institutions alike, supported by the department's own analysis in targeted consultancies/audits, reinforces the need for a more fundamental reset to the Scheme's operations to improve survivor experience, equity and Scheme integrity.

### ***A survivor-focused and trauma informed framework***

Feedback suggests that the Scheme poorly understands the concepts of 'survivor-focused' and 'trauma informed'. Applicants informed the Review that these principles are frequently absent in the operational aspect of processing applications. This highlights the need for the Scheme to develop and implement a best-practice, trauma informed framework across all functions, branches and operations.

The Royal Commission placed significant emphasis on the need for Scheme design and staffing to be trauma informed, as well as the need for the Scheme to provide appropriate supports to survivors through the process.

Trauma informed practices and operating principles seek wherever possible to minimise or mitigate the risk of further harm. The Review understands that the Scheme is unable to hire exclusively clinically trained staff. However, the concept of trauma informed care should be understood and applied operationally.

The Management Plan for the Scheme contains a recommendation to create specialised case teams that would have sole responsibility for direct contact with survivors. The Review supports this recommendation.

Submissions to the Review from applicants, their nominees, support services, some institutions and jurisdictions specifically cite examples where the Scheme has failed to protect applicants and has harmed them in their journey for redress.

These issues relate to all areas of the Scheme:

- 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.

The department should finalise the draft Scheme Stakeholder Management Plan and Workforce Plan by 30 June 2021 and align these documents with the proposed Trauma Informed Framework and Survivors' Service Improvement Charter to address the issues identified.

The Review also found the Scheme would achieve immediate and long-term benefit from the development and implementation of reflective practices training for supervisors, in line with the best-practice Trauma Informed Framework. This will contribute to the development and learnings of staff in improving the applicant experience. Training in reflective practices establishes a supportive management style and reflects positive attitudes to applicants and staff about the importance of supporting trauma informed approaches and their own wellbeing.

### ***What does the legislation say about being trauma informed?***

The Act states in its general principles that redress should be survivor focused and should be assessed, offered and provided with regard to what is known about the nature and impact of child sexual abuse, and institutional child sexual abuse in particular; the cultural needs of survivors; and the needs of particularly vulnerable survivors and applicants.

The legislation also states that redress should be assessed, offered and provided to avoid, as far as possible, further harming or traumatising the survivor.

A trauma informed approach is about changing systems at all levels:

*To provide trauma-informed services, all staff of an organization, from the receptionist to the direct care worker to the board of directors, must understand how violence impacts on the lives of the people being served so that every interaction is consistent with the recovery process and reduces the possibility of re-traumatization.*

Elliot et al., *Trauma-informed or trauma-denied: principles and implementation of trauma-informed services for women*, 2005, p. 462.

The Review has heard consistently from survivors and their advocates that many have had experiences with the Scheme which were not trauma informed.

It is acknowledged that the Scheme is a client-focused function that deals with highly vulnerable applicants, and it sits within a policy-focused bureaucracy. It is also acknowledged that Scheme staff are not necessarily health or human services professionals. However, 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. The guiding principles under the legislation are clear and the principles of a trauma informed approach are entirely appropriate for staff of the Scheme and necessary for survivors engaging with the Scheme.

The department has an opportunity to take the lead on implementing trauma informed approaches, evaluating their impact and improving the quality of service delivery from the Scheme. Research from the Royal Commission found:

*The emergent and enthusiastic take-up of the idea of trauma-informed care (in Australia) would be significantly strengthened through national leadership and collaborative initiatives to design, implement and evaluate organisational and systemic approaches.*

Quadara, A., Hunter, C. *Principles of Trauma-informed approaches to child sexual abuse: A discussion paper*, 2016, p. 36.

The recently released Blue Knot Foundation publication *Organisational guidelines for trauma-informed service-delivery* provides a practical starting point for organisations that want to become more trauma informed. The trauma informed approach of the guidelines articulates a change process that seeks to prevent (re)traumatisation of survivors in their interaction with organisations.

The Review understands that the Blue Knot Foundation has been engaged by the department for staff training, and in February 2021 the Blue Knot Foundation was engaged by the department to conduct an audit. It is recommended that the department build on this process to implement a change process which helps the whole of the Redress Group to understand what it means to be trauma informed and consider how this might change the work they do to ensure they 'do no harm' and improve the experience of survivors.

## ***Transparency and public accountability***

Feedback to the Review indicated there is a lack of transparency in key areas of redress. Submissions and consultations informed the Review there are few opportunities for ongoing systematised engagement with survivors. The Review found this facilitates a climate of mistrust, with few avenues for their resolution in circumstances where significant survivor mistrust of institutions already exists.

The Review is supportive of greater transparency and accountability of all redress elements given their importance to many survivors' journey. The Review strongly supports a greater overall degree of transparency and accountability to combat the common complaint in submissions that the Scheme and its processes are opaque and shrouded in secrecy.

## ***The purpose of the Survivors' Service Improvement Charter***

The Review acknowledges and supports work underway to improve Scheme processes. However, there is a need to be more systematised in application of those improvements across the Scheme's operations. The agreement and commitment by the Australian Government and state and territory governments to success measures provides a strong foundation for driving integrated changes and increasing survivor confidence in the Scheme. The focus on the survivor journey is also a very sound basis for improvement. The development of a Survivors' Service Improvement Charter (the Charter) is an effective means of outlining key commitments to survivors and effective Scheme management; and providing regular measurement and public reporting of outcomes. To be effective it must be informed by sound performance analytics, including qualitative measures focused on the survivor journey, and input from all key stakeholders through agreed engagement measures that give prominence to the survivor voice. It must also be articulated in Scheme governance processes.

The Charter is a commitment by the Scheme to making the Scheme survivor focused. The Charter establishes a Scheme commitment to survivors that:

*We also say we believe you. We say what happened was not your fault.*

Prime Minister of Australia, the Hon. Scott Morrison, 22 October 2018: National Apology to Victims and Survivors of Institutional Child Sexual Abuse.

The Charter will seek to embed the importance of qualitative aspects of survivors' outcomes based on Scheme's statutory obligations to survivors and public commitments to survivors in the setting up of the scheme and should underpin Scheme service standards. Its development can draw on experience from good practices in agencies such as the National Disability Insurance Agency (NDIA) that have a strong focus on participants. The NDIA five principles of participant engagement are transparency, responsiveness, respectfulness, empowerment and connectedness (see **Appendix G**).

The Charter will make clear the need to place equal focus on the quality of the survivor interaction with the Scheme as well as the promptness in processing applications. The Charter

provides an opportunity for the Australian Government and state and territory governments to publicly commit to specific areas for Scheme improvement, such as equity of access and increased uptake of direct personal responses; and to provide public assurances that the Scheme is becoming simpler, more trauma informed and fairer for survivors.

The Charter will assist in setting and promulgating clear service standards for decision-making by the Scheme, ensuring ongoing transparency. It will assist in ensuring that there is an ongoing focus on the survivor journey throughout all elements of the Scheme, including the provision of appropriate, targeted and adequate support services.

The Charter will embed notions of support, trust, empowerment and resilience to encourage survivors to apply for redress and embeds Scheme operational values that are trauma informed and survivor focused. The Charter will ensure survivors have a voice regarding implementing any reforms to improve and maintain survivor confidence in the Scheme. The Charter establishes a culture of expectations for all participants.

The Charter will ensure a Scheme commitment to a reportable service guarantee against a Performance Management Framework. The Charter will establish and publish Scheme success measures and disseminate this information widely through targeted and culturally appropriate communication products. The Charter will also contain commitments to public reporting of data, including the public reporting recommended by the Review.

The Charter will provide a 'touchpoint' for all policy judgements. The Charter will commit the Scheme to learning from national and international research into institutional child sexual abuse and applying those lessons to the policy settings and operationalisation of the Scheme.

## Section 2.2 The guiding principles

The guiding principles of the Charter include the following:

- a. The Charter must align with the objects of the Act.
- b. The Charter should be based on five principles of engagement with survivors: transparency, responsiveness, respectfulness, empowerment and connectedness.
- c. The Charter should underpin the relationship between the Scheme Operator, survivors, nominees, support services and institutions.
- d. The Charter should embrace and respect diversity to ensure inclusion of culturally and linguistically diverse communities, Australian and Torres Strait Islander peoples, vulnerable peoples and people with disability.
- e. The Charter should ensure survivors are empowered to make informed decisions across all aspects of their redress journey and outcomes.
- f. The Charter must establish and promulgate time frames for the processing of applications and the reasons for a determination to a survivor.
- g. The Charter must guarantee that survivor information, data and the processes of collection and storage of survivor information are safe and secure.
- h. The Scheme Operator must make a public commitment to the Charter in the draft Services Australia Service Agreement, the Management Plan, the Draft Workforce Plan and the Business Plan, and inform the bi-annual reporting and success measures.
- i. The Scheme Operator must communicate the Charter, using targeted and focused communication products, to all vulnerable populations.
- j. The Charter must establish the survivor voice within the Scheme to ensure that issues are identified early and responded to quickly and that the survivor feels supported and heard throughout their redress journey.

# Recommendations

## ***Recommendation 2.1***

The Australian Government develop and implement through a co-design process a Survivors' Service Improvement Charter by the end of 2021. The Charter should:

- a. Include service standards to improve survivor experience.
- b. Be reflected in Scheme rules, the inter-governmental agreement and key governance and performance documents and contracts with support services.
- c. Provide a service guarantee to survivors including:
  - i. Guaranteeing survivor information is safe and secure.
  - ii. Setting expectations regarding service delivery, transparency and accountability.
  - iii. Giving surety regarding responsiveness and resolution of issues.
- d. Establish a robust feedback loop to ensure the survivor voice is embedded throughout the Scheme.

# Chapter 3 Applying for redress

## Section 3.1 Eligibility to apply for redress

### **Key findings**

- The eligibility criteria appear arbitrary and unjust.
- There are serious impediments for prisoners, people with serious criminal convictions, non-citizens and non-permanent residents to apply to the Scheme.
- Decisions in relation to medical abuse are being made inconsistently, without regard to the Royal Commission and contemporary standards.
- Standards of proof for different decisions vary, resulting in difficulties for decision makers, applicants and support services.

### **Background**

The Royal Commission recommended that survivors should be able to apply to a redress scheme for redress if:

- a. They were sexually abused.
- b. And they were children.
- c. And it was in an institutional context.
- d. And the first instance of the abuse occurred before the cut-off date.

Entitlement to redress under the Scheme is a multi-stage process. To be entitled to redress, applicants are required to submit a valid application to the Scheme, in accordance with section 19 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act). In addition, the Scheme Operator must consider there is a reasonable likelihood that the person is eligible for redress under the Scheme, the application must be approved, an offer of redress must be made to the person and the offer of redress must be accepted. The eligibility criteria as set out in section 13 of the Act state that a person is eligible for redress if:

- a. They were sexually abused.
- b. And the sexual abuse is within the scope of the Scheme.
- c. And the sexual abuse is of a kind for which the maximum amount of redress payment that could be payable to the person would be more than nil.
- d. And one or more participating institutions are responsible for the abuse.
- e. And the person is an Australian citizen or permanent resident at the time the person applies for redress.

A person may also be eligible for redress if the Act or *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (the Rules) prescribe eligibility.

## ***Reasonable likelihood standard of proof***

Following the receipt of a valid application and processes to obtain information from institutions, the independent decision maker (IDM) must formally assess an applicant's eligibility for redress and determine the redress payment. The standard of proof for eligibility for redress is subject to the 'reasonable likelihood' test. A list of indicators of 'reasonable likelihood' is set out in the National Redress Guide, a publicly available Guide to Social Policy Law:

- a. The person states the abuse occurred.
- b. A participating institution/s indicates they should be treated as responsible for the person's abuse.
- c. A report or complaint of the abuse occurred.
- d. The person has received a prior payment for the abuse from the institution.
- e. People with similar claims against an abuser or institution have been found eligible for redress.

The reasonable likelihood standard of proof is applied to the eligibility criteria as discussed above.

The National Redress Guide further states:

*In determining reasonable likelihood, the Operator must also consider that the Scheme was established in recognition that some people:*

- a. Have never disclosed their abuse and disclosure to the Scheme may be the first time they have done so.*
- b. 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).*
- c. Do not have corroborating evidence of the abuse they suffered.*

However, the training material for IDMs lists the following factors for indicating 'reasonable likelihood':

- a. A signed statutory declaration.
- b. Confirmation of identity.
- c. Whether the relevant institutions believe they should be treated as responsible.
- d. Medical treatment or therapeutic support sought.
- e. Witnesses to the abuse.
- f. Criminal charges or convictions in relation to the abuse or the abuser.
- g. Prior report of the abuse.
- h. Information provided in the request for information process.

A signed statutory declaration and confirmation of identity affirm true and accurate information and establish evidence of identity. They are not indicators of reasonable

likelihood of abuse in an institution as a child. Reasonable likelihood is a unique standard of proof which warrants substantial guidance and assistance to decision-makers to assist in their determinations and ensure the correct interpretation is applied.

As noted by the Royal Commission, in cases of child sexual abuse, much of the hard evidence, such as institutional records, has been lost. Further, survivors of abuse may have incomplete memories: the impact of trauma on memory was noted by the Blue Knot Foundation in its submission:

*Fragmentation and lack of chronology, the passage of time, many people having vague recollections without being able to name the detail or even the actuality of the abuse at times.*

The Review summarised the current evidentiary base regarding the impact of trauma on memory at **Attachment 1**.

Furthermore, most child sexual abuse takes place in private without witnesses other than the alleged perpetrator.

The Review finds the standard of reasonable likelihood to be appropriate. However, the Scheme should review its policy guidelines and training material to ensure appropriate guidance is provided to IDMs to avoid inconsistencies.

### ***The Assessment Framework standard of proof***

A different and higher standard of proof to reasonable likelihood applies to decision-makers when undertaking the calculation of entitlement and applying the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Assessment Framework).

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.

The Assessment Framework also requires that a decision-maker impose an objective test when classifying abuse as contact, exposure or penetrative abuse. Neither the reasonable likelihood nor reasonable to conclude standards apply to this decision point. There is no specific standard of proof for this classification; rather, a decision-maker must ensure their decision is based on sufficient evidence and they can justify it if questioned. IDMs have taken diverse approaches as to the evidence required to support a finding that abuse took place in a particular form.

The fact that the Assessment Framework imposes two different standards within itself for decision-makers to comply with results in unnecessary complication for the IDMs. This is in addition to the separate standard of proof related to eligibility as discussed above.

The Review is concerned that these varying objective tests and standards of proof are difficult for decision-makers, applicants and support services. It would be beneficial for a prescribed and consistent standard of proof, preferably the reasonable likelihood standard, to apply to each relevant decision point under the Act. This could be done through amendment to the Act, the Assessment Framework and related policies and guidelines to contain clear and practical explanations of the required standards.

The Assessment Framework is discussed in further detail later in **Chapter 3**.

### ***The definition of sexual abuse***

A threshold issue for determination is whether the applicant experienced sexual abuse within the scope of the Scheme. The relevant part of the definition of sexual abuse of a child under the Act is that:

*[It] includes any act which exposes the person to, or involves the person in, sexual processes beyond the person's understanding or contrary to accepted community standards.*

This definition is open to interpretation.

The Royal Commission's definition more specifically clarified what sexual abuse might entail. The definition in the Act uses the first sentence only. See **Appendix H** for the full quote and significant trigger warning in relation to this material.

Subject to exceptional circumstances provided by the Act, certain categories of people cannot make an application for redress. They include people who have already made an application, those with a security notice in force, a person under the age of 18, a person in jail, or where an application is being made in the period of 12 months before the Scheme sunset date.

Submissions to the Review raised concerns about the restrictive criteria, particularly in relation to prisoners, non-citizens and permanent residents. The restriction on these categories is considered in submissions to be unfair and is discussed below.

### ***Non-citizens and people resident outside Australia***

Non-citizens and persons living overseas cannot apply for redress under the Scheme, notwithstanding that they lived in Australia as children and were abused in institutional settings. Between 1922 and 1967, between 5,000 and 10,000 children were shipped to Australia, most of whom were sent to charitable and religious institutions, where many of them suffered severe physical and sexual abuse (Submission to the Review number 115).

The Explanatory Memorandum to the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 provides that the non-citizen / permanent resident requirement was to mitigate the risk of fraudulent claims and to maintain the integrity of the Scheme because it would be very difficult to verify the identity of those who are not citizens, permanent residents or within the other classes that may be specified in the Rules.

However, 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.

It should be noted that the United Kingdom's payment scheme for child migrants has no citizenship requirement for former child migrants to receive the payment. Payments can be made to Australian citizens who came to Australia as child migrants under the age of 16 and through a voluntary care agency or local authority. It would be possible to analyse the United Kingdom's experience with identity checking and verification of non-citizen / permanent resident applicants and managing the risk of identity fraud and then implement a similar process for the Scheme.

### ***Prisoners***

The Act states that survivors in jail cannot make an application for redress. The expectation was that survivors in jail could make an application on release from jail. For the purposes of the Scheme, a person released on parole is not in jail.

Where a survivor in jail applies for exceptional circumstances to justify making an application from jail, the Scheme Operator must consult the Attorneys-General of the states and territories where both the abuse and the offence occurred. In making a decision, the Scheme Operator is required to give greater weight to the advice provided by the Attorney-General of the state or territory where the abuse occurred than to any other factors.

The restriction against prisoners applying was in part a response to concerns that confidentiality and access by support services would be difficult. However, given the Royal Commission report stated the evidence that people in jail are more likely than the general population to have been victims of child sexual abuse, the restriction on prisoners applying to the Scheme is perceived as unjust.

During its inquiry, the Royal Commission interviewed a number of people in jail. The ability to apply from jail has been advocated by support services and survivors, who argue that jail may actually be an environment that provides more accessible supports to a survivor through the process and that prisoners have time to undertake the application process. If applications can be processed up to a certain point, survivors exiting jail should have less time to wait for their assessment.

While there may be practical difficulties in accessing people in prison in some states as well as keeping information confidential and managing the potential risk to the prisoner if the information becomes known in prison, there are also advantages for the prisoner survivor. These advantages include access to people who can help provide support in the application process and providing financial sustainability to the prisoner when they are released.

The Review supports a process being developed that accommodates people in jail who want to apply for redress. Such a process would require:

- a. clear articulation of whether there are certain categories of prisoner who cannot apply (for example, paedophiles, murderers and so on)
- b. the provision of up-front support services, most likely prisoner support services working with redress support services
- c. once the application is submitted and initially considered, advice to the person about the process and what happens next. The next steps will depend on when the person is likely to be released and the stages of the process that can be completed while they are serving their sentence
- d. finally, once an application is considered and if it is approved, a discussion with the person about what they want to do with the payment. For example, it could be held for them in trust until they are released.

### ***Survivors with serious criminal convictions***

There is also a separate assessment process for 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.

Survivors permitted to make an application from jail under exceptional circumstances who have a serious criminal conviction must also complete this process. In tandem these constitute a significant bar discouraging applicants and deterring other potentially eligible applicants from applying. The Review concludes that more flexibility is required to ensure justice for survivors with serious criminal convictions and is confident that this can be done without damaging the reputation of the Scheme.

This process was the result of negotiations between the Commonwealth and state and territory governments.

*In order to maintain integrity and public confidence in the Scheme, there will be some limitations for people who have committed the most serious of crimes, such as homicide. However, to ensure the Scheme retains flexibility and is able to meet prevailing community standards, there will be a special assessment of applicants with serious criminal convictions.*

Second reading speech, p. 3024.

The process allows the Scheme Operator to determine that a person with a serious criminal conviction is not prevented from being entitled to redress under the Scheme if the Scheme Operator is satisfied that providing redress to the person would not bring the Scheme into disrepute or adversely affect public confidence in or support for the Scheme. In undertaking this consideration, the Scheme Operator must seek advice from the relevant Attorneys-General in the state or territory where both the abuse and the offence occurred. If the abuse and/or the offence occurred outside of a participating state or territory, the Operator must seek the advice of the Commonwealth Attorney-General.

The Scheme Operator also considers a range of matters including the nature of the offence, the length of imprisonment, the length of time since the person committed the offence, and rehabilitation prospects.

As at 31 December 2020, the Scheme had received 309 applications or requests for determination as to whether they are able to make an application from survivors who were in jail and/or with serious criminal convictions (**Appendix Table 6**).

Of these, 57 were exceptional circumstances applications from survivors seeking to apply from jail, 35 of which also had a serious criminal conviction. The remaining 252 applications were from survivors with a serious criminal conviction (not in jail).

As at 31 December 2020, the Scheme Operator had made determinations for approximately 120 (or around 40%) of the 309 applications or requests for consideration received from survivors in jail or with serious criminal convictions (**Appendix Table 7**). The majority of these were applications from applicants with a serious criminal conviction who were not currently in jail that resulted in redress payments to applicants.

Almost all applicants were male. A significant proportion of applicants also identified as Aboriginal and Torres Strait Islander and/or as a person with disability (**Appendix Table 8**).

The Royal Commission documented the higher proportion of prisoners who had been victims of child sexual abuse compared with the general population and acknowledged the growing body of research on the relationship between abuse as a child and criminal offending.

### ***Children***

Section 20(1)(c) of the Act states that an application for redress under the Scheme cannot be made if 'the person is a child who will not turn 18 before the Scheme sunset day'.

Section 21 of the Act allows rules to be made for the purposes of dealing with any applications made by a child who will turn 18 before the Scheme sunset day. Section 15 of the Rules sets out these processes, including the requirement that the Scheme Operator must not make a determination on applications before the person turns 18 (section 15(3)). In practice, any application made by a child who will turn 18 before the Scheme sunset day is set aside until the person is close to turning 18, at which point the Scheme will re-engage with the applicant and a determination will be made on the application once the person turns 18.

As a result of the operation of these provisions, child applicants will not be found eligible or ineligible for redress because they are either not able to make an application to the Scheme or their application is set aside until they have turned 18 (and are no longer a child).

A child waiting for their redress application to be determined has access to the Scheme's support services throughout the period. The Scheme's legal support services are available to children and their families, including those who are unable to make an application to the Scheme (as they will not turn 18 before the Scheme sunset date), to consider the child's legal rights, particularly if civil litigation may be a viable alternative.

Applications received from children will not be determined by an IDM until the child reaches 18 years of age. The child's application will progress in readiness for a determination (for example, information will be gathered from relevant participating institutions) and the

department will contact the applicant as they near the age of 18 to see if they have any additional information they would like to provide. Once the child reaches the age of 18, they may choose to proceed with their application, withdraw their application and reapply, or withdraw their application entirely.

The age restriction was justified to ensure that children could not sign away their future civil rights when they may have limited capacity to understand the implications and when the impact of the abuse may not fully be realised.

The department is not able to provide data on the numbers of applications that have been deemed ineligible that are from children. This needs to be rectified in going forward and advice should be brought to the Board. This issue might become more urgent closer to the closing date of the Scheme and could be revisited at the eight-year review.

### ***Child Safe practices and mandatory reporting***

The Royal Commission published a number of recommendations outlining how institutions could become Child Safe. Since their publication, a number of reforms have taken place to protect children more effectively, including legislative amendments, updates to the Commonwealth Child Safe Framework, the development of an evaluation framework to inform a 10-year review, a new eSafety Toolkit for Schools and the opening of the Australian Centre to Counter Child Exploitation. Institutions that are responsible for children are accountable to Child Safe reporting practices, and this has implications for their engagement with the Scheme.

An application to the Scheme may be the first time a named individual is identified as a potential perpetrator of sexual abuse. For institutions advised of abusers through a request for information, this will trigger mandatory reporting obligations. For applicants who are unaware of this legal requirement, this can cause distress when they are approached unexpectedly for the purposes of an investigation. Currently, the Scheme does not provide services to support applicants whose report activates a Child Safe report.

Institutions that comply with state and territory policies will have procedures to respond to this circumstance. However, this may be less clear for institutions that have less defined policies. One institution requested that the Child Safe reporting framework be revised to ensure the Scheme reported more claims of abuse to the police while others requested more guidance around their mandatory reporting requirements in these circumstances.

The Scheme has received applications that identify the institution where abuse occurred but do not name a perpetrator. Such information advises institutions of a significant risk to children in their care. One institution spoke of the difficulty they faced in managing this situation. The Review recognises the distress caused by such a discovery, while acknowledging that survivors of abuse in institutional settings may not be confident in identifying their abuser and so are unable to name them. Institutions are obliged by law to have Child Safe

policies that anticipate the possibility of potential perpetrators in their midst and therefore protect children.

The Scheme's burden of proof, as discussed in this chapter, compared with other burdens of proof such as the 'balance of probabilities' and 'beyond reasonable doubt', creates the possibility that an applicant might receive an offer of redress based on testimony that would not be successful through civil litigation or sufficient for a criminal conviction in court. One institution raised concerns that an offer of redress was tantamount to a finding, leaving them in an uncertain position in terms of providing ongoing employment to someone who has not been found guilty in a court of law. Concerns of this nature will need to be considered by institutions on a case-by-case basis and will be largely dependent on the situation, with the institution needing to be mindful of the relevant child safety laws. The Review believes there is merit in the Australian Government and state and territory governments working with the National Office for Child Safety within the Department of the Prime Minister and Cabinet to provide guidance on good practice in these situations.

### ***Child-on-child abuse***

Submissions from four institutions commented on the difficulty they faced in being held responsible for child-on-child abuse. One institutional submission suggested that eligibility for redress should only be available to children who were sexually abused by children who have been trained to hold formal leadership roles within an institution.

The Review notes that in the design of the Scheme child-on-child abuse has been consciously scoped in, the view being that institutions, such as schools, are frequently acting in loco parentis. While acknowledging the complexity of managing this issue, the Royal Commission in other recommendations focused on the importance of ensuring institutions are child safe to oblige changes in policies, practices and infrastructure to mitigate against and prevent such abuse. The Review does not recommend any changes to the Scheme's treatment of child-on-child abuse, but greater clarity on this issue for institutions would be beneficial.

### ***The age at which the abuse is experienced***

Eligibility for redress is dependent on the age of the child at the time they were abused, that is, under the age of 18. For care leavers prior to the change to the age of majority, children were in care until they were 21:

*The National Redress Scheme (NRS) is using today's standards to make policy for different generations when children were considered state wards until the age of 21. Just as a 16 year old had no say in their care or what happened to them, neither did a 20 year old who was still in care. The policies of the time believed that children were just that until the age of 21.*

While a child is legally a child until the age of 18, that change to the law did not take effect until 1974. Prior to that date there were people in care who were over the age of 18 years but still living in care and where there was no possibility that they could be released from care until they reached the age of 21.

The Review believes the Scheme should recognise these care leavers if they were abused in care over the age of 18 and under the age of 21 prior to 1 November 1974. This is because these care leavers were still required to remain in care between the ages of 18 and 21 due to the laws at the time, and some experienced abuse during that period of care.

### ***Survivors in disability institutions***

The Review is concerned that the department has a lack of visibility of applications from survivors in disability institutions. The Review received no submissions from disability institutions or guardians in relation to this cohort of children or survivors. This is particularly concerning given the high number of people who have applied for the Scheme and have identified as having disability.

A consulting firm was engaged to consult with the disability sector in relation to the Review. The report offered various reasons as to why survivors in disability institutions were unrepresented. These reasons included:

- a. People living in disability institutions were one step further removed from direct information, relying on carers and workers for information.
- b. There are privacy issues, particularly when using the telephone.
- c. There is potential exploitation of people living in supported accommodation, including by caregivers once it is known they may receive a sum of money.
- d. There is a lack of awareness of the existence of the Scheme.
- e. There may be difficulties with the application process due to disability.

The Review concludes that the Australian Government should give serious consideration to the difficulties that children and adults living in disability institutions may have in accessing the Scheme. The Australian Government should consider introducing additional specialist support services to assist with applications and increasing awareness within these supported institutions and their residents.

### ***A single application***

Applicants can only make one application to the Scheme. The single application restriction is problematic, particularly where an applicant has named multiple institutions and not all of them have joined the Scheme. It also fails to acknowledge the manner in which traumatic memory can be recovered by applicants (Refer to **Attachment 1**). It may also be punitive if a mistake is discovered after acceptance of the offer or there is a policy change that would have favoured the applicant.

In cases where an applicant has named several institutions, only one of whom is participating in the Scheme, that person can elect to go ahead with the initial application or to have the application put on hold pending the other institution or institutions joining the Scheme. If the applicant elects to go ahead, they are denied the opportunity to obtain redress from the other named institution/s if or when they join the Scheme. However, applicants can pursue other named institutions through civil litigation.

If the person elects to hold their application until the other institutions have joined, they will also be financially disadvantaged through delay and in terms of access to the other elements of redress. The lapse of time will also minimise their redress payment while indexation will be applied to any prior payment. They do not have the option of pursuing redress at a later date from the institutions that have not joined.

The inability to submit a second or supplementary application places restrictions on survivors and inhibits the flexibility of the Scheme. The Review understands that the justification for allowing one single application is to avoid the practical difficulty of dealing with subsequent applications where redress payments have already been made and may need to be adjusted. However, the Review is of the view that the focus should be on the applicants, not the institutions' benefit, and there is merit in the Scheme reconsidering this restriction in light of unintended consequences as discussed above.

### ***Abuse in a medical setting***

The Review heard from a number of applicants and support services citing sexual abuse in a medical setting whose applications had been rejected because the abuse was considered not to be sexual in nature, when the applicants were adamant that it was.

knowmore cites cases being managed by them where clients were abused by medical and health professionals in the context of unnecessary and inappropriate medical examinations.

This observation was supported by a number of submissions that provided accounts of how many female care leavers were routinely subjected to internal examinations that were carried out in a less than professional manner and that appeared to be for the sexual gratification of a doctor.

knowmore particularly expresses concern at the decision-makers' reliance on what were considered to be 'standard' or 'acceptable' practices of the past. knowmore argues that the examinations experienced by their clients:

*Were sexual processes contrary to contemporary community standards and, as such, fall within the definition of sexual abuse within the Act ... [and they] were also contrary to community standards at the time of the abuse.*

This means that, just because a sexual assault took place as a form of harassment or 'bastardisation', it is still a sexual assault. The case study below illustrates this point.

## **Case Study 1**

*We note that the Royal Commission has heard evidence that many girls were subjected to the brutal vaginal examinations. This evidence included that such checks were routinely undertaken in a manner that was abusive and invasive. BDC, who was at Institution Y from May 1963 until May 1965 gave evidence that whenever she was returned to Institution Y after absconding she was forced to have an internal medical examination. She said that she spoke with other girls about the medical examinations and that they nicknamed the doctor, 'Dr Finger.'*

*Ms S, who was at Institution Y from May 1970, gave evidence that she was forced to undergo a venereal disease examination upon arrival at Institution Y at the Fitzroy clinic, despite being a virgin. She said that she was held down whilst the examination was carried out, that she bled afterwards, and that she was made to undergo the same procedure ten days later.*

*BHE, who was at Institution Y on and off over the period June 1971 to February 1977 gave evidence that every time she was returned to Institution Y after absconding she had to undergo a VD check. She said it was painful and she was never told why she had to go through them.*

*Ms H gave evidence that within the first or second week of arriving at Institution Y she was taken to the VD clinic in Fitzroy and forced to undergo an internal medical examination. She stated that her understanding was that girls had to undergo this procedure every time they were returned to Institution Y. Ms H gave evidence that prior to undergoing the procedure she did not receive any explanation, her permission was not obtained, but that a sexual history was taken. She said that despite screaming that she was a virgin, four people physically held her down and the examination was conducted.*

Submission to the Review 02.

The submission argues that the situations described above constituted penetrative abuse. The submission further notes:

*We have received correspondence from the National Redress Scheme that such abuses are not deemed to fit under the category of 'Penetrative Abuse' as there is no evidence to show that the medical procedures were sexual in nature or provided perpetrators with sexual gratification. We submit that this view held by the Scheme is a gross misrepresentation of the assaults experienced by many survivors and should be viewed and assessed under the category of 'Penetrative Abuse'.*

The Review notes the differing approaches and interpretations of abuse which fit under the category of penetrative abuse when the abuse occurred in the context of a medical procedure and strongly supports further clarification of this issue being provided by the Scheme.

### ***The Scheme's policy position on medical settings***

The policy advice stresses the importance of considering the context of the situation, the legislative requirements and the standard practices of the time and in the jurisdiction. The policy advice includes the following indicators of potential sexual abuse include:

- a. Where the materials available to the IDM indicate that the medical procedure was carried out in circumstances where the practitioner received sexual gratification from the act.
- b. Where procedures were carried out an excessive amount [sic] of times.
- c. Where there was no authority to perform the procedure.
- d. Where unnecessary medications or sedatives were used.

Contra-indicators of sexual abuse in the advice include where the procedure was a medical requirement or common medical practice at the time.

### ***Conclusion***

Consistent with Royal Commission recommendations on equal access and equal treatment of survivors, the Scheme should remove all legislative and process barriers that deter or make it difficult for survivors to apply for and access redress.

Should the existing processes be retained, feedback suggested that the serious criminal conviction form requires amendment to provide adequate space for responses. We acknowledge that the Scheme should continue to consider the potential impacts of applications on Scheme reputation on a case-by-case basis.

The Scheme has produced policy advice for IDMs on sexual abuse. The policy on medical abuse has been very tightly defined. Because the institutional settings were medical and at times the procedures were undertaken by 'trusted' medical professionals, the policy settings may be unfair to the applicant.

There is an emphasis on the 'standards of the time' benchmark and the indicators for sexual abuse are minimised. The policy advice could mean that an IDM fails to identify abuse in a medical setting if they apply only the tightly defined parameters of the policy and do not consider the specific circumstances of the medical procedure.

The policy advice used for the determination of medical abuse as sexual abuse should be reviewed and better indicators used to describe the reasonable likelihood of sexual abuse in a medical setting.

In relation to medical procedures and the definition of child sexual abuse, the Review considers that reliance on legal or community standards of the time is inappropriate and warrants review based on Scheme experience.

Where medical procedures were based on community standards of the time, it is clearly inappropriate for this to be a factor relied upon in determining that sexual abuse did not occur.

Where medical procedures were based on the law or regulations of the time, this should not be the sole consideration for an IDM. The IDM will then need to consider the type of medical procedure and any evidence in relation to how it was carried out. Where there is evidence that a medical procedure was legal, how it was undertaken (including the frequency of the

procedure and the appropriateness of having people view it) must be taken into consideration as to the reasonableness and therefore the lawfulness of the procedure.

The Review recommends further training and guidance be provided to IDMs in relation to medical issues to ensure consistent and transparent decision-making.

The Review acknowledges that the eligibility criteria were agreed at a time where there was less certainty about predicted numbers of applicants. Given the above identified issues with the eligibility criteria, the Review considers it is now appropriate to review the original eligibility criteria based on current Scheme experience.

# Recommendations

## ***Recommendation 3.1***

The Australian Government review the current restriction on survivors making a single application, and assess this requirement to ensure fairness to the survivor and to acknowledge any changes in their circumstances or additional available information.

## ***Recommendation 3.2***

The Australian Government amend the eligibility criteria to include a single application process for all applicants. This process should also allow for applications to be made by the following survivors:

- a. Non-citizens.
- b. Non-permanent residents.
- c. Prisoners.
- d. Those with serious criminal convictions.
- e. Care leavers if they were abused in care over the age of 18 and under the age of 21 prior to 1 November 1974.

## ***Recommendation 3.3***

The Australian Government review the application of policy guidance regarding child sexual abuse in a medical setting, amend inconsistencies and provide greater clarity for independent decision makers in the exercise of their judgement.

## ***Recommendation 3.4***

The Australian Government amend the Act, the Assessment Framework, policy and guidelines to establish a 'reasonable likelihood' standard of proof for all decisions relating to an application.

# Section 3.2 The application form and information required

## ***Key findings***

- National Redress Scheme processes are administratively complex and do not achieve the right balance between detail and flexibility.
- There is a long period before the Scheme reaches a determination and communicates it to the survivor.
- Applicants who use a redress support service have a more positive experience of redress.
- Vulnerable applicants currently lack access to appropriate support.
- Applicants require greater clarity of information in relation to the use of nominees to ensure they are aware of when a nominee may be contacted.
- There is a clear perception from survivors the Scheme favours the interests of institutions over them.

## ***Background***

Under its terms of reference, the Review is required to consider the application, assessment and decision-making process, including user experiences of the process.

The Review considered submissions to the Review and to the Joint Select Committee on Implementation of the National Redress Scheme (JSC), as well as survey responses from survivors, support and advocacy services and family members, and the consultations conducted by the Independent Reviewer.

The Royal Commission made the following recommendations about access to the Scheme:

- a. A process for redress must provide equal access and equal treatment for survivors, regardless of the location, operator, type, continued existence or assets of the institution in which they were abused, if it is to be regarded by survivors as being capable of delivering justice.
- b. Any institution or redress Scheme that offers or provides any element of redress should do so in accordance with the following principles:
  - i. Redress should be survivor focused.
  - ii. There should be a 'no wrong door' approach for survivors in gaining access to redress.
  - iii. All redress should be offered, assessed and provided with appropriate regard to what is known about the nature and impact of child sexual abuse, and institutional child sexual abuse in particular, and to the cultural needs of survivors.
  - iv. All redress should be offered, assessed and provided with appropriate regard to the needs of particularly vulnerable survivors.

The Royal Commission further noted that:

- a. The Scheme processes needed to be efficient and focused on obtaining the information required to access redress and to make the determination in a fair and timely manner.
- b. The way in which the Scheme is administered must be sensitive, transparent and survivor centred so that any risk of re-traumatisation is minimised and the benefits of redress maximised.

### ***The application process for obtaining redress***

The Scheme is administratively complex and can be confronting for survivors. The survivor feedback study commissioned by the Review found:

*Survivors were distressed about the nature of the application process, including the energy and stress involved, their lack of control in the process of applying, the impact the process would have on them. In addition, the likely outcome made many question whether the process would be worthwhile.*

Survivor feedback study, commissioned by the Review.

The amount of information required on the application is significant. The application form is over 44 pages long and structured in three parts:

- a. Part 1 seeks personal details, some of which will not be required until a determination has been made and the offer accepted, for example, bank account details.
- b. Part 2 seeks information on the abuse, including institution names—this part must be completed for each institution named in the application.
- c. Part 3 seeks information on the impact of the abuse on the survivor.

The Review notes that the application form has been prepared in a format to assist survivors, following consultation with experts and survivors regarding the appropriate form. The use of white space, larger font and detailed explanations, including warnings where appropriate, has contributed to the length of the form.

In submissions and consultations, survivors were critical of many aspects of the application process. Survivors stated that the application form is too complex for a population that may have literacy difficulties; there is not enough guidance on the level of detail required in the application form; the process is currently traumatising; and the Scheme does not engage with survivors sufficiently, particularly regarding the progress of an application.

The Review received submissions relating to the requirement to provide bank account details on the application form. It was submitted that this is potentially detrimental to applicants because:

- a. Some applicants do not have a bank account and this requirement may delay an application being made or create a barrier to making an application.

- b. Providing a current bank account which a carer or institution may have access to increases the risk that any redress payment may be used without the applicant's knowledge or permission.

The survivor survey showed that 26% of respondents had not applied for reasons of eligibility, the nature of the information required for the application, the potential for re-traumatisation, expectations of low likely benefit or preference to take other action.

Submissions indicate a desire for a simpler application process. Frequent issues raised by applicants included:

- a. The length of the application form and substantial amount of information requested in it, which was reported to prevent some survivors from making an application.
- b. The need for clear guidelines at the beginning of the form to assist applicants to know how much detail was required, particularly in relation to detailing specific traumatic events.
- c. Clarity around the use of Assistance Nominees, particularly to provide the applicant clear choice to decide who should be the first point of contact by the Scheme.
- d. Up-front acknowledgement on the form of the emotional and psychological impact the application may have on survivors and the provision of information about support services available to assist with the process.

The Review agrees that the application process requires significant simplification on the basis of the issues raised in submissions and outlined above. One of the most significant issues is the lack of clarity about what information and level of detail is required to satisfy the level of proof. Furthermore, the application process should provide clear guidance to people with disability about alternative communication methods permitted to capture their applications and give them an opportunity to identify their support needs and request assistance from specialist disability redress support services.

### ***Redress support services***

Various redress support services have advised the Review that it can take up to three months to complete an application.

Submissions indicate that the application process can cause distress for some applicants. However, only around 30.8% of applicants are supported during the application process. Reasons why survivors may not use a funded support service include issues relating to:

- a. Access, particularly for survivors who live in rural or remote communities.
- b. Trust in the services to provide them with impartial advice/assistance.

On the basis of submissions from support services and feedback from the Scheme, the Review found that applicants who use a support service to complete their application:

- a. Receive a determination and offer of redress within a shorter time frame.
- b. Submit a more coherent and complete application.

- c. Feel more supported than those applicants who complete the application form without assistance.

However, the benefits of using a support service appear to go beyond the provisions of support to the applicants. The average monetary payment is also higher for those applicants with support (see **Chapter 1, Table 5**).

The most common reason for not applying was the potential trauma involved. Survivors commented that the prospect of applying was 'too painful' or they were reluctant to revisit the memories they had tried hard to forget. Many comments in the survey indicated a deep distrust of government:

*I hate the government for what they did to me and for making me do the application to get some form of validation. It was retraumatising and disrespectful. Their [the support service's] support is the main reason I decided to go through with my claim but because of the disgusting way the government has handled the Scheme I regret joining. People are encouraged to come forward and bring up the past and then treated like a joke.*

Survivor feedback study, commissioned by the Review.

For survivors, completing the substantial application form is challenging. This is heightened by the extremely distressing nature of information being requested. In addition, the information that applicants need to provide 'to be believed' is not clear.

The Review strongly supports more assertive outreach to facilitate the provision of support to applicants to assist in the completion of their applications. Better access to enhanced front-end financial, legal, psychological, Indigenous and disability support services will minimise trauma and assist survivors to obtain better outcomes.

### ***Statutory declaration requirement***

The application form requires verification of the information provided by a correctly completed statutory declaration form. The application is invalid without this document.

Many survivors consider this requirement questions the integrity of their application, while others have difficulty complying with it due to being homeless; living in a community where they do not have a birth certificate or have concerns about confidentiality, especially in regional communities; or having literacy difficulties. They are also required to provide proof of identity documentation despite in many instances being in receipt of other national government health or social care payments. The Review believes there are opportunities to streamline and simplify this process that the department should investigate. In this regard, the Review notes other examples of the Commonwealth drawing on data obtained for another purpose for the purpose of identification, for example, people who lost their entire belongings in bushfires and did not have a birth certificate could draw on proof of identity through previous Centrelink or Medicare records.

The completed statutory declaration form disproportionately affects survivors in remote communities, particularly Aboriginal and Torres Strait Islander peoples. A submission from an Aboriginal and Torres Strait Islander support service advised:

*It's just another barrier/step in the process, to get a statutory declaration, we have to get the client's ID, to get ID we need ID. That means we need three separate pieces of ID to get the ID to get the statutory declaration done.*

Submission to the Review 196.

An Aboriginal and Torres Strait Islander support service described the difficulty one of their Kimberley clients had to establish his date of birth in order to obtain the statutory declaration:

*The DOB was incorrect on his driver's licence. To prove his correct date of birth we required additional proof of ID. To prove his correct DOB we had to get confirmation from his institution records to correct this.*

Submission to the Review 196.

Some participating institutions consider that this requirement should remain part of the application process in order to mitigate fraud. However, the Review found that the statutory declaration is not a contemporary requirement for Commonwealth schemes.

The Review also notes that section 28 of the Act imposes civil penalties on any person who gives information or produces a document or statement that the person knows is false or misleading. The department therefore has an avenue to take action against any applicant who purposely or recklessly provides false or misleading information in relation to their identity.

During the COVID-19 lockdown period (from 1 March 2020 to 31 December 2020), requirements for the completion of the statutory declaration were modified and applications were considered following the provision of satisfactory identification, without applicants needing to have their statutory declarations signed and witnessed. The Review found that survivors and support services welcomed this approach.

The Scheme could consider the process for identity checking which was used during the COVID-19 lockdown period and assess whether it is deemed suitable to be utilised going forward, with any necessary amendments.

The Review acknowledges that the removal of the statutory declaration requirement will not remove a requirement for applicants to prove their identity. It is therefore likely that some applicants will encounter difficulties with this step of the process. However, it is a necessary step to ensure the integrity of the Scheme. The Review notes information from the department that it currently considers information it has available about applicants through other means (such as social security payments), which is used to data match the information provided in the applications to streamline the process and timelines. However, this process only applies where an applicant has a Centrelink Registration Number (CRN) and has already confirmed their identity with Centrelink. This information is also not consistent with feedback received from survivors and support services.

## ***Engagement with applicants during the application process***

The frequency and quality of communications with applicants by Scheme staff during the application process is a source of significant concern to applicants.

The survivor survey found that some contact with Scheme staff was positive (39%) but that it was more common that survivors reported negative experiences with redress Scheme staff, with many feeling the contact compounded their trauma.

Some comments about the interaction included:

*It's been over 5 months since the initial calls to request identification ... I have no idea how much longer I have to wait or what is being assessed. I am feeling so judged and stressed. They were always able to tell me nothing except that I had to wait an indefinite period of time. I feel the whole process is traumatic, poorly resourced and poorly run.*

*Once the staff receive a redress application they should act on it right away. Not take more than 4 weeks to get back to you and never leave it up to the applicant to call.*

Survivor feedback study, commissioned by the Review.

The lack of honest and real-time information about where their application was at was a common complaint among applicants. Applicants advised the Review that it sounded as though Scheme staff were reading from a prepared script. The Review understands that Scheme staff are required to work from prepared scripts when speaking with applicants. These scripts are provided to Scheme staff to ensure they have access to consistent information to provide to applicants. However, such scripts do not negate the need for Scheme staff to act in a professional, understanding and trauma informed manner. Applicants identify this and therefore distrust what they are hearing:

*The contact I had was appalling on the whole. The pre-scripted statement of always hearing 'your application is progressing' and giving no other information is a soul destroying way to respond to survivors of abuse. It re-traumatised me over and over. I know it was not the operator's fault though but it's a fundamentally flawed system. I know the Scheme may think it's a human response but it was akin to being like an automated phone response system with a recording at the end that says, 'your application is progressing'.*

Survivor feedback study, commissioned by the Review.

A key issue was applicants experiencing contact with multiple staff members rather than having a designated contact. Applicants and institutions reported this caused considerable frustration and often produced variable or inaccurate information.

Another complaint is the lack of courtesy experienced and the lack of information provided:

*If the Federal Government, in contrast to the response of the Royal Commissioners, had any appreciation of the rape and violent abuse along with the near total lack of education that I and my fellow inmates experienced the Federal Redress Office would surely respect and appreciate the keenness of survivors to cooperate with the Redress Scheme. Instead disparagement of us as fellow Australian citizens has characterized this Federal Government's response. Are we really people of little worth? Please, if possible, ask the Federal Redress Office to begin their letters/requests with some indication of respect, comparable with the respect shown to us by the Royal Commissioners.*

Submission to the Review 08.

There is a need for all communications with applicants to be more trauma informed. The provision of accurate and up-to-date information to applicants about the progress of their applications is important to mitigate the risk of further traumatisation and assist in the setting of expectations. It would be respectful for such information and tracking to be available to Scheme applicants. This should be a requisite for any ICT system supporting the Scheme.

### **Nominees**

Applicants and support services raised with the Review the lack of attention paid to nominee information contained in applications. This included failing to ensure that nominees were present when the Scheme contacted applicants, and not contacting nominees in the first instance where applicants requested this in the application (Submission to the Review 168).

Applicants are able to request a nominee to act on their behalf. There are two types of nominee, assistance nominees and legal nominees. Assistance nominees can assist the applicant with their submission, contact the Scheme on behalf of the applicant, receive copies of written communications and telephone calls from the Scheme about the application and request a review. Legal nominees also have the authority to apply for redress on an applicant's behalf and accept or decline the offer on their behalf.

The applicant and nominee complete a separate form to advise the Scheme of a nominee. However, the redress ICT system does not effectively record nominee details. This increases the risk of the applicant's request to utilise a nominee not being consistently adhered to. The redress ICT system is covered in detail in **Chapter 6**. Applicants have commented that Scheme staff often ignored or missed the existence of the nominee. For example:

*A legal service became my nominee. This was acknowledged by the Redress Scheme but Redress staff ignored this & rang me anyway. Their attitude was insensitive & like [they] couldn't care less. I was sent mail in my former name I was known by when I was abused. Despite filling the forms out correctly & legal service telling them to fix their data, redress staff ignored this. They breached my right to privacy by doing this & repeatedly sent out mail in my former name. They put me at risk of having people in my community ask about my past. Despite a flag being on my file, regarding name to contact me by, they kept doing it. The way they dealt with my application caused me more unnecessary distress.*

Survivor feedback study, commissioned by the Review.

The Review believes the provision of a nominee arrangement is necessary for those applicants who want to minimise contact with the Scheme and/or who may highly be vulnerable. This needs to be respected, utilised and supported by appropriate information systems to ensure that applicants with nominee arrangements are clearly identified and treated as requested.

### ***Priority applications***

The application form does not provide applicants with the opportunity to request priority status for health, age or other reasons.

The department has a priority applications policy to fast-track applications from survivors who are elderly or have significant health issues. However, the existing redress ICT system does not automate decisions on whether an application should be treated as a priority or not but does allow Scheme staff to manually record this information into the system. Once an application's priority has been established and recorded in the redress ICT system, the system provides functionality to display the priority, search for applications by priority, and establish certain time frames, such as for the return of a request for information, based upon that priority. The redress ICT system is discussed further in **Chapter 6** and the prioritisation of applications is discussed under the recognition payment section in **Chapter 4**.

### ***Conclusion***

The Review acknowledges the challenges inherent in developing an application form and process that captures highly personal and sensitive information and that at the same time provides enough information to allow reasonable decision-making. However, there are opportunities to improve the application form and the survivor experience during the application process which could also assist in efficiencies in the timing of processing applications. These are detailed in the discussion above.

Applicants should receive end-to-end support from the Scheme. Support is required due to applicant vulnerability and the traumatising nature of the questions they need to address in the application form. This should include access to counselling support, financial support, and free and impartial legal advice and interviews for applicants with an intellectual disability.

The Scheme should simplify the application form to provide options, particularly for Aboriginal and Torres Strait Islander survivors and people with disability. The process should enable survivors to apply for redress and not deter them from it.

To further assist survivors in making an application, the department should also provide the option for applicants to refer to previous evidence or submissions which they provided to the Royal Commission or other inquiries. Allowing applicants to do so would limit the requirement for them to revisit their abuse and retell their story.

## Recommendations

### ***Recommendation 3.5***

The Australian Government provide all survivors with end-to-end support by experienced, culturally appropriate, and trauma-informed professionals.

### ***Recommendation 3.6***

The Australian Government develop a significantly simplified application form that:

- a. Includes the provision of more assertive support, including culturally appropriate and easily understood information, to assist in the completion of the application.
- b. Includes the nominee form.
- c. Removes the statutory declaration requirement and simplifies identity checks.
- d. Removes the requirement to provide banking details in the application form, deferring this requirement until a determination is made.

### ***Recommendation 3.7***

The Australian Government provide more assertive outreach support or assist applicants in the completion of their applications. This should include better access to enhanced front-end financial, legal, psychological, Indigenous and disability support services to minimise trauma and assist survivors to obtain better outcomes.

### ***Recommendation 3.8***

The Australian Government explore, for consideration, alternative mechanisms to facilitate access to the scheme for more vulnerable individuals, Aboriginal and Torres Strait Islander, culturally and linguistically diverse and applicants with disability, including but not limited to face-to-face application assistance.

# Section 3.3 Application determinations and the Assessment Framework

## ***Key findings***

- The assessment process, including calculations for the monetary payment component, is complex, and lacks transparency.
- Survivors and Support Services informed the Review there have been inconsistent decisions, even in similar factual scenarios.
- The current outcome letter and statement of reasons templates are impersonal and lack detail or reasoning.

## ***The role of the independent decision maker***

IDMs are delegates of the Scheme Operator. IDMs come from a variety of backgrounds and have significant relevant experience in public and private sector areas. IDMs are aware of the need to comply with the legislative framework, including *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act), *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (the Rules) and the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Assessment Framework). IDMs are independent of the Scheme, and the Scheme Operator cannot direct an IDM in terms of their decision-making.

Currently, there are approximately 40 IDMs located throughout Australia and generally working remotely from the Scheme staff.

As delegates of the Scheme Operator, IDMs must make the following determinations on an application in accordance with section 29 of the Act:

- a. Approve or not approve the application as soon as possible.
- b. Each participating institution that is responsible for abuse.
- c. The amount of redress payment for the applicant.
- d. The amount of each responsible institution's share of the cost of the redress payment.
- e. The amount of counselling and psychological component of the redress for the applicant and the amount of each responsible institution's share of those costs.
- f. Whether the counselling and psychological component of redress for a person will include access to counselling and psychological services provided under the Scheme or a counselling and psychological services payment.
- g. If redress will consist of a counselling and psychological services payment, determine the amount of that payment equals the amount of the counselling psychological component of redress for the person.

- h. For a participating institution that was identified in an application and that was determined not to be responsible for abuse, determine that the institution is not liable to provide redress to that person under the Scheme.
- i. Where a participating institution is determined to be equally liable with a defunct institution, that the participating institution is the funder of last resort for the defunct institution.

IDMs are also required to make decisions relating to reviews of determinations under section 75 of the Act. In reviewing a determination under section 75, an IDM must reconsider the original determination and make a new determination which:

- a. Affirms the original determination.
- b. Or varies the original determination.
- c. Or sets the original determination aside and substitutes a new determination.

Reviews are discussed in more detail at **Chapter 5**.

The department supports IDMs with detailed procedural advice, policy guidance and training to assist them in their deliberations, including:

- a. Training material provided on appointment.
- b. The Scheme support hub, which IDMs can go to for advice and assistance as required.

The decision-making process includes consideration of survivor applications, institution responses to requests for information and any other documentation supplied by the applicant or by the institution.

Scheme staff assist IDMs by initially assessing the application to identify the responsible institution or institutions and issuing requests for information to those institutions. Scheme staff are responsible for entering the application into the redress ICT system, which IDMs use to access the application and associated materials.

### ***The determination of the redress payment***

The complexity of the redress assessment process should not be underestimated. The detailed process for working out the payment assessment is set out in section 30 of the Act.

IDMs are required to use the formula set out in section 30 of the Act, 'Working out the amount of redress payment and sharing of costs'.

The process by which IDMs approach their task was the subject of detailed discussions with many of the IDMs during the course of the Review.

**Appendix I** contains the method statement for calculating the amount of redress payment.

### ***Survey responses***

Survey responses included many comments on the insufficiency of the amount of redress payment. The sentiment in these comments is often about the lack of transparency. Comments included:

*I was disappointed when I received the cold and clinical telephone call with an Offer amount. No explanation was given as to the breakdown (I found that out when I received the written offer). There has been an 'is that all there is' feeling since then. It was an horrendous experience to go through the process. It is not victim centred, not equitable, not consistent, not transparent, not accountable, and is open to the vagaries of assessor differences.*

*... The redress payment is meant to be an acknowledgement of pain and suffering. Clearly some decision-makers have no understanding of our pain and suffering.*

Survivor feedback study, commissioned by the Review.

### **IDM comment**

The Review spoke at length with a number of IDMs to gain their insight in relation to their role. Their feedback included experiencing difficulties with:

- a. Making the assessments in isolation from colleagues.
- b. Evaluating the type of abuse and drawing the link between the applicant and the institution.
- c. Constraints within the Scheme, such as the current text of the offer letter and the inability to provide the IDM's name on the letter.
- d. Inability to request information directly from applicants. Under current arrangements, IDMs must request the information from Scheme staff, who in turn may request it from the applicant.

IDMs claim the current outcome letter does not contain enough information for the applicant, including the reasons for decisions; it is not trauma informed; and it is not sufficiently personalised.

IDMs submitted that they wanted applicants to know that an IDM had carefully considered their application and made a determination through a thorough process.

Other improvements proposed by IDMs included developing a central knowledge bank to inform decisions, the ability to view like applications for guidance, better understanding of reasonable likelihood and training to improve consistency. The Review agrees that these proposed improvements would increase consistency in decision-making.

### **Statements of reasons**

IDMs are required to prepare a statement of reasons for their determination. Statements of reasons are useful for people affected by decisions to understand the decision and be able to appeal decisions in an informed manner.

The Scheme does not provide IDMs with sufficient training material to explain why a statement of reasons is important and what it must include.

The statement of reasons templates currently provided for IDM use are complex and legalistic. The Review believes survivors would prefer a more personal, complete and easy-to-understand statement of reasons.

Additionally, the Review was advised that statements of reasons are only provided to applicants on request. It should be standard practice that each outcome letter include a statement of reasons for the purposes of transparency of decision-making.

### ***Inconsistency of decision-making***

The outcomes under the determination process have been criticised by applicants and support services. One of the most common complaints from applicants and the support and advocacy services is the inconsistency in decision-making by IDMs. This is predominantly in relation to the amount of redress payment determined, especially regarding the consideration of extreme circumstances, prior payments and eligibility for redress.

Submissions included criticism of the lack of transparency about the decisions on payment outcomes. Stakeholders would like to understand the reasons for the disparity between outcomes for what in some circumstances appear to be similar or identical situations.

These disparities are principally where there are similar factual situations but widely varying outcomes. It is clearest in sibling situations:

*Two siblings who had very similar experiences of institutional child sexual abuse ... apply for redress under the Scheme. Both siblings had previously participated in civil proceedings, and had received almost identical relevant prior payments from the responsible institution.*

*Despite their common experiences of abuse and history of prior payments, the clients received vastly different redress outcomes under the NRS. One sibling was found to have experienced extreme circumstances and received an offer of all three components of redress, including a monetary payment of approximately \$30,000.*

*The other sibling was found not to have experienced extreme circumstances. As a result, following the deduction of relevant prior payments, that sibling received an offer of redress that did not include a monetary payment.*

Submission to the Review 166.

The support service assisting these applicants has been unable to reconcile these disparities, although it believes that it may be because different IDMs assessed their applications. The support service commented:

*This unexplained unfairness and inconsistency has had a significant impact on the survivors and is inconsistent with the principles of transparent and consistent decision-making. While one has been able to accept their offer, the other has experienced further delays, stress and uncertainty while waiting for the outcome of an internal review.*

Submission to the Review 166.

The Review is concerned with the lack of consistency in decision-making. The inconsistencies arise from a lack of quality assurance processes, misalignment of laws and policy and a lack of training for IDMs. Additionally, IDMs should have access to outcomes of the reviews of their decisions and to de-identified decisions made by other IDMs so that comparable circumstances receive comparable outcomes.

## ***Conclusion***

Following consideration of submissions regarding inconsistency in decision-making, departmental audits of this area and discussions with IDMs, the Review believes it would be beneficial to the integrity of the Scheme to create the position of Chief IDM. The role and duties of this position would be to have oversight of all determinations, with a view to ensuring quality assurance and consistency in practice. The Chief IDM could also be responsible for ensuring that the quality of all communication and interactions with applicants is both consistent and trauma informed. The role of Chief IDM would not affect or impact on the independence of IDMs in making their decisions. Rather, it would ensure there was a central point for oversight, guidance and consistency of decision-making.

The Review also recommends that the Scheme consider the creation of a de-identified case database that IDMs could refer to in order to ensure consistency in determinations.

# Recommendations

## ***Recommendation 3.9***

The Australian Government strengthen consistency and integrity in decision-making through actions including but not limited to:

- a. The Australian Government providing accurate and clear policy guidance to independent decision makers.
- b. The Australian Government, as a priority, reviewing and improving the information and training resources provided to independent decision makers.
- c. The Australian Government creating the position of a Chief independent decision maker to provide a systemic focus on Scheme integrity, quality assurance and consistency in decision-making.
- d. The development of a de-identified case database, available to assist independent decision makers.

## ***Recommendation 3.10***

The Australian Government review the format and content of the outcome letter and statement of reasons template with a view to removing legalese and ensure independent decision makers provide detailed information to justify their decisions in plain English.

The outcome letter should include the name of the independent decision maker.

# Section 3.4 Applying the Assessment Framework

## ***Key findings***

- The current Assessment Framework causes significant distress to survivors.
- Independent decision makers are not applying the Assessment Framework consistently with different levels of reliance on the Assessment Framework Policy Guidelines.
- The Review has identified potential causes of inconsistency in decision-making due to differing guidance and information between the legislation and policy documents.
- The Scheme disadvantages survivors who have applied for redress and identified multiple institutions.

## ***Background***

In order to arrive at a monetary payment, IDMs assess applications against a framework of criteria that has payment values attached to each criterion. The criteria are set out in the Assessment Framework and are reproduced at **Appendix J**.

The Act permits the development of policy guidelines to which the IDM can refer for guidance on the Assessment Framework, including in relation to extreme circumstances payments.

Guidance for IDMs to consider in making a determination is contained within two documents: the Assessment Framework Policy Guidelines and the Internal Assessment Guide.

Both documents are internal policy documents and are not publicly available. The Assessment Framework Policy Guidelines are protected by sections 102 to 104 of the Act. The Internal Assessment Guide contains some information that constitutes protected information for the purposes of the Act, but it is not of itself protected information or a protected document.

IDMs are encouraged in training to consider the Assessment Framework Policy Guidelines when making a determination.

The Scheme has been advised that generally, for schemes of this type and other Commonwealth payment schemes and state-based victims of crime schemes, the Assessment Framework and policy guidelines are in the public domain. This is to ensure the public is aware of how payments are determined and to improve public accountability and applicant and staff understanding.

## ***The Assessment Framework under the Scheme***

The Royal Commission recommended a three-tiered assessment framework, although, due to the negotiations with the states and territories, the Scheme did not adopt this recommendation (see **Appendix K**).

The Assessment Framework also differs from the Royal Commission recommendation in that:

- a. The maximum redress payment is \$150,000, not \$200,000 (see **Chapter 4**).
- b. There are three ‘primary’ categories of abuse (as opposed to the Royal Commission’s two), with different relative amounts awarded for each category.
- c. There are separately identified payments for ‘institutional vulnerability’ and ‘recognition of related non-sexual abuse’ (\$5,000 each).
- d. A payment for ‘extreme circumstances’ has been included.

### ***The requirements for meeting the Assessment Framework categories***

To be eligible for a redress payment a person needs to be ‘reasonably likely’ to have experienced sexual abuse. Relevant sexual abuse includes the categories of abuse as defined in the Assessment Framework:

- a. Exposure abuse (\$5,000).
- b. Contact abuse (\$30,000).
- c. Penetrative abuse (\$70,000).

Only one of these categories will be relevant to the applicant. Once the IDM has established the level of abuse, the IDM may allocate an additional amount for the impact of the abuse:

- a. \$5,000 for exposure abuse.
- b. \$10,000 for contact abuse.
- c. \$20,000 for penetrative abuse.

There are two supplementary categories: institutional vulnerability and related non-sexual abuse, each attracting a payment of \$5,000. In addition, there is a payment of an additional \$50,000 where the IDM establishes that extreme circumstances exist.

### ***The Royal Commission recommendation in relation to severity of impact***

The Review acknowledges the Royal Commission’s view that:

*It is appropriate to include severity of impact of abuse in assessing monetary payments and we consider it should be given equal weight with severity of abuse. This factor allows for recognition that the impact of abuse on survivors varies greatly between survivors and it allows for a more individualised assessment. It also recognises the potentially lifelong impact of child sexual abuse on survivors ...*

Royal Commission, Final Report, p. 238.

The Royal Commission recommended a payment matrix for assessing monetary payments which included a separate payment component for the impact of abuse. The Review has concluded that this separate payment is unnecessary, as there are very few instances where an impact payment has not been made. It could be inferred from a survivor making an application of this nature that the sexual abuse they have suffered has impacted them.

Having regard to the purpose and intention of the Scheme, the Review holds the view that it is the intention of the Act to recognise and alleviate the impact of past institutional child sexual abuse and related abuse, not to determine and compensate for the severity of the

impact of that abuse. The Review is of the opinion that, in order for the Scheme to assess the severity of the impact of the abuse, survivors would need to provide more detailed and specific information in their applications as well as potential medical or psychological assessments. This would not be consistent with a trauma informed approach to redress. Additionally, the Review is aware that some applicants would not provide details of the impact of the abuse for a variety of reasons, including cultural issues. The Review therefore does not recommend that the Scheme be amended to include an assessment and monetary payment in relation to severity of the impact of abuse.

### ***Exposure abuse***

Sexual abuse will be determined to be exposure abuse if none of the abuse involved physical contact with the person (whether involving physical penetration of the person or not) by someone else or an object used by someone else.

### ***Contact abuse***

Sexual abuse will be determined to be contact abuse if any of the abuse involved physical contact with the person by someone else or by an object used by someone else (even if the rest of the abuse did not) and none of the abuse involved penetration of the person.

### ***Penetrative abuse***

Sexual abuse will be determined to be penetrative abuse if any of the abuse involved penetration of or by the person (even if the rest of the abuse did not).

If an IDM determines that a person has experienced penetrative abuse then under the Assessment Framework that applicant can be considered for an extreme circumstances payment of \$50,000.

### ***The extreme circumstances payment***

The Assessment Framework includes a payment for extreme circumstances that will apply if the abuse was:

- a. Penetrative.
- b. And, taking into consideration whether the person was institutionally vulnerable and there was related non-sexual abuse, it would be reasonable to conclude that the sexual abuse was so egregious, long-term or disabling to the person as to be particularly severe.

Survivors and support services submitted strong views to the Review that the requirement for penetrative abuse to occur in order to receive the extreme circumstances payment is inappropriate and that the definition of extreme circumstances should be extended to include non-penetrative abuse (Submissions to the Review 119b, 121, 139, 142, 166).

The Review agrees that the requirement for penetration disregards the very serious and long-term effects of other categories of serious sexual abuse. In this regard, based on submissions,

the Review also questions the requirement for there to have been penetrative abuse to receive the highest payment amount under the Assessment Framework. There would be circumstances where sexual abuse that did not include penetration would be so serious, egregious, long-term or disabling to a person that it should be classified as particularly severe and warrant a higher recognition payment than the current contact abuse payment would provide (Submissions to the Review 119b, 121, 139, 142, 166).

### ***Assessment Framework Policy Guidelines***

The Assessment Framework Policy Guidelines and the Internal Assessment Guide assist IDMs to make determinations in relation to the existence of extreme circumstances. The Review has sighted but is unable to publicly discuss or disclose the specific contents of the Assessment Framework Policy Guidelines due to the protected status of the document under sections 102 to 104 of the Act.

The Review is concerned that certain guidance provided in the Assessment Framework Policy Guidelines, if applied by IDMs, creates more stringent criteria and a higher threshold for the IDM to be satisfied that extreme circumstances apply than is contained in the Assessment Framework itself.

Where the Assessment Framework Policy Guidelines are considered determinative in their language, IDMs reported feeling compelled to follow the criteria in them. This creates a scenario where extreme circumstances payments are not made even where survivors potentially qualify for them under the Assessment Framework. It also potentially results in further inconsistencies in decision-making, depending on how much weight an IDM places on the additional guidance and criteria provided in the Assessment Framework Policy Guidelines.

The application of the extreme circumstances criteria is inconsistent in the eyes of stakeholders, particularly survivors who provided the Review with many examples of these apparent inconsistencies. One submission provided the following example of the inconsistencies:

*We have seen as above on multiple occasions, internals and other digital penetrations be awarded \$100 000. We have subsequently seen another Care Leaver who suffered fifteen incidences of rape (penile penetration) to also receive \$100 000.*

Submission to the Review 126.

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).

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.

Because of this inconsistency, there is potential for survivors to not receive fair and equal treatment under the Act. Further, it is likely that fewer people are receiving payments for extreme circumstances than there should be. The absence of a payment for extreme circumstances has a significant impact on outcomes for applicants.

The Review recommends that the IDMs receive further training and guidance on the application of the Assessment Framework Policy Guidelines to ensure they are being applied consistently, including with the same weighting applied to their application. IDMs will also benefit from amendments to the Act, the Assessment Framework and associated policy material, as this coherence of law, policy and training will result in greater consistency in decision-making.

Consistent with the JSC recommendation 3 and submissions from IDMs, survivors and institutions, the Review also recommends that the Assessment Framework Policy Guidelines be made a public document to improve transparency in their application and decision-making. The publication of the Assessment Framework Policy Guidelines would be consistent with the publication of similar assessment guidelines, such as in state-based victims of crime legislative schemes.

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 improve 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.

## ***Conclusion***

There are serious inconsistencies between the legislative instruments and the internal policy documents, including the Internal Assessment Guide and the Assessment Framework Policy Guidelines, which result in inconsistent decision-making under the Assessment Framework. The Review considers that the assessment process would benefit from simplification and clarification from the perspectives of both the applicant and the IDM. The Australian Government will need to consider whether any changes to the Assessment Framework will need to be implemented retrospectively and what the ramifications of this will be from a funding perspective.

## Recommendations

### ***Recommendation 3.11***

The Australian Government amend the Assessment Framework to:

- a. Remove the sole requirement for the existence of penetrative sexual abuse as the key indicator of severity of abuse and for the existence of extreme circumstances.
- b. Combine the separate payment for the impact of sexual abuse with the recognition payment for sexual abuse, recognising the impacts of child sexual abuse on the lives of every survivor.
- c. Avoid the use of the term 'penetrative' to acknowledge severe trauma is not exclusively penetrative, but is often equally severe and life-altering.

### ***Recommendation 3.12***

The Australian Government amend key policy guidance, including the Internal Assessment Guide and the Assessment Framework Policy Guidelines, to:

- a. Ensure clarity for independent decision makers in applying the Assessment Framework. This recommendation includes ensuring the Assessment Framework Policy Guidelines do not include any additional criteria which may, if applied, result in a higher threshold being required to be satisfied for a payment of extreme circumstances or limits the discretion of the independent decision maker.
- b. Provide clarity to independent decision makers about the weight of any guidance material provided by the Scheme in their making decisions under the Assessment Framework and ensure their discretion is not limited.

### ***Recommendation 3.13***

The Australian Government make the Assessment Framework Policy Guidelines publicly available through removal of existing legislative protections to achieve greater transparency in decision-making and consistency with contemporary practices of other government schemes.

## Section 3.5 Protected information

### **Key findings**

- There have been numerous breaches of the protected information provisions in the Act by the Scheme, including 13 data breaches reported to the OAIC and 98 reported occasions where a request for information was sent to the wrong institution.
- Applicants are concerned about the manner in which the department and institutions manage their personal and protected information.
- Applicants are concerned about their personal information being shared with insurers.

### **Protected information**

The protected information provisions of the Act apply to the Operator, institutions and applicants. Part 4-3 of the Act sets out when a person is authorised to obtain, record, disclose or use protected information. It also includes offences for when a person obtains, records, discloses or uses protected information without authorisation under the Act.

Protected information is defined in section 92(2) of the Act as:

- a. *Information about a person or an institution that:*
  - i. *was provided to, or obtained by, an officer of the Scheme for the purposes of the Scheme; and*
  - ii. *is or was held in the records of the Department of the Human Services Department; or*
- b. *Information to the effect that there is no information about a person or an institution held in the records of a Department referred to in subparagraph 9(a)(ii).*

The protected information provisions afford the same protection to an institution's information as to an individual's information. Concerns were raised in submissions that there is no justification for protecting the information about responsible institutions. Survivors felt that this protection of the information of institutions was unwarranted.

### **Privacy**

The *Privacy Act 1988* (Cth) (Privacy Act) (section 6) also defines 'personal information' as:

*information or an opinion about an identified individual, or an individual who is reasonably identifiable; whether the information or opinion is recorded in a material form or not.*

This means that in many circumstances protected information is also personal information for the purposes of the Privacy Act.

Under the Notifiable Data Breaches Scheme, any organisation or agency that is covered by the Privacy Act must notify affected individuals and OAIC when a data breach is likely to result in serious harm to an individual whose personal information is involved.

A data breach occurs when an organisation or agency that holds personal information loses or makes an unauthorised disclosure of that information: for example, by mistakenly giving it to the wrong person or disclosing it when not authorised to do so.

### ***Protection of applicant information***

Survivors have raised concern about the Scheme sharing their information in requests for information to institutions and the extent of the information shared.

The application form informs applicants who will see the application and for what purpose. Scheme officials and participating institutions see all or some of the information for the purposes of determining eligibility for redress. However, the form also advises:

*In some cases, the institution's insurer may need your name, date of birth, your experience of abuse (Part 2) and the impact of abuse (Part 3). Where this is the case the Scheme will share the information directly with the insurer.*

Sections 94 to 98 of the Act set out specific additional authorisations which allow the Scheme Operator to disclose protected information, for example, for child protection purposes or to nominees. There are then certain circumstances where the release of protected information is authorised, as the Scheme Operator is also empowered to make a certificate certifying that the disclosure of protected information is in the public interest. This is referred to as a Public Interest Certificate (PIC).

Part 11 of the Rules qualifies the circumstances in which a PIC may be made when dealing with protected information about a person. These restrictions do not apply to protected information about an institution. The Scheme Operator is required to make an assessment of whether a disclosure is in the public interest whenever a PIC may be proposed.

Survivor concerns are that too much information is shared. To date the department has advised the Review that it has not shared any information directly with insurers. However, some applicants have raised concerns that this has in fact occurred. There are also no guarantees about the information institutions may have shared with their insurers. This is due to the authorisation contained within section 98(2)(c) of the Act, which allows participating institutions to provide protected information to an insurer to facilitate a claim under an insurance policy. The provision of personal details to an institution's insurer is a concern for applicants because of the highly sensitive information they are providing in the form. The Review notes information from institutions that, if they are unable to provide the required information to their insurers, this may impact their financial ability to remain in the Scheme.

Originally the information in Part 3 of the redress application form was automatically supplied to the institution, but an amendment was made to the procedures in late 2018 whereby applicant permission is now required.

Under section 41(1) of the Act, written notice of the redress offer is also forwarded to the responsible institution. This is of concern to the applicant if they withdraw their application after information has been supplied to the institution or if they decide not to accept the offer

of redress but pursue a civil action. In this case, the institution will have information potentially prejudicial to a survivor's civil claim.

knowmore expressed particular concern in a submission to the JSC about the lack of protection for survivors in relation to how an institution may use and/or disclose a survivor's personal information, including as part of an internal investigation of an alleged perpetrator:

*While the NRS Act provides that before disclosing protected information the institution must have regard to the impact the disclosure may have on the survivor, there is no legislative requirement that the survivor be consulted or provide consent before the institution can use and/or disclose their personal information as part of these processes.*

*knowmore is very concerned that institutions may disclose a survivor's personal information to a perpetrator without their informed consent. There are many reasons why survivors of institutional child sexual abuse may not want their identity or the description of the abuse they experienced to be disclosed to the perpetrator, including that it may put them at further risk of harm from the perpetrator. It may also be re-traumatising for survivors who are reminded of the feelings of powerlessness they experienced as children towards the perpetrator or the institution.*

Submission to the Review 166.

The Review understands that a lack of clear information in the relevant areas on the application form can lead to information being used or disclosed by institutions in a manner which the applicant was unaware it would be used in that way. The Review concludes that changes are required to ensure an applicant can provide informed consent for future use of protected information about them by institutions.

### ***Control of protected information by the Scheme Operator***

The Review was also provided information that the department (on behalf of the Scheme) has notified OAIC of 13 eligible data breaches, all of which amounted to unauthorised disclosures of personal and protected information under the Act.

The Scheme has also provided a request for information containing protected information to the wrong institution on 98 occasions between 2018 and 2021. This resulted in information about an applicant being inadvertently provided to the incorrect recipient.

Submissions to the Review from support services expressed concern that privacy was being breached by the Scheme. These concerns included:

- a. Part 3 of the redress application form being made public even where an applicant has ticked 'No I do not agree to share Part 3' with the relevant institution.
- b. Sharing of protected information with a state department without cause and not identifying this error for an extended period of time.
- c. Receiving correspondence from the Scheme in relation to an applicant who the support service was not assisting or representing.

- d. That there are no controls on how institutions are using or disclosing protected information.
- e. The perception of survivors that the protected information provisions are a form of secrecy.

### ***Conclusion***

As a general principle, the sharing of applicant information should be more closely protected, especially Part 3 of the application form, which should not be shared with the institution unless and until the survivor requests a direct personal response.

The survivor should be made specifically aware of what information is being provided to institutions. Currently, survivors are asked to grant permission to share only Part 3 information with the institution, and information in parts 1 and 2 is provided without their express permission.

Given the nature of the information, institutions should provide minimal protected information to their insurers. Where possible, institutions should only be providing de-identified information to their insurers. The Review acknowledges that this may create difficulties where an insurer requires specific information. Submissions to the Review stated that insurers would not pay claims without specific identifiable information being provided by them.

The protected information provisions as they pertain to institutions overreach and should be reconsidered. 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.

The Scheme does little to provide assurance that participating institutions are respecting the Scheme's legislative requirements in relation to protected information. Participating institutions are provided with Scheme policy guidance on protected information and institutions are required to comply with the law as set out in the Act. However, the Scheme does nothing further in relation to assurance of institutions' protected information policies and arrangements.

# Recommendations

## ***Recommendation 3.14***

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.

# Chapter 4 The elements of redress

## Section 4.1 The monetary payment

### **Key findings**

- The practice of indexation of prior payments penalises applicants for delays.
- Some applicants receive little or no payment despite their abuse being determined by the Scheme to have occurred. A minimum payment was a recommendation of the Royal Commission but has not been adopted in the Scheme.
- Over half of applicants (57.6%) are currently accorded priority status with the number likely to rise but survivors do not perceive any significant benefits of this categorisation. Scheme data supports this observation.
- Average processing times for applications accorded priority status exceed the average processing time frame for applications not accorded priority status.
- Given the vulnerable health status and age of many survivors, serious consideration needs to be given to advanced payments to survivors.

### **The cap**

The Review terms of reference require analysis of the key facilitators and barriers to institutions opting into the Scheme. Recommendation 6 of the *First Interim report of the Joint Select Committee on Implementation of the National Redress Scheme April 2020 (JSC 2020)* recommends that the Review consider the appropriateness of the current cap and matrix for calculating redress payments.

The Review received mixed views about the payment cap for redress outcomes. Survivors were disappointed and angry about the difference between the Royal Commission's recommended \$200,000 cap and the Scheme's \$150,000 cap. Furthermore, survivors were frustrated with the lack of explanation provided by the Scheme for the lesser amount and were concerned that the Scheme had adopted other recommendations from the Royal Commission that had a deleterious financial impact on them, such as prior payments.

The Australian Government and state and territory governments did not support any revisions to the cap, highlighting that its adoption had been fundamental in the negotiations moving to a national scheme. They viewed any shift as a potential risk to the maintenance and overall viability of a national voluntary opt-in scheme.

Whilst the Review did receive some comment advocating for raising the cap to the \$200,000 that the Royal Commission recommended, the Review received no advice on how the Scheme could equitably implement the change. Any amendment to the cap would require reassessment of applicants, significantly extending timelines and increasing uncertainty for most applicants. There was significantly more focus and consensus on the need to address fundamental issues about the Scheme's operation to make a more viable and less traumatic

experience for survivors. Survivors and their support services highlighted the experience of participation in the Scheme as traumatising, that the Scheme is inaccessible without support, that applications are taking too long to process and that there is a need for greater transparency over decision-making.

In considering the cap, the Review placed significant weight on the maintenance of a viable national scheme and the overall benefits and risks to survivors. Any changes to the Scheme of this nature require consensus of the funding partners, and the Review heard this does not exist.

The Review consulted with actuarial experts to calculate the financial impact to the Scheme and its partners of a change to the cap. The first scenario would raise the extreme circumstances payment to \$100,000 which, putting aside the legislative complexities of doing so, would cost \$297.4 million. The second scenario would involve changing all levels of the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Assessment Framework) by a proportionate amount to raise the cap to \$200,000. This scenario would involve reassessment of all determinations made to date, further traumatising survivors and potentially requiring the assessment of deceased survivors' applications, and would cost \$726.3 million.

Any revision of the cap at this stage could have significant negative impacts on survivors, should it require any whole reassessment of the 5,334 applications already determined. It would also have consequences for institutions that have predicated their participation in the Scheme based on the \$150,000 cap. On balance, the Review believes that a revision of the cap is neither realistic nor viable at this time.

Having weighed the issues, the Review considers that the Australian Government and state and territory governments should direct their energy and additional resources towards issues that will improve the integrity and fairness of the Scheme. These could include 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.

Therefore, the Review does not make a recommendation regarding changing the current maximum redress monetary entitlement.

## Section 4.2 Prior payments

### **Key findings**

- The Scheme's application of the prior payments policy causes confusion and significant distress for applicants who receive lower redress offers than anticipated.
- Applicants are disadvantaged if they identify related non-sexual abuse in their application for which they have received a prior payment.
- The lack of clarity about the applicability of prior payments increases the risk of inconsistent decision-making and outcomes.
- Applicants and support services are unhappy with the application of indexation at the time of determination as this results in an adverse outcome for applicants.
- There have been instances of applicants dying before receiving an outcome.

### **Background**

The issue of prior payments and how the Scheme considers them in the calculation of a monetary payment is contentious. Submissions to the Review, the Joint Select Committee on Implementation of the National Redress Scheme (JSC) and participants in the survivor feedback study commissioned by the Review all provided feedback about this issue.

### **Royal Commission recommendations and comment**

State statutory victims of crime compensation schemes and other redress schemes have made payments to survivors of abuse. The Royal Commission recommended that survivors who had received monetary payments in the past:

*whether under redress schemes, statutory victims of crime schemes, through civil litigation or otherwise, should be eligible to be assessed for a monetary payment under redress.*

Royal Commission, *Redress and civil litigation report* (2015), p. 25.

This recommendation was intended to ensure that the past receipt of a monetary payment under other schemes would not prevent the eligibility of applicants under the redress scheme. The Scheme does not prevent eligibility; however, the application of the *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (the Rules) can lead to disadvantage to applicants in determining the amount of their redress payment.

The Royal Commission also recommended that redress payments be reduced by the amount of prior payments and that prior payments be indexed.

### **The Scheme and prior payments**

The consideration of prior payments has been a source of concern and confusion for survivors, advocates and support services. Survivors in particular are hurt and offended that payments received for abuse in state care have been taken into account in their applications for redress when the former payments were in recognition of the neglect and physical abuse experienced, not sexual abuse.

The Scheme requires that relevant prior payments are those payments for institutional child sexual abuse or related non-sexual abuse. A relevant prior payment under the legislation is:

*Any payment that was paid to the person by, or on behalf of, the responsible institution in relation to abuse for which the institution is responsible.*

Submissions from support services to the Review stated that prior payments for non-sexual abuse should not be taken into account in determining a redress payment.

Section 26 of the Rules specifies amounts or payments that are not relevant prior payments.

However, section 26(5) of the Rules provides that payments that are for non-sexual abuse, where the same institution is also responsible for the sexual abuse, are a relevant prior payment. It should be noted that the payment did not have to be made by the same organisation, only that the sexual abuse and the non-sexual abuse were by the same responsible institution.

The Scheme's approach to section 26(5) of the Rules is that, where a prior payment can be broken down into separate amounts that cover different purposes, only the amounts that were made in recognition of the sexual abuse or the harm caused by the sexual abuse will be treated as a relevant prior payment. Conversely, where the payment cannot be broken down into separate amounts, the entire amount is treated as a relevant prior payment for the purposes of the Scheme.

However, where a prior payment relates only to non-sexual abuse, but the same institution is then found liable through the redress application for sexual abuse, the whole of the non-sexual abuse prior payment will be deducted from any subsequent redress payment.

The Review is concerned with this approach, particularly as the Assessment Framework includes a \$5,000 payment for non-sexual abuse, yet on occasions the Scheme deducts substantially larger prior payments for non-sexual abuse from the redress payment amount. Consultations with the Review provided feedback that this area of the Scheme is particularly misunderstood by applicants.

Where a previous payment cannot be broken into components for non-sexual and sexual abuse, the outcome is detrimental to the applicant, as the entire prior payment is taken into account to reduce their redress payment.

The Review considers the quantification of an amount of \$5,000 for non-sexual assault provided for in the Assessment Framework as important in this context. This amount essentially places a value of \$5,000 on the non-sexual abuse component for the purposes of the Scheme. In circumstances as described above, 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.

The Review also received submissions relating to the inconsistent messaging and application of the prior payments provisions and is concerned about the ramifications for applicants from these inconsistent practices.

A summary of the number of redress payment offers reduced due to a prior payment is contained at **Appendix Table 9**.

### ***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.

The Review was made aware of certain prior Stolen Generation payments which may be taken into account for the purposes of the calculation of redress payments. These include payments relating to the New South Wales class action concerning the Stolen Generation (known as the Stolen Generation Group Action). 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.

### ***Indexation of prior payments***

On the indexation of prior payments policy, both JSCs have separately made recommendations that:

- a. Commonwealth, state and territory governments revisit the practice of indexing prior payments.
- b. Indexation of prior payments cease and, as an interim measure, indexation only be applied 'up until the date of application submission, rather than the date of payment offer'.

Where an applicant has already received a payment from the responsible institution(s), or on behalf of the responsible institution(s), in relation to the sexual and related abuse, the prior payment (or relevant portion) is adjusted for inflation and this amount is subtracted from the redress payment.

The adjustment for inflation is calculated when the independent decision maker (IDM) makes a determination on an application. The formula for adjusting a prior payment for inflation is set out below:

$$\text{Prior payment} \times (1.019)^n = \text{amount to be deducted}$$

1.019 is the inflation factor and 'n' equals the number of whole years since the prior payment was paid.

National Redress Scheme Act, section 30(2).

Indexation of prior payments was a Royal Commission recommendation:

*In our consultations there has been general support for the principle that those who have already received monetary payments should remain eligible to apply under a new redress scheme, provided that any previous monetary payments are taken into account. This appears to be the approach most likely to achieve 'fairness' between survivors in the sense that survivors and survivor advocacy and support groups overwhelmingly advocate.*

Royal Commission, *Redress and civil litigation report* (2015), p. 258

However, submissions to two JSC inquiries and the Review have been critical of the policy of indexing prior payments. There is strong consistency in the opposition to the policy, that redress payments:

- a. Are not compensation.
- b. Unlike civil claims, do not adequately reflect the 'true value' of the damage.
- c. Are significantly less than common law damages.

One submission succinctly captured the sentiment of those opposed to the policy:

*For many survivors, relevant prior payments were awarded to them through protracted and challenging settlements. Thus, the experience of applying indexation to a relevant prior payment can be very deflating and unfair for a survivor. This is particularly the case because the redress payment itself is not indexed, effectively increasing a double inequity the later the survivor applies for redress.*

Submission to the Review 185.

Four non-government institution submissions expressed varying views on indexation:

- a. One stated that survivors who have received a past payment are likely to be aware of the impact of such payments on their redress payment outcome.
- b. Another supported retention of the existing policy.
- c. Another proposed that the scope of prior payments be expanded to capture counselling costs incurred by non-government institutions.
- d. Two of the four submissions proposed the 7.5% scheme administration fee and legal support services fee should be waived or substantially discounted for redress payment offers with a zero dollar value due to recognition of prior payments.

The Australian Government and state and territory governments were aware of the negative survivor sentiments regarding indexation and the perceived disadvantage in the way it is currently applied. Most proposed improvements to make it fairer or cease its application.

The Review has costed two policy options:

- a. No indexation of prior payments.
- b. Indexation that is only calculated at the date of application.

Analysis of option (a) yielded an average increase to redress payments of \$2,194 per applicant. This would result in an increase of \$69.8 million to the costs of the Scheme, or approximately 2.59%.

Analysis of option (b) yielded an average increase to redress payments of \$158 per applicant. This would result in an increase of \$5.5 million to the costs of the Scheme, or approximately 0.17%.

The Review supports the removal of the practice of indexation of prior payments. In the event the Australian Government disagrees with this conclusion, the Review strongly recommends that indexation apply to prior payments from the data of application rather than the date of determination.

### ***Impact on outcomes for survivors***

The consideration of relevant prior payments impacts significantly on the redress payment amount, see **Table 9**.

**Table 9** is incredibly complex, therefore it will be broken down into the measure recorded by the Review as well as the year. The data presented will include the number of payments reduced by a prior payment, as well as the average amount deducted.

#### **All redress payments reduced by a prior payment.**

- **Redress payments reduced by a prior payment (2018 to 19).** Total number, 130. Average amount deducted, \$38,582.
- **Redress payments reduced by a prior payment (2019 to 20).** Total number, 1,292. Average amount deducted, \$43,221.
- **Redress payments reduced by a prior payment (2020 to 21).** Total number, 673. Average amount deducted, \$40,042.
- **Number of redress payments reduced by a prior payment across the life of the Scheme.** Total number, 2,095.
- **Average amount deducted for prior payments across the life of the Scheme.** Average, \$41,912.

#### **All redress payments reduced by a prior payment, excluding Aboriginal and Torres Strait Islander people and people with a disability.**

- **Redress payments reduced by a prior payment (2018 to 19).** Total number, 33. Average amount deducted, \$38,103.
- **Redress payments reduced by a prior payment (2019 to 20).** Total number, 428. Average amount deducted, \$42,620.
- **Redress payments reduced by a prior payment (2020 to 21).** Total number, 146. Average amount deducted, \$44,778.
- **Number of redress payments reduced by a prior payment across the life of the Scheme.** Total number, 607.
- **Average amount deducted for prior payments across the life of the Scheme.** Average, \$42,893.

**All redress payments reduced by a prior payment, for Aboriginal and Torres Strait Islander people only.**

- **Redress payments reduced by a prior payment (2018 to 19).** Total number, 35. Average amount deducted, \$35,129.
- **Redress payments reduced by a prior payment (2019 to 20).** Total number, 384. Average amount deducted, \$37,345.
- **Redress payments reduced by a prior payment (2020 to 21).** Total number, 324. Average amount deducted, \$32,324.
- **Number of redress payments reduced by a prior payment across the life of the Scheme.** Total number, 743.
- **Average amount deducted for prior payments across the life of the Scheme.** Average, \$35,051.

**All redress payments reduced by a prior payment, for people with a disability only.**

- **Redress payments reduced by a prior payment (2018 to 19).** Total number, 85. Average amount deducted, \$39,932.
- **Redress payments reduced by a prior payment (2019 to 20).** Total number, 697. Average amount deducted, \$45,510.
- **Redress payments reduced by a prior payment (2020 to 21).** Total number, 368. Average amount deducted, \$43,359.
- **Number of redress payments reduced by a prior payment across the life of the Scheme.** Total number, 1,150.
- **Average amount deducted for prior payments across the life of the Scheme.** Average, \$44,409.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Note b: The 'Average' column is calculated by calculating the amount of all outcomes determined across the 2.5 years of the Scheme's life, divided by the number of outcomes.

Note c: There is crossover between applicants being people with disability or not, or identifying as Aboriginal and Torres Strait Islander or not. This accounts for the proportion column not equating to 100%.

Source: Scheme data.

There is a large degree of public misunderstanding about prior payments and how the legislation operates to include all relevant prior payments.

The Review considers that the Royal Commission's limitation on prior payments was appropriate, it ensures that institutions do not pay twice for the same abuse but rules out payments received that do not relate to the institutional child sexual abuse that is the focus of the Scheme.

The Review supports the concerns identified by the survivors, support groups, the Australian Government and state and territory governments regarding the application of indexation. It

recommends its removal by applying it from the date of application the Scheme is vulnerable to criticism that there is potential financial benefit in delaying applications. The Review therefore recommends that indexation cease at the time of application to the Scheme.

### ***Specific purpose payment options***

The Review's terms of reference also require consideration of the extent to which the Scheme has provided redress to survivors who are entitled to it.

The Royal Commission presented evidence on the lifelong impact of child sexual abuse on survivors' physical and mental health. There is a well-documented relationship between child sexual abuse and multiple risk factors leading to lower health outcomes and life expectancy. The outcomes of lifelong trauma have serious, debilitating effects on the survivor.

The Royal Commission concluded:

*We accept that priority should be given to determining the applications of applicants who are seriously ill or elderly, so that the chance of them being alive and able to receive their redress payment is maximised. We also consider that, if the applicant is seriously ill or elderly and requests an interim payment, the scheme should be able to make an interim payment of \$10,000... to any applicant who the scheme accepts is eligible for redress before it fully assesses their application and determines the amount of their monetary payment.*

Royal Commission, *Redress and civil litigation report* (2015), p. 347.

The Act provides that applications may be considered as urgent but does not provide guidance on the types of applications to be determined as 'urgent'. The practical application of this policy is that it reduces the time frames that institutions have to respond to a request for information from eight to four weeks. The Review believes this provision should be retained and, if possible, truncated if improvements in the current process can be progressed.

Until November 2020, Redress Operations applied a 2019 policy, developed when operations were part of the then Department of Human Services, which provided for terminal illness and advanced age. The policy defined advanced age as applicants born before 1944, or 1964 for applicants that identified as Aboriginal and Torres Strait Islander.

In November 2020, the department issued an updated policy advice that identified five additional grounds for classifying an application as urgent:

- a. The applicant presents with serious mental health issues.
- b. The applicant is approaching the advanced age range and is in ill health (but has no terminal illness).
- c. The applicant identifies extensive non-terminal health issues.
- d. The applicant presents with recent suicide ideation.
- e. There is any other reason the Scheme considers requires the urgent processing of an application.

The policy also notes that the support service knowmore has a triage process for determining priority clients that includes the criteria listed above.

knowmore advised the Review that 23% of its clients are classified as priority clients due to age and/or immediate and serious health concerns such as terminal cancer.

According to Scheme data, between 1 July 2018 and 31 December 2020:

- a. 19.7% of all applicants were aged 70 or older.
- b. The Scheme had made 69 payments to beneficiaries in respect of 66 deceased applicants.
- c. A further 66 applicants were deceased but their application had not been finalised.

Over the same period, 5,249 applicants (or 57.6% of all applications received) were granted priority status (**Table 10**). The Review notes that current trends show the Scheme has reconfigured the priority status criteria to better identify those with a higher need for an expedited outcome. This is evident in **Table 10** when considering the proportion of applications that were accorded priority status in 2019-20 fell by approximately 24%. The Review notes that the data for the 2020-21 financial year is not complete, however a similar trend appears to be occurring. The number of applicants accorded priority status in the first half of the 2020-21 financial year is 548, or approximately 30.2% of all applicants to processed in the same time period. If this trend continues, this will represent a further reduction to the proportion of applicants accorded priority status by approximately 20%.

In the second year of operation, the Scheme assigned priority status to applications received in the first year. This was to allow the Scheme to process the backlog of applications that had accrued as quickly as possible. Since the backlog was cleared in 2020, the Scheme has returned to prioritising applications based on the usual categories of; health grounds, age grounds, and 'other reason' (see **Table 10**). This explains the current tracking of 30.2% of applications being assigned priority status in 2020-21, which is more in accordance with the intentions of the priority status to be a restricted use assignment for applications that need to be processed quicker than the general population of applications.

**Table 10: Number of applications accorded priority status, 1 July 2018 to 31 December 2020 (30 months)**

**Table 10** reports the number of applications that have been accorded priority status, the proportion of all applications accorded priority status, as well as the grounds for establishing priority status, across the life of the Scheme.

**Number of applications accorded priority status.** Total number 2018 to 19, 3,131. Total number 2019 to 20, 1,570. Total number 2020 to 21, 548. Total number across the Scheme's life, 5,249.

**Proportion of applications accorded priority status, against total applications.** 2018 to 19, 74.9%. 2019 to 20, 50.2%. 2020 to 21, 30.2%. Total across the Scheme's life, 57.6%.

**Number of applications accorded priority status on health grounds.** Total number 2018 to 19, 589. Total number 2019 to 20, 447. Total number 2020 to 21, 182. Total number across the Scheme's life, 1,218.

**Number of applications accorded priority status on age grounds.** Total number 2018 to 19, 748. Total number 2019 to 20, 518. Total number 2020 to 21, 250. Total number across the Scheme's life, 1,516.

**Number of applications accorded priority status 'legacy' i.e. Received in the first year of scheme operation.** Total number 2018 to 19, 1,794. Total number 2019 to 20, 484. Total number 2020 to 21, 0. Total number across the Scheme's life, 2,278.

**Number of applications accorded priority status 'other reason'.** Total number 2018 to 19, 0. Total number 2019 to 20, 121. Total number 2020 to 21, 116. Total number across the Scheme's life, 237.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Note b: The 'Total' for the proportion of applications accorded priority status against total applications is actually the average proportion of all applicants accorded priority status across the life of the Scheme.

Source: Scheme data.

To date, redress staff have encountered significant challenges in implementing and managing the applications prioritisation policy; over 50% have been granted priority status. The Scheme has yet to achieve business as usual for application processing, and shortcomings with the redress ICT system have made it difficult for staff to create and easily identify and manage priority applications in line with the policy:

*I have received encouraging assistance from knowmore towards appealing the decision made in my case, but to no avail at this stage. (I applied on 5th August 2018, and had been deemed high priority due to my health and financial situation but have now entered my third year since applying.)*

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While staff have implemented manual processes to manage priority applications, this has not always achieved an expedited outcome (**Table 11**). An effective prioritisation system is highly reliant on the ability to triage applications on the basis of agreed risk factors and to provide prescribed pathways to track and facilitate their progression through the entire application process. Under the current Scheme operating conditions, these are difficult to achieve. In 2019 to 20 over 50% of applicants were granted priority status, although the proportion for 2020 to 21 appears to be showing a positive trend towards more restricted allocation.

**Table 11: Average application processing timeframes, 1 July 2018 to 31 December 2020 (30 months)**

**Table 11** breaks down the average application processing time for all applicants, and applicants accorded priority status, across the life of the Scheme.

**Average application processing time for all applicants.** 2018 to 19, 14.3 months. 2019 to 20, 9.2 months. Average across the Scheme's life, 12.5 months.

**Average processing time for applications accorded priority status.** 2018 to 19, 15.1 months. 2019 to 20, 8.7 months. Average across the Scheme's life, 13.4 months.

Note a: Average processing time means the time from the date an application was received by the scheme until the date the application was finalised, including the redress payment where relevant, grouped by the date the application was received. This does not adjust for any time for an institution to join the Scheme.

Note b: Average processing times for priority applications received in Year 1 of the Scheme is higher than the Scheme average processing time because all applications that were received on or before 31 December 2019 have now been given priority status due to the age of the application.

Note c: The data in **Table 11** does not include applicants who named a non-participating institution in their application, as the Scheme has no control over the time taken or decision for institutions to sign onto the Scheme.

Source: Scheme data.

In two of the three financial years to date, average processing time frames for applications accorded priority status exceed the average processing time frame for all applications.

The redress ICT system should be able to effectively track and report on the progress of all applications while also facilitating the necessary escalation arrangements to support the prioritisation policy. This includes being able to produce management reports on priority applications which would identify prioritised applications, track progress, and identify key application progression points. Such improvements will greatly assist staff in application management and engagement with survivors. The current redress ICT system lacks this functionality (discussed further in **Chapter 6**).

The 2019 Scottish Advance Redress Scheme provides a better priority payments model. The scheme was introduced in advance of legislation, which was introduced into the Scottish parliament in August 2020. The scheme provides acknowledgement and recognition to

survivors who suffered abuse in care in Scotland before December 2004. Eligible survivors receive an ex gratia and discretionary payment of £10,000. Survivors must be either aged 68 or over (amended from age 70 to 68 on 3 December 2019, following a review of the scheme) or have a terminal illness. Terminal illness must be certified by a registered healthcare professional. In its first year of operation, the scheme made 417 payments, with the majority of applications being approved in 22 days.

The Review acknowledges the differences between the Scottish Advance Redress Scheme and the Australian National Redress Scheme. The Scottish Advance Redress Scheme was established knowing it would take a long period of time to establish their national scheme; therefore, the advance payment acts as an interim acknowledgement. Furthermore, the Scottish scheme is founded on a smaller cohort than the Australian Scheme. However, when considered in tandem with the recommendation to implement a minimum redress payment of \$10,000, there would be no negative financial impact on the Scheme, as the Scheme would reduce the redress monetary component by \$10,000 for applicants who received the advance payment.

Many applicants in the Scheme have waited a very long time, often directly associated with the length of time it has taken for institutions to participate in the Scheme. While the department has been working hard to onboard institutions, there continue to be survivors who have lodged applications where the responsible institution has not joined or no longer exists. There are currently 443 applications on hold where institutions have not joined (or are defunct). This figure includes 98 applications lodged in the first three months of the Scheme's operation (July, August and September 2018). This is reported to have impacted very negatively on some survivors' overall health.

The Review heard that it has also made other survivors question the merits of applying given the trauma and challenges of the process as a whole. The Review therefore believes that an advance payment should be introduced for eligible applicants, with criteria that acknowledge the vulnerable status of survivors, the complexity of the scheme and the time taken to finalise the application process.

The suggested criteria could include:

- a. Eligible survivors born before 1944.
- b. Eligible survivors born before 1964 for applicants who identify as Aboriginal and Torres Strait islander.
- c. Those with life-threatening illnesses.

Gross redress payments for these survivors will be reduced by a corresponding amount.

### ***Minimum monetary redress payment***

The reports of the Royal Commission and JSC 2019 both recommended a minimum monetary redress payment of \$10,000:

*We are satisfied that \$10,000 is an appropriate minimum payment. It is large enough to provide a tangible recognition of a person's experience as a survivor of institutional child sexual abuse while still ensuring that a larger relative proportion of total payments is not directed to those who have been less seriously affected by abuse.*

Royal Commission, *Redress and civil litigation report* (2015), p. 23.

Currently, the Scheme does not set a minimum redress payment. Two state and territory governments explicitly support a minimum redress payment of \$10,000:

*This minimum payment acknowledges the abuse as well as the effort involved in making an application and to date, the lengthy delays in receiving a determination. To ensure equity, if the Scheme did institute a minimum redress payment, it should in principle, have retrospective effect, subject to suitable administrative arrangements being put in place.*

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According to Scheme data, in the first two years of operation 42 applicants received a redress payment offer of less than \$10,000. It is estimated that implementation of this policy would cost \$2.1 million over the life of the Scheme, based upon the assumption that nil outcomes remain constant throughout the life of the Scheme.

The \$2.1 million represents an increase to Scheme costs of 0.35%. The benefit of the minimum redress payment outweighs the detriment of cost to the Scheme. The average current wait time for a redress outcome is approximately 13.4 months. Given the stress and anxiety involved in the redress process for survivors, receiving a nil outcome creates significant despair.

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.

### ***Payment by instalments***

The Royal Commission recommended that the future Scheme consider offering applicants the option to receive payment by instalments, depending on survivor demand and the cost to the Scheme of administering this option.

In doing so, the Royal Commission noted advice from survivor advocacy and support groups that some survivors may experience difficulty 'receiving lump-sum payments that are much larger than the amount of money they are used to handling'. It also acknowledged issues in Aboriginal and Torres Strait Islander communities where survivors may come under pressure to share or spend the payment against their wishes and intentions.

The Review notes that this is not an issue exclusively for the Aboriginal and Torres Strait Islander community, it affects all vulnerable survivor groups. Specific concerns were also raised with the Review regarding potential elder abuse in these situations. One Aboriginal and

Torres Strait Islander support service agreed with the Royal Commission that the Scheme should consider alternative payment methods such as payment by instalments.

However, the Royal Commission also noted that many survivors wanted to receive and manage the lump sum payment themselves. It concluded that survivors were more likely to access financial counselling and this was potentially of greater benefit in assisting survivors to make informed decisions.

The Review believes there is benefit in exploring the merits of payments by instalments and other measures that reflect the interests of survivors through the Survivor Roundtable and in consultation with banking institutions. This view complements rather than contradicts the Royal Commission's supports for financial counselling.

# Recommendations

## ***Recommendation 4.1***

The Australian Government consider the inconsistent application and understanding of the prior payments provisions in the legislation, with specific reference to Stolen Generation payments and:

- a. Amend the legislation relating to prior payments for related non-sexual abuse to achieve a fair and transparent outcome for applicants who have received a prior payment.
- b. Provide clear guidance and policy materials to the public and to independent decision makers on how the provisions are to operate, with a view to consistent application of the provisions.

## ***Recommendation 4.2***

The Australian Government provide advance payments of \$10,000 to eligible survivors born before 1944, or 1964 for applicants that identified as Aboriginal and Torres Strait islander, and those with terminal illnesses. The Scheme will adjust gross redress payments for these survivors by a corresponding amount.

## ***Recommendation 4.3***

To acknowledge the impact of child sexual abuse, the Australian Government provide a minimum monetary redress payment of \$10,000, even where a relevant prior payment would otherwise have reduced the redress payment to a lesser amount.

## ***Recommendation 4.4***

The Australian Government investigate the demand for payment by instalments and other flexible payment measures that support survivor interests, in consultation with survivors, their advocates and support services.

## ***Recommendation 4.5***

The Australian Government remove the indexation of relevant prior payments.

In the case where the Australian Government determines the indexation of prior payments should remain, the Review recommends the calculation of indexing at the date of receipt of an application and not the date of offer. For reasons of equity, any change should be applied retrospectively to 1 July 2018.

# Section 4.3 Counselling and psychological care

## **Key findings**

- Applicants require access to redress support services before, during, and after making an application.
- The Royal Commission recommended that access to counselling be available for the life of the applicant, and be available to applicants' families.
- The Scheme has recorded high levels of applicants accepting the offer of redress counselling, although states and territories report very low uptake of these services.
- Access to counselling is inconsistent across the country.
- Support services are limited or non-existent in rural and remote locations.
- The process for applying for and getting access to redress counselling differs by state and territory.
- Services provided in states and territories differ significantly in the types and level of redress counselling options available.

## **Background**

The Review's terms of reference also require consideration of access to counselling and psychological services under the Scheme.

Two JSCs made recommendations, in relation to the redress counselling element of redress, that:

- a. Any caps or limits be removed.
- b. Survivors have lifelong access to flexible and trauma informed redress counselling on an episodic basis.
- c. Redress counselling be culturally sensitive, with particular emphasis on the needs of Aboriginal and Torres Strait islander survivors.
- d. The scope of redress counselling be increased to provide end-to-end support for survivors, including for survivors who intend to apply for the Scheme and throughout the application process and financial counselling.
- e. Provision of out-of-hours support and counselling be expanded.
- f. The Commonwealth clarify the services provided to eligible survivors of the Scheme that are distinct from or in addition to services already available to Australian citizens.

## **Counselling and psychological care**

The Royal Commission stated:

*It is clear that many survivors will need counselling and psychological care from time to time throughout their lives. At times, a survivor may need very intensive therapy and*

*support. At other times, a survivor may go for years without needing counselling or psychological care. Some survivors will need more counselling and psychological care, including psychiatric care, than others. Some may not seek any care, regardless of need.*

Royal Commission, *Redress and civil litigation report* (2015), p. 177.

Currently the monetary value of redress counselling is determined by type of sexual abuse (**Table 12**). Redress counselling entitlements are calculated on the redress payment amount before deductions are made for prior payments, that is, prior payments do not reduce a survivor's counselling entitlement under the Scheme.

**Table 12: Monetary value of the redress counselling element**

**Table 12** presents the information found in the Assessment Framework for the amount of money awarded to survivors for their redress counselling, based on the tier and type of abuse suffered.

**Tier 1, Penetrative abuse.** Redress counselling value, \$5,000.

**Tier 2, Contact abuse.** Redress counselling value, \$2,500.

**Tier 3, Exposure abuse.** Redress counselling value, \$1,250.

Source: *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018*, p. 4.

Eligible applicants receive either a lump sum to pay for services in their local area or a referral to counselling and psychological care (redress counselling) services run by the relevant state or territory government. Arrangements differ in various states and territories:

- a. In New South Wales, Victoria, Queensland, Tasmania, the Northern Territory, and the Australian Capital Territory, eligible applicants receive a referral to a free government-funded service.
- b. Eligible applicants in South Australia, Western Australia and overseas receive a lump sum payment.

States and territories that provide redress counselling services must do so in accordance with national service standards set out in the Inter-governmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse (IGA). These require:

- a. A minimum of 20 hours of redress counselling to successful redress applicants over their lifetime, regardless of the value of the redress counselling payment.
- b. Survivor access to redress counselling, including in rural, regional and remote areas.
- c. Survivor preferences to be taken into account when developing care plans.
- d. A range of delivery options to meet the needs of different survivors, such as face-to-face, phone, online video chat, mobile apps and group therapy.
- e. Survivors with complex and additional needs to be referred to providers with specialist expertise.

- f. Services that are culturally appropriate and consider the diversity of survivors such as needs related to disability, gender, sexuality and language.
- g. Culturally appropriate services for Aboriginal and Torres Strait Islander survivors.

### ***Eligibility to receive redress counselling***

The acceptance documentation is the means by which the Scheme informs applicants of their redress offer. Applicants must tick acceptance against the components of redress they wish to receive: monetary, counselling and psychological care and direct personal response. The Scheme does not offer counselling services prior to this time, after which the state-based services are available to the applicant, as detailed in the outcome letter of offer.

Where an applicant does not tick this box at the time they deal with the acceptance offer, or provide instructions in an accompanying letter to this effect, there is no legal avenue for applicants to subsequently amend their decision. Once the Scheme receives an acceptance document, the Scheme Operator must issue a notice to the relevant institutions and, where the applicant has accepted the offer of a monetary payment, make this payment as soon as practicable.

### ***The extent to which survivors have accessed counselling and psychological care***

As at 31 December 2020, 67.6% (or 3,079 out of 4,554) of applicants who accepted an offer of redress also accepted an offer of redress counselling (**Table 13**). Accepting an offer of redress does not automatically entitle the survivor to counselling. Applicants must tick the box on the acceptance documents to opt-in to being eligible for the counselling and psychological care component of redress.

Applicants that live in Western Australia, South Australia and overseas, will be provided with their counselling and psychological care component as a lump sum as part of their redress outcome. For all other states and territories, when an applicant accepts their offer of redress, the state is debited an amount to provide the services.

**Table 13: Applicant acceptances of redress counselling offers, 1 July 2018 to 31 December 2020 (30 months)**

**Table 13** establishes the number of offers and acceptances of redress counselling, broken down by year, over the life of the Scheme.

**Number of applicants that received an offer of CPC.** 2018 to 19, 304. 2019 to 20, 2,974. 2020 to 21, 1,641. Total number, 4,919.

**Number of applicants who have responded to their offer of CPC.** 2018 to 19, 239. 2019 to 20, 2,504. 2020 to 21, 1,811. Total number, 4,554.

**Total number of applicants that accepted an offer of CPC.** 2018 to 19, 143. 2019 to 20, 1,736. 2020 to 21, 1,200. Total number, 3,079.

**Acceptances as a proportion of offers responded to.** 2018 to 19, 59.8%. 2019 to 20, 69.3%. 2020 to 21, 66.3%. Total number, 67.6%.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Note b: The CPC acceptance percentage is based on the number of applicants who had responded at the end of each reporting period respectively.

Source: Scheme data.

Applicants who receive a lump sum payment for redress counselling have higher acceptance rates of redress counselling offers than those from states and territories that provide redress counselling services (**Table 14**). In this instance, the Scheme pays the survivor the lump sum payment in full as a once off, with no requirements on applicants to use the counselling payments for their intended purpose.

**Table 14: Number of redress counselling (CPC) offers and acceptances by state, 1 July 2018 to 31 December 2020 (30 months)**

**Table 14** is a complex. It presents the number of CPC offers and acceptances of those offers, broken down by state, as well as financial year and total across the Scheme.

This data will be presented on the state or territory basis.

**New South Wales.** Number offered 2018 to 19, 83. Number accepted 2018 to 19, 44. Number offered 2019 to 20, 589. Number accepted 2019 to 20, 300. Number offered 2020 to 21, 284. Number accepted 2020 to 21, 185. Total offered across the life of the Scheme, 956. Total accepted across the life of the Scheme, 529.

**Vic.** Number offered 2018 to 19, 58. Number accepted 2018 to 19, 30. Number offered 2019 to 20, 561. Number accepted 2019 to 20, 310. Number offered 2020 to 21, 236. Number accepted 2020 to 21, 147. Total offered across the life of the Scheme, 855. Total accepted across the life of the Scheme, 487.

**Qld.** Number offered 2018 to 19, 82. Number accepted 2018 to 19, 32. Number offered 2019 to 20, 880. Number accepted 2019 to 20, 423. Number offered 2020 to 21, 509. Number accepted 2020 to 21, 306. Total offered across the life of the Scheme, 1,471. Total accepted across the life of the Scheme, 761.

**South Australia.** Number offered 2018 to 19, 10. Number accepted 2018 to 19, less than 5. Number offered 2019 to 20, 196. Number accepted 2019 to 20, less than 185. Number offered 2020 to 21, 130. Number accepted 2020 to 21, less than 130. Total offered across the life of the Scheme, 336. Total accepted across the life of the Scheme, 313.

**Western Australia.** Number offered 2018 to 19, 26. Number accepted 2018 to 19, 12. Number offered 2019 to 20, 438. Number accepted 2019 to 20, 377. Number offered 2020 to 21, 328. Number accepted 2020 to 21, 339. Total offered across the life of the Scheme, 792. Total accepted across the life of the Scheme, 728.

**Tasmania.** Number offered 2018 to 19, 36. Number accepted 2018 to 19, 17. Number offered 2019 to 20, 198. Number accepted 2019 to 20, 80. Number offered 2020 to 21, 103. Number accepted 2020 to 21, 56. Total offered across the life of the Scheme, 337. Total accepted across the life of the Scheme, 153.

**Northern Territory.** Number offered 2018 to 19, less than 5. Number accepted 2018 to 19, less than 5. Number offered 2019 to 20, less than 35. Number accepted 2019 to 20, less than 15. Number offered 2020 to 21, less than 20. Number accepted 2020 to 21, less than 15. Total offered across the life of the Scheme, 50. Total accepted across the life of the Scheme, 27.

**Australian Capital Territory.** Number offered 2018 to 19, less than 5. Number accepted 2018 to 19, less than 5. Number offered 2019 to 20, less than 55. Number accepted 2019 to 20, less than 30. Number offered 2020 to 21, less than 30. Number accepted 2020 to 21, less than 20.

Total offered across the life of the Scheme, 89. Total accepted across the life of the Scheme, 51.

**Overseas.** Number offered 2018 to 19, less than 5. Number accepted 2018 to 19, less than 5. Number offered 2019 to 20, less than 30. Number accepted 2019 to 20, less than 25. Number offered 2020 to 21, less than 10. Number accepted 2020 to 21, less than 10. Total offered across the life of the Scheme, 33. Total accepted across the life of the Scheme, 30.

Note a: The table above shows the number of CPC offers made to applicants by financial year, and the number of CPC that was accepted by applicants during that year. There are instances where the CPC offer and acceptance occurred in different financial years.

Note b: Accepting an offer of CPC does not mean the applicant has received any of their CPC, except in those states and territories or overseas where the applicant receives a CPC payment rather than services.

Source: Scheme data.

The total value of accepted offers of redress counselling was around \$13.7 million (**Table 15**). This amount was debited to states and territories that provide counselling and psychological care services, or was paid directly to the applicant for South Australia, Western Australia and overseas residents. The amount debited or paid is relative to the level of abuse determined.

**Table 15: Accepted offers of redress counselling by value, 1 July 2018 to 31 December 2020 (30 months)**

**Table 15** breaks down the number of accepted offers of redress counselling, based on the 'Tier' of payment value, across the life of the Scheme.

**Tier 1, Value \$5,000.** Number of accepted offers 2018 to 19, 119. Number of accepted offers 2019 to 20, 1,342. Number of accepted offers 2020 to 21, 951. Total Number of accepted offers across the life of the Scheme, 2,412.

**Tier 2, Value \$2,500.** Number of accepted offers 2018 to 19, 23. Number of accepted offers 2019 to 20, 384. Number of accepted offers 2020 to 21, 242. Total Number of accepted offers across the life of the Scheme, 649.

**Tier 3, Value \$1,250.** Number of accepted offers 2018 to 19, less than 20. Number of accepted offers 2019 to 20, less than 20. Number of accepted offers 2020 to 21, less than 20. Total Number of accepted offers across the life of the Scheme, 18.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Source: Scheme data.

The national service standards require that states and territories provide the Scheme Operator with data on access to services by survivors, including information regarding the number of referrals made to funded agencies and information on complaints. This has not been consistently reported.

In 2018 to 19, the department sought from states and territories information on survivor uptake of redress counselling for inclusion in the Scheme's first annual report. However, this information was not part of the published annual report, and the department did not seek this information for the 2019 to 20 annual report. The Review is supportive of greater ongoing transparency and accountability about the uptake of the three redress elements as an indicator of the Scheme's effectiveness in meeting survivors' needs and ongoing assessment of the survivor experience.

The Review sought advice from the states and territories that provide redress counselling services on the numbers of survivors that have accessed those services.

As at 31 December 2020, 2008 survivors from these states and territories had accepted an offer of redress counselling as part of their offer of redress. However, only 1,025 (or 51%) had contacted the state or territory to seek to access redress counselling (**Table 16**). Of these 1,025 survivors, only 204 survivors, or 20% have actually accessed counselling (**Table 16**). The Review supports further analysis of this uptake to better shape this redress component and its offering to better understand and meet survivor needs.

**Table 16: Numbers of survivors that have accessed redress counselling, 1 July 2018 to 31 December 2020 (30 months)**

**Table 16** identifies the number of applicants that have sought access to, as well as those who have successfully accessed, CPC services across the life of the Scheme. This data will be presented in two categories.

**Applicants that have sought access to CPC services.** Number of applicants 2018 to 19, 42. Number of applicants 2019 to 20, 497. Number of applicants 2020 to 21, 486. Total number of applicants, 1,025.

**Applicants that have accessed CPC services.** Number of applicants 2018 to 19, 5. Number of applicants 2019 to 20, 88. Number of applicants 2020 to 21, 111. Total number of applicants, 204.

Note: The above data does not include Western Australia, South Australia or overseas applicants, as they receive a CPC payment rather than services.

Source: State and territory data.

Not all eligible applicants from South Australia, Western Australia and overseas accepted an offer of a lump sum payment for redress counselling. This suggests a lack of understanding of the redress component.

The low acceptance rates in states and territories outside of South Australia and Western Australia may indicate that applicants do not understand the redress counselling element of their redress offer. However, currently there is no Scheme data available to understand these trends.

Improving the uptake of redress counselling is currently under consideration by the Scheme's inter-jurisdictional Communications and Community Engagement working group. In July and September 2020, the working group listed for consideration the low uptake of redress counselling by survivors and sought members' views on possible options to help address the issues. The working group also collated and circulated to members individual state and territory redress counselling arrangements to inform further discussion. The Review welcomes this initiative. No decision had been taken at the time of the Review.

### ***Feedback on redress counselling element***

The Review received feedback from consultations and submission processes and surveys of survivors and their advocates and families.

Survey responses from survivors and their advocates on the adequacy of the monetary value of the redress counselling are summarised below (**Table 17**).

#### **Table 17: Feedback on the monetary value of redress counselling**

**Table 17** reports the feedback received about the amount the survivor received for redress counselling. This is presented based on the responded type.

**Survivors.** Number responding 'Adequate', 31. Number responding 'Inadequate', 27. Number responding 'Unsure', 37. Number of nil responses, 5.

**Survivor advocates.** Number responding 'Adequate', 32. Number responding 'Inadequate', 18. Number responding 'Unsure', 46. Number of nil responses, 4.

Source: Review data.

In addition, survivor advocates expressed concern that the monetary value was not sufficient for complex trauma. This accords with the Royal Commission recommendations.

For some survivors counselling is the most important part of redress:

*The counselling has been the best part of the Redress scheme for me, it is still ongoing and has helped a great deal.*

Submission from survivor to a Consultancy to the Review.

Other survivors provided a qualified response noting that the value was only acceptable as they had already received a significant amount of psychological support.

*The payment is adequate only because I have been receiving counselling for years, otherwise I would not have been able to even apply for Redress at all. Had I not been receiving counselling & psychological help, the payment offered by Redress would be totally inadequate.*

Submission from survivor to a Consultancy to the Review.

Other survivors stated that they had accessed counselling via other schemes, such as state and territory based victims services schemes. Some did not wish to have counselling, as it resulted in unwanted recollections and memories.

Survivor and advocate responses indicated misunderstanding over choice of provider. For example, respondents to both surveys stated that survivors should not have to change practitioner:

*Victims if they have already got a psychologist prior to this agreement should not be asked to change under the redress policies and procedures as it takes time and sometimes years for the victim to trust as trust had been broken by people.*

Submission from survivor to a Consultancy to the Review.

Some survivors had yet to find the right provider for them:

*Took up offer but choice of counsellor was limited, chose one and went to a session or two but not happy with fit. No need to find new person within limited selection and start again. Feel number of sessions won't be enough*

Submission from survivor to a Consultancy to the Review.

Survivors and advocate submissions raised a number of issues relating to approved redress counsellors, including that some are not sufficiently specialised, there are shortages in rural and remote locations and there are few culturally relevant services for Aboriginal and Torres Strait Islander survivors or people with disability. Advocates for people with disability questioned whether the existing services had the skills necessary to deal with the more complex disabilities and be responsive to needs of people with intellectual disability.

Survivors also proposed changes to service delivery such as via Medicare. Both survivors and their advocates suggested that redress counselling should be from the point of application rather than as part of the package:

*this should be available from the time the application is submitted as I needed it and at times found myself considering self harm. Lifeline is not a solution to use when you need a person who has continuity for your case.*

Submission from survivor to a Consultancy to the Review.

Many submissions from survivors asked for more flexibility and access to counselling. Some survivors described their struggle to access counselling due to geographical distance, rural isolation and waiting lists. For survivors, the process of initiating a new counselling relationship can be daunting. One submission described the significant anxiety that making a phone call to book an appointment could cause.

A submission from a state or territory government considered it was inappropriate to preclude access to redress counselling and recommended review of the support provided to survivors about the decision to access counselling and any requirements or procedures that limit access to these important components of redress.

Issues raised in submissions and consultations concerned:

- a. Differences between redress counselling services and Royal Commission recommendations.
- b. Differences between redress counselling services provided by states and territories.
- c. Redress counselling entitlements for survivors that move between states and territories.
- d. Access to services in rural and remote areas.

### ***Royal Commission recommendations and the current Scheme counselling***

The Royal Commission recommended that:

- a. Redress counselling should be available throughout a survivor's life.
- b. Redress counselling should be available on an episodic basis.
- c. Survivors should be allowed flexibility and choice, recognising that different groups of survivors have different needs for redress counselling.
- d. There should be no fixed limits on the redress counselling provided to a survivor.
- e. 'Without limiting survivor choice, counselling and psychological care should be provided by practitioners with appropriate capabilities to work with clients with complex trauma'.
- f. Services for family members if necessary for a survivor's treatment.

The national service standards have adopted three of these recommendations:

- a. Survivors may access redress counselling on an ongoing or episodic basis.
- b. Service providers must be appropriately qualified and skilled in working with survivors with complex trauma, have an understanding of the effects of institutional child sexual abuse, and be registered with a relevant professional association.
- c. States and territories must provide survivors with services that are culturally appropriate, including Aboriginal and Torres Strait Islander healing approaches, and consider the diversity of survivors, such as needs related to disability, gender, sexuality and language.

In addition, the national service standards are consistent, in principle at least, with Royal Commission recommendations on unlimited counselling for the duration of the survivor's life. It does not impose a fixed limit, it only prescribes the minimum number of hours of counselling a survivor may receive over their lifetime. However, it does not provide for redress counselling for family members.

The JSC 2019 also recommended that redress counselling be available for the duration of a survivor's life. The Australian Government's response to the JSC report noted that:

- a. Legislation set minimum amounts of redress counselling.
- b. States and territories were responsible for providing redress counselling services.
- c. Some states and territories provided arrangements above the minimum standard (see below).

It also stated that it would consult with jurisdictions and further consider these recommendations through the second year Review.

Subsequently, the JSC 2020 recommended the removal of any caps or limits on redress counselling services for survivors. At the time of the Review, the Australian Government had not responded to this report.

The lump sum payment to survivors in South Australia, Western Australia and overseas may cover the cost of episodic counselling but not ongoing, lifelong counselling. These survivors, particularly those who are relatively young, are disadvantaged by the lump sum payment arrangement.

In discussing (then) contemporary services and service gaps, the Royal Commission noted many other services provide redress counselling to survivors, such as:

- a. In-patient, out-patient and community-based mental health services.
- b. Alcohol and drug rehabilitation services.
- c. Primary health services.

The Royal Commission also noted that the Australian Government funds primary healthcare initiatives through Medicare. Recently, the Australian Government provided an additional \$100.8 million over two years, from 2020 to 21, to increase the cap on Medicare subsidised psychology sessions from 10 to 20. The measure attracted some criticism on affordability grounds and access to psychologists in more remote areas. Critics claimed that the cost of a psychology session of around \$260 with a rebate of \$128 only subsidised 'services for the more advantaged parts of the population'.

### ***Differences between state and territory redress counselling services***

Over the life of the Scheme, survivor groups have raised a number of concerns regarding the provision of redress counselling, including:

- a. The way in which counselling and psychological care is delivered across states and territories.
- b. The ability to access or continue with a service in the event of relocation.

Submissions from redress support services recommended that either:

- a. All jurisdictions agree to give survivors the option of receiving the counselling and psychological component of redress as either a monetary payment or access to services.
- b. Redress counselling should be accessible across different jurisdictions.

Currently, redress counselling entitlements vary between states and territories. New South Wales, Queensland, Tasmania and the Australian Capital Territory provide redress counselling over the survivor's lifetime. The Victorian Department of Health and Human Services advised that provision of redress counselling beyond the life of the Scheme would require a new source of funding.

A number of jurisdictions provide survivors with more than 20 hours of counselling. In New South Wales, victims of child sexual abuse who were abused in New South Wales are eligible for free and unlimited counselling through Victim Support Services. In Queensland survivors can access an initial 20 hours of redress counselling but may access more on request. Requests require the support of and a recommendation from a practitioner, with the agreement of the survivor. Both Tasmania and the ACT consider requests for more than 20 hours of counselling on a case-by-case basis.

At the time of the Review, the Victorian Department of Health and Human Services was considering an evaluation of its bespoke redress counselling arrangements, including the number of sessions of redress counselling that can be offered. However, it advised that any redress counselling policy and funding changes will require approval by the Victorian Government.

Survivors who have moved between jurisdictions may be disadvantaged. For example, redress survivors who reside in New South Wales but were abused outside of that state are only entitled to access 22 hours of redress counselling. In Victoria, redress counselling services are only provided to people who lived in Victoria when they accepted an offer of redress counselling through the Scheme.

However, most states and territories that provide redress counselling services have arrangements that enable survivors to continue to access support in the event of relocation. For example, New South Wales has approved counsellors that can be accessed in other states and territories and overseas, while Queensland provides access via the Trauma Support Directory or by the counsellor registering with its redress counselling service. ACT also signs up counsellors in other states and territories for redress clients that permanently relocate. Tasmania accesses providers in other states and territories and facilitates counselling with interstate providers of choice in response to applicant requests.

In some states, for example, New South Wales, Victoria and Queensland, survivors can choose to continue with an existing practitioner.

Currently, there is limited flexibility in service choice. The Victorian redress service has contracted Aboriginal and Torres Strait Islander organisations to provide culturally sensitive programs. The evaluation of the Victorian redress service also recommended alternative and adjunct therapies, following survivor feedback that some would prefer to access alternative support such as more inclusive group work, equine therapy, trauma informed yoga, and outdoor and recreational activities alongside a clinician. The Review is supportive of such flexibility being provided across all jurisdictions where available.

Three states, Queensland, Tasmania and the Australian Capital Territory, will consider survivor requests for alternative therapeutic services on a case-by-case basis. The Australian Capital Territory also has some scope to provide redress counselling beyond traditional counselling, particularly for Aboriginal and Torres Strait Islander clients. Currently, Queensland is planning to establish a statewide preferred supplier list of Aboriginal and

Torres Strait Islander community health and sexual assault support services that can deliver redress counselling services in keeping with the current fee-for-service arrangements. The Review supports and recommends that there be greater flexibility in the provision of the counselling and psychological care component of redress. The Review acknowledges this will need to be actioned by the Australian Government and state and territory governments.

### ***Redress counselling for family members***

There is limited access to redress counselling for family members of survivors.

Tasmania considers requests for redress counselling for a survivor's family members on a case-by-case basis. The Queensland model supports survivors to attend counselling with their partner, a family member or another significant person. These sessions are included in the number of eligible redress counselling hours.

Sometimes assistance is via victims service schemes and limited to abuse that occurred in the relevant state or territory.

In the Australian Capital Territory, family members are eligible for up to 20 hours of counselling under the Victims Services Scheme as 'related victims'. Similarly, in New South Wales, under the Victims Support Scheme, in some circumstances, families of survivors may be eligible for counselling, for example, a parent or guardian of survivor who was under the age of 18 at the time of the abuse.

The Review is of the opinion that the New South Wales Victims Support Scheme model should be applied to redress. This recognises the effects of vicarious trauma on family and guardians of children that suffer child sexual abuse.

### ***Access to redress counselling in rural and remote areas***

Survivors and support services highlighted the challenges faced by applicants in rural and remote area in accessing redress counselling. Issues include access to appropriately skilled practitioners and services, waiting times for appointments, and both the time and costs incurred travelling to and from appointments.

All state redress counselling services provide services in metropolitan, rural and regional areas in their states. For example, the Victorian redress service includes 17 organisations with over 120 locations across Victoria. Where possible, the Tasmanian redress counselling service identifies appropriately skilled practitioners in remote areas and facilitates the referral.

Queensland acknowledged that there is more choice in the populated parts of the state and practitioners may need to be sourced from the closest regional town in rural and remote locations.

In addition, all state delivery models support telehealth, with telephone and video counselling available from practitioners across the state. However, it is recognised that some survivors will prefer face-to-face options.

There is no data on access to services from survivors in South Australia and Western Australia, as survivors living in these jurisdictions receive the lump-sum counselling payment instead.

### ***Other changes proposed by submissions***

Submissions suggested that the term ‘counselling and psychological care’ may not resonate with all survivors. One submission suggested that the term ‘Counselling, Healing and Wellbeing Services’ may better reflect the needs and preferences of survivors. The Review supports a change in name where this would increase survivor understanding of redress.

Consultation and submissions to the Review also recommended that survivors:

- a. Have access to redress counselling during the initial stages of application.
- b. Should be offered counselling to support them where they have been advised of a decision that their application was unsuccessful.
- c. Be provided with access to financial counselling for survivors.

Providing seamless end-to-end support to survivors is a fundamental duty of care and was one of the recommendations of a JSC of the Australian Parliament. The Review agrees with this recommendation, as noted in **Chapter 6**. Survivors should have access to support and care while they are considering whether or not to make an application, while they are completing the application form, and after lodging an application with the Scheme. This is also discussed under support services in **Chapter 6**.

### ***Conclusion***

The Royal Commission stated:

*There are many government and non-government generalist and specialist services and practitioners that provide counselling and psychological care to those who have experience child sexual abuse, including those survivors of institutional child sexual abuse ... [and] any expansion in services should build on existing services rather than displace or compete with them.*

Royal Commission, *Redress and civil litigation report* (2015), p. 197.

The Review strongly supports this conclusion.

The Review also acknowledges the differing needs and preferences of survivors but notes there are challenges for many survivors in accessing services that best meet their needs. Not all survivors will access counselling and psychological care services, including state and territory based redress counselling services. Others may access a service episodically and others on a continuing basis. There may also be considerable delay between the time survivors accept an offer of redress and the time they access redress counselling.

The Review’s consultation and submissions processes identified a range of actions that may increase the uptake of redress counselling services, including:

- a. Providing seamless, end-to-end support to survivors before, during and after the application process.

- b. Aligning redress counselling services with national service standards requirements, in particular, providing survivors with access to culturally appropriate and alternative therapeutic services, including Aboriginal and Torres Strait Islander healing approaches.
- c. Introducing consistency in service provision across all states and territories, including South Australia and Western Australia, for all survivors, regardless of where the abuse occurred and their place of residence.
- d. Providing survivors with unlimited counselling for the duration of their life.

The Review strongly supports all of these proposed actions. In addition, it supports greater transparency in the collection and reporting of counselling and psychological care related data, including ongoing assessment of the effectiveness of current providers.

The department advised that, as part of continual improvement, they initiated a review of the Scheme's acceptance document. The acceptance document design has been modified in response to stakeholder feedback to simplify the acceptance of components of redress for eligible applicants. The modified design, which is currently being tested with stakeholders, provides language that a person can accept all components of redress by simply signing and returning the acceptance document to the Scheme. The design continues to provide choice for the applicant to accept only one or more components by ticking a box for each relevant component. Readability and layout have also been improved, with plain English and more white space used where possible. It is anticipated the altered acceptance document will be released shortly. The Review welcomes work in this area.

The Review is concerned that counselling is currently not available at potentially one of the most traumatising times for the applicant, when they are making the decision to apply and going through the application process. The Review is supportive of changes to the current arrangements to better support survivors to mitigate the risk of harm and ensure that supports are available if and when they are most needed. It also notes that states and territories that provide redress counselling services may choose to provide all eligible survivors with access to these services regardless of whether or not the relevant box was ticked on the acceptance document. An extension of this flexibility should be explored to provide greater equity of access.

The Review notes that improving the counselling and psychological care component of redress is a Ministers' Redress Scheme Governance Board priority for 2021.

# Recommendations

## ***Recommendation 4.6***

The Australian Government undertake the following actions to improve the equity, scope and quality of counselling support:

- a. All survivors have lifelong access to trauma informed redress counselling.
- b. Access to redress counselling should not be determined by the state or territory in which the abuse occurred or where the survivor resides.
- c. 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.
- d. The Australian Government should work with state and territory governments 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.

## Section 4.4 Direct personal response

### **Key findings**

- The direct personal response is an essential element of redress.
- Uptake by applicants and completion of direct personal response has been low. Survivors are either reluctant to engage in the process, owing to reports of it causing considerable distress, or are confused about what is involved.
- A direct personal response has the potential to provide reparation, holding institutions accountable for past actions, expressing remorse and making a positive commitment to survivors.

### **Background**

The terms of reference require the Review to consider the extent to which survivors have accessed direct personal responses under the Scheme, including factors influencing the uptake and experiences with the direct personal response process.

Two JSCs of the Australian Parliament have made recommendations on the direct personal responses element of redress, that:

- a. The Australian, state and territory governments require institutions to report to the Scheme Operator on the number of complaints received, the nature of the complaints and how these complaints were resolved.
- b. The Review consider ways to support survivors accessing direct personal responses as a high priority.

### **Overview**

A direct personal response is a foundational Scheme element.

The direct personal response process 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. That is, it has:

*A symbolic role in setting relationships right. Reparation is one gesture in a broader process of providing a meaningful apology.*

Submission to the Review 86.

'Do no further harm' is the foundational restorative principal underpinning all actions in the direct personal response process.

For some survivors of institutional child sexual abuse, direct personal responses can play an important role in helping them to achieve a sense of justice and healing.

Applicants may request a direct personal response from the institution(s) found responsible for their abuse. Where an applicant is found to have suffered abuse in more than one

institutional setting, they will be able to request a direct personal response from each or any of these institutions.

The purpose of a direct personal response is to:

- a. Validate the survivor's experience.
- b. Provide an opportunity for the survivor's personal experiences to be heard and acknowledged.
- c. Address any power imbalances within the responsible institution.

A direct personal response can be one or more of the following:

- a. An apology or a statement of acknowledgement or regret.
- b. An acknowledgement of the impact of the abuse on the person.
- c. An assurance of the steps the institution has taken, or will take, to prevent abuse occurring again.
- d. An opportunity to meet with a senior official of the institution.

The applicant can receive a direct personal response:

- a. At a face-to-face meeting with a representative of the institution.
- b. Via a written letter.
- c. By any other method preferred by the survivor and agreed to by the institution.

Applicants may choose to be accompanied by a support person at any time during the direct personal response. A support person may be a family member, a close friend, the applicant's support worker or someone from a redress support service.

Consistent with the findings and recommendation of the Royal Commission, a '[direct] personal response can only come from the institution':

*A demonstration of accountability by the responsible institution's representative is a crucial element of a DPR. Accountability is evident when an institution takes ownership of its failure to prevent abuse and acknowledges the harm, its impacts and the often poor responses institutions made to survivors when abuse was made known.*

Direct Personal Response Guidance Handbook 2020.

A secondary and important objective of the direct personal response process is for institutions to gain an understanding of the impacts of the sexual abuse on the survivor and the institution and to guide cultural reforms and inform prevention of future abuse.

The Scheme's legal and policy frameworks set out the obligations and responsibilities of institutions. In preparing for and giving the direct personal response, the responsible institution must:

- a. Provide clear and consistent information to the survivor about the institution's process for arranging direct personal responses, including the methods the institution is able to engage in.

- b. Ensure the survivor's needs, expectations and preferences dictate the way the direct personal response is given.
- c. Pay the costs associated.

Three key documents set out the framework for direct personal responses:

- a. The Act (Division 4, Direct Personal Response, Part 2-5).
- b. *National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018* (DPR Framework), a legislative framework issued under the Act to guide participating institutions in supporting and implementing effective and safe engagement with survivors.
- c. The Direct Personal Response Guidance Handbook 2020 (the handbook), which is provided to participating institutions.

### ***Eligibility to receive a direct personal response***

Applicants who wish to accept an offer of a direct personal response must tick the relevant box on the acceptance offer form.

Following acceptance, the Scheme writes to the survivor to:

- a. Advise that the survivor must contact the institution to start the direct personal response.
- b. Provide the name, telephone contact number and email address for the institution(s) nominated by the applicant.

An institution is not required to provide a direct personal response where:

- a. The applicant has not had an application approved under the Scheme.
- b. An applicant does not tick the box for a direct personal response on the acceptance document form.
- c. The applicant does not contact the institution to request a direct personal response before the Scheme ends (currently 1 July 2028, the 10th year since the Scheme's commencement).
- d. The applicant has not responded to reasonable attempts to arrange a direct personal response before the Scheme ends.
- e. The applicant requests but subsequently notifies the institution that they wish to withdraw from the direct personal response.
- f. The applicant has already received a direct personal response from the institution under the Scheme.

### ***The extent to which survivors have accessed direct personal responses***

Participating institutions must provide an annual report to the Scheme on the numbers of direct personal responses requested and given to survivors and the types of responses requested and given.

Between 1 July 2018 to 31 June 2020, 2,259 (80.5%) of the 2,807 applicants that accepted an offer of redress also accepted the offer of 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 (**Table 18**)).

**Table 18: Survivor acceptance of and uptake of direct personal responses (DPR), by financial year, 2018 to 19 to 2019 to 20**

**Table 18** presents the number of applicants and the proportion of accepted offers of redress, across the life of the Scheme, broken down by the status of the application. The status of the application will be used to present the data.

**Accepted offer of redress.** Number of applicants 2018 to 19, 239. Proportion of accepted offers of redress 2018 to 19, 100%. Number of applicants 2019 to 20, 2,568. Proportion of accepted offers of redress 2019 to 20, 100%. Total Number of applicants across the life of the Scheme, 2,807. Total proportion of accepted offers of redress across the life of the Scheme, 100%.

**Accepted DPR offer (Note a).** Number of applicants 2018 to 19, 130. Proportion of accepted offers of redress 2018 to 19, 54.4%. Number of applicants 2019 to 20, 2,129. Proportion of accepted offers of redress 2019 to 20, 82.9%. Total Number of applicants across the life of the Scheme, 2,259. Total proportion of accepted offers of redress across the life of the Scheme, 80.5%.

**Requested DPR.** Number of applicants 2018 to 19, 21. Proportion of accepted offers of redress 2018 to 19, 8.8%. Number of applicants 2019 to 20, 157. Proportion of accepted offers of redress 2019 to 20, 6.1%. Total Number of applicants across the life of the Scheme, 178. Total proportion of accepted offers of redress across the life of the Scheme, 6.3%.

**Received DPR.** Number of applicants 2018 to 19, 8. Proportion of accepted offers of redress 2018 to 19, 3.3%. Number of applicants 2019 to 20, 88. Proportion of accepted offers of redress 2019 to 20, 3.4%. Total Number of applicants across the life of the Scheme, 96. Total proportion of accepted offers of redress across the life of the Scheme, 3.4%.

**In progress.** Number of applicants 2018 to 19, 7. Proportion of accepted offers of redress 2018 to 19, 2.9%. Number of applicants 2019 to 20, 41. Proportion of accepted offers of redress 2019 to 20, 1.6%. Total Number of applicants across the life of the Scheme, 48. Total proportion of accepted offers of redress across the life of the Scheme, 1.7%.

**On hold.** Number of applicants 2018 to 19, 6. Proportion of accepted offers of redress 2018 to 19, 2.5%. Number of applicants 2019 to 20, 25. Proportion of accepted offers of redress 2019 to 20, 1.0%. Total Number of applicants across the life of the Scheme, 31. Total proportion of accepted offers of redress across the life of the Scheme, 1.1%.

**Withdrawn.** Number of applicants 2018 to 19, 0. Proportion of accepted offers of redress 2018 to 19, 0%. Number of applicants 2019 to 20, 3. Proportion of accepted offers of redress 2019 to 20, 0.1%. Total Number of applicants across the life of the Scheme, 3. Total proportion of accepted offers of redress across the life of the Scheme, 0.1%.

Source: Scheme data.

### ***Factors influencing survivor requests for direct personal responses***

Consultations with and submissions from survivors, support services and institutions identified a range of possible reasons for the low number of survivors that have requested to receive a direct personal response to date. These included:

- a. A lack of understanding about the purpose and potential benefits of a direct personal response.
- b. The fact that not all survivors will request a direct personal response for a broad range of reasons, such as the possibility of contact triggering further significant trauma.
- c. Survivor exhaustion and re-traumatisation as a result of completing the complex and lengthy application process, it may take years before some survivors are ready to request a direct personal response.
- d. The requirement for survivors to contact the institution responsible for their abuse to start the direct personal response process.
- e. Issues of trust, including survivors' concerns that institutions have not changed and the process will not lead to institutional change, about institutions' ability to provide a sincere apology, and that the institutional representative delivering the direct personal response will be the abuser or someone who did not act on reports of the abuse.
- f. The global pandemic, from the second half of 2019 to 20 onwards.

The Review also received feedback on survivor experiences of direct personal responses process via its consultation and submission processes and surveys of survivors, their advocates and families, and institutions.

Respondents to all three review surveys considered the direct personal response the most problematic redress element. The survivor survey commissioned by the Review provides a comprehensive insight of survivor perceptions of direct personal responses (**Table 19**).

**Table 19: Survivor feedback on the DPR redress element**

**Table 19** presents the survey statements, as well as the survivor responses to the statements, regarding the DPR redress element. The data will be presented by the survey statement.

**I was provided with details of who to contact about the personal response.** Agreed, 54%. Disagreed, 26%. Not sure, 16%. Did not answer, 4%.

**I received a direct personal response from the institution.** Agreed, 19%. Disagreed, 61%. Not sure, 11%. Did not answer, 9%.

**The direct personal response was in a form that was acceptable to me.** Agreed, 18%. Disagreed, 41%. Not sure, 26%. Did not answer, 15%.

**I was able to have input into the form of the direct personal response.** Agreed, 25%. Disagreed, 34%. Not sure, 31%. Did not answer, 10%.

**The direct personal response was extended to me with the courtesy, genuineness and respect intended by the Royal Commission.** Agreed, 28%. Disagreed, 31%. Not sure, 26%. Did not answer, 15%.

Note a: 80 survivors participated in the survey.

Source: Review data.

Of the survey respondents that received a direct personal response:

- a. 26% indicated they were not provided with institution contact details.
- b. 41% did not consider the delivery of the response was in an acceptable form.
- c. 34% disagreed that they were able to influence the form of the response.
- d. 31% disagreed with the statement, 'The direct personal response was extended to me with the courtesy, genuineness and respect intended by the Royal Commission'.

In contrast, survivor submissions largely focused on why survivors have chosen not to access a direct personal response. Issues raised by submissions on the direct personal response were:

- a. institutional responses to requests for direct personal responses from close family members where the applicant had passed away
- b. the survivor did not find the direct personal response meaningful.

Two submissions advised that institutions had declined requests for direct personal responses from siblings or children of survivors that had passed away. The Review is aware of a number of applicants to the Scheme that have passed away before receiving their redress offer (see **Chapter 1**).

### ***Institution experiences with the direct personal response process***

While submissions from institutions largely focused on process changes and improvements (discussed below), the focus of the institutional survey was on the number of direct personal responses delivered and related institutional arrangements.

Consistent with other feedback, survey responses confirm that the number of direct personal responses delivered is low:

- a. 82% of respondent institutions had not provided a direct personal response.
- b. 15% of respondent institutions had provided one direct personal response.
- c. 2% of respondent institutions had provided more than one direct personal response.

In relation to institutional arrangements for the delivery of responses:

- a. 89% of respondent institutions had a dedicated person managing the direct personal response process.
- b. Dedicated persons were usually in very senior positions, such as chief executive officers, directors, managers, school principals, bishops, congregational leaders, or in specialised positions, such as directors of professional standards or safeguarding officers.
- c. 43% of dedicated persons had relevant trauma qualifications.

Only 75% of survey respondents (78 out of 103) claimed that institutions answered questions about the institution's method for providing direct personal responses to survivors:

- a. 59% reported using a face-to-face meeting.
- b. 55% reported using a written letter from the institution.

While some respondent institutions confirmed they considered survivors' preferences and accommodation of such requests depended on the choices of applicants, it was not clear how they did so. Some respondents also sought professional advice on how to make the response meaningful and helpful for the survivor.

Institutions specifically raised concerns about the appropriateness or their willingness to undertake direct personal responses where they were not accepting of the IDM's decision. There are currently no formal review avenues for institutions to appeal an IDM's decisions. However, the department advises that it follows up all matters raised that relate to errors of fact.

The Act provides that, in certain circumstances, the Scheme may waive part or all of a funding contribution owed by a participating non-government institution. A waiver is a special concession, where an exceptional circumstance exists, that extinguishes a debt owed to the Commonwealth. The Commonwealth cannot pursue the debt at a later date.

Circumstances in which a waiver may be appropriate include where there has been a miscalculation of the share of the redress payment owed by the institution or where the

incorrect institution has mistakenly been held responsible based on matters of known fact. This is discussed further in **Chapter 5**.

### ***Revitalising the direct personal response redress element***

There is a strong consensus about the need to revitalise and make process improvement to improve the uptake of direct personal responses by survivors. The Review strongly supports this view given the strong social justice benefits that underpin the direct personal responses and the importance of the process in ensuring that the survivor receives acknowledgement that the abuse should not have happened.

The department recognises that further effort is required and has proposed a range of immediate, mid-term and longer term actions to address issues relating to survivor uptake of direct personal responses and institutional obligations.

The department also advised that some survivors would prefer the institution to contact them (or their support person or service) and there was confusion about the process among survivors and institutions. Other issues identified in submissions from institutions and support services included:

- a. More effective communication to survivors, institutions and Scheme staff, more targeted Scheme communications is also discussed in **Chapter 1**.
- b. Arrangements that better support survivors' requests and assist them to receive a direct personal response.
- c. Coordinated and ongoing training of institutional representatives given the low uptake of direct personal responses to date.
- d. Effective oversight of direct personal response delivery, survivor experience and outcomes.

### ***Communication and engagement with survivors, institutions and redress staff***

Consistent feedback to the Review was that the purpose and the potential restorative benefits of direct personal responses are not well communicated to or understood by survivors, institutions and Scheme staff:

*The Department should adequately publicise all three elements of the scheme as an integrated redress package, providing clear, comprehensible information.*

*Information about each element of redress should explain outcomes, purpose, steps and potential benefits, and should publicise both statistics and survivor stories, using a variety of formats (written and audio-visual) to communicate, and including data indicating changes in the take-up rate of DPR by survivors.*

Submission to the Review 86.

The Review supports this proposal based on the experience of other related national redress schemes.

To date, the department has not actively promoted the scheme (see **Chapter 1**):

*There is a need to further improve communications for people regarding the parameters and benefits of a DPR and to access a DPR from each participating institution. Although jurisdictions (and potentially NGIs) have developed a bespoke information sheet for people requesting a DPR, this could be strengthened and disseminated via additional communication modes.*

Submission to the Review 185.

The Review supports this proposal and highlights the communication process currently being introduced in Queensland to be an exemplar of good practice in this area.

Annual reporting responses from institutions to the Scheme confirm there is confusion among survivors and institutions about the direct personal response process and suggest this has contributed to delays in the delivery of direct personal responses.

Another proposal to improve survivor understanding was to rename 'direct personal response'. There were two suggestions. The first was 'direct personal engagement', 'to remove the implication of a hollow unilateral gesture, and to reflect, instead, the relational element that supports individual recovery and institutional reform'. The other was 'apology'.

The Review is supportive of name changes that are most acceptable to survivors and make the intent clearer.

The Review supports dedicated resources being allocated to provide a more proactive approach to facilitate uptake of direct personal responses, both at the time the survivor lodges their application and after a determination has been made. Strategies should consider approaches that utilise existing relationships between survivors and relevant entities to facilitate a 'warm handover,' such as state and territory government and non-government entities that are actively involved in victims compensation or redress schemes, including Aboriginal and Torres Strait Islander controlled entities and support agencies.

### ***Supporting survivors request and receive direct personal responses***

Submissions identified three broad areas requiring reconsideration:

- a. The requirement for applicants to tick a box to accept an offer of direct personal response.
- b. The responsibility on survivors to initiate contact with the institution.
- c. Better alignment of Scheme direct personal response processes with the Defence Abuse Reparation Scheme (the Defence scheme).

As noted previously, currently applicants who wish to accept an offer of a direct personal response must tick the relevant box on the acceptance offer form. Where an applicant has not ticked the box, the institution is not obliged to respond to a request for, or provide, a direct personal response:

*Tasmania does not support this approach. The decision to accept or refuse counselling and/or a DPR can be very difficult for a survivor to make, particularly at a time which can be very emotional and potentially overwhelming.*

Submission to the Review 181.

The Tasmanian government submission also advised that there have been occasions where institutions have refused to provide a direct personal response where the survivor did not tick the relevant box. It unequivocally stated, 'This is very concerning and contrary to the spirit and intent of the Scheme'. The Review agrees.

The Tasmanian government submission also recommended review of the support provided to survivors about their redress offer and the impact of their decision on access to a direct personal response and redress counselling. The Review supports this recommendation.

The Scheme advised the Review that it is considering replacing the single outcome call with two calls. The first call will advise the survivor of the monetary payment outcome and arrange a time to call back to talk through the purpose of the direct personal response and redress counselling elements. The Review supports measures that provide survivors with more information and time to fully consider all options.

Overall, the Review believes that the acceptance rate of direct personal response offers is encouragingly high. Possible reasons why the remaining applicants did not accept an offer of a direct personal response, particularly in the first two years of scheme operation, include:

- a. A lack of knowledge or understanding about the purpose of a direct personal response.
- b. Survivor re-traumatisation due to the lengthy and complex application process.
- c. The complexity of the letter of offer and acceptance form.
- d. That the survivor does not desire a direct personal response.

However, as identified in **Table 18**, the Review is concerned that the delivery rate of direct personal responses (that is, the actual direct personal response occurring) remains low (4.3% of all outcomes).

Submissions from the Australian Government and state and territory government, institutions and support services suggested that the requirement for survivors to contact the institution responsible for their abuse to start the direct personal response process may be a significant barrier. The Review shares this view:

*It is up to the applicant to contact the institution which will be incredibly hard for them to do unless the institution is able to make some sort of opening contact to support them.*

Survivor feedback study, commissioned by the Review.

Submissions proposed a range of options, such as:

- a. Institutions being responsible for initiating contact with survivors to provide information on their processes and healing outcomes.
- b. The Scheme proactively brokering contact between survivors and institutions.

- c. Using mediators to negotiate and arrange the provision of a direct personal response where requested by the applicant.

Survivor-led direct personal responses are consistent with Royal Commission findings and recommendations. The Royal Commission concluded:

*Re-engagement between a survivor and institution should only occur if, and to the extent that, a survivor desires it.*

Royal Commission, *Redress and civil litigation report* (2015), p. 137.

This underpinning principle was acknowledged by one submission that recommended that the current process continue as is. The Review acknowledges and supports the intention to ensure the survivor remains in control of the decision to seek a direct personal response; however, it believes that appropriate supports should be available to assist in making the initial approach and throughout the process if required. Without these, numbers of completed direct personal responses are likely to remain low.

However, the Royal Commission also stated that the Scheme could facilitate or an intermediary representative could act for survivors or support them where the survivor does not 'wish to conduct all of their part of the re-engagement themselves'. The Review notes that some state and territory administrations have dedicated redress support units that coordinate survivor requests or provide access to facilitators for direct personal responses for government institutions. The Review is supportive of exploring greater use of existing jurisdiction services given their experience in this area.

In addition, redress support services are contracted to provide a range of services to survivors before, during and after they apply for redress, including practical and emotional support, legal advice and financial counselling. This includes supporting survivors to access direct personal responses from responsible institutions.

Submissions also cited the Defence scheme restorative model as a better practice and/or alternative delivery model. The Defence scheme was established in November 2012 to provide reparation payments to individual cases of abuse in Defence that occurred before 11 April 2011. Since 1 December 2016, the Commonwealth Ombudsman, in their capacity as the Defence Force Ombudsman, has been able to receive reports of contemporary and historical abuse within Defence. The scheme ends on 30 June 2021.

Under the Defence scheme, one outcome available to survivors is participation in a restorative engagement program:

*The Framework is underpinned by the best practice principles and values of restorative practice and mediation. These principles and values include 'do no further harm', confidentiality, and privacy.*

Defence Abuse Response Taskforce, *Restorative Engagement Program Framework*, 27 March 2014.

The Scheme's direct personal response is similar to the Defence scheme's restorative engagement program. Both models provide survivors with an opportunity to tell their story

to a senior institutional representative in a private meeting and for the representative to acknowledge and respond to survivors' stories of abuse.

Both schemes also allow survivors to nominate a person to provide support throughout the restorative engagement process. A support person can be a friend, family member, partner or professional support worker such as an advocate or counsellor. However, professional facilitation of Defence scheme restorative engagement conferences is mandatory. This requirement sought to ensure that restorative engagements were professionally conducted and minimised the risk of further harm to participating survivors.

Professional facilitators are engaged to prepare both the survivor and institutional representative for the restorative engagement conference. This includes conducting pre-conference meetings with each participant and attending and facilitating the restorative engagement conference. The department established a panel of professional convenors for this purpose.

In addition, the Defence scheme also appoints a dedicated liaison officer to support survivors who wish to participate in a restorative engagement conference. Liaison officers have appropriate trauma training, skills and experience. They assist survivors to identify their motivations and expectations of the process and understand the steps involved in the process leading up to the conference. There is no redress scheme equivalent and this option warrants exploration by the Scheme.

The proportion of applicants that have accepted an offer of redress under the Defence scheme and the Scheme is 71.7% and 53.9% respectively (**Table 20**). However, a higher proportion of Defence scheme survivors have participated in a restorative engagement, 28.8% compared to 7.7% of Scheme survivors.

**Table 20: Comparison of uptake of direct personal responses, DART and redress scheme**

**Table 20** compares and contrasts the DPR uptake between the Defence Abuse Response Taskforce and the Scheme. The data will be presented by scheme name.

**Defence Abuse Response Taskforce.** Number of eligible applications received, 3,475. Proportion of total eligible applications received, 100%. Number of payments made, 2,490. Proportion of total eligible applications received, 71.7%. Number of restorative engagements/DPRs delivered, 718. Proportion of total eligible applications received, 28.8%.

**Redress scheme.** Number of eligible applications received, 2,742. Proportion of total eligible applications received, 100%. Number of payments made, 2,259. Proportion of total eligible applications received, 82.4%. Number of restorative engagements/DPRs delivered, 96. Proportion of total eligible applications received, 4.3%.

Source: Review analysis.

The Review acknowledges that there are significant differences in the scope and maturity of the two schemes and this explains in part the different approaches adopted and the outcomes. However, the Review also recognises the additional support provided to survivors under the Defence scheme and how this has contributed to the higher uptake of the restorative engagement element. These are reflected in the positive outcomes anecdotally reported from both applicants and Defence personnel.

The Review acknowledges that some states and territories use the facilitator model and have established panels for this purpose (for example, New South Wales and Queensland). Others are in the process of doing so (for example, South Australia). Currently, these arrangements only apply to government institutions. Similarly, some non-government institutions, such as the Uniting Church of Australia, have a central contact point for direct personal response requests. The Review is supportive of these changes based on experience in other schemes and believes that extension to other institutions warrants consideration.

### ***Building institutional capacity to deliver direct personal responses***

Submissions from support services and institutions identified two risks arising from the low numbers of survivors requesting a direct personal response:

- a. The impact on the skills and ability of institutions to effectively engage with survivors of complex trauma.
- b. The potential for inconsistent delivery of direct personal responses.

A support service submission stated:

*It is not surprising that there is a low uptake of DPR's under the current arrangements. There are no strict guidelines about how institutions conduct the DPR, or consistency in how they might operate. There are real risks that the survivor could be re-traumatised or even reabused and that this opportunity for an apology will have the opposite effect. Whilst some institutions, such as government institutions, have clear procedures, training, and appoint professional facilitators to conduct the DPR, many don't. Survivors need to be assured these processes are safe and survivor focused.*

Submission to the Review 184.

A submission from a state or territory government also acknowledged the challenges in delivering direct personal responses and identified this as an area requiring further effort:

*The challenge that confronts institutions is to provide a DPR that evolves from being trauma aware to becoming trauma informed. This requires ... institutions to move beyond the understanding of 'damage' inflicted, towards designing practices and processes that emphasise openness, collaboration, levelling of power differences, maximising restorative opportunities and championing a sense of safety, security and support for survivors throughout the redress process.*

Submission to the Review 163.

The legislative framework and handbook require that a direct personal response is delivered by people who have received training on the nature and impact of child sexual abuse; and the needs of survivors, such as cultural awareness and sensitivity.

On joining the Scheme, all participating institutions receive a copy of the DPR Framework, the handbook, and an invitation to attend department-run training. The one-day 'DPR Immersion' course provides an introduction to and overview of the direct personal response element. Since 1 July 2018, the Scheme has delivered 35 training sessions to over 600 attendees from government and non-government institutions.

Before the training course, the department also directly engages with each new institution. Until December 2020, the department conducted one-on-one teleconferences with each new institution, approximately 120 teleconferences were conducted. From December 2020 onwards, the department emails new institutions a direct personal response factsheet that outlines institution obligations. At the same time, it provides them with the framework and handbook.

In August 2020, the Victorian government administration initiated a project to design and develop training resources for government facilitators and institutional representatives. In late 2020, agreement was sought and obtained from the Inter-governmental Agreement Committee to develop eLearning materials to guide government institutions in effective and safe engagement with survivors. The eLearning initiative will provide nationally accessible and standardised training for all government institutional representatives and facilitators across the Scheme's lifetime. Currently, there is no intention to share these materials with non-government institutions and there is no equivalent initiative for this sector.

The disparity in training and other resources available to government and non-government institutions and divergence in good practice increases the risk of inconsistent delivery of direct personal responses. Recently the department identified potential inconsistencies in direct personal response delivery from institutions' 2019 to 20 annual reporting responses. These included different time frames for completing direct personal responses of a similar method, such as written engagements and telephone discussions. Direct personal response processes completed within a short number of days or hours may indicate that institutions are not tailoring engagements to meet the needs, expectations and preferences of individual survivors as required by the DPR Framework.

In addition, approximately 50% of survivor abuse occurred in non-government institutions. Given the slow uptake of the direct personal response element, the preliminary training for non-government institutions is likely to require supplementation to ensure institutional capacity to deliver direct personal responses. Institutional survey responses also support this conclusion. Only 43% of respondents indicated that their institution had dedicated persons with relevant trauma qualifications. However, this may not be representative of all participating institutions.

In late 2020, state administrations also expressed interest in reconvening the direct personal response community of practice to encourage information sharing and best practice. Non-government institutional participation should be encouraged.

### ***Transparency and accountability***

Although direct personal responses are a foundational redress element, the department has no oversight of its delivery or compliance.

Instead, the department's role in supporting institutional delivery of direct personal responses is currently limited to providing guidance materials such as the handbook, training (the one-off 'DPR Immersion' course) and monitoring feedback and complaints via feedback channels and annual reporting under the DPR Framework.

Until July 2020, the department had a dedicated team that coordinated and provided direct personal response guidance material and internal policy advice to the Redress Group. This dedicated team was disbanded as part of a reorganisation across the Redress Group in July 2020 and its functions were distributed to various sections and branches.

The department informed the Review that it believes integrating direct personal responses into the various functions of Scheme has benefited the process, whereas the original section was separate and isolated. While there may be benefits in integrating the function in the longer term, the Review believes that at this point greater prominence needs to be given to the direct personal response component as part of a larger communication effort to promote the Scheme. This needs to be supported by stronger oversight at the Ministers' Board level. There is also considerable benefit in outward-facing staff with responsibility for the direct personal response having cultural awareness and sensitivity training.

The Review believes that the Scheme needs to make direct personal responses more prominent in the Scheme, given its importance to social justice, healing for survivors and holding institutions to account. The Review does not conclude whether the revised operating model for direct personal response is positive or negative given the lack of affirming data. However, based on current concerns about uptake, it reaffirms that direct personal response needs to be supported in all steps of the redress journey.

As previously advised, participating institutions must make an annual report to the Scheme on the numbers of direct personal responses requested and given to survivors and the types of responses requested and given.

Under the DPR Framework, institutions must also:

- a. Ask survivors for feedback on their direct personal response.
- b. Have a process for managing complaints about direct personal responses.
- c. Provide survivors with details on how to provide feedback or complaints.

Under the framework, institutions must make efforts to address feedback and complaints. Currently, there is no requirement for institutions to report this information to the Scheme.

As previously noted, this was a recommendation by a former JSC of the Australian Parliament. The Review supports the collection and reporting of survivor experience data to drive ongoing improvements and minimise risks of harm to survivors.

There would also be merit in shortening reporting obligation time frames from 12 to six months and requiring institutions to report on feedback received and complaints as part of the Survivors' Service Improvement Charter reporting process. This would provide the department with greater opportunities to identify and address areas of concern in a timely manner.

Revitalisation will require a coordinated focus. This focus could be provided by the department within the current distributed model or by a state government partner or it could be outsourced to a support service.

### ***Conclusion***

To date, approximately 53.9% of all survivors that accepted a monetary offer of redress also accepted an offer of a direct personal response. However, only a small proportion of these (7.7%) has requested a direct personal response from the responsible institution and only half again have received a direct personal response.

In contrast, in the Defence scheme around 29% of survivors have participated in a restorative engagement. While there are significant differences in the maturity, scope and structure of the two schemes, a crucial difference is the level of support provided to the survivor. Importantly, the Defence scheme demonstrates that a higher survivor uptake of direct personal responses is achievable.

To maximise its potential, major revitalisation and process improvements of the direct personal response redress element are necessary. The Australian Government and state and territory governments agreed that further effort was necessary in each of the areas identified by the Review. In addition, there was broad consensus among survivors, support groups and institutions that direct personal responses are the most problematic redress element. This is supported by feedback and annual reporting responses from institutions provided to the department in 2020.

The Australian Government, state and territory governments, survivors, support services and institutions identified four broad areas where change is necessary:

- a. More effective communication to survivors, institutions, and scheme staff.
- b. Arrangements that better support survivors to request and receive a direct personal response.
- c. Coordinated and ongoing training of institutional representatives.
- d. Effective oversight of direct personal response delivery and outcomes.

The Review recommends that the Scheme seek to provide survivors and their advocates with an opportunity to influence direct personal response policy and process and build institutional capability.

The Review notes that improving the counselling and psychological care and direct personal response components of redress are Ministers' Board priorities for 2021.

# Recommendations

## ***Recommendation 4.7***

In order to increase the uptake and quality of direct personal response, the Australian Government works with state and territory governments together with survivors, nominees, advocates, support services, institutions and restorative engagement experts to co-design an improved direct personal response process. This work needs to consider:

- a. Identifying and removing barriers (legislative or otherwise) to allow facilitation of a direct personal response by someone other than the survivor.
- b. Offering better support to survivors by providing for the appointment of dedicated liaison officers to individual survivors, where requested by the survivor.
- c. The merits of professional facilitation of face-to-face direct personal responses, particularly where there is survivor feedback regarding the quality of the delivery.
- d. The Inter-jurisdictional Committee taking responsibility for developing, implementing, monitoring and reporting on these changes.

Developing a direct personal response action plan for implementation by 30 November 2021.

# Chapter 5 Access to review, funder of last resort, civil litigation

## Section 5.1 Reviews of decisions and revocation of determinations

### ***Key findings***

- The provisions relating to review of decisions lack specific details of grounds of appeal and cause confusion for applicants and support services.
- The level of detail provided in decisions to applicants is not sufficient to allow applicants to make an informed decision to seek review.
- Applicants are currently unable to provide additional information to an independent decision maker with their request for review. This negatively affects the applicants who omit information in the original application, which could prove relevant in the review.
- Most reviews are unsuccessful for the survivor, with 80% of original decisions upheld.

### ***Background***

The review arrangements under *National Redress Scheme for Institutional Child Abuse Act 2018* (the Act) relate to decisions about eligibility for redress and the outcome of the assessment for a redress payment. An applicant or a person acting on their behalf can request an internal review of a determination. An Independent Decision Maker (IDM) will then affirm, vary or overturn the decision. In addition, applicants can request a revocation of a determination. Institutions have no right of review.

Applicants can request an internal review of their determination if they have been found ineligible or if they are dissatisfied with the redress outcome.

Revocations are available to the Scheme Operator or their delegate if information becomes available that would have changed the decision had that information been known or if the Scheme is made aware of a relevant prior payment prior to the applicant's acceptance of an offer.

### ***Submission comment from survivors and support services***

Submissions from survivors noted the following in relation to review options:

- a. There was concern around the lack of external review.
- b. The idea of requesting a review was distressing.
- c. There was confusion around the review process.

- d. Some find it difficult to understand some of the language used to explain the review process and its objectives.
- e. There is insufficient information provided to applicants about how the IDM reached the decision.

The Women's Legal Service NSW summarised the impact of the current arrangements as follows:

*A failure to provide full and transparent reasons also leaves the victim-survivor unclear about what information has been relied upon, what weight has been placed on particular evidence and what evidence may have been over-looked and/or dismissed. This is highlighted where there is inconsistency in decision making amongst groups of victim-survivors who were abused at the same institution and who had very similar experiences. Inconsistent decisions combined with a failure to explain the reasoning behind these decisions is incredibly distressing, divisive and damaging for victim-survivors who are left feeling that their experiences have been invalidated and that they are not believed. This, in turn, leads to disastrous consequences.*

Submission to the Review 140.

Redress support services made comments on the review processes, including:

- a. Difficulties with review processes, including having a new IDM reviewing the same material.
- b. Concern about the failure to provide applicants with the opportunity to address or respond to issues with their application.
- c. The need for clarification and extension of review timeframes.
- d. The risk of receiving a lower redress payment amount.
- e. Survivors being too intimidated and scared to request a review.
- f. The low success rate for review applications.

In relation to (f) above, the Review notes that, of 215 completed internal reviews over the life of the Scheme, 168 decisions were affirmed, meaning no change was made to the original determination (see **Table 21** below).

knowmore has assisted many clients to apply for an internal review, often with favourable outcomes. However, the support service remains concerned about the limitations of the internal review arrangements:

*That survivors are prevented from providing new information to support their application for an internal review, and the lack of clarity surrounding what constitutes new information.*

*That survivors who apply for an internal review risk having their original decision reduced.*

*The general lack of transparency surrounding the internal review process, which is deterring some survivors from seeking a review.*

Submission to the Review 166.

The Women's Legal Service NSW noted:

*We are extremely concerned about a number of areas in which there is a lack of transparency on the part of the Scheme, and the consequent failure to afford natural justice and procedural fairness to victim-survivor applicants. In particular, we are concerned about the secrecy around the Assessment Framework, the failure to provide adequate reasons for determinations and the review process.*

Submission to the Review 140.

### ***Submissions from institutions***

Institutions indicated to the Review that they would like greater involvement in the review process. Some of the concerns raised by institutions included:

- a. Frustration at the lack of involvement in the resolution of cases (Submission to the Review 45).
- b. The lack of a dispute resolution mechanism which would allow institutions to appeal on limited grounds, for example, where there was an inaccurate calculation or redress or assignment of liability (Submission to the Review 125).
- c. The lack of a complaints mechanism for institutions (Submission to the Review 143).
- d. The perceived lack of evidence on which to base a decision or failure to accurately interpret medical evidence (Submission to the Review 109).
- e. Inadequate reasons provided in determinations which leads to institutions being unable to ascertain how the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Assessment Framework) has been applied (Submissions to the Review 91, 137).

The Review acknowledges these concerns, particularly the absence of a quick review and correction process where a clear error has been identified.

### ***Review of decisions under the Act***

An applicant or a person acting on their behalf can request an internal review of a determination. The IDM will then affirm, vary or overturn the decision. External merits review is specifically not available. It is understood that the absence of external merits review was to make the Scheme as simple and accessible as possible.

Applicants' review rights are limited to a request for a review of decisions relating to eligibility or for a review of the determination. As there is no 'without prejudice' provision, applicants run the risk of having their offer reduced if they request a review of the determination. This is a specific concern for support services.

There are no specific grounds for review set out in the Act. Applicants struggle to establish reasons for review, as the outcome letter provides only general information about the determination.

Further, the Scheme requires that requests for reviews are made in the approved form. It is difficult to locate this form on the website.

Additionally, applicants are currently prohibited from providing additional information with their review request, meaning the review decision may not be made on all relevant and available information at the time of the review.

Data provided to the Review provides a snapshot of current review numbers. It is clear from the data that the majority of decisions which are reviewed are affirmed, meaning the outcome does not change. Where a decision is amended, it is likely that the redress amount will increase. Where a redress amount decreases, this is usually attributed to an incorrect calculation on the first occasion. There is nothing in the Act which prevents an application for review resulting in a worse outcome for the applicant.

Submissions to the Review indicated that there was a high level of hesitation to apply for a review due to the fact that the outcome could leave an applicant worse off. The Review believes it would be beneficial for the legislation to be amended to provide that all review applications will be on a without prejudice basis, meaning an applicant cannot be worse off due to a request for review. This will remove the current perceived deterrent to seeking a review for many applicants.

**Table 21: Number of requests for a review of a redress determination, and the outcomes of the reviews, 1 July 2018 to 31 December 2020 (30 months)**

The data in **Table 21** is presented across the financial years, as well as the total for the Scheme's lifetime. The data will be presented based on the number and outcome of the requests for a review of a redress determination.

**Total number of applicants that requested an internal review.** Number 2018 to 19, less than 5. Number 2019 to 20, 134. Number 2020 to 21, 90. Total number, less than 250.

**Total number of completed internal reviews.** Number 2018 to 19, less than 5. Number 2019 to 20, 125. Number 2020 to 21, 87. Total number, less than 250.

**Total number of affirmed decisions.** Number 2018 to 19, less than 5. Number 2019 to 20, 104. Number 2020 to 21, 62. Total number, less than 200.

**Total number of amended decisions.** Number 2018 to 19, less than 5. Number 2019 to 20, 21. Number 2020 to 21, 25. Total number, less than 50.

**Change in Eligibility.** Number 2018 to 19, less than 5. Number 2019 to 20, 9. Number 2020 to 21, less than 5. Total number, 13.

**Increase in redress amount.** Number 2018 to 19, 0. Number 2019 to 20, 9. Number 2020 to 21, 17. Total number, 26.

**Decrease in redress amount.** Number 2018 to 19, Number 2019 to 20, Number 2020 to 21, Total number,

Note a: There is one instance where the redress amount was decreased upon review because the original decision amount was miscalculated due to a prior payment.

Source: Scheme data.

***Statements of reasons for a decision and the outcome letter***

As discussed in **Chapter 3**, IDMs are required to prepare a statement of reasons for their determination. The IDM populates a template with standard phrases. The applicant may receive the statement of reasons with the outcome letter. IDMs advised that a statement of reasons is not provided unless requested. The outcome letter gives limited information about the basis for the decision.

The IDMs have access to a statement of reasons guide, which is an internal policy document. The Review found that some of the terminology in the guide is unhelpful. A literal interpretation and application of the guide by an IDM could result in them using similar phrasing as is contained in the guide to the effect that they do not believe the abuse was sexual abuse, which could cause trauma to the applicant.

The limitations on merits review were initially to balance the need for an expedited application process for survivors. The Scheme believed that allowing the reviewer to request further information from survivors would create a significant administrative burden and

potentially add to the re-traumatisation of survivors. There was also the possibility that a full review process would increase the operational costs for institutions to participate in the scheme and lengthen time taken to receive determinations.

The availability of administrative review is important where IDMs have either a high level of personal discretion in the making of decisions or where the grounds on which decisions are made are not published. It is especially important when operational guidance is confidential and survivors are uncertain about the reasons why their application was assessed the way it was by the IDM. This has a deleterious impact on the survivor.

As discussed in **Chapter 3**, not all guidance provided to the IDMs is consistent with the legislation. Such a conflict potentially results in inconsistent decision-making by the IDMs. In circumstances where IDMs are not providing detailed reasons in their decision letters, it is difficult for these inconsistencies to be identified, therefore perpetuating the issue.

The capacity to apply for a review is dependent on the information available to the applicant about the assessment of their application and the reasons for the decision. Applying for a review without having the detailed information about the basis for the decision is a severe handicap for the applicant. The Scheme does not provide the IDM's statement of reasons with the offer letter, although an applicant can request it.

However, 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.

The department should provide more flexibility for the IDMs to develop their statements of reasons within the parameters of the Act, the *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (the Rules) and *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Assessment Framework) so that applicants know how their outcome was arrived at, what was taken into account, what was not considered and why.

The Review does not agree that institutions should have access to review rights similar to those of an applicant, given the desire to differentiate this process from a more adversarial civil process. However, there is a legitimate need for the department to sort an agreed process where a clear error has been made which requires correction quickly and efficiently, such as where an incorrect institution has been held responsible or where there is an obvious miscalculation.

### ***The revocation provisions***

The revocation provisions enable the Scheme Operator to revoke a decision that an IDM has already made under section 29(2) or 29(3) of the Act. Revocation allows the IDM to consider additional information and to re-make the decision as though the IDM had never made the initial determination.

Revocations occur if 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. The effect of the revocation is to enable the decision-maker to make a new decision. The new decision has the same rights of review as any other decision made under section 29 of the Act. A request for a revocation can come from an applicant or their nominee or an institution.

The Act provides that a revocation effectively puts the application back to the stage immediately before it was determined, and the Scheme Operator is required to make a determination to approve, or not approve, the application as soon as practicable.

The Scheme provided data on the number and outcomes of revocations to date (see **Appendix Table 10**). Of 42 revocation requests completed, 28 revocations were approved with new decisions made. There are 31 revocations currently in progress.

The Review considers that better data collection is necessary to inform the Scheme on reasons for requests for revocation and reviews, not least to inform and contribute to quality assurance in relation to assessment decisions and determinations. The lack of coherent data collection is reportedly due to current redress ICT systems not having the functionality to report on review or revocation determinations.

The Review recommends the department seek the functionality to obtain data on:

- a. Who has initiated the request for revocation.
- b. The basis of the request, what new information has been forthcoming.
- c. The basis for the new decision.
- d. The period of time taken for the revocation decision and the new decision from the date of request.

Data in relation to the period of time taken for a revocation to be approved and a new decision made is important, as it informs the Scheme in relation to the efficiency of the process and may prevent undue delay to an applicant.

# Recommendations

## ***Recommendation 5.1***

The Australian Government review the process for redress internal review and amend the legislation to:

- a. Allow for the provision of additional information with an internal review request.
- b. Ensure all reviews are to be without prejudice to the original determination (i.e. original payment determination cannot be reduced on review).
- c. Publish and make easily accessible an approved mandatory template for review requests.

## Section 5.2 Funder of last resort

### **Key findings**

- Some survivors are unable to access redress because the responsible institution no longer exists and there is no contemporary successor institution, or the responsible institution cannot or will not join the Scheme.
- It is time for the Australian Government, and state and territory governments to make a considered judgement about the ongoing funder of last resort arrangements and give effect to a key principle underpinning recommendations of the Royal Commission.

### **Background**

The Royal Commission concluded that it was appropriate for the institutions in which the abuse occurred to fund the costs of redress. However, the Royal Commission also recognised that some responsible institutions may no longer exist and there may not be a contemporary successor institution to fund the costs of redress. In these circumstances the Royal Commission recommended that the Australian Government and state and territory governments:

- a. Provide ‘funder of last resort’ funding to meet any shortfall in funding.
- b. Negotiate and agree their respective shares of funding contributions for applications in the relevant state or territory.

Two JSCs of the Australian Parliament also recommended that the Australian Government and state and territory governments act as the funder of last resort for all defunct institutions:

*While the participation of relevant institutions is crucial, in cases where the institution no longer exists, access to the scheme, and ultimately a step towards justice, can only be achieved if all jurisdictions fill this gap.*

Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, *Getting the National Redress Scheme right: An overdue step towards justice*, p. xvi.

### **Funder of last resort policy**

The funder of last resort arrangements in the Act are limited. These state that a jurisdiction can only be a funder of last resort where:

- a. The institution is defunct.
- b. And a participating government institution of the relevant state or territory is equally responsible with a defunct institution for the abuse of a person.
- c. And the government institution agrees to be the funder of last resort for the defunct institution in relation to the abuse.
- d. And the Minister declares the government institution as the funder of last resort.

The narrower funder of last resort provisions reflect initial concerns about:

- a. The numbers of applicants without a viable institution to seek redress from.
- b. The potential costs of broader funder of last resort arrangements for participating state and territory governments.
- c. The risk of broader funder of last resort arrangements acting as a disincentive for institutions to join the Scheme.

### ***Scheme data on funder of last resort arrangements***

Over the period 1 July 2018 to 31 December 2020, state and territory governments agreed to be funder of last resort for 117 applications (**Table 22**).

**Table 22: Applications eligible for funder of last resort funding, 1 July 2018 to 31 December 2020 (30 months)**

The data in **Table 22** is presented in two levels. The first is the number of applications with a funder of last resort. The second is the number of applications where agreement for funder of last resort is pending. The data is across the life of the Scheme, by financial year, as well as a total.

#### **Number of applications with a funder of last resort.**

- **Total number of applications naming a defunct institution for which there is a funder of last resort.** Number of applications 2018 to 19, 41. Number of applications 2019 to 20, 50. Number of applications 2020 to 21, 26. Total number of applications, 117.
- **Total number of applications where a state or territory government has agreed to be the funder of last resort.** Number of applications 2018 to 19, 41. Number of applications 2019 to 20, 50. Number of applications 2020 to 21, 26. Total number of applications, 117.
- **Total number of applications where the Australian Government has agreed to be the funder of last resort.** Number of applications 2018 to 19, 0. Number of applications 2019 to 20, 0. Number of applications 2020 to 21, 0. Total number of applications, 0.

#### **Applications pending FOLR declaration.**

- **Total number of applications where agreement to funder of last resort is pending (Note a).** Number of applications 2018 to 19, N/A. Number of applications 2019 to 20, N/A. Number of applications 2020 to 21, 66. Total number of applications, 66.

Note a. The department only reports this data at a point in time and was unable to provide historical data.

Source: Scheme data.

However, the Review notes that this number may have increased due to the fact that, once an institution is declared, this generally results in an increase in applications in relation to that institution.

The Scheme has been unable to progress 443 applications (or 4.9% of all applications) because the responsible institution no longer exists and there is no funder of last resort, an institution is still in the process of joining the Scheme, or the institution cannot or has declined to join the Scheme (**Table 23**).

**Table 23: Applications on hold with no responsible institution, as at 31 December 2020 (30 months)**

**Table 21** is the number of applications on hold with no participating institution, by financial year, including total.

**Total number of applications on hold—no participating institution.** Number of applications 2018 to 19, 282. Number of applications 2019 to 20, 136. Number of applications 2020 to 21, 25. Total number of applications, 443.

Source: Scheme data.

Just over half of all applications on hold (54.4%) cannot be progressed because the responsible institution is defunct and there is no funder of last resort, is not financially viable, is in the process of joining the Scheme or declined to join the Scheme.

Fifteen non-government institutions account for 55% of applications on hold. At the JSC public hearing on 22 January 2021, the department advised that it was actively working with the Department of Home Affairs and the Attorney-General's Department to identify and pursue alternative options relating to one institution, Fairbridge (Restored) Limited. On 24 March 2021, the Australian Government announced five former Fairbridge farm schools will now be covered by the National Redress Scheme allowing survivors of these institutions to have their applications progressed. The Review acknowledges that Jehovah's Witnesses have recently informed the department of their intention to join and this process is underway.

***Impact of the funder of last resort policy on survivors' access to redress***

Survivor responses to the survey commissioned by the Review stated they felt excluded and let down where their application was on hold due to non-participation of an institution under the Scheme, with no recourse or access to a funder of last resort:

*It took a lot of courage and stress to make an application to the NRS, only to find out the institution concerned has not signed up.*

Survivor feedback study, commissioned by the Review.

Submissions from survivor advocates and support services unanimously proposed that one or more governments act as funder of last resort. Any changes to funder of last resort arrangements require the unanimous agreement of the Ministers' Redress Scheme Governance Board (Ministers' Board) and legislative amendment.

Australian Government and state and territory government submissions that addressed the funder of last resort policy also identified a range of issues. While there was some support for

a review of the funder of last resort policy, submissions noted the need for supporting, comprehensive information, including:

- a. The number of defunct institutions in each jurisdiction.
- b. An estimate of the number of survivors who will not be able to access redress under the existing policy.
- c. The estimated costs over the life of the Scheme for each state and territory.

In relation to funding, several options were proposed, including:

- a. The Commonwealth should act as the funder of last resort in two circumstances:
  - i. The institution is defunct, but a government is not equally responsible with the defunct institution for the abuse.
  - ii. The institution is operating, but it does not have financial means to join the scheme, however, these institutions could still deliver a direct personal response.
- b. State and territory governments should continue to consider and agree to funder of last resort provisions on a case-by-case basis for defunct institutions.

One state or territory government did not support extending funder of last resort to institutions that can join the Scheme but have chosen not to because of concerns that this may act as a disincentive to other institutions to join the Scheme. The same submission acknowledged that:

- a. Some survivors would not be able to access redress via the Scheme.
- b. These survivors could still pursue a civil claim.
- c. The Scheme provides an alternative and more trauma informed pathway to redress. The Review notes this is not relevant in these cases.

In contrast, another state or territory government stated that denying survivors access to redress 'clearly runs contrary to the principal aim of the scheme'.

The Review understands that this issue at the Ministers' Board meetings in March, July and November 2020 and have requested further information from the department.

However, the options considered by the Ministers' Board to date will not provide redress to applicants where the responsible institution is able to but has chosen not to join the Scheme.

### ***Institutions unable to join the Scheme***

It is clear that there are challenges for governments where, following assessment, institutions cannot meet the requirements of legislation to join the Scheme. There are two specific groups of institutions who cannot join the Scheme:

- a. Named institutions which are defunct and no link to a parent or government institution can be found.
- b. Those named institutions that have been assessed to not possess the financial means to join the Scheme.

There is an understandable reluctance from the Australian Government and state and territory governments to agree too quickly to step into this space. Reasons for this include the fundamental underpinning of the Scheme for institutions to be accountable for historical abuse of children and concern about the use of public money to provide redress when there remains an existing institution.

The Review supports all efforts by governments to continue to work actively to bring institutions into the Scheme. The Review understands the Australian Government may be reluctant to enter into a 'loans arrangement' whereby institutions join the Scheme, pay what they can at that time, the Australian Government picks up the rest and the institution pays back a determined amount over time. Undoubtedly this would be administratively complex and the Australian Government would be unlikely to recoup all its outlay.

The Review recommends that, before the fourth year of the scheme, the Australian Government review and determine the arrangements for institutions (where there is a redress application naming them) which have not joined the Scheme due to their inability to meet the requirements of the legislation. This is in the interests of providing redress for applicants from named institutions. The Australian Government, along with state and territory governments, should move to resolution. This may include the application of funder of last resort or a loans arrangement or having the institution join the Scheme or a combination of options.

### ***Alternative funder of last resort policy arrangements***

The Royal Commission's recommendations on funder of last resort reflected its conclusion that there was a broader social responsibility for institutional child sexual abuse:

*Although the primary responsibility for the sexual abuse of an individual lies with the abuser and the institution they were part of, we cannot avoid the conclusion that the problems faced by many people who have been abused are the responsibility of our entire society. The broad social failure to protect children across a number of generations makes clear the pressing need to provide avenues through which survivors can obtain appropriate redress for past abuse. In addition to this broader social responsibility, governments may also have responsibilities as regulators and as guardians of children.*

Royal Commission, *Redress and civil litigation report* (2015), p. 31.

This collective responsibility underpins the way forward. In this regard, the Review notes actions taken by state governments to accept the funder of last resort actions and decisions.

### ***Encouraging participation by non-government institutions in the Scheme***

The level of participation of non-government institutions has been a significant factor in the performance of the Scheme in the first two years because a survivor's application for redress cannot progress without the named institution being part of the Scheme. At the commencement of the Scheme, the department adopted an engagement strategy to join up non-government institutions, prioritising onboarding of institutions.

The engagement strategy included proactive outreach, tailored communication and other activities that reduce barriers and maximise institutional participation.

Under the Act, an eligible institution had two years to join the Scheme from the date of the Scheme's commencement. The Minister for Families and Social Services further extended the date by six months to 31 December 2020. This was in acknowledgment of the impact of the COVID-19 pandemic on institutions' capacity to join the Scheme in 2020.

At the end of January 2021, in addition to the Australian Government and all state and territory governments, 450 non-government institutions are participating in the Scheme. There are now no organisations named by the Royal Commission who are in the process of joining the Scheme. One has been found unable to meet the requirements of the Scheme, two have declined to join the Scheme and four are defunct. In addition, the Scheme is working to onboard over 300 tier 2 and tier 3 institutions.

The JSC, in their 2020 report, recommended the Australian Government take action to encourage non-government institutions to join the Scheme. The JSC recommended (recommendations 10 and 11) the Scheme publish the list of institutions unable to or unwilling to join the Scheme and that the Australian Government and state and territory governments take action to remove their charitable status and/or other concessions or sources of public funding.

The Ministers' Board agreed to these actions, releasing a communique in April 2020 that required institutions that have been named in applications to the Scheme and/or in the Royal Commission to provide a letter of intent to join the Scheme. Institutions failing to do so would be publicly named on the Scheme's website. Further, institutions failing to join the Scheme would be ineligible for future Australian Government grant funding. The issue of sanctions is discussed further below.

Following the Ministers' Board announcement, a total of 158 non-participating institutions provided a commitment to join the Scheme by 31 December 2020.

By 31 December 2020 only three institutions continued to be publicly named as refusing to join the Scheme. These were:

- a. Fairbridge (Restored) Limited
- b. Jehovah's Witnesses
- c. Kenja Communications.

On 3 March 2021 Jehovah's Witnesses announced they would join the Scheme. Their media statement linked their decision directly to the legislative changes which would mean they would lose their charitable status. On 24 March, the Australian Government announced five former Fairbridge farm schools will now be covered by the National Redress Scheme under the funder of last resort provisions.

Other non-government institutions that have either been unresponsive or unwilling to work with the Scheme may be considered for public naming in the future.

The Australian Government and state and territory governments have taken additional persuasive actions to encourage and facilitate non-government institutions to join the Scheme. Notable actions include the following:

- a. Survivors can apply for redress at any time until 1 July 2027. However, to ensure all applications can be progressed regardless of the date a survivor comes forward, the Minister has amended the *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (the Rules) (section 56A, 'Timing of declaration'), extending the date for non-government institutions to join the Scheme to 31 January 2028.
- b. Where the Scheme receives an application that names an institution that has not previously been approached to join the Scheme, the institution will be given six months to join the Scheme. These institutions will be publicly named and other sanctions will be considered if they do not join within six months of the Scheme engaging with them.

Individual states, such as the Australian Capital Territory, Tasmania and Victoria, announced that non-government institutions with redress liability that do not join the Scheme risk exclusion from future government funding or contracts. These governments adopted this policy to ensure that as many survivors as possible have access to the redress they deserve.

### **Sanctions**

The Australian Government is taking further action including the introduction of a new Australian Charities and Not-for-profits Commission governance standard and legislation to ensure that organisations that do not take reasonable steps to participate in the Scheme will be deregistered as a charity and lose access to a range of Commonwealth benefits, including taxation concessions. From January 2021, these organisations are no longer eligible for future Commonwealth grant funding.

The Review understands that, in 2020, the Inter-jurisdictional Committee proposed three sanctions for consideration by the Ministers' Board. Publicly naming non-government institutions was among them. The Minister has since addressed and implemented this. The remaining two sanctions are:

- a. Funding-related measures, including reviewing existing funding (where possible) and eligibility requirements for future funding.
- b. Revoking or reducing charitable and/or deductible gift recipient status of a non-government institution.

Each government is responsible for determining which sanctions it will adopt.

On 1 July 2020, the Minister for Families and Social Services publicly named six institutions that had refused to join the Scheme. Two have subsequently joined the Scheme; one (Lakes Entrance Pony Club Inc.) has been assessed as not being able to meet the legislative

requirements of the Scheme. Jehovah's Witnesses have recently indicated their intention to join. Five former Fairbridge farm schools will now be covered by the National Redress Scheme under the funder of last resort provisions. Kenja Communications remain on the public list of institutions that will not join the Scheme.

While the Australian Government and state and territory governments have agreed to a range of sanctions to apply to non-government institutions, to date the Australian Government and state and territory governments have implemented only the first of these, publicly naming non-government institutions that have not joined the Scheme.

On 27 November 2020, the Minister also issued a press release advising of the Australian Government's intentions to strip responsible institutions of their charitable status if they failed to join the Scheme.

At the time of the Review, the Australian Government and state and territory governments have yet to apply any financial sanctions or change an organisation's charitable status, despite legislation and policies being introduced to facilitate these sanctions. However, these sanctions are used by state governments to continue to apply pressure on institutions to persuade them to join the Scheme and it is reported that institutions have joined the Scheme as a result of being advised their funding and charitable status will be removed if they do not. Also, institutions that fail to signify their intention to join the Scheme continue to be publicly identified. Therefore, it appears the sanctions are considered by institutions as a serious enough threat that they increase Scheme participation without the sanction itself having to be imposed.

The Review supports the efforts of governments to take all reasonable steps necessary (including applying sanctions to institutions) to ensure that institutions named in redress applications responsibly join the Scheme.

The department should monitor the application of the sanctions by each state and territory (including, for example, by monitoring the reporting linked to the funding policy at the end of the financial year) to ensure sanctions are imposed where appropriate and without undue delay. It is important that sanctions are imposed when appropriate, as this is a significant step from a public accountability perspective and to emphasise the impact on survivors of institutions refusing to participate.

Additionally, it is important to acknowledge the delays caused by institutions not joining the Scheme. Data received from the department showed that, of the 98 applicants from the first three months of the Scheme whose applicants were on hold due to an institution not joining, six applicants died without receiving a determination. This is an unacceptable outcome. The department needs to explore alternative options to address the lengthy period of time which these applicants are waiting for their application to be considered.

## ***Conclusion***

Consistent with Royal Commission recommendations, the Scheme's policy intent is to hold institutions to account for child sexual abuse and to assist survivors to gain access to redress. However, this also makes survivors' access to redress dependent on the continued existence of the responsible institutions and their joining the Scheme.

Currently, the Australian Government and state and territory governments only act as funders of last resort in limited circumstances. However, these arrangements do not provide all survivors with access to redress.

The Australian Government and state and territory governments have been reluctant to broaden the funder of last resort arrangements due to concerns over uncertainty about the potential numbers of applicants with a defunct institution, the potential costs of acting as the funder of last resort, and the risk of broader funder of last resort arrangements acting as a disincentive for institutions to join the Scheme.

Two years into the Scheme's operation, funding partners are in a better position to assess potential human and financial risks and impacts associated with funder of last resort. It is time to make a considered judgement about the ongoing funder of last resort arrangements and give effect to a key principle underpinning recommendations of the Royal Commission.

Further, it is also time to put further pressure on institutions who refuse to join the Scheme without appropriate reason. Applying further pressure, including imposition of serious sanctions, will reduce the requirement for the Australian Government and state and territory governments to act as funders of last resort and the related delay in processing applications linked with these institutions. The Review supports actions by governments to utilise all available levers to facilitate institutions accepting responsibility for sexual abuse and participating in the Scheme and there should be no hesitation in applying these sanctions.

# Recommendations

## ***Recommendation 5.2***

The Australian Government and state and territory governments consider and 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. Where an application names a responsible institution that is not participating in the Scheme and a determination would otherwise be suspended or delayed, governments should prioritise declaring themselves as the funder of last resort for:

- a. Named institutions that are defunct and where no link to a parent or government institution can be found.
- b. Those named institutions that have been assessed to not possess the financial means to join the Scheme but are willing to do so.

## Section 5.3 Civil litigation

### ***Royal Commission recommendations on civil litigation laws***

The Royal Commission made recommendations in four key areas to assist survivors who wished to pursue a civil claim for past and future institutional child sexual abuse:

- a. Removing limitation periods (recommendations 85 to 88).
- b. Imposing a duty on institutions (recommendations 89 to 93).
- c. Imposing a proper defendant upon institutions (recommendation 94).
- d. Prescribing principles for managing litigation (recommendations 96 to 99).

In doing so, the Royal Commission noted the lack of uniformity across state and territory laws.

### ***Civil litigation trends***

In 2015, the Royal Commission found that ‘some survivors had obtained substantial payments by pursuing civil litigation’, but these payments usually came from settlements:

- a. Claimants in the top 10% of claims had received payment amounts of between \$178,038 and \$4,069,897 (in 2014 dollars).
- b. Eighty per cent of payments made to claimants were below \$107,315.

The Royal Commission stated:

*Generally, these claims involved significant injuries, arising in circumstances where there appear to have been reasonable bases to argue that the institution owed a duty of care and had breached it. These large amounts, even if reached by agreement, are more likely to represent what a court might award as common law damages.*

Royal Commission, *Redress and civil litigation report* (2015), p. 431.

As a rule, state and territory courts do not publish information on trends or outcomes in child abuse civil litigation cases. However, on 4 February 2020, the Supreme Court of Victoria issued a media release announcing the establishment of a new case management list in the Common Law Division called the Institutional Liability List:

*The new list will include claims for damages which have arisen from or following the Royal Commission ... The Institutional Liability List will be the thirteenth specialist list within the Common Law Division and is expected to be the third largest. The creation of the specialist list will allow for more efficient and experienced management of cases.*

Supreme Court of Victoria, ‘New Institutional Liability List’, media release, 4 February 2020.

The Supreme Court advised that the new list was the result of a significant increase in the number of claims relating to historical institutional child abuse following legislative changes that removed limitation periods:

*The number of such claims doubled in the 2018/19 financial year, and there are currently 262 pending cases.*

Supreme Court of Victoria, 'New Institutional Liability List', media release, 4 February 2020.

The Review sought information on civil case numbers and outcomes from all state and territory administrations for the period 2015 to 2020. Most state and territory administrations were only able to provide limited data due to the way courts currently record data. Only one state was able to provide comprehensive data, while some states were only able to provide data for civil claims against government institutions. Those states and territories that did provide data to the Review did so on a strictly confidential basis.

### ***What the Review was told***

Survivor submissions provided a range of responses. Some survivors did not consider civil claims to be an option because of the additional stress and trauma involved. One survivor noted that a civil claim would result in a better outcome, but the process allowed lawyers to employ delaying tactics. Another was advised by a legal firm:

*If raped do civil, if molested do Redress.*

Submission to the Review 190.

Yet another survivor was struggling to make a decision on whether to pursue redress or a civil claim.

Submissions from support services acknowledged that the recent changes in state and territory laws have created significant uncertainty for survivors about the most appropriate avenue for redress. For many, civil proceedings will result in more appropriate compensation than any amount achievable through a redress scheme that includes recognition payments but does not specifically provide payments of compensation. One submission noted there was a lack of support services for survivors who pursue civil litigation.

Some submissions did not support the requirement for survivors to sign a release to waive their right to pursue future legal action against the institution, describing it as 'manifestly unfair'. One legal firm submission proposed, instead, that all survivors should have access to redress and counselling. Where the survivor subsequently chose to pursue a civil claim, or had a settlement pending, the courts could deduct the redress payment from any civil damages.

Seven submissions from institutions argued that the requirement for survivors to release institutions from future civil liability remain unchanged. One of these submissions also suggested that the civil claims and redress frameworks required review to provide a more sustainable system for institutions. Another submission noted that some legal firms encourage survivors to pursue civil claims over redress and suggested that legal fees should be capped for child sexual abuse civil claims. Yet another submission was concerned that applicants were unaware of pro bono options for legal advice. One submission stated that most redress claims made against it continue to be through civil action.

Finally, one state or territory government would welcome data on the number of survivors pursuing justice through civil claims.

The Review has identified the following issues with the Scheme from the perspective of survivors choosing whether to pursue civil litigation or make a redress application and assessing the costs and benefits of each option:

- a. Errors made in processing applications.
- b. Scheme time frames.
- c. Non-advertising and non-promotion of the Scheme.
- d. The complexity of the Scheme.

The Australian Government needs to consider these issues in the interests of Scheme integrity.

The Review also notes steps currently being taken by the New South Wales government to introduce new laws to allow Scheme settlement payments as low as \$5000 to be overturned in favour of fair compensation. The proposed laws would give courts the power to nullify historic payments for sexual and serious physical abuse of children in institutions.

### ***Conclusion***

While little information is available on civil case trends, the statement by the Supreme Court of Victoria indicates this is changing, at least in Victoria. It stated that:

- a. In 2018 to 19, the number of civil claims had doubled, but it did not publish case numbers.
- b. The new the Institutional Liability List was expected to be the third largest list.

The Review notes that a significant increase in the number of civil cases will directly impact on Scheme costs (**See Chapter 7**). Currently, the Scheme's 7.5% administration fee is based on the Royal Commission's estimate of 60,000 applications.

Most state and territory administrations do not appear to be collecting comprehensive data on civil case trends. Given the potential impact of civil cases on Scheme costs, and overall sustainability, it would be desirable for them to do so. The Supreme Court of Victoria Institutional Liability List provides one possible model.

# Chapter 6 Scheme management

## Section 6.1 Scheme staffing

### ***Key findings***

- The Scheme is highly reliant on a temporary contract based workforce across the Redress Group. This is expensive, inefficient and has potentially negative impacts on both staff and survivors.
- There is a need for an increase in permanent staffing levels, greater staffing diversity, particularly the recruitment of Aboriginal and Torres Strait Islander, People with Disability, and Culturally and Linguistically Diverse staff to the Scheme.
- The Scheme is yet to deliver a trauma informed framework that reflects up-to-date clinical education to eliminate or minimise harm to staff and to avoid as far possible further harming survivors.
- Departmentally commissioned reports in 2018, 2019, 2020 and 2021 have informed the department of psychological risks to all redress staff and survivors.
- The optimal duration of staff in redress roles is two years.
- The Scheme has yet to adequately address identified staffing and Work Health and Safety issues.

### ***The Royal Commission***

In 2017, the Royal Commission's Final Report recommended that the Australian Government and state and territory government agencies ensure relevant policy frameworks and strategies are trauma informed and recognise the benefits of implementing trauma informed approaches.

It found that, in order to ensure effective practice and optimal survivor experience, Scheme staff should have access to regular external professional supervision to mitigate the impacts of vicarious trauma and provide opportunities for counselling, debriefing, assistance, mentoring and clinical development.

The Royal Commission found supervision builds, supports and maintains a strong workforce; and developing relationships with staff and among team members provides a positive environment. Furthermore, it found professional supervision could reduce staff turnover and mitigate the effects of vicarious trauma.

Crucially, the Final Report argued it is the ethical requirement of agencies to provide supervision to staff working with complex trauma, and this is important for meeting the needs of victims and survivors of child sexual abuse.

## ***Key findings of departmentally commissioned reports***

The department commissioned a number of consultancies to inform the Scheme of the likelihood of risk of psychological injury to redress staff and survivors and to provide recommendations for staff health and wellbeing, Scheme policy and practice, the development of trauma informed principles and workforce planning.

A summary of the findings of one consultancy is contained at **Appendix L**.

## ***Good practice principles***

In April 2020, the Scheme commissioned a consultancy to develop seven detailed and tailored good practice principles for a psychological wellbeing program and to review the implementation and operation of the Scheme against those service principles.

These clinically informed, trauma informed principles were:

- a. Positive workplace cultures.
- b. Trauma informed care approach to employee wellbeing.
- c. Minimise organisational stress and promote role readiness.
- d. Provide leadership support for employee wellbeing.
- e. Adopt an integrated whole-of-organisation and stepped-care approach to mental health and wellbeing.
- f. Quality assurance and continuous improvement.

The report recognised:

- a. All workers involved in the Scheme are at risk of developing a psychological injury and this risk is both reasonable and foreseeable.
- b. Workers directly involved in delivering the Scheme to eligible survivors, through reading stories and impact statements and speaking with survivors, will be at a very high risk of developing a psychological injury.
- c. As the Scheme is planned to operate for 10 years, there is a reasonably foreseeable risk that workers will sustain a psychological injury(s) during the 10-year Scheme.
- d. The optimum duration of service in these roles is two years.
- e. Continuous, prolonged exposure to traumatic content, as experienced by redress staff, without adequate supervision and support can lead to burnout, disrupt the support and assistance to survivors and undermine the effectiveness of the workforce.

Feedback to the Review suggests the report was considered by Scheme management but the issues raised still exist and warrant specific focus in light of Scheme obligations under the *Work Health and Safety Act 2011* (Cth) (WHS Act).

## ***Business model***

The Scheme should develop a robust business model that has a higher complement of permanent staff, appropriately skilled and provided with the necessary ongoing support, with access to a flexible surge pool of staff to manage peaks in workload.

The Review found staff need to have quite specialised skills and training to work in this area and, if they do not, the risk to both staff and survivors increases. Staff need the time to build up expertise and have the opportunity to rotate in this area to capture their expertise, but the Scheme should give staff time out to avoid the risk of burnout. Ongoing training and support is critical. The business model should facilitate retention of capable and competent permanent staff whose trauma informed values align with the Scheme; and outline proactive actions to improve Scheme workplace culture to make it more attractive for current staff to remain.

The Scheme should build improved data analytics into the business plan to realise business as usual; commit to communicating to existing staff the Scheme's 'value add'; and outline the proactive steps it is undertaking to improve Scheme performance using trauma informed principles for staff and survivors.

## ***Workforce planning***

In a service that is demand based, workforce planning is also even more critical and there is a strong need for good employee metrics to monitor health and wellbeing to mitigate the risk of work health and safety injury. The Scheme should also ensure there is appropriately trained surge capacity available to effectively manage backlogs and peak in demand without impacting negatively on Scheme delivery of timely determinations.

In May 2020, the Interim Report of the Joint Select Committee on Implementation of the Scheme (JSC 2020) identified the issue of high turnover of staff and a failure of the Scheme to notify survivors of changes to caseworkers.

In 2020, it was recommended to the Scheme that there be:

- a. Additional training of staff to reduce errors in applications.
- b. Additional guidance and communications for case coordinators.
- c. Modification of the case coordinator/redress officer role description to reflect the research requirements of the positions.

A consultancy found the Scheme does not recruit staff appropriately, with the needs of the position accurately included in the statements of requirements, and staff lack the necessary support to be able to complete the work competently.

A further report to the Scheme which examined staff productivity, forecast full time equivalent (FTE) requirements and advised on how to address application processing targets modelled two scenarios. The first scenario was where current productivity was 35%, uplifting to 40% by end June (for both quality leaders and Scheme support quality assurance). The

second scenario was where current productivity was at 45% for quality leaders and 50% for Scheme support quality assurance, with no forecast uplift.

The report found both scenarios identified a significant deficit in capacity across quality roles, and overtime would not be a sustainable solution to meeting capacity requirements. It recommended that, to fix this issue, the Scheme decide to either adopt significant efficiency issues or increase the recruitment of quality staffing as soon as possible. The department has advised the Review that the recommendations are being addressed.

The Scheme notes the limitations of Scheme data analytics; the additional costs associated with the utilisation of contract staff; and the requirement to either employ skilled staff or provide comprehensive training to onboard staff, making the use of temporary staff more challenging, less efficient and more costly.

### ***Work health and safety***

Under the WHS Act and *Work Health and Safety Regulations 2011* (Cth), the department has a duty of care to eliminate or minimise the risks to workers of psychological harm from exposure to psychological hazards, including indirect trauma, stress, fatigue and harassment.

The WHS Act also specifies that the Scheme, in offering redress, should do so without further harming or traumatising the survivor.

However, the department's civil liability exposure for trauma and associated psychological injury is significant, and successive reports have identified redress content as a source of vicarious trauma for Scheme administrators. In 2020, the Scheme received 27 recommendations from an external report that reflected the requirements of the work health and safety legislation, including:

- a. Recruitment and selection process (including psychological screening) conducted by an employee assistance program.
- b. Workflow management (for example, ensuring availability of short breaks).
- c. Regular leader wellbeing check-ins.
- d. Psychological health and safety risk monitoring, involving regular and frequent staff consultation.
- e. Trauma informed care training.
- f. Resilience training.
- g. Leave-taking, encouraged by management.
- h. 'Wellbeing coaching' for management to support teams.

The report identified in its risk assessment of the Scheme that there is a risk the Scheme will expose workers to psychosocial hazards that affect the health and wellbeing of workers. It identified that psychological injury can be life-changing for the affected worker and impact their family, their community and the workplace.

This report found the likelihood of experiencing psychological harm is almost certain (greater than 90% chance of this risk eventuating), the risk rating is 'very high' and vicarious trauma is a critical workplace risk for staff and the Scheme.

### ***Feedback to the Review***

The Review found the Scheme has yet to address identified staffing and work health and safety issues to the extent necessary. As noted, the Review has supported the need for a resetting of processes in the Scheme to give more focus on a trauma informed approach, thereby reducing the harm to both survivors and staff.

The Review heard that since the Scheme's inception workplace culture has given priority to the achievement of performance metrics. This is largely in response to the desire to reduce backlogs. There are concerns that this has not given equal weighting to the requirement for the process to be trauma informed and survivor focused, and submissions raise concerns regarding the potential of the redress process to harm survivors. The Review agrees with submissions that the process must be trauma informed and survivor focused and has found that the workplace culture needs to balance this requirement with the achievement of performance metrics to achieve an ideal workplace culture for Redress staff.

In a report relating to operational staff in Services Australia prior to the machinery of government change, surveyed staff reported a shift in workplace culture and in the attitudes of senior leadership towards employee wellbeing. This shift was perceived as a negative move away from a trauma informed care approach to employee wellbeing to a more performance-driven culture. The Review is concerned that these are viewed as competing and mutually exclusive priorities rather than interdependent and complimentary aspects critical to a well-functioning redress scheme.

The Review found Scheme staff face a significant and known risk of experiencing vicarious trauma through their employment across all four branches of the Redress Group and the Scheme is aware of those risks.

### ***Staff support services***

The Review supports the need for ongoing staff to have access to regularly delivered, appropriate clinical and supervisory support.

The Review notes that the measures taken by the Scheme to date have not addressed the issues of staff health and wellbeing and the lack of a unified approach to the delivery of health and wellbeing measures has led some staff to feel unsupported, exposing them to the risk of vicarious trauma.

The Scheme currently provides vicarious trauma training intermittently and access to an employee assistance program and a wellbeing program. However, it was reported to the Review that staff are less willing to take short breaks after challenging tasks or to engage in self-care activities during work time for fear this will be seen in a negative light.

The Scheme currently contracts the services of two healthcare providers, with one provider supporting employees with wellbeing checks and access to a support line and the other providing individual wellbeing sessions, available every eight to 10 weeks for staff.

In 2021, the Scheme is potentially moving to the provision of only one healthcare provider. Nevertheless, communication of these services to staff is generally poor, and consultations undertaken by the Review report conflicting levels of support and uptake among teams and branches.

The Review found individual wellbeing session uptake among staff is low and, although the Scheme offers vicarious trauma training, it is offered infrequently. In the past year, the training has been available twice. However, the Review notes that in March 2021 the department scheduled sessions in Psychological First Aid training in April and June, suggesting that all leaders in the Redress Group attend, but this training is only available to Canberra-based staff.

Notwithstanding this, the Review found that, given the acute levels of staff turnover across the Redress Group, the Scheme must ensure all staff are aware of and receive appropriate clinically developed trauma informed training and the Group Manager Corporate Services should audit and report participation of all redress staff in training.

### ***The effect of the COVID-19 pandemic***

The Review was informed that during the COVID 19 pandemic Scheme staff continued to progress survivors' applications and the department continued to recruit both permanent and contract staff.

The department reported that processing of applications during the pandemic was complex and requests for information (RFIs) sat with institutions un-actioned for substantial periods of time. At one stage there were over 1,000 RFIs and requests for further information (RFFIs) lodged with institutions.

The department also reported that during the COVID-19 pandemic there were significant staffing changes, the level of unscheduled absences within the contractor workforce was higher than average and new starters were not becoming fully productive in their roles for between six weeks and three months of employment.

### ***Staff turnover***

The Scheme should strengthen the capability uplift in staff and ensure that staff recruitment is appropriate and competent and capable staff are retained.

Scheme management needs to have access to more detailed data on all staff turnover at full time effective level as well as data on absenteeism and separation by reason, level, branch and length of service. This should be reported as a standalone cost centre to inform workforce planning and mitigate work health and safety risks. The information needs to be regularly audited and reported.

The Review sees merit in the department considering retention strategies, for example:

- a. 'Stay' interviews in which staff can provide feedback to branch managers about what would make them stay in the Scheme and what could be improved.
- b. The identified competent and capable staff being encouraged to stay with the Scheme and being provided with additional professional development opportunities.

The Review found internal staff have a strong appetite for the recruitment of appropriately skilled individuals and are concerned the level of staff 'churn' is directly contributing to processing errors in survivors' applications.

The department could consider the use of psychometric assessments as part of the recruitment process to the Scheme, particularly in the operational space where staff have contact with survivors. Such profiling is commonly used in sectors (government, non-government and private) where staff are engaging with vulnerable clients.

Submissions from all participants to the Review expressed the strong view and concerns that high staff turnover has:

- a. Created the issue of skill retention.
- b. Contributed to confusion, inconsistencies and trauma for survivors and nominees, especially survivors who fear how many government workers have had access to the private content of their application.
- c. Had an identified, negative effect on applicants and is a contributing factor in why survivors do not continue with their application.
- d. Had negative effects on applicants who have had to repeat their story to multiple case managers, have had numerous people look at their private application and have dealt with Scheme staff with varying levels of trauma informed training.
- e. Has created a situation that is not sustainable or trauma informed. Indirectly, through commentary, submissions stress the importance of a reliable, single point of contact for Scheme applicants.

Submissions from support services and applicants detail examples of substandard service delivery and inconsistent advice from Scheme staff that highlights how Scheme processes are not trauma informed or survivor focused.

The Review strongly supports the need for greater staffing diversity and particularly encourages the recruitment of staff to the Scheme who identify as Aboriginal and Torres Strait Islander, being from a culturally and linguistically diverse background and persons with disability.

Submissions argue that staff members should be survivor focused and capable of identifying the needs, support, engagement and trust requirements of survivors on a case-by-case basis. Furthermore, Scheme staff should be able to provide 'individualised, empathetic and nurturing responses are necessary, rather than the adversarial, legalistic and process driven responses received by survivors'.

## ***Staffing data***

The Review found that it was very difficult to obtain good quality and timely Scheme staffing data and analytics in response to numerous requests.

The Scheme was unable to provide the Review with Services Australia data relating to permanent and contract staff turnover and separation information prior to the machinery of government changes. Therefore, the Review is unable to provide analysis of staff numbers and separations for non-ongoing, permanent and contract staff for 2018 to 19.

The Scheme was unable to provide data on non-ongoing and permanent staff turnover disaggregated by staffing level and branch; or the reasons for non-ongoing and permanent staff separations or movement for the period February 2020 to January 2021. Therefore, the Review is unable to report the level of staff turnover or separation reasons for non-ongoing and permanent staff from February 2020 to January 2021.

## ***Contract staff***

The Review found Scheme dependency on short-term contract staff is a significant risk to the Scheme.

Internal interviews with Scheme staff and submissions from support services, survivors, institutions and nominees to the Review echo a very high level of frustration and disappointment regarding the lack of a sufficient, trauma informed, permanent and stable staff workforce.

Survivors and support services particularly found high staff turnover both traumatising and distressing.

Submissions from stakeholders voice strong concerns regarding both the apparent lack of training of contract staff and the high level of contract staff turnover within the Scheme.

The Scheme provided some information to the Review relating to headcount of contract staff, length of employment and separation reasons. On the basis of the information provided to the Review, it is reasonable to conclude:

- a. Short-term contract staff form a very high percentage of redress staff in Service Delivery (potentially as high as 83% of the cohort).
- b. Staff turnover is very high in Redress Operations (potentially as high as 49 % in just over seven months).
- c. Some contract staff are supervising other contract staff.
- d. The length of contracts are short-term.

In contrast, internal interviews conducted by the Review suggested the Scheme has approximately a 30% retention rate for contract staff members but could not indicate over what period.

The Review is unable to provide a detailed analysis for contract staff (FTE), as the Scheme did not provide this information.

### ***Application processing***

The Review was unable to correlate staffing data with application processing information due to the lack of consistent Scheme data and analytics.

The Review strongly suggests the Scheme map and correlate applications processing against staffing of non-ongoing, permanent and contract staff information to facilitate workforce planning and improve data analytics.

### ***Trauma informed principles***

Submissions to the Review suggested that, in the context of redress, 'trauma informed' is not understood or applied.

Internal interviews conducted by the Review suggest the Scheme's trauma informed approach to date, even though staff are often well intentioned, is not trauma informed and has been ill-informed, not understood, haphazard in delivery and communicated poorly to staff.

The Review strongly believes that a performance-based culture in the Scheme must be built on the principles of the service being trauma informed. This recognises the risks and benefits to both staff and survivors.

### ***Training***

The Scheme should mandate clinically developed trauma informed key training for all redress staff that is culturally aware, and this training should be linked to redress staff key performance measures.

Given the high-risk nature of the work, the delivery of and participation by all staff in training should be mandated and subject to ongoing and regular audit and annual reporting.

Submissions to the Review recommend the Scheme develop staff members with regular, targeted, trauma informed training.

These submissions suggest participants are not satisfied that current training is sufficient for Scheme staff and or provides trauma informed service delivery training.

The Review should mandate and report training annually as part of its work health and safety obligations and to provide oversight for potential workers' compensation claims.

The Review found staff often self-nominate training, without any record kept of participation or knowledge checks of staff validated.

Scheme-commissioned report findings reiterate that redress supervisors are responsible for the mental health and wellbeing of their team, but they do not have any training in these requirements.

The Review found supervising staff are often contractors themselves who are left to identify and address staff training needs.

### ***Risks***

Consultations and submissions to the Review appear to contradict the Scheme's internal feedback regarding the effectiveness of risk management strategies and a comprehensive health and wellbeing plan; and the availability of trauma informed training.

According to the 2020 to 21 Redress Group Business Plan, the primary risk of the Scheme is 'inflicting harm upon survivors and support staff'. The plan recognises that mitigating against this risk is dependent on the Scheme adopting trauma informed principles in policy or service delivery.

### ***Strategies to support change***

The Scheme should take immediate steps to eliminate or minimise harm to staff and survivors; to deliver redress in a culturally competent and safe manner to meet its work health and safety obligations; and to limit Scheme legal exposure through the co-development and implementation of a trauma informed framework across all Scheme policy and practice.

The Scheme should mandate clinically informed, reflective practices for all supervisors.

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.

Taken together, the Scheme Workforce Plan, Risk Management Plan and Business Plan should address and report on how the Scheme is meeting and monitoring its work health and safety legislative obligations. This is particularly important in minimising staff exposure to risks of harm to staff and survivors. Consideration should be given to regular reporting on initiatives taken by the department in this area and subsequent impacts on staff satisfaction, retention and so on. The annual staff survey and exit interviews provide obvious starting points for analysis and reporting.

# Recommendations

## ***Recommendation 6.1***

The Australian Government formalise the development and implementation of a trauma informed framework to inform all actions, policies and interactions within the Scheme. The Australian Government should then develop the framework with reference to the current clinical education on trauma informed guidelines and cultural sensitivity.

## ***Recommendation 6.2***

The Australian Government analyse the efficacy of existing staff mental health and wellbeing mechanisms against these trauma informed guidelines to ensure staff are supported and reduce the risk of mental health issues and burnout.

## ***Recommendation 6.3***

The Australian Government finalise and regularly review and report on its annual Workforce Plan, Risk Management Plan, Mental Health and Wellbeing Plan and Business Plan to reflect clinically developed trauma informed principles and mitigate risks to staff and survivors.

## ***Recommendation 6.4***

The Australian Government review, co-develop and implement a clinically designed recruitment and selection process for all new staff to ensure staff are trauma aware and possess the capability and capacity to provide a trauma informed redress service to survivors.

## ***Recommendation 6.5***

The Australian Government mandate and regularly audit and report on the participation by all staff in a clinically designed and delivered training programs that include modules on trauma informed and culturally safe practices; work health, safety and wellbeing; privacy; and protected information. The efficacy of these measure should be monitored through survivor feedback mechanisms.

## ***Recommendation 6.6***

The Australian Government implement reflective practices supervision training for all supervisors to improve staff support and the survivor experience.

## ***Recommendation 6.7***

The Australian Government significantly increase its cap on Average Staffing Levels (ASL) in the Scheme based on workforce planning and scheme projections and not continue to rely on

contract staff across the Redress Group. Provision should be included for appropriate skilled surge capacity to ensure timeliness is maintained.

# Section 6.2 Scheme management and the redress ICT system

## ***Key findings***

- The Redress ICT System is not fit for purpose to support the effective delivery of the Scheme.
- The current system relies on manual workarounds for key operational data and is not able to effectively track or prioritise applications.
- The Redress ICT System is not capable of supporting the department's future 'Business As Usual' (BAU) workload.
- There needs to be greater granularity in the reporting of Scheme costs.
- There needs to be greater transparency in the detailed service agreement between the department and Services Australia.

## ***A Statement of Intent and NRS Service Agreement***

Services Australia delivers the following on behalf of the department:

- a. Redress ICT systems.
- b. Identity services.
- c. Postal and scanning services.
- d. Front-of-house services.
- e. Telephony services.
- f. Social work services.
- g. Forms design.
- h. Payments to applicants.
- i. Business integrity services.
- j. Shared premises arrangements.
- k. Training.
- l. Privacy incident management.

While Services Australia delivers these services for the department, the Scheme is solely the responsibility of the department under the Administrative Arrangements Orders.

The service agreement specifies generic performance measures against which the Scheme will report, including timeliness, payment integrity and relationship management.

The Scheme should take immediate steps to align the letter of intent, the service agreement and the Bilateral Management Agreement (BMA) with the Act, the Survivors' Service Improvement Charter and the Trauma Informed Framework. The Review found that, while the Statement of Intent references the Commonwealth Redress Scheme Service Arrangement, neither document references section 10 of the Act, 'the guiding principles guiding actions of officers under the Scheme'.

The department anticipates a Statement of Intent and the National Redress Scheme Service Agreement (the IGA) will come into effect on 9 March and 30 June 2021 respectively. Taken together, these documents will replace the previous Head Agreement and will formalise and support the business interaction between Services Australia and the department to deliver redress.

In 2021, Services Australia and the department will establish a BMA to administer the Scheme. Collectively, this document and the related protocols will establish the Scheme's governance, communication, and reporting expectations between the two departments.

### ***The redress ICT system***

Services Australia and the department share responsibility for managing the redress ICT system. The Enterprise Data Warehouse (EDW) databases for the Scheme are located on the Services Australia network. The Empower IQ tool, a productivity and quality tool, is provided to the department under licence from a private provider as a monthly cost. This includes technical support and some analytical support.

### ***Cost of administering the redress ICT system***

The Review is unable to report with certainty the actual costs of the Services Australia redress ICT system. This makes it difficult for the Review to accurately assess the costs of the Scheme to the Commonwealth since its inception.

In February 2021, Services Australia provided information to the Review pertaining to direct costs associated with redress for 2018 to 19 and 2019 to 20 (see **Table 24**).

**Table 24: Services Australia direct costs, 1 July 2018 to 31 December 2020 (30 months)**

**Table 24** displays the direct costs from Services Australia for three different areas: Redress BAU branch, Project (Business) and Project (ICT). The table further breaks these down into sub-categories of costs, and presents these costs for 2018 to 19 and 2019 to 2020. These costs will be presented based on the year the costs are attributed to.

**2018 to 19 costs.**

- Redress BAU branch. Maintenance and break-fix costs, \$11,400,000.
- Project (Business).
  - Administration (inc. travel and training) costs, \$200,000.
  - Contractors/consultants costs, \$2,700,000.
  - Salaries costs, \$300,000.
- Project (ICT)
  - Administration (inc. travel and training) costs, \$100,000.
  - Contractors/consultants costs, \$8,500,000.
  - Salaries costs, \$3,400,000.

**2019 to 2020 costs.**

- Redress BAU branch. Maintenance and break-fix costs, \$19,500,000.
- Project (Business).
  - Administration (inc. travel and training) costs, \$0.
  - Contractors/consultants costs, \$200,000.
  - Salaries costs, \$200,000.
- Project (ICT)
  - Administration (inc. travel and training) costs, \$0.
  - Contractors/consultants costs, \$10,400,000.
  - Salaries costs, \$2,900,000.

**Total costs for the Scheme's lifetime.** 2018 to 2019, \$26,600,000. 2019 to 2020, \$33,200,000.

Explanatory information provided by the department disaggregates this information as follows:

- a. Redress BAU Branch provides staff payments to process applications.
- b. Project (Business) represents set-up costs of the Scheme. This includes all the project costs, risk assessments, fraud planning, legal, recruitment, communication products, resource development, training and other corporate set-up costs.
- c. Project (ICT) represents the Case Manager ICT costs to design, build, deploy and maintain the redress ICT system. The 2017 to 18 costs are understood to be \$17 million.

From this information, it appears the total direct cost associated with Services Australia redress for 2018 to 19 and 2019 to 20 appears to be \$59.8 million.

The Review supports greater transparency and granularity in the reporting of direct Scheme costs and the need for a services agreement between the department and Services Australia to align with key scheme objectives regarding the survivor experience and journey.

### ***The capabilities of the redress ICT system***

The Scheme requires a good case management system to ensure the trauma informed and survivor-focused, efficient and timely tracking and processing of survivors' applications.

The Review found the current redress ICT system does not:

- a. Provide an 'end-to-end' case management system for staff and survivors.
- b. Allow online case progression through to a determination.
- c. Minimise re-work.
- d. Create a single view of the applicant.
- e. Enable real-time auditable reporting.
- f. Provide full transparency of the workload and contain sufficient inbuilt user guidance for staff.

The commonly repeated aspiration of redress ICT system staff to achieve a 'business as usual' approach, a 'Steady State' or even a 'Future State' is undermined by the capacity and capability of the current Services Australia redress ICT system.

Submissions from survivors, support services and institutions report that errors emanating from the redress ICT system are exacerbated further by the current Scheme case management system and human errors, including:

- a. The receipt of incorrect advice.
- b. The incorrect recording of survivors' information.
- c. Phone calls to the scheme that are often not returned.
- d. Survivors' anxiety and frustration caused by the high turnover of staff.
- e. The lack of survivor focus and trauma informed principles in the processing of an application.
- f. The unsatisfactory resolution by scheme staff of queries arising from a survivor's application.
- g. The lack of trauma informed training and cultural sensitivity of staff.
- h. Requests for information often being sent to the wrong institution.
- i. An unsatisfactory explanation and a lack of understanding of the basis of a determination.
- j. Breaches of protected information, particularly resulting from the sharing of a survivor's personal stories.

### ***Trial case coordination approach***

In April 2019, at the request of the then Minister, the Scheme introduced a trial case coordination approach for the processing of applications. The main purpose of this trial was to reduce the number of hands and eyes on applications and to provide survivors with a point of contact in the bureaucracy to assist in progressing their application from beginning to end. The pilot ran for three months and introduced for the first time an acknowledgement phone call to applicants.

This initiative was well received by both survivors and institutions, as it provided a clear point of contact for applications that had not existed previously. Following the three-month trial, the case coordination approach was rolled out across the Scheme and all applications were allocated to a case coordinator.

However, in April 2020, in response to the changed priority from the Minister to clear the backlog of applications (that is, applications lodged in the first year of the Scheme) and following advice from a consultancy, the Scheme moved from a case coordination system to a task-oriented throughput approach. This did allow for applications to be moved more quickly; however, the Review heard that potentially the new system is less trauma informed.

The Review notes that, while the Scheme has currently adopted a more transactional approach to the processing of applications, it could consider the reintroduction of the case coordination approach as the Scheme realises a business as usual operational state.

### ***Business requirements***

The Review found greater financial investment is required to develop a redress ICT system that has both the functional capacity and the capability to deliver an end-to-end case management trauma informed service to survivors that will provide transparency and accountability.

The Scheme has rolled out the redress ICT system, described originally as a 'Minimum Viable Product' (MVP), over the past two years. The original version of the redress ICT system had no capability to issue payments.

A series of key redress ICT system changes to date include:

- a. Transitioning the system to support case management.
- b. Automating calculation of redress payment in February 2019. Prior to that date, there was no integration with the Service Australia SAP systems and department staff entered all payments manually into SAP.
- c. The introduction of Empower IQ, a tool whose intellectual property is privately owned. Internal interviews conducted by the Review suggest the various iterations of the Empower IQ tool proved unreliable and are prone to 'crashing', resulting in the loss of data input and a continuing reluctance by case officers to use the product.

In October 2020, a consultancy commissioned by the Review found the business requirements for future Scheme changes are not defined and there is a backlog of changes in software updates. These include:

- a. Improving the debt management function for recovery of debts from survivors (over payments and fraud).
- b. Automating the current manual process for the calculation of counselling and psychological care credits to state and territory governments.
- c. Providing the ability to make retrospective changes to applications after the determination has been made, such as when a new participating institution is identified or data have been incorrectly input (currently changes can only be made manually in the back-end to the database, which can result in delays in payments and invoices).

The department advised the Review that in November 2020 the department established a prioritised requirements list that is currently being costed by Services Australia.

### ***Redress ICT system storage capacity***

The Scheme advised the Review a system health check is performed each morning to ascertain current data storage levels. Out of a current allocation of 500 GB, 361 GB is being used, with the 85% full mark expected to be reached in approximately 80 days.

When the 85% mark is reached, the redress ICT system will automatically trigger the provision of a further six months of storage. Beyond this point, the Review notes further financial investment in redress ICT system storage will be required.

### ***Manual workarounds***

The Review found, through consistent feedback, the redress ICT system does not support an audit function, and staff are heavily reliant on manual workarounds to enter information, often retrospectively.

Internal interviews conducted by the Review suggested data entry into the redress ICT system is prone to human error and the retrofitting of decisions and at times relies on manually entered 'overrides' of input information.

The Scheme was unable to quantify the number of system errors that required branch manager approval that prevented an application from proceeding.

The Scheme informed the Review that, should a decision be incorrect, it has issued waivers to the institution for their liability but does not seek reimbursement from the survivor.

### ***Data input***

The department relies totally on Services Australia and institutions for redress ICT system data.

Each day from 7 am, the department manually enters Services Australia EDW data into the department's redress ICT system. Updates can take between 24 and 48 hours to manually process.

While a redress ICT system 'audit logger' of more than 61 'key words' is currently used to manually input new application information, further 'sprints' are under development in an attempt to provide consistency between staff.

The Review was advised the delivery of changes to the redress ICT system is normally conducted in 'sprints'. Sprint 12 was delivered on 10 October 2021 at an estimated cost of \$600,000; and Sprint 12 was delivered on 14 November 2020 and 16 January 2021 respectively at an estimated cost of \$2 million.

### ***Errors in requests for information***

The Scheme informed the Review that at times there have been errors in onboarding institutions and the Scheme has sent requests for information (RFIs) to the wrong institution, but Scheme data on the number was limited.

The Scheme does not capture any data regarding the number of queries that it receives regarding institutions that have been incorrectly identified in declarations and during the onboarding process.

### ***Errors in invoicing***

The Scheme advised to date the department has waived the funding contribution in relation to 12 applications and issued around 430 invoices in respect of 4,300 determinations. This figure only includes known errors that have been since been rectified. There are seven requests for waivers that are currently with the department for consideration.

The department was unable to provide the total number of errors in survivor outcomes that have been rectified prior to a final determination since Scheme commencement.

The Scheme advised it does not record information of the number of errors detected in payments and invoices sent to institutions or information on the number of times there has been incorrect institutional responsibility and liability apportionment.

### ***Redress ICT system limitations***

The Review requested detailed information on the current functionality of the redress ICT system and was advised that ultimately not all work allocation methods currently used are solely through the system. A list of commonly used features in redress ICT system that the system is unable to complete is located at **Appendix M**.

The Review found that it is unlikely the redress ICT system will cope with increased survivor applications, even when taking into account the most recent actuarial advice on the anticipated number of Scheme applicants (see **Chapter 1**).

## ***Conclusion***

The Scheme should conduct an independent review of the redress ICT system and the Scheme CMS to ensure they are fit for purpose and can:

- a. Support the end-to-end business process involved in redress applications with a reportable audit function.
- b. Operate case progression through automated workflows and prevent cases with errors passing through sections, while allowing concurrent processing of sections of the application, to reduce processing time.
- c. Include all elements of a survivor's application in one easily read CMS profile, available only to relevant staff on a 'need to know' basis.
- d. Enable real-time reporting on trauma informed key performance indicators, processing times, productivity, reworking, workloads, and costs.
- e. Be transparent and accountable so that Scheme users can understand the status, age, next action, type, and cohort of an application.
- f. Contain built-in guidance, tips and advice to guide users through the process and assist with application of online quality assurance.

# Recommendations

## ***Recommendation 6.8***

The Australian Government urgently assess whether the redress ICT system is fit for purpose: to support the effective management of the Scheme; provide survivors with timely and accurate information on their application; reduce the current manual workarounds and off-system processes; and improve quality checks. This independent assessment should also identify necessary priorities for upgrades. Thereafter, the Australian Government commit to investment to improve the redress ICT system.

## ***Recommendation 6.9***

The Australian Government develop an information management strategy including a Minimum Data Set to capture 'whole of client data' and key performance indicators that realign transactional outputs with trauma informed outcomes and enhance the functionality of the redress ICT system to support the additional data capture and reporting requirements.

## ***Recommendation 6.10***

The Australian Government develop the redress ICT system to ensure 'whole of client data' analytics and to enable real-time reporting and prioritisation of applications and allow projections for future Scheme operational requirements and the collection of specific disaggregated data that provides analysis of the socio-demographic characteristics of the survivor cohort. This systems redevelopment must include bringing off-system processes, which currently require 'system work around', into the redress ICT system.

## Section 6.3 Complaints

### ***Key findings***

There is a need to implement the Quality Call Framework and Strategy urgently, to ensure ongoing systems and sufficient resources are in place to handle complaints in a trauma informed and timely way.

### ***Complaints handling***

The department handles complaints regarding the Scheme through the department's complaints-handling services.

The Review found that, in the 2019 to 20 financial year, the Scheme was in the top three areas of complaints to the department.

In the 15 months to 30 September 2020, the Scheme received approximately 829 complaints and 308 enquiries. Complaints mainly related to service delivery experience, including delays in processing applications due to non-participating institutions, and redress outcomes.

There has been an increase in the complexity of complaints and enquiries received, these predominantly relate to service delivery experience, the outcomes that are advised and options available to survivors, and the delays in processing applications due to non-participating institutions.

Overall, the various departmental reviews of the Scheme's complaints handling found:

- a. The process is fragmented, with up to 11 sections involved.
- b. Complaints to the department's call centre contact often failed to resolve concerns or result in a satisfactory response.
- c. Complaints data is of poor quality and not recorded in a single place.
- d. The Scheme's approach to complaints was found to lack empathy and a survivor focus.

Internal interviews and submissions from support groups and survivors suggest that the identified issues have not been resolved and, further, that these issues are not limited to the department's call centre but apply across the Scheme.

Submissions from support services report that:

- a. Many survivors interpret delays as a deliberate strategy by government of 'waiting for them to die' to reduce expenses.
- b. Survivors need to know how their application is progressing and they are not forgotten.
- c. Responses of 'your application is progressing' and 'you do not need to do anything else' need to be improved.

- d. Extensions of times given to institutions for requests for information should be limited.

The departmental reviews proposed significant changes to complaints handling including a culture change to one that welcomes feedback, responds empathetically and learns from complaints in order to address the root cause systematically.

These reviews also recommended the development of clear lines of communication for complaints by:

- a. Consolidating complaints into those from survivors and nominees and those from institutions.
- b. Allocating staff, training and resources to better handle complaints.
- c. Improving complaints tracking and reporting linked to performance reporting with senior executive visibility.

Internal interviews conducted by the Review also indicated that staff do not know what they are allowed to tell survivors when they call and staff have been advised differently about whether to disclose to applicants that they are high priority or normal priority.

In November 2019 the National Redress Scheme, Operational Effectiveness Review (OER) considered what steps the Scheme had taken since assuming responsibility for a recommendation handed over from Services Australia, that is:

- a. Develop and implement formalised mechanisms for assessing and documenting the quality of interactions between Redress Review Team (RRT) staff and survivors.
- b. Set up call recording accounts for all RRT staff as a matter of priority and mandate that redress staff use phones which are configured with call recording software when engaging with survivors.

The OER reported the Scheme had responded to the recommendation with the development of an Operational Staff Supervision Framework, the development of formalised mechanisms for assessing and documenting the quality of interactions between case coordinators and survivors, and access to call recording for the purpose of training and continuous improvement.

In November 2020, the OER reported that a call strategy for the Scheme and Quality Call Listening training modules were being finalised to operationalise the Quality Call Framework (QCF) for the Scheme, focusing on compliance with trauma informed principles.

Information provided to the Review suggests an audit of the skills and competencies is currently underway to understand the learning and development needs for staff interacting with applicants over the telephone. However, the Review is unclear of the status of the QCF and the reporting date of the audit of skills and competencies.

# Recommendations

## ***Recommendation 6.11***

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.

## Section 6.4 Institutional responsibility

### *Key findings*

- Smaller non-government institutions encounter difficulties in meeting the requirements to join the Scheme, largely due to financial liability issues.
- The liability estimator tool provided to institutions to use to estimate their potential liability under the Scheme requires amendment to provide a more realistic estimate of future potential institutional liability.

### *The role of institutions in the Scheme*

In order for a survivor to be eligible for redress, the institution responsible for the abuse must be participating in the Scheme. All institutions named in redress applications must join the Scheme to provide equal access to justice for all survivors of institutional sexual abuse and equal and fair treatment of survivors; and to hold institutions accountable.

Participating institutions are institutions that have agreed to provide redress to people who experienced institutional child sexual abuse and have joined the Scheme. Non-participating institutions include institutions who are yet to join and those who have declined to join the Scheme.

According to actuarial data collected through the Review, of the possible 40,000 to 60,000 survivors who may apply to the Scheme, approximately 59% of survivor applications will involve Australian Government and state and territory government institutions and 41% will involve non-government institutions.

It is estimated the greatest proportion of survivors were abused in residential care (30%), education institutions (29.9%), and religious institutions (13.1%). Other significant groups include foster care (7.9%), juvenile justice (5.7%) and sport and recreation (5.3%).

When the Scheme was established, all Commonwealth institutions were participating, as well as New South Wales government and Victorian government institutions. Since then, all states and territories have joined the Scheme. Major non-government institutions involved with the Royal Commission also agreed to join the Scheme and most have now done so.

The total participating institution sites as at the end of January 2021 is 62,517. Of those, 21,154 are government institutions and 41,363 non-government institutions.

As at 31 December 2020, there were 443 applications to the Scheme that could not be progressed because 254 named non-government institutions were not participating in the Scheme.

On 9 February 2021, an additional 34 non-participating non-government institutions were declared as participating in the Scheme. Currently, there are 74 named institutions that are defunct, plus another 18 defunct institutions that state and territory governments have agreed to be the funder of last resort.

## ***Prerequisites to joining the Scheme***

Under section 115 of the Act, an institution becomes a participating institution if the Minister makes a declaration in relation to the institution. In order to make a declaration relating to a non-government institution, section 115(3)(c) of the Act requires that the Minister must be satisfied that the non-government institution (other than a defunct or unincorporated lone institution) has agreed to participate in the Scheme.

Additionally, for all institutions, section 115(3)(f) of the Act requires that the Minister must be satisfied that any requirements prescribed by the Rules are met.

Section 56(3) of the Rules relates to the ability for liabilities and direct personal response obligations to be met. In accordance with section 56(3) of the Rules, there must be reasonable grounds for expecting that, if an institution is declared to be a participating institution, its liabilities under the Act and its obligations under section 54 of the Act (relating to direct personal responses) will be discharged.

The department may take any of the following considerations into account when providing information to the Minister that informs the decision to make a declaration of an institution as a participating institution:

- a. How an institution is structured to participate in the Scheme.
- b. The capacity of the institution to pay, including for estimated future claims.
- c. Attendance at onboarding training provided by the Scheme.
- d. The process the institution will follow to provide a direct personal response and evidence it can discharge this obligation.

## ***Issues that may affect non-government institutions joining the Scheme***

There are a myriad of factors, financial and non-financial, influencing non-government institutions' decisions to join the Scheme. It is useful to canvas some of the issues raised through consultations and submissions to the Review.

Participating institutions are responsible for the cost of providing redress to survivors and contribution to the administration of the Scheme. Institutions pay for each survivor who accepts an offer of redress. Institutions are responsible for:

- a. The value of any monetary payments.
- b. The value of any assistance from counselling and psychological care.
- c. A contribution of \$1,000 to legal support services.
- d. A contribution to administration costs to 7.5% of the total value of monetary payments.
- e. The cost of providing direct personal responses where requested.

It is difficult to assess the total cost for institutions participating in the Scheme. Factors influencing institutions' behaviour include but may not be limited to the costs of legal advice,

insurance arrangements, organisational structures, philosophical positions, and the anticipated number of survivors making applications for redress.

### ***Institutions' financial capacity and liability risk***

In some circumstances, the institution is willing to join but their financial circumstances mean that they are not eligible to do so.

In making an application to join the Scheme, non-government institutions are required to demonstrate their capacity to fund their estimated liability. This includes the monetary component, counselling and psychological care component, and administration and legal fees. Non-government institutions must also sign a memorandum of understanding with the department and participate in onboarding training.

In general, the larger established non-government institutions have the requisite financial and governance structures to meet the Scheme's onboarding requirements. The department reports that some smaller and medium-sized institutions have struggled to meet the financial requirements of joining the Scheme.

Submissions from some institutions made the point that, unlike large educational and religious institutions, many of 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.

### ***The liability estimator tool***

Institutions are provided with a liability estimator tool to assist them in working out what their total redress liability might be over the life of the Scheme, taking into account the types of activities they have operated and how many children were involved.

The Review heard from institutions that the Scheme's liability estimator tool may be overestimating financial liabilities, preventing some institutions from joining the Scheme. They also advise that multi-party matters, prior payments and the number of claims influence the potential cost to the institution and should be taken into account in the tool.

The Review found data collected by the Scheme should be regularly reviewed to enable the liability estimator tool to be amended to provide a more realistic estimate of institutional liability. This may assist the entry of institutions into the Scheme.

However, the department advises these issues also pose some challenges for the Scheme's management of institutional participation because they put more pressure on financial viability assessments, as the implications of institutions not joining or withdrawing from the Scheme for financial reasons can accentuate equity issues and place pressure on the Scheme to expand funder of last resort provisions.

At the time of writing, there were 11 institutions willing to join the Scheme that have been deemed unable to meet the legislative requirements of the Act.

The Review is informed the department continues to work through options to alleviate the financial concerns with the institution with the view to progressing their engagement if circumstances change. In the meantime, survivor's applications are 'on hold' (see **Chapter 5** for discussion of issues related to Funder of Last Resort).

### ***Potential alternative options***

The Australian Christian Churches (ACC) with ACS Financial has joined the Scheme as a 'participating group' and offers an alternative model for smaller financially challenged institutions to join the Scheme.

ACC has aggregated member churches providing access insurance coverage to respond to the financial component of any claims approved under the Scheme. Members pay a monthly contribution and ACC manages their financial component of redress.

### ***Responsible institution, first institution question***

A participating institution is responsible for abuse of a person if the abuse occurred in circumstances where the participating institution is responsible for the abuser(s) having contact with the person.

Under the Scheme arrangements institutions can be 'primarily' responsible for abuse if the institution is solely or primarily responsible for the abuser having contact with the person or equally responsible for abuse if the institution, and one or more other institutions, are responsible for the abuser having contact with the person.

When multiple participating institutions are determined to be equally responsible for an instance of abuse then each of the institutions will be responsible for providing a direct personal response to that person and for paying an equal share of the redress payment (unless any of them have made relevant prior payments, in which case the prior payments will be deducted from that institution's share).

In general, if two institutions are equally responsible for abuse (and there is only one set of abuse), but only one is a participating in the Scheme and the other is not, the maximum redress available to the survivor is reduced by half.

In this instance, applicants are given the choice between having their application finalised or waiting to see if the other institution will join the Scheme.

As provided for under section 30 of the Act, the determination regarding institutional responsibility is made by the individual decision maker (IDM).

IDMs make these determinations based on the information provided in the application, responses from institution(s)' request for information responses, and with reference to the Act and the Rules.

Section 12 of the Rules sets out circumstances where the Australian Government and state and territory governments cannot be found responsible if they had a minor or incidental connection with another institution, such as providing funding.

This ‘first institution’ question was raised with the Review by institutions in relation to apportioning financial responsibility between government and non-government institutions.

The Review’s terms of reference ask whether an institution (the first institution) should be responsible for abuse that occurs in connection with another institution merely because the first institution regulates or funds the other institution or the other institution’s responsibilities. Part 3 of the Rules (‘Responsibility of institutions’) sets out the conditions and circumstances for calculating financial responsibility.

Despite the ordinary responsibility provisions, there are some circumstances where participating government institutions are deemed equally responsible with another institution. These are:

- a. When they had parental responsibility and placed a child.
- b. Where the survivor was a Defence cadet.
- c. In relation to certain child migrants.

The Scheme will also deem a government institution (an authority of the Commonwealth, a state or a territory) as not responsible for the abuse of a person where another institution satisfies one or more of relevant circumstances (and is therefore likely to be responsible for the abuse of a person) and the only connection between the government institution and the institution in which the abuse occurred is one or more of the following:

- a. The government institution regulated the other institution or an activity of the other institution.
- b. The government institution funded the other institution or an activity of the other institution.
- c. The other institution was established by or under the law of the jurisdiction that the government institution belongs to.

It is important to note here that IDMs, in assessing individual cases, have discretion to make decisions when an institution is responsible but in exercising their powers they are subject to the provisions of the Act and the Rules.

A number of institutions addressed the first institution question in their submissions. They made the argument that, historically, regulators and funders were significantly involved in the operation of institutions through licensing processes, the referral of children and the implementation of the relevant state legislation; therefore, they should share in the responsibility for abuse that occurs in a regulated or funded institution.

Feedback from institutions debates the policy principle rather than citing specific instances where they believe a specific decision has been wrongly determined. This may be because

the current waiver provisions provide a formal avenue of review of the invoiced payment for individual determinations.

### ***Lone institutions and participating groups***

For the purposes of the Scheme the Act sets out that an institution can be a lone institution or be an associate of a 'participating group'.

An institution is a lone institution when it is non-government institution that is not in a participating group and not defunct. It can be an incorporated or unincorporated body. That is, in joining the Scheme, it is doing so as a single entity.

Two or more participating institutions may form a participating group. Participating groups are established through a ministerial declaration. The creation of 'participating groups' adds an additional step in the process for non-government institutions; however, for large, complex organisations such as the churches and sporting associations, it offers a structured way to manage engagement in the Scheme and increase the potential of redress for survivors.

All participating groups must have a representative who acts on behalf of each member of the group. However, the representative will not assume any obligations or liabilities of the members, except for the liability of a member to pay the funding contribution. If an applicant accepts an offer of redress then the person releases the participating institutions as well as all of the associates of that institution.

The Review received submissions from institutions regarding the optimal structure to join the Scheme. Institutions express concern about the time required and complexity of negotiations to determine proposed 'participating groups' and the need to understand financial liability and risk associated with these arrangements. The Review suggests this could be canvassed at the institutional engagement forum.

## ***Conclusion***

Non-government institutions are facing numerous difficulties with meeting the requirements of becoming a participating institution. The Review strongly supports the reconsideration of the factors considered to enable non-government institutions to join the Scheme. This could include:

- a. Continued engagement with key stakeholder groups such as the national sporting associations and the Australian Charities and Not-for-profits Commission to investigate the possibility of them establishing third-party financial arrangements such as those established by the Australian Christian Churches and ACS Financial, facilitating participation by smaller financially challenged institutions.
- b. Undertaking further modelling to take account of planning for likely increases in the number of applicants following declaration as a participating institution.
- c. Refining the onboarding process to increase timeliness, creating the capacity to accommodate a broader range of financial arrangements, such as the treatment of assets in estimations of financial capacity and scheduled payments to accommodate an institution's individual situation.
- d. Continued refinement of the liability estimator tool and updating of parameters based on actual data and actuarial advice that inform the tool.

The Review also strongly supports a review of the arrangements for institutions (where there is a redress application naming them) which have not joined the Scheme due to their inability to meet the requirements of the legislation at an appropriate point in time.

# Chapter 7 Financial arrangements

## Section 7.1 Funding the Scheme

### **Key findings**

- Consultations and submissions to the Review were divided on the general appropriateness of the amount of the administration fee.
- The administration fee is consistent with the user pays principle, including for \$0 redress outcomes.

### **Funding elements**

The Review's terms of reference require consideration of the operation of the Scheme's funding arrangements, including a review of the Scheme administration element of funding contributions.

Consistent with Royal Commission recommendations, the Inter-governmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse (IGA) states that the Scheme will operate on a responsible entity pays basis. This principle is reflected in the relevant provisions of the *National Redress Scheme for Institutional Child Abuse Act 2019* (the Act).

Under the agreed funding arrangements, the Commonwealth is responsible for funding the initial costs of redress payments, including the redress counselling element, and administering the Scheme.

### **Institutions' funding contribution**

Consistent with the 'responsible entity pays' principle, participating institutions deemed responsible for the abuse must pay a funding contribution to the Commonwealth for their share of these costs. A participating institution's total funding contribution consists of:

- a. The redress payment for the participating institution.
- b. The administration component.

The administration component consists of:

- a. An administrative charge equal to 7.5% of the total value of the institution's gross liability for redress payments made in each quarter.
- b. A per-claim contribution of \$1,000 (or share of that contribution) towards legal support costs delivered by the Scheme's legal support services, where these costs are directly attributable to supporting eligible applicants to access legal support.

There are two exceptions to this requirement. Where a state or territory government acts as a funder of last resort for a defunct institution, the state or territory government will be liable to pay the defunct institution's share of redress costs to eligible survivors. In addition, unless the *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (the Rules)

otherwise prescribe, the liability to pay funding contributions does not apply if the participating institution is a Commonwealth institution (this is because the Australian Government has already appropriated the funding for Commonwealth redress liabilities and set it aside for use by the Scheme).

The department calculates and invoices participating institutions' funding contributions each quarter, on 1 July, 1 October, 1 January and 1 April. In the first two years of Scheme operation, participating institutions paid \$244.9 million in invoices. There were no debt recovery actions and no waivers issued.

The Commonwealth also contributes to the cost of the Scheme. It meets all fixed costs, such as all remaining costs for legal support services; funding of specialist support services; and the costs of processing applications, including staffing.

### ***The cost of administering the Scheme***

The Review commissioned a specialist financial consultant to assess the appropriateness of the 7.5% administrative charge.

However, the consultancy concluded the quality of the cost data underpinning these estimates, in particular, the financial data provided by Services Australia, was low. The consultancy made multiple requests over a 10-week period; however it was not provided with:

- a. Detailed cost centre / cost element data on expenditure incurred in the first two years of the Scheme.
- b. Any information on the depreciation of expense and applications maintenance and support costs.

As a result, the consultancy's estimates of total departmental costs over the life of the Scheme were not based on data which the Review would have preferred to rely on.

In addition, the consultancy was not able to estimate case management system depreciation or expense costs over the life of the Scheme.

The Review's survey of institutions asked whether the current administration fee of 7.5% was appropriate. Seventy-seven of the 103 institutional representatives responded to this question. There were no responses to the effect that the fee was too little, 52% responded that it was 'about right', and 48% responded that it was 'too much'.

Two submissions from institutions suggested that, where a survivor accepts a \$0 net redress monetary offer, the administrative component should be substantially discounted or waived. Survivors may receive a \$0 net redress monetary offer where they have previously received a payment from the responsible institution that is equal to or greater than the gross redress offer. These prior payments are deducted from the gross redress amount.

Currently participating institutions are required to pay the administration component when a survivor accepts a net \$0 redress payment. However, some of these applicants may also

have accepted an offer of redress counselling, the cost of which the Scheme recovers from the responsible institution. Regardless, charging the administration component is consistent with the user pays principle.

### ***Conclusion***

Consultations and submissions to the Review were divided on the general appropriateness of the amount of the administration fee.

The Review has not made a recommendation on the appropriateness of quantum of the administrative fee, as it was not provided with actual detailed expenditure data across the life of the Scheme to date.

In addition, the Review considers there are more compelling changes that warrant additional funding, to improve the Scheme's ability to effectively meet Scheme objectives to survivors.

# Section 7.2 Funding and evaluation of redress support services

## ***Key findings***

- Scheme performance reviews, audits and joint select committee reports have identified support services' funding arrangements and internal evaluation processes are inadequate.
- Performance measures used in evaluating support services should be trauma informed, survivor focused, culturally sensitive, must reflect the needs of survivors and the time required to complete an application.

## ***The Act***

Under the terms of reference, the Review must consider the availability of, and access to, support services under the Scheme.

The Act does not specifically require the Scheme to provide support services.

The Scheme currently commissions support and legal and financial services in parts of Australia, either face-to-face or by telephone, for survivors and/or through existing Commonwealth and jurisdictional services.

## ***The Royal Commission***

The Royal Commission's Final Report identified the need for dedicated community support services.

The report concluded that the Scheme should provide an integrated model of advocacy and support for all survivor groups, including Aboriginal and Torres Strait Islanders, people with disability, and culturally and linguistically diverse (CALD) applicants.

The Review found the Scheme has responded partially to this direction, but the absence of targeted, timely and accessible legal, financial and psychological support services is traumatising and harming for survivors.

## ***Survivors' experiences***

The Australian Government funds 39 support services nationally that provide a range of support services to survivors. These support services provide practical and emotional support to people engaging with the Scheme. A range of counselling options are available, including face-to-face, telephone, video and online.

Feedback to the Review demonstrates that the survivor experience with support services is generally positive. However, there is currently no formal feedback sought on survivor experiences with support services or formal evaluation of their efficacy. The Review believes the Scheme must develop a feedback loop for garnering this information.

Submissions to the Review described how many existing applicants have experienced considerable delays in accessing appropriate services. This may in part explain the relatively low number of applicants that are currently taking advantage of these services.

A survey commissioned by the Review of 322 survivors suggested that some decided not to apply to the Scheme 'because of the trauma that was likely involved and that they felt unable to supply all the information required in the detail that was requested', with some suggesting they 'lacked "proof" and felt their accounts wouldn't be believed'. This appears to suggest adequate communication about the Scheme has not reached survivors.

The Review found the unavailability of legal and financial support services increased the applicant's vulnerability to opportunistic legal practices and coercive behaviour that was anecdotally becoming more concerning as identified by survivors and jurisdictions (refer to **Chapter 5**).

The Scheme recognises that, given the traumatic impact on survivors of childhood sexual abuse, it can be challenging for survivors to engage with support services. Crucially, this engagement and support takes time, effort and skill.

Some survivors reported that, without the aid of redress support services, they would not feel comfortable or secure enough to make an application for redress. Furthermore, their experience working with certain counselling and legal services was that they were both expertly delivered and sensitive to the needs of survivors.

Submissions from support services described how some applicants have additional complex needs, including significant mental health issues, drug and alcohol addictions, homelessness; and are experiencing personal safety concerns. Some are in jail. These are circumstances that correlate directly with their childhood abuse and subsequent trauma.

Submissions and consultations with support services cite instances of postponing the preparation of applications in circumstances where the support service must address the survivors' urgent and basic needs first (housing, medication, food and so on).

Submissions from support services suggest progressing an application to submission may take considerable time depending on the survivor's ability to cope with reliving, repeating, describing and documenting their abuse to a complete stranger and then waiting an indeterminate period for a determination.

Lack of available and readily accessible services and culturally appropriate and safe support services exacerbates and contributes to ongoing trauma and survivor Scheme fatigue.

The Review believes the Scheme must fund support services that can demonstrate trauma informed, survivor-focused, culturally appropriate policies and practices and, where appropriate, can incorporate Aboriginal and Torres Strait Islander healing approaches and meet the diversity of survivors' needs with regard to disability, gender, sexuality, culture and language.

### ***Survivor access to support services***

Survivors' access to support services and interventions is an equity of funding and accessibility issue the Scheme must urgently address.

The Review found survivor demand for and accessibility of redress support services is currently a function of survivor awareness of the services; the geographic location and accessibility of the services to survivors; and the relevance, cultural appropriateness and availability of the type of service.

Submissions to the Review supported the view that appropriate, targeted supports and interventions appear to strengthen a survivor's application, reduce processing times and creates less trauma for survivors.

The Review found the current provision, location and accessibility of support services often creates insurmountable barriers for survivors, materially affecting the likelihood of a survivor applying for redress and/or persisting in their application through to a determination. Survivors consistently raised the issue of long wait times and limited access to support services. This issue affected rural and remote applicants, as well as applicants from outside urban areas such as the greater Sydney area of New South Wales. Submissions from some survivors reported waiting up to 12 months for an appointment.

The Review found the Scheme does not currently collect information on the number of applications made in relation to abuse occurring in government-funded disability group homes. While data suggests that there is a high uptake of applicants identifying as living with disability, the Review believes that this is potentially misleading due to confusion about terminology.

As discussed in **Chapter 3**, the current low number of disability institutions that have joined the Scheme emphasises the urgent need for more targeted support for people with disability as well as CALD communities to apply for redress. The Review identified the need for increased awareness of the Scheme through national and state social care programs, including the National Disability Insurance Scheme.

The Review found the Scheme must provide much greater granularity in its data collections, as there are clear and significant gaps as identified not least by Scheme internal performance reviews.

**Table 25: Applicant demographics and support service access, 1 July 2018 to 31 December 2020 (30 months)**

**Table 25** shows the applicant demographics, as well as whether they have accessed a redress support service. This data will be presented on the applicants demographic.

**Number of applicants to the Scheme.** Total number, 9,117.

**Number of applicants to the Scheme that identify with disability.** Total number, 4,356. Proportion of all applicants to the Scheme, 47.8%.

**Number of applicants to the Scheme that have accessed a redress support service.** Total number, 2,804.

**Number of applicants to the Scheme that have accessed a redress support service, and identify with disability.** Total number, 1,977. Proportion of all applicants to the Scheme that accessed a redress support service, 70.5%. Proportion of applicants with a disability that accessed a support service, 45.4%.

Access to specialist redress support services that can also accommodate additional needs will continue to facilitate if not determine access to the Scheme for some survivors. This suggests the Scheme should consider the expansion of redress support services as it extends its outreach to engage more survivors with additional needs.

***Legal support service, knowmore***

The Royal Commission Final Report recommended that the Scheme establish a legal advice and referral service, as well as dedicated community support services. These services were required to be trauma informed, and have an in-depth understanding of child sexual abuse in institutional contexts.

Currently the Australian Government funds knowmore to provide survivors with legal support services. Since 2018, they have provided support to 714 applicants (7.8% of all applicants).

knowmore provides free assistance to survivors to apply for compensation and other forms of redress, to lodge complaints with police, locate records and connect survivors with counsellors and support services. knowmore also has a panel of external legal providers who provide legal advice and representation to survivors (fee based or no win no fee) who choose to undertake civil action in the courts.

Survivors advise of up to 12-month waiting periods to access the initial consult for legal advice with knowmore, as well as a lack of availability of these services in non-metropolitan areas. This has a direct impact on the lodgement of redress applications and the quality of those applications. The Review noted submissions about the lack of access to this free legal service for survivors and applicants who lived in regional or remote areas. knowmore's office locations are Brisbane, Sydney, Melbourne and Perth, with periodic travel to regional and

remote locations to provide their service. The Review found the limited presence of legal support in regional, remote and rural locations is especially detrimental to survivors.

The Review considers this delay in providing assistance with applications is likely to contribute to survivors attempting to complete applications without support or abandoning applications. It may also lead to survivors seeking assistance from other providers, who may provide this service for a fee.

Survivors informed the Review that the current arrangements for legal services and support are inadequate. Feedback included knowmore was often slow to respond, or did not respond at all, to survivors' requests for information. The Review identified a lack of trust among survivors for the Scheme and support services. Although state and territory government funded services often provide coverage for some of the gaps, survivors report significant waiting periods for these services, perpetuated by the limited resourcing provided to fund redress legal support services.

As such, the Review suggests the department consider whether a single funded organisation at city-based locations is sufficient to provide adequate support and assistance to all survivors in a timely and satisfactory manner and whether the regional support and services provided by knowmore is sufficient. This consideration should take into account the potential for vulnerable survivors to be taken advantage of in the private marketplace by paid service providers offering to provide the same service as those provided for free by knowmore.

### ***Financial services***

The Royal Commission proposed that survivors be provided with financial counselling prior to receiving a monetary payment.

Currently, survivors receiving a redress payment may access financial counselling through specialist services delivered by knowmore, which is funded to 30 June 2021 through the Financial Counselling Foundation.

Financial counselling prepares applicants for the likely receipt of their monetary component. The Review noted a number of different views regarding the provision of financial counselling to survivors. This included a reluctance to use free financial services provided by faith-based institutions.

Through submissions and consultation the Review received differing views about how best to provide financial counselling services. Many stakeholders supported extending the scope of redress counselling to include the financial needs of survivors. knowmore recommended that the Australian Government and state and territory governments explore mechanisms to ensure survivors have access to free and appropriate financial counselling services. Furthermore, stakeholders agreed that these services should be available to all survivors as early on in the application process as possible. These services should be culturally informed and available in rural and remote areas.

One Aboriginal and Torres Strait Islander stakeholder did not consider financial counselling to be a culturally appropriate response or that its clients would access these services. Instead, it suggested that the Scheme consider alternative payment methods, such as payment by instalments. The Review should support access to this preference.

### ***Funding for support services***

In response to the Royal Commission recommendations, the Australian Government committed \$57.2 million to fund 39 redress support services from June 2018 to June 2021 and an additional \$73.5 million has recently been committed to redress support services through to 2024.

The department funds 39 redress support services to provide individual and group counselling, social worker support, and application assistance. These are provided face-to-face or via telephone, video and online media.

There are major differences between the levels and types of support offered, the value of the different support services, and the costs for the Scheme.

Data provided to the Review showed that nearly two-thirds of all redress support service clients are serviced by only seven organisations. These organisations were:

- a. Child Migrants Trust (CMT).
- b. Care Leavers Australasia Network (CLAN).
- c. Micah.
- d. Blue Knot Foundation.
- e. Rape and Domestic Violence Services Australia (RDVSA).
- f. Relationships Australia Western Australia (RA WA).
- g. Open Place.

The Scheme reported that the Australian Government has allocated \$24.4 million to the funding of the redress support services in 2020 to 2021.

The Review acknowledges that the types and amount of support offered by redress support services varies greatly by state; urban, regional, rural and remote location; and type of support needed, including legal, financial and psychological. The Review therefore does not comment on the appropriateness of individual support service funding or expenditure.

### ***Internal performance evaluation***

The Review found the Scheme is not capturing adequate data for people identifying as coming from a CALD background, people with disability and Aboriginal and Torres Strait Islander people to guide the department in allocating and selecting the appropriate mix and quantum of support and specialist services.

In December 2019, the Scheme conducted an internal performance review of redress support services that identified an increase in:

- a. Redress support service clients.
- b. Redress support service sessions.
- c. The number of redress and support service sessions per client.

This appears to suggest an uptake in support services by likely survivors.

In 2020, the interim Joint Select Committee (JSC) report recommended that the Review examine the funding of redress support services as a matter of high priority.

The JSC report identified service gaps in rural and remote areas, including access to culturally safe and sensitive services. Submissions to the JSC also highlighted a number of issues, including the need for:

- a. After-hours support.
- b. Face-to-face services in regional and rural areas.
- c. Culturally sensitive services.
- d. Support for family members of survivors.

In 2019, the Scheme conducted an internal performance review to assess the effectiveness of redress support services. The Review received feedback that the department acted on this review, which has led to additional compliance measures specified in the Activity Work Plans of each redress support service funding agreement.

However, at the same time, a 2020 internal audit report identified a need for the following performance information:

- a. Length of time an applicant obtains support from a service provider before submitting an application.
- b. Outcome of applications where redress support services have been used.
- c. Geographic and demographic mapping of applicants using redress support services.
- d. Number of visits before a survivor feels ready to submit an application.
- e. Comparative analysis between redress support services.

The Review is unaware if this performance information has been collected and analysed. However, it is supportive of this direction.

The Review was advised that work is underway to map the distribution of services to current and anticipated demand. The Scheme's 'heat map' (see **Figure 3**), a geospatial mapping of current support services, is currently only indicative and highlights significant gaps in redress support service coverage.

### **Figure 3: Heat map**

The heat map identifies the areas which have access to redress support services, based on application numbers and the location of the support services.

There is a high concentration of services along the east coast of Australia, as well as a small concentration in Western Australia around Perth, and South Australia around Adelaide.

The Review strongly supports a more granular analysis of demand and supply being completed to inform future decisions on the funding and distribution of services.

### ***Rural and remote survivors***

The Review understands that an internal departmental review found 35% of redress support service clients were living in regional areas in the second year, compared with 10% in the first year. This indicates a successful increase in accessibility in these areas.

### ***Survivors with disability***

Submissions from interviews, support services, advocacy groups and survivors to the Review strongly suggest the operationalisation of the Scheme currently presents significant access barriers for survivors with disability, some of which are seen as insurmountable. These suggest the Scheme does not currently offer an adequate range of options for people with disability to apply to the Scheme. There are also not enough communication products or support services to include effectively all survivors with disability, and this is having a material impact on the number of applications. Furthermore, the redress application process does not capture any detail regarding the diverse support needs or types of disability of survivors. Therefore, the Scheme is unable to effectively plan and evaluate its effectiveness in accommodating applicants with disability.

The Royal Commission revealed that paedophiles targeted children with disability in the care of institutions. Many survivors live with a recognised form of disability. Disability advocacy groups have argued that childhood sexual abuse is a significant contributing factor to psychosocial disability. Additionally, survivors were often subject to a range of abuse and neglect, including a lack of educational opportunities. Some applicants live with chronic illness, learning disabilities such as literacy barriers and impaired short-term memory. Some survivors live with speech and communication disabilities, relying on sign language, re-enactment and symbol-based communication tools.

Despite the common experience of disability amongst applicants, support services raised concerns the Scheme's design had not anticipated disability as a central issue.

**Appendix Table 11** shows that 47.8% of total applications to the Scheme are from people who self-identify as a person with disability. Furthermore, **Appendix Table 12** shows that 70.5% of the total number of applicants who identified as a person with disability accessed a redress support service. However, the Review notes that it is not clear if the support service accessed by a survivor offered specialist disability services, how frequently the survivor visited the support service, what the level of availability of services was or if the type of support service was appropriate to their need.

### ***Support services for survivors with disability***

Consultancies commissioned by the Scheme and submissions to the Review from support services and survivors are of the strong view that survivors with disability are significantly

disadvantaged by the Scheme application process, and greater supports and deliberate outreach are needed to engage survivors. Support services described how a survivor's history of violence and abuse in institutional and other service contexts can prevent survivors from engaging social services, including those funded to assist with redress applications.

The number of funded disability-specific redress support services was found to be inadequate for the number of applicants with disability. Therefore, it was argued that other redress support services must also be resourced and appropriately trained to assist people with disability:

*Our outreach work requires relationship building across a range of stakeholders and sectors. We are finding that it does indeed take time to establish relationships with agencies and institutions that assist people with disability, to earn the trust of workers and clients, and to engage safely with potential applicants to the Scheme. Currently, however, time-limited funding arrangements do not always allow us to build these meaningful relationships with services.*

Submission to the Review 215.

According to one submission, 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 disability via the Scheme, especially people with intellectual disability and cognitive disability and those who need supports and accommodations in order to communicate with others.

The Review found many applicants will need support throughout the application process, such as end-to-end mental health or casework support for potential applicants, but this is particularly so for applicants with disability. 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.

Support services described the current application process as incredibly difficult for traumatised applicants to complete, and reflected it was likely that people with additional barriers such as cognitive disability would find the application process impossible. While survivors with disability might have strong communication skills, some are unaware of the language used to describe sex and sexual abuse. Interviews and submissions to the Review described the insufficiency of redress support services trained to accommodate the needs of people with disability.

Support services raised concerns that engagement work undertaken by the department had generally focused on specific geographical areas in which there are survivors who are likely to need additional support, outreach and advocacy. Support services recommended that the department's outreach and advocacy work should instead respond to barriers confronting people with disability in engaging with the Scheme, for example, people who live in closed

institutions or other 'hard to reach' settings such as boarding houses, group homes, mental health and forensic mental health units and prisons, regardless of their geographical location.

Support services raised concerns that information and communications technologies and systems used by the Scheme were inaccessible for many people with disability. Of note was the website, brochures and correspondence to applicants with disability, including documentation intended specifically for people with disability. For example, it was argued that one of the 30-page Easy Read publications was 'far too unwieldy' for some people with disability to make sense of.

To include people with disability, 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 (NDIS) allows participants to communicate their needs through Auslan interpreters and symbol-based communication tools such as Proloquo2Go.

In circumstances where a minor who cannot communicate through written or spoken words and was living in supported accommodation requires assistance in providing information, indicators of child sexual abuse such as pregnancy, records of terminations or treatment of sexually transmitted diseases provide a strong case for institutional responsibility.

Submissions recommended that options such as augmentative and alternative communications and assistive implementation of the technology for visually impaired and blind people should be comprehensively incorporated within the Scheme and redress support services.

### ***Gatekeepers and conflict of interest***

Advocacy groups raised concerns that many survivors of disability and their support communities were unaware of the Scheme. Further complicating access was the role that gatekeepers (such as guardians) play in making the choice not to apply to the Scheme on behalf of a survivor with disability. Finding support workers or therapists willing to raise the topic of sexual abuse with people with disabilities was difficult because raising the possibility of sexual abuse can be perceived as sensitive and high-risk.

When a survivor lives in supported accommodation, the institution that cares for them may also be the place where they experience abuse. Such institutions may have a conflict of interest in raising awareness of the Scheme with their clients. In their submission to the Joint Select Committee, PWDA raised concerns that survivors with disability who are living in closed or institutional settings are unaware of the Scheme and redress support services. Survivors in these circumstances may have additional concerns about the impact their application could have on the quality of their ongoing care. The Review notes that, at the time of writing, three

disability service providers named during the Royal Commission had not signed onto the Scheme.

Similarly, the Review found there should be regular and publicly reported evaluation of support services. The Scheme should co-develop, with support services and survivors, trauma informed performance and success measures as a condition of funding in order to provide greater choice to survivors and to assist Scheme workforce planning. These evaluations should be reported publicly.

Disability advocacy groups raised concerns the legal capacity of applicants may not always be respected or supported by redress support services and legal firms. Improvements to supports were recommended, such as the adoption of processes to include support persons to assist with decision-making, peer support, advocacy, assistance with communication, providing information in accessible formats and the development of non-conventional methods of communication to include people who use non-verbal forms of communication. Some support services argued that substitute decision-making arrangements (such as guardianship or nominee arrangements) were not consistent with self-determination and should be dismantled.

Raising awareness of the Scheme with people with disability will require the Scheme to develop a bespoke communications approach, with a more extensive outreach and engagement that respects the diversity of the survivor community and greater engagement with existing disability support services, to encourage referrals to the Scheme. The Scheme could improve access for people with disability through the provision of more accessible, streamlined, multi-format, plain English information upfront about the Scheme, with initial individual contact from the Scheme for those enquiring to ensure the explicit needs of people with disability are met.

In conclusion, in order to address these barriers, 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.

### ***Aboriginal and Torres Strait Islander survivors***

The JSC identified that the Scheme was not communicating effectively with Aboriginal and Torres Strait Islander survivors of institutional child sexual abuse, and there was a lack of communication between stages of the application process for redress. The JSC recommended the Review examine the provision of culturally sensitive services.

This section of the report explores briefly the extent to which the Scheme may unfairly exclude Aboriginal and Torres Strait Islander survivors from redress and seeks urgent clarification from the Scheme. It then considers how the Scheme has provided culturally sensitive services to Aboriginal and Torres Strait Islander survivors and evaluates their effectiveness. It analyses findings of the Royal Commission, external feedback from consultancies, and submissions to the Review from survivors and support services.

The Review found the Scheme has yet to implement effectively recommendations from the Royal Commission that would improve accessibility to the Scheme for Aboriginal and Torres Strait Islander survivors, and the eligibility of children living in missions and institutions post 1967 warrants immediate clarification by the Scheme.

The Scheme should also take immediate proactive 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.

The Royal Commission acknowledged that Aboriginal and Torres Strait Islander children are 'significantly over-represented in some high-risk institutional contexts due to a range of historical, social and economic factors'. Aboriginal and Torres Strait Islander survivors represented 14.3% of all survivors interviewed by the Royal Commission. The Royal Commission identified that the Aboriginal and Torres Strait Islander communities face fear, shame, discrimination and language barriers. The 2017 Final Report of the Royal Commission recommended that the Australian Government fund Aboriginal and Torres Strait Islander healing approaches, advocacy and support services. It recommended the Scheme should adopt an Aboriginal and Torres Strait Islander communications plan and raise awareness and knowledge of child sexual abuse with Aboriginal and Torres Strait Islander targeted information.

The Review found that the Scheme should review and reset the current model of funding and service delivery of support services to address existing unmet demand and more proactively target survivors who are particularly vulnerable, Aboriginal and Torres Strait Islander, people with disability and people from CALD backgrounds to ensure more equitable access.

Consultancies commissioned by the department in 2017, 2019 and 2020 reiterated that Aboriginal and Torres Strait Islander communities need a culturally sensitive, bespoke communications approach and flexible counselling options.

In 2017, the Scheme commissioned a study to inform an Aboriginal and Torres Strait Islander communications plan. The study identified that Aboriginal and Torres Strait Islander individuals are reluctant to disclose and report abuse and are likely to contact, be comfortable with, and want support from Aboriginal and Torres Strait Islander organisations. The study concluded that communications must be transparent, authentic and consistent, and the

Scheme must create an Aboriginal and Torres Strait Islander communication strategy that is adapted to community preferences.

In 2018, the then Department of Human Services created a communications timeline for the Scheme that included planned media releases, research reports, Scheme branding, media resources, stakeholder engagement and social media outreach.

In 2019, the Scheme commissioned a report on the success of communications. It found there was no tailored communication reaching Aboriginal and Torres Strait Islander people. It identified that redress products and materials were not culturally sensitive or appropriate and they excluded applicants with low literacy levels. Furthermore, information that did reach Aboriginal and Torres Strait Islander communities was often misunderstood or misinterpreted. The group recommended that the Scheme establish Aboriginal and Torres Strait Islander grassroots connections and a communications toolkit for Aboriginal and Torres Strait Islander relevant channels.

The Review was informed that current funding for Indigenous redress support services is \$9.5 million over three years to June 2021. In October 2020, the department announced a further total spend of \$73.1 million for mainstream and specialist redress support services over four years to 30 June 2024. However, it is unclear what percentage of these funds will be specifically committed to Indigenous redress support services over this period.

In October 2020, the department advised the Senate Community Affairs Legislation Committee budget estimates that the Scheme is undertaking work to build the capabilities of all redress support services to support applicants who are Indigenous, from culturally or linguistically diverse backgrounds and people with a disability to engage with the Scheme. The department also advised the committee it had launched on the Scheme website more accessible communication materials to help meet the needs of those facing literacy, language and other barriers.

The Review found that, in light of the submissions received, it is time the Scheme reset its communications strategy and products, its methods of communication delivery and increase funding to Aboriginal and Torres Strait Islander specialist support services.

Submissions to the Review are of the strong view that Scheme communication methods are not appropriate for the Aboriginal and Torres Strait Islander cohort, and there is a lack of cultural sensitivity with existing Scheme products. Submissions informed the Review that many Australian and Torres Strait Islander survivors are homeless, living in multiple towns/communities and unlikely to be engaging with traditional media. The Review questions if communications through the Scheme website will meet the needs of people facing literacy, language and other barriers.

Submissions also suggested Aboriginal and Torres Strait Islander survivors are more likely to live in regional and rural locations, which is an identified service gap for the Scheme. Analysis of the 2016 Australian Census reiterates this view. Aboriginal and Torres Strait Islander people make up 25% of the remote population of Australia and just 2% of the non-remote

population. A consultancy commissioned by the department to consult Aboriginal and Torres Strait Islander survivors found among this cohort of people English is often a second, third or fourth language, and some survivors have had limited access to education.

Submissions from support services suggest that, in order to complete applications and comprehend Scheme advertisements, many Aboriginal and Torres Strait Islander survivors will require translation services and literacy support. The Scheme currently translates the Scheme webpage into nine common languages, although none of these are Indigenous languages.

The 2020 Scheme communication plan has demonstrated an awareness within the Scheme of the needs of Aboriginal and Torres Strait Islander applicants for targeted communications. However, the Review found, through submissions, that Aboriginal and Torres Strait Islander applicants currently lack the culturally safe, targeted communication methods to improve uptake of the Scheme and support services.

Submissions to the Review said that the manner in which Aboriginal and Torres Strait Islander applicants describe their abuse can disadvantage their application. 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.

The sensitivity required from support services in requesting information in a culturally appropriate manner is significant. For example, the cultural use of the words ‘Aunty’ and ‘Uncle’ to describe Elders in the community (in addition to family members) can lead to misunderstandings of the role the abuser played during the applicant’s childhood and determinations that the applicant is ineligible. This is because the Scheme does not extend to familial abuse.

Submissions also argued that the application form is unsuitable for Aboriginal and Torres Strait Islander applicants, who find it too long, complicated and traumatising. Some support services suggest they advise applicants to pursue civil action if eligible because it is more trauma informed than the Scheme.

A 2020 consultancy commissioned by the Review reported that Aboriginal and Torres Strait Islander applicants are more likely to have their monetary component reduced through the recognition of prior payments. This consultancy reported that some of the interviewed Aboriginal and Torres Strait Islander survivors received a one-time ‘Stolen Generations’ payment, with acknowledgement of the trauma they experienced as members of the Stolen Generations. The consultancy highlighted that, of the 950 survivors who had their final offer reduced by a prior payment, 34.4% of those survivors were Aboriginal and Torres Strait Islander. Data provided by the Scheme to the Review found that 29.5% of survivors (or 2,685 out of 9,117) with an offer of redress identify as Aboriginal and Torres Strait Islander.

The Review therefore concludes the application of prior payments has a disproportionate impact on Aboriginal and Torres Strait Islander applicants, that is, there is an over-representation of Aboriginal and Torres Strait Islander survivors in the number of applicants having their payments reduced because of a prior payment. Submissions to the Review confirm this conclusion and identify the negative impacts this is having on Aboriginal and Torres Strait Islander applicants. To correct this anomaly the Scheme should consider legislative amendment to the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Assessment Framework). This is discussed in **Chapter 3** of the report.

Support services informed the Review that arranging for itinerant or homeless survivors to be in a place to commence or continue an application is very difficult. Support services report the time required to earn the trust of survivors to tell their story is significant. Consultants to the Review reported that some Aboriginal and Torres Strait Islander survivors are comfortable to wait many years until they feel prepared to tell their story and complete their application. This delay has implications for Scheme management of redress communication and the progression of applications.

The Review found that Scheme design has not considered the unique cultural differences needed to engage Aboriginal and Torres Strait Islander survivors. Submissions have confirmed the finding of the Review that the Scheme has not provided appropriate cultural sensitivity training to the wider Scheme staff. Survivors and support services report that staff members are making errors and are being culturally insensitive to the vulnerable Aboriginal and Torres Strait Islander cohort. Submissions report that the Scheme has not employed a sufficient number of Aboriginal and Torres Strait Islander staff.

The Review found that Aboriginal and Torres Strait Islander staff employment levels has seen improvement. Furthermore, the Scheme has established an Indigenous Service Delivery Stream to make improvements to its internal staffing to provide specialist case handling services to respond to the cultural needs of Aboriginal and Torres Strait Islander applicants.

The Aboriginal and Torres Strait Islander communities have endorsed jurisdictions offering Aboriginal and Torres Strait Islander healing approaches but have also raised concerns that access to culturally appropriate healing is not consistent across the jurisdictions. Support services claim that Aboriginal and Torres Strait Islander communities struggle as a collective, and the Scheme does not support family members through vicarious trauma. This aligns with the findings of the Royal Commission that Aboriginal and Torres Strait Islander communities suffer vicarious trauma.

Submissions to the Review reveal the manner that government officials recorded events when establishing guardianship of a child can differ from the recalled experiences of Aboriginal and Torres Strait Islander survivors. For example, children who were forcibly removed from their families might be recorded as having been relinquished. If the Scheme continues to hold inaccurate institutional records in greater esteem than individual accounts,

this creates a risk that Aboriginal and Torres Strait Islander survivors will not receive the recognition they are entitled to, including redress.

The Review found that the Scheme has not acted upon advice regarding Aboriginal and Torres Strait Islander applicants, and the current communications strategy and products are not culturally appropriate for Aboriginal and Torres Strait Islander survivors and the Scheme's counselling and psychological care element of redress does not provide a culturally appropriate path to healing.

The Scheme must consider and implement measures to overcome these issues with the current Scheme design that disadvantages Aboriginal and Torres Strait Islander applicants. 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 redress application form to better cater to the needs of Aboriginal and Torres Strait Islander survivors, such as simplifying the language used, reducing the length and complexity of the form, and including additional information about redress support services.

The Scheme should also immediately amend the application form for cultural sensitivity. For example, the Scheme should reorder the questions on the application form so that, for example, question 11 and question 24 establishes Aboriginal and Torres Strait Islander status before citizenship. Similarly, the application form does not provide the opportunity for Aboriginal and Torres Strait Islander applicants to describe the supports they may need to complete the process; therefore, it does not provide the Scheme with an opportunity to evaluate its effectiveness in providing those supports or to identify future needs.

In conclusion, if the application process is to be successful in capturing the experiences of Aboriginal and Torres Strait Islander survivors, it should acknowledge the historical context of abuse, the cultural diversity of the Aboriginal and Torres Strait Islander communities, the distinct experience of Aboriginal and Torres Strait Islander survivors and therefore their individual needs. The Scheme should explore and adopt alternative models of therapy that support whole communities and must be proactive in providing sufficient and necessary financial advice that limits conflict.

The Scheme should co-develop its communications and communication products through consultation with the Aboriginal and Torres Strait Islander communities. The Scheme should also engage staff from Aboriginal and Torres Strait Islander communities to increase trust in the Scheme and to contribute to better design, delivery and decision-making.

### ***Culturally and linguistically diverse survivors***

The Scheme should urgently co-develop a bespoke CALD communication strategy and targeted communication products. There should be sufficient levels of funding of appropriate and necessary CALD support services geographically spread across jurisdictions to ensure equity of access for CALD survivors in their journey for redress.

Survivors may qualify as CALD if they identify with diverse cultures, religions and/or ethnicities including ancestry from outside Australia. CALD survivors may practise cultural or ethnic customs, values or beliefs. The Royal Commission found that children living in institutions, from CALD communities, faced significant risk of sexual abuse because they were targeted for sexual abuse and were at particular risk of exclusion from the Scheme.

The Final Report of the Royal Commission identified that greater research was required and there was a need to connect CALD individuals with multicultural and ethno-specific services. It recognised that CALD survivors often need additional interpretation services, cultural contextualisation or rephrasing to communicate the intentions of Scheme information, and many service providers were not competent to respond to the cultural needs of CALD survivors. The Royal Commission identified that CALD survivors required a tailored outreach.

In 2017 and 2019 respectively, the Scheme commissioned two consultancies to make recommendations for a Scheme communications plan and report on the effectiveness of Scheme communications. Together the consultancies found the Scheme had not addressed the issues necessary to secure involvement from CALD survivors.

In 2017, the Scheme also commissioned a study to inform a communications plan to address the needs of the CALD cohort. It found that there was little knowledge amongst CALD communities of the Royal Commission, the Scheme or child sexual abuse. The study identified that any Scheme communications plan would need to involve Elders of CALD communities to disseminate information, particularly for those who do not speak English as a first language, and to make services available in 14 languages. In 2017, it appeared the Scheme would act on and incorporate these learnings. However, in 2018 the Scheme developed a 'Communication Strategy' which divided communications into two phases, with Phase 2, 'External Audience', itemising only one instance of communications to target the CALD community with a national budget allocation of \$15,000.

In 2019, the Scheme commissioned a second consultancy to report on the success of the Scheme's communication methods. The report identified that:

- a. There are significant differences in the language, literacy and knowledge of redress in remote communities, compared to metropolitan areas.
- b. Knowledge of redress in multicultural and faith-based settings was low.
- c. The scheme does not translate redress material into enough languages.
- d. Available redress materials are not culturally sensitive or appropriate.

The second consultancy reported that the department did not act on the recommendations of the first study in the creation of the Scheme. This appears to have had a significant impact on the knowledge and understanding within CALD communities of the Scheme and contributed to the lack of applications from CALD survivors.

The Review commissioned two further reports on the current success of Scheme communications to give a contemporary update on the progress of the Scheme. Consultants identified that 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 of 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. Further, these reports found using the language required in the application form could potentially trigger trauma and feelings of shame. Overall, their findings echoed again recommendation 50(a) of the Royal Commission for a targeted communications plan for CALD communities.

Submissions to the Review have similarly confirmed the lack of community awareness of the Scheme, and the Scheme is not sufficiently addressing the needs of the CALD community. Stakeholders have informed the Review that the Scheme application form further contributes to the lack of appropriately targeted CALD communications because it prevents the collection of any meaningful data. For example, the survivor application form records the CALD status of applicants through only two questions: question 18 asks for a 'preferred spoken language' and question 37 asks whether the applicant was a child migrant. The Review has found that child migrants are struggling to access redress and this is causing trauma for those applicants. Currently, the department does not collect the CALD status of individuals applying to the Scheme or make this information available to the Australian Government or its support services, further contributing to the lack of knowledge about CALD survivors. The Review notes that currently the Scheme has translated the Scheme webpage into nine common languages, but the reach and understanding of the Scheme webpage and its contents among CALD communities are unknown.

The current Scheme communications plan does not address measures or reveal dedicated, specific and sufficient funds for actions necessary to reach and include CALD survivors in the Scheme. In October 2020, the department announced a further total spend of \$73.1 million for mainstream and specialist redress support services over four years to 30 June 2024.

However, it is unclear what percentage of these funds will be specifically committed to specialist CALD redress support services to support survivors in their application for redress and the geographic spread, type of service or availability of these support services to survivors.

Drawing on the Royal Commission recommendations and feedback provided to the Review, it is clear the Scheme has yet to implement and fund an effective and bespoke communications plan and develop targeted communication products to reach survivors in CALD communities to encourage 'buy-in' from survivors.

Without an appropriately funded, targeted co-developed plan, any measures by the Scheme to engage with CALD communities risk failure. The Scheme must amend the application form to be more culturally sensitive and appropriate, including providing information and the application in additional translated languages, and link both bespoke communication products and survivors to appropriate and available CALD support services. The Scheme

should amend its current methods of data collection sufficient to draw meaningful qualitative conclusions from the application form and develop alternative methods to better capture the diversity of CALD people and cater to their needs.

The current 2020 to 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. Currently there is no Scheme commitment to a bespoke communications strategy, communication products or information relating to the allocation and targeting of funding in the current plan.

The Review notes continuation of this gap will maintain the status quo, continue the ill-informed understanding of CALD communities and survivors' needs and probably continue the perceived lack of CALD applications, noting there is currently no data held on CALD applications. It is worth reiterating the strongly held view that, unless the Scheme implements a co-developed CALD communications strategy, the Scheme is unlikely to reach survivors in the CALD community.

Notably, the performance review found that only two of the 39 redress support services record having any CALD clients, and only one is tailored toward a specific cultural community located in Melbourne (Jewish).

The Review found that there are major differences between the levels and types of support offered, the value of the different redress support services, and the costs for the Scheme.

As noted above, the Review found that nearly two-thirds of all redress support service clients are serviced by only seven support organisations.

The Review found that redress support services are keeping clients on for longer periods of time, which is limiting the ability of services to take on new clients and exacerbating survivor fatigue.

### ***Evaluation of redress support services***

The Review found 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 generalisable given the small sample size and are not a substitute for more systematic analysis.

The Review analysed the funding arrangements of support services with the data available and found that many redress support service providers' costs exceed double the average per client or session.

The Review found in instances where the costs exceeded double the average, genuine reasons for the difference cost were provided, including the set-up costs of services and the

remoteness of the location where services are delivered. These costs may diminish by a reliance on existing jurisdictional services and on-the-ground support services.

On the basis of Scheme data available to the Review, it is not possible to comment on the efficacy or relative value of the various support services. Hence, there is 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.

### ***Training needs***

Concerns were expressed to the Review regarding the adequacy of understanding demonstrated by some support services of key Scheme components.

It is apparent that some support services may have had no specific redress training.

In some jurisdictions, the Review found social welfare and health workers may also limit likely survivor referrals to support services because of concerns about the Scheme's impact on the wellbeing of survivors, including concerns about the time taken to finalise applications.

Survivors and support services felt that there was a significant lack of flexibility for the support services offered and the extent to which they were funded to provide support. Ongoing commissioning and evaluation of support services needs to place significant emphasis on these issues.

# Recommendations

## ***Recommendation 7.1***

In 2021 to 22 and 2022 to 23 financial years, the Australian Government improve communication and engagement by:

- a. Funding a targeted communication strategy to build trust and increase awareness of the Scheme among survivors, including; specific strategies to reach vulnerable people; Aboriginal and Torres Strait Islander people; people with disability; regional, remote, and culturally and linguistically diverse communities.
- b. Taking proactive steps to better communicate the availability of all support services, including access to free legal services, to survivors, nominees, advocates and institutions.
- c. Where appropriate, the Scheme funding support services that facilitate Aboriginal and Torres Strait Islander healing approaches and which also meet the diversity of survivors' needs with regards to disability, gender, sexuality, culture and language.

## ***Recommendation 7.2***

The Australian Government provide greater access to survivor support services and interventions including:

- a. Additional funding to improve the quality, scope and geographic spread of appropriately skilled and relevant support services. This should include financial counselling.
- b. The commissioning of an external impact evaluation of all existing support services to ensure they are trauma informed and survivor focused.

The funding of services that are able to provide tailored and targeted responses, including outreach, to vulnerable individuals and cohorts.

# Appendices

## Appendix A

### The terms of reference of the Review

#### **Section 192 (2)**

(a), the extent to which the States, participating Territories and non-government institutions have opted into the scheme, including key facilitators and barriers to opting in

(b), the extent to which survivors who are eligible for redress under the scheme have applied for redress

(c), the extent to which redress has been provided to survivors who are entitled to redress under the scheme

(d), the application, assessment and decision-making process, including user experiences of the process

(e), redress payments

(f), access to counselling and psychological services under the scheme

(g), the extent to which survivors access direct personal responses under the scheme, including factors influencing the uptake and experiences with the direct personal response process

(h), the availability of, and access to, support services under the scheme

(i), the implications of the scheme's design for survivors (including Indigenous and child migrant survivors, as well as survivors who are still children or who have a criminal conviction)

(j), the operation of the scheme's funding arrangements (including a review of the scheme administration element of funding contribution)

(k), the operation of the funder of last resort provisions

(l), the extent to which the scheme has been implemented as proposed in the National Redress Scheme Agreement

(m) to the views of key stakeholders on the scheme (including representatives from survivor groups, non-government institutions, advocacy groups, support services provider groups, the Independent Advisory Council, the Commonwealth, the States and the Territories)

(n), the impact and effectiveness of section 37 (which is about the admissibility of certain documents in evidence in civil proceedings)

(o), the question of whether an institution (the first institution) should be responsible for abuse that occurs in connection with another institution merely because the first institution regulates or funds the other institution or the other institution's activities

(p), the administration of this Act and the scheme

(q), any other matter relevant to the operation of this Act or the scheme.

# Appendix B

## Consultations in the conduct of the Review

### ***Persons and organisations met with in the conduct of the Review***

- Senator the Hon. Anne Ruston, Minister for Families and Social Services, and senior officials from the Commonwealth Department of Social Services.
- Senator the Hon. Rachel Siewert, Senator for Western Australia.
- Deputy Chair of the Joint Select Committee on Implementation of the National Redress Scheme, Sharon Claydon MP, Member for Newcastle.
- Joint Select Committee on Implementation of the National Redress Scheme.
- The Hon. Elise Archer MP, Redress Minister, Tasmania.
- The Hon. Mark Speakman SC MP, Redress Minister, New South Wales.
- The Hon. Leanne Linard, Redress Minister, Queensland.
- The Hon. Selena Uibo MLA, Redress Minister, Northern Territory.
- The Hon. Vickie Chapman MP, Redress Minister, South Australia.
- The Hon. Linda Burney MP, Shadow Minister for Families and Social Services, Member for Barton.
- The Hon. Mark Dreyfus MP, Shadow Attorney-General, Member for Isaacs.
- Ministers' Redress Scheme Governance Board.
- Aboriginal & Torres Strait Islander Advocacy Program.
- Anglican General Synod.
- Australian Catholic Redress.
- Baptist Union of Victoria.
- Barnardo's.
- Beyond Brave (Bravehearts).
- Blue Knot Foundation.
- Care Leavers Australasia Network (CLAN).
- Christian Brothers.
- De La Salle Brothers.
- In Good Faith Foundation.
- Ivanhoe Grammar.
- Kimberley Stolen Generation Aboriginal Corporation.
- knowmore.
- Marist Brothers.
- People with Disability Australia.
- Senior officials from the Department of the Prime Minister and Cabinet.
- Senior officials from the ACT Government.
- Senior officials from the Attorney-General's Department (SA).

- Senior officials from the Department for Child Protection (SA).
- Senior officials from the Department of Justice (Tas).
- Senior officials from the Department of Justice (WA).
- Senior officials from the Department of Justice and Community Safety (Vic).
- Senior officials from the Department of the Attorney-General and Justice (NT).
- Senior officials from the Department of Communities and Justice (NSW).
- Senior officials from the Department of Child Safety, Youth and Women (Qld).
- Sisters of Mercy Brisbane.
- Scouts Australia.
- Sisters of Mercy Catholic Religious Australia.
- Sisters of St Joseph.
- Southern Youth and Family Service.
- Tuart Place (WA).
- Uniting Church of Australia.
- Victorian Aboriginal Child Care Agency (VACCA).
- Women's Legal Centre (NSW).
- YMCA.

# Appendix C

## Cross-reference of the terms of reference, JSC 2020 recommendations and components of the Review report

### Chapter 1: Introduction to redress

- Introduction to the Review, Section 192(2)(b), (c), (q), (m), JSC 2020 recommendation 1, 2, 9.
- Historical context, Scheme establishment and accountabilities, Section 192(2)(a).
- Inter-governmental agreement, Scheme legislation and governance, Section 192(2)(a), (c), (l), (m), (p).
- Scheme performance data, Section 192(2)(p), JSC 2020 recommendation 9.
- The extent to which eligible survivors are accessing redress, Section 192(2)(b),(c), (m), JSC 2020 recommendation 9.

### Chapter 2: The survivors' experience

- Survivors' Service Improvement Charter, Section 192(2)(d), (m), (p), JSC 2020 recommendation 2, 3.
- The guiding principles, Section 192(2)(p), (q), JSC 2020 recommendation 1, 2, 3.

### Chapter 3: Applying for redress

- Eligibility to apply for redress, Section 192(2)(b),(i), (m), (p), JSC 2020 recommendation 2, 9, 13.
- The application form and information required, Section 192(2)(b),(d),(i), (m), (o), JSC 2020 recommendation 3, 4, 9.
- Application determinations and the Assessment Framework, Section 192(2)(c),(d),(e),(m), (p), (q), JSC 2020 recommendation 3, 6.
- Applying the Assessment Framework, Section 192(2)(c),(d),(e), (m), JSC 2020 recommendation 2, 3, 6.
- Protected information, Section 192(2)(n), (p).

### Chapter 4: The elements of redress

- The monetary payment, Section 192(2)(e), (m), JSC 2020 recommendation 5, 14.
- Prior payments, Section 192(2)(d), (m), JSC 2020 recommendation 5, 6.
- Counselling and psychological care, Section 192(2)(f), (m), JSC 2020 recommendation 7, 13.
- Direct personal response, Section 192(2)(g), (m), JSC 2020 recommendation 6, 8.

### Chapter 5: Access to review, funder of last resort, civil litigation

- Reviews of decisions and revocation of determinations, Section 192(2)(d), (j), (m), (o), (p), JSC 2020 recommendation 6.
- Funder of last resort, Section 192(2)(a), (j), (k), (m), JSC 2020 recommendation 10, 12.
- Civil litigation, Section 192(2)(n), JSC 2020 recommendation 9.

#### **Chapter 6: Scheme management**

- Scheme staffing, Section 192(2)(p)(q).
- Scheme management and the redress ICT system, Section 192(2)(a), (m), (p).
- Complaints, Section 192(2)(p), (q), JSC 2020 recommendation 3.
- Institutional responsibility, Section 192(2)(a), (o), JSC 2020 recommendation 10.

#### **Chapter 7: Financial arrangements**

- Funding the Scheme, Section 192(2)(j) to JSC 2020 recommendation 7.
- Funding and evaluation of redress support services, Section 192(2)(h), (m), JSC 2020 recommendation 7, 8, 12.

# Appendix D

## List of public submissions received by the Review

The Review received a number of submissions from institutions and survivors of institutional child sexual abuse. These were helpful in informing the Review of the lived experience of survivors and their contact with the National Redress Scheme. For privacy reasons, the Review agreed not to identify submissions, or their content, without express permission. The Review is seeking the permission of institutions to publish their submission on the National Redress Scheme website.

# Appendix E

## History timeline for the Scheme

See Section 1.3 for an overview of the history of the Scheme, including key dates.

# Appendix F

## Scheme reforms implemented to date by the department

### ***Amendments to the application and other forms, outcome letter and acceptance document***

The National Redress Scheme application form has been amended to include:

- a. Updates to privacy notice and statutory declarations resulting from the machinery of government changes.
- b. Additional guidance information regarding prior payments.
- c. Readability improvements, bold words introduced at certain questions and plain English used where able.

The Nominee, Special Criminal Conviction and Applying from Jail forms have also been updated including:

- a. Removal of the two-column format for applicant readability.
- b. Updates to privacy and sharing information sections (as per application form).
- c. Improved readability on who completes which section in the form, better information on how to access redress support services, and detailed information on how to certify documents for police checks (to assist applicants and nominees).

Improvements have also been made to the outcome letter, acceptance document and associated documents to provide applicants with clearer information about the decision and what the next steps are for the applicant. The outcome letter and associated documents also include two new forms for applicants to use when they are requesting a review of a determination or declining the offer of redress.

### ***Modifications to the redress ICT system***

The department has recently implemented enhancements to the redress ICT system to improve the ICT systems support for application processing. The following enhancements, implemented from July 2020, are the more significant recent changes implemented:

- a. A new keyword facility provides increased granularity for the tracking and reporting of an application's progress.
- b. A new system-generated alert advises staff when an applicant who is under 18 years of age turns 17 years and six months of age. This alert is used to ensure application processing activities recommence to ensure a timely determination can be made once the applicant turns 18 years of age.
- c. A system enhancement allows for the concurrent processing of tasks. This means that, for those applications where the applicant has not provided proof of identity or a valid statutory declaration, the application is able to progress further along the

application process but not to the point of a determination being made, while actions are concurrently taken to obtain proof of identity or a valid statutory declaration.

- d. A system enhancement to the Institution Portal provides institutions with a new 'Notifications' tab for improved visibility of the receipt of notices, such as section 25 request for information (RFI) notices.
- e. The applicant's middle name has been added on various screens within the Institution Portal to make it easier for institutions to search for records for applicants where the name is relatively common.

### ***Processing applications, end-to-end processes***

A number of improvements to the Scheme have been implemented, including:

- a. Refinements to quality assurance processes, reporting and guiding documents.
- b. System improvements, including the ability to request and respond to further information through the Institution Portal and tools that support redress staff to respond to and readily identify changes to the application status (such as the receipt of further information).
- c. A dedicated and specially trained contact team to ensure inbound calls are responded to quickly and consistent information is provided to the caller.
- d. A specialist team that identifies responsible institutions and issues requests for information.

In addition, a number of refinements have been made to the application processing model, including:

- a. A Case Coordination model, assigning a named point of contact for all applicants.
- b. For applicants with increased vulnerability, a specialist service through a named single point of contact.
- c. Establishment of a centralised team focused on the preparation of RFI packages to institutions. Centralisation of the role is supporting specialisation in this complex area.

### ***Communication and information provided to survivors and supporters***

To address the need for clearer survivor messaging and more transparent guidelines on what staff can say to survivors to help manage their expectations, three core documents were developed as part of the revised Scheme survivor messaging work:

- a. Revised survivor messaging guidelines.
- b. Core values of expectation management.
- c. Visual resources.

There will be a specific focus on delivering this package of resources to staff who work in the Redress Contact Team, the Clinical Support Team, Service Recovery Team and other teams that have direct contact with applicants.

### ***On-boarding of non-government institutions***

The Scheme has introduced a 12-week process for the provision of critical onboarding documentation relating to governance and finance, an escalation strategy and working with state and territory governments to engage with non-government institutions that are unresponsive or require additional assistance.

### ***Participating institutions***

The department has established a team to build and maintain relationships with participating institutions to improve survivor experience. This team responds to institutional queries, quality assures Child Safe reporting and notifications, and provides regular information to institutions about new policy, milestones or available resources. Common queries include amendments to institutional lists, the delivery of direct personal response and issues relating to the RFI process.

# Appendix G

## The National Disability Insurance Agency Participant Service Charter

### ***Five principles for engagement with participants***

The National Disability Insurance Agency Participant Service Charter is based on five principles for its engagement with participants. These are:

#### **Transparent**

We will make it easy to access and understand our information and decisions.

#### **Responsive**

We will respond to individual needs and circumstances.

#### **Respectful**

We will recognise your individual experience and acknowledge you are an expert in your own life.

#### **Empowering**

We will make it easy to access information and be supported by the NDIS to lead your life.

#### **Connected**

We will support you to access the services and supports you need.

The Participant Service Charter also tells you how you can contact us, make a complaint or provide feedback, and your rights if you do not agree with a decision we've made.

# Appendix H

## Definition of Child Sexual Abuse from the Royal Commission

**(Trigger warning: Appendix H contains graphic language about sexual abuse).**

The Royal Commission's definition of sexual abuse of a child is:

*... includes any act which exposes the person to, or involves the person in, sexual processes beyond the person's understanding or contrary to accepted community standards'*

*... Sexually abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism, and exposing the child to or involving the child in pornography. It includes child grooming, which refers to actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, to lower the child's inhibitions in preparation for sexual activity with the child.*

# Appendix I

## Working out the amount of redress payment and sharing of costs

### Method statement

- Step 1. Apply the assessment framework to work out the maximum amount of redress payment that could be payable to the person. The maximum amount must not be more than \$150,000, regardless of the number of responsible institutions. The amount worked out is the **maximum amount** of the redress payment that could be payable to the person.
- Step 2. Work out, in accordance with any requirements prescribed by the rules, the amount that is the responsible institution's share of the maximum amount. This amount is the **gross liability amount** for the responsible institution.
- Step 3. Work out the amount of any payment (a **relevant prior payment**) that was paid to the person by, or on behalf of, the responsible institution in relation to abuse for which the institution is responsible (but do not include any payment to the extent that it is prescribed by the rules as not being a relevant prior payment). This amount is the original amount of the relevant prior payment.
- Step 4. Multiply the **original amount** by the following:

$$(1.019)^n$$

where:

*n* is the number of whole years since the relevant prior payment was paid to the person.

The resulting amount is the adjusted amount of the relevant prior payment of the institution.

Note: The adjustment under this step is broadly to account for inflation.

- Step 5. Add together the adjusted amount of each relevant prior payment of the institution. If the resulting amount is not a whole number of cents, round the amount up to the next whole number of cents. This amount is the **reduction amount** for the institution.
- Step 6. The amount of the institution's share of the costs of the redress payment is the gross liability amount for the institution (in step 2) less the reduction amount for the institution (in step 5). The amount may be nil but not less than nil.

Source: Section 30(2) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

# Appendix J

## The assessment matrix for calculating a redress payment

The assessment matrix for calculating a redress payment is complex.

The amount awarded for penetrative abuse can be up to \$150,000 not including the assessment of prior payments reducing this amount. The penetrative abuse payment is made up of a maximum: \$70,000 for recognition of sexual abuse, \$20,000 for recognition of the impact of sexual abuse, \$5,000 for the recognition of related non-sexual abuse and \$5,000 for the recognition the person was institutionally vulnerable. Recognition of extreme circumstances of sexual abuse is only available for penetrative abuse, which includes a payment up to \$50,000.

The amount awarded for contact abuse can be up to \$50,000 not including the assessment of prior payments reducing this amount. The contact abuse payment is made up of a maximum: \$30,000 for recognition of sexual abuse, \$10,000 for recognition of the impact of sexual abuse, \$5,000 for the recognition of related non-sexual abuse and \$5,000 for the recognition the person was institutionally vulnerable.

The amount awarded for exposure abuse can be up to \$20,000 not including the assessment of prior payments reducing this amount. The contact abuse payment is made up of a maximum: \$5,000 for recognition of sexual abuse, \$5,000 for recognition of the impact of sexual abuse, \$5,000 for the recognition of related non-sexual abuse and \$5,000 for the recognition the person was institutionally vulnerable.

Source: Section 5 of the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018*.

# Appendix K

## The assessment framework from the Royal Commission 2017

**Appendix K** identifies the factor involved in assessing the value of the redress payment, as outlined in the 2017 Royal Commission, as well as the value and relative % of the whole amount the factor represents. The data will be presented based on the factor.

**Severity of abuse.** Proportion of maximum payment available, 1 to 40%. Maximum value of factor, \$40,000.

**Impact of abuse.** Proportion of maximum payment available, 1 to 40%. Maximum value of factor, \$80,000.

**Additional elements.** Proportion of maximum payment available, 1 to 20%. Maximum value of factor, \$40,000.

**The ‘additional elements’ category was intended to recognise the following elements:**

- a. Whether the applicant was in state care at the time of the abuse, that is, as a ward of the state or under the guardianship of the relevant minister or Australian Government agency.
- b. Whether the applicant experienced other forms of abuse in conjunction with the sexual abuse, including physical, emotional or cultural abuse or neglect.
- c. Whether the applicant was in a ‘closed’ institution or without the support of family or friends at the time of the abuse.
- d. Whether the applicant was particularly vulnerable to abuse because of his or her disability.

Source: Royal Commission into Institutional Responses to Child Sexual Abuse, Redress and civil litigation report (2015), p. 230 to 232.

# Appendix L

## Review of psychological wellbeing services in the Scheme

A consultancy commissioned by the Scheme in April 2020 reviewed the implementation and operation of the Scheme against seven redress service principles. It found:

- a. Scheme staff were adapting to and struggling with a performance-driven culture.
- b. This shift was perceived as a negative move away from a trauma informed care approach to employee wellbeing to a more performance-driven culture.
- c. The Scheme had in development a trauma informed care approach to employee wellbeing. However, it had yet to be implemented due to resource constraints.
- d. Reduced support from the Clinical Support Team in providing staff debriefings in response to employee distress left a greater burden of responsibility for managing employee wellbeing and psychological risk to team leaders, who expressed feeling inadequately trained and time poor to do this well.
- e. A reflective supervision model had been developed but was not implemented due to resource constraints. Team leaders were providing debriefing and welfare support without procedures or training to support them.
- f. There was little implementation of protocols regarding the management of employee distress as a result of indirect trauma exposure and/or cumulative stress.
- g. There was inconsistency in the type and level of support offered by team leaders.
- h. Since the introduction of Empower-iQ, an Ernst & Young case management IT dashboard, staff are less willing to take short breaks after challenging tasks or to engage in self-care activities during work time for fear this will be seen in a negative light.
- i. The Scheme had not recognised organisational stressors that undermine employee wellbeing, such as a lack of clear guidelines to support decision-making.
- j. Forty-one per cent of Scheme staff believed that wellbeing and mental training provided was insufficient.
- k. Forty-one per cent of the respondents believe the wellbeing and mental health component of the foundation training prepared them only to a small extent. Respondents mentioned wanting more specific strategies for coping with role-related stress.
- l. There was a lack of a coordinated follow-up training beyond the induction training. Most interview respondents mentioned the need for a follow-up training three to six months after beginning the role and would appreciate more ongoing training opportunities.
- m. The Scheme did not incorporate minimisation of psychological risk within key performance indicators for leadership roles.
- n. The Scheme lacked an overarching policy, or strategy document regarding employee mental health and wellbeing. There were limited procedures or guidelines for the

implementation of existing wellbeing strategies and a lack of data and monitoring to evaluate existing strategies.

- o. It was unclear whether the Scheme had policies, procedures and training for the provision of evidence-based critical incident support for its staff.
- p. Quality assurance and continuous improvement practices were not established within the Scheme.

Source: Consultation commissioned by the Scheme.

# Appendix M

## Functionality issues with the redress ICT system

The Review found that the redress ICT system:

- a. Is unable to provide consistency in file folders.
- b. Has limitations where an application is moved a stage or multiple stages 'too far', the application cannot be returned or 'moved back' stages, and this will often require a manual workaround. The review was advised that, for this reason, occasionally the stage of an applicant's application presented in the redress ICT system is not accurate.
- c. Cannot go backwards when new information materially affecting an application changes or is received. The review was advised this will depend on which stage an application is at. At some stages (particularly the latter stages of an application lifecycle), this will require a manual workaround and cannot accurately be reflected on the system.
- d. Cannot provide 'pop-ups' to flag changes or important notations, for example, when the clinical team is trying to contact a survivor.
- e. Cannot provide automated alerts for critical or vulnerable cases that can also 'drop off' the system. The redress ICT system does not actively draw the user's attention to this status; rather, it relies on the user actively seeking this information through the 'overview' tab.
- f. Cannot track work (currently, individual case officers rely on manual entry, individualised excel spreadsheets and email files for internal tracking).
- g. Cannot restrict viewing of files by redress staff. Currently, the restricted viewing of files is managed through the use of user privileges. The review was informed that, if a user has access to the system, they are able to view all files/applications, although only certain roles are able to amend or progress certain applications.
- h. Cannot attribute work undertaken to particular staff unless the staff member self-identifies in case notes.
- i. Cannot calculate the time taken to perform a task. The tracking of work between each stage is currently managed through the use of the daily data hub report produced by the data hub off-system.
- j. Cannot auto-validate ABNs.
- k. Cannot identify if a redress payment offer is accepted or declined. Currently, there is no way on the system to decline a redress offer except to wait until the six-month

acceptance period has lapsed. A reminder can be sent via phone or letter, but the recording of lapsing acceptances is completed off-system.

- l. Cannot identify which extension individual properties have been amended.
- m. Cannot identify how many times an acceptance period has been extended in the system, this is tracked off-system.
- n. Cannot confirm if a survivor has availed themselves of a direct personal response or the counselling and psychological care component.
- o. Cannot identify or validate performance against operational key performance indicators.
- p. Cannot identify protected information.
- q. Cannot include current revocation functionality. (The review was informed this will be introduced in the upcoming system release, but, as a result, all revocation tracking is completed off-system and occurs through the use of the keyword functionality).
- r. Cannot report how many reviews are on hand/have been completed. This is manually performed in liaison with the data hub.

# Appendix tables

## Appendix Table 1

### Age of survivors who have applied for redress, 1 July 2018 to 31 December 2020 (30 months)

**Appendix Table 1** identifies the number of applicants, based on their age, across the lifetime of the Scheme. The data will be presented based on the applicants age group.

**less than 20 years old.** Number of applicants 2018 to 19, less than 5. Number of applicants 2019 to 20, 0. Number of applicants 2020 to 21, less than 5. Total number of applicants, less than 10.

**20 to 29 years old.** Number of applicants 2018 to 19, 62. Number of applicants 2019 to 20, 90. Number of applicants 2020 to 21, 70. Total number of applicants, 222.

**30 to 39 years old.** Number of applicants 2018 to 19, 225. Number of applicants 2019 to 20, 242. Number of applicants 2020 to 21, 204. Total number of applicants, 671.

**40 to 49 years old.** Number of applicants 2018 to 19, 550. Number of applicants 2019 to 20, 432. Number of applicants 2020 to 21, 308. Total number of applicants, 1,290.

**50 to 59 years old.** Number of applicants 2018 to 19, 1,045. Number of applicants 2019 to 20, 882. Number of applicants 2020 to 21, 549. Total number of applicants, 2,476.

**60 to 69 years old.** Number of applicants 2018 to 19, 1,256. Number of applicants 2019 to 20, 943. Number of applicants 2020 to 21, 455. Total number of applicants, 2,654.

**70 to 79 years old.** Number of applicants 2018 to 19, 776. Number of applicants 2019 to 20, 448. Number of applicants 2020 to 21, 188. Total number of applicants, 1,412.

**80 or more years old.** Number of applicants 2018 to 19, less than 270. Number of applicants 2019 to 20, less than 90. Number of applicants 2020 to 21, less than 40. Total number of applicants, less than 400.

Note a. The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Source. Scheme data.

## Appendix Table 2

### Number and type of determinations made, 1 July 2018 to 31 December 2020 (30 months)

**Appendix Table 2** identifies the number of determinations made across the life of the Scheme, as well as the type of the determination. The data will be presented by the number and type of determination.

**Total number of determinations made.** Number of determinations 2018 to 19, 346. Number of determinations 2019 to 20, 3,195. Number of determinations 2020 to 21, 1,793. Total number of determinations, 5,334.

**Total number of eligible determinations made.** Number of determinations 2018 to 19, 346. Number of determinations 2019 to 20, 3,059. Number of determinations 2020 to 21, 1,753. Total number of determinations, 5,158.

**Total number of ineligible determinations made.** Number of determinations 2018 to 19, 0. Number of determinations 2019 to 20, 136. Number of determinations 2020 to 21, 40. Total number of determinations, 176.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Source: Scheme data.

# Appendix Table 3

## Outcomes of applications finalised, 1 July 2018 to 31 December 2020 (30 months)

Appendix Table 3 contains complex data on the actual outcome of a finalised redress application, across the lifetime of the Scheme. The data will be presented by the outcome of the finalised application.

**Total number of outcomes issued.** Number 2018 to 19, 311. Number 2019 to 20, 3,147. Number 2020 to 21, 1,695. Total number, 5,153.

**Total number of applications finalised.** Number 2018 to 19, 239. Number 2019 to 20, 2,537. Number 2020 to 21, 1,793. Total number, 4,569.

**Total number of redress offers accepted offer of redress.** Number 2018 to 19, 239. Number 2019 to 20, 2,568. Number 2020 to 21, 1,747. Total number, 4,554.

**Total number of redress offers declined offer of redress.** Number 2018 to 19, 0. Number 2019 to 20, less than 10. Number 2020 to 21, less than 5. Total number, n.p.

**Total number of ineligible outcomes issued that have been responded to.** Number 2018 to 19, 0. Number 2019 to 20, less than 5. Number 2020 to 21, less than 5. Total number, n.p.

**Total number of redress offers pending response/finalisation.** Number 2018 to 19, 72. Number 2019 to 20, 610. Number 2020 to 21, 576. Total number, 1,258.

**Total number of applications withdrawn by survivors.** Number 2018 to 19, 232. Number 2019 to 20, 73. Number 2020 to 21, 15. Total number, 320.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Note b: 'n.p.' is used where it is not possible to provide the total number due to disaggregation.

Source: Scheme data.

## Appendix Table 4

### Applications on hold that cannot be progressed (other than no responsible institution), 1 July 2018 to 31 December 2020 (30 months)

**Appendix Table 4** identifies the number of application on hold, as well as the reason for this status. The data relates to the Scheme's lifetime. The data will be presented by the reason for the on hold status.

**Total applications on hold for reason other than no participating institution.** Number 2018 to 19, 172. Number 2019 to 20, 188. Number 2020 to 21, 64. Total number, 424.

**Not yet able to properly identify.** Number 2018 to 19, 18. Number 2019 to 20, 26. Number 2020 to 21, 16. Total number, 60.

**Requested by applicant.** Number 2018 to 19, 61. Number 2019 to 20, 60. Number 2020 to 21, 14. Total number, 135.

**Applicant is not contactable.** Number 2018 to 19, 55. Number 2019 to 20, 37. Number 2020 to 21, 22. Total number, 144.

**Investigation.** Number 2018 to 19, less than 5. Number 2019 to 20, less than 5. Number 2020 to 21, 0. Total number, less than 5.

**Documents not received.** Number 2018 to 19, 15. Number 2019 to 20, 5. Number 2020 to 21, 0. Total number, 20.

**Special assessment.** Number 2018 to 19, 6. Number 2019 to 20, 23. Number 2020 to 21, 1. Total number, 30.

**Unable to identify institution.** Number 2018 to 19, 0. Number 2019 to 20, less than 5. Number 2020 to 21, 0. Total number, less than 5.

**Requested by nominee.** Number 2018 to 19, 13. Number 2019 to 20, 28. Number 2020 to 21, 9. Total number, 50.

**Proof of Identity (POI) cannot be identified.** Number 2018 to 19, 0. Number 2019 to 20, less than 5. Number 2020 to 21, less than 5. Total number, less than 5.

**Statutory declaration invalid or missing.** Number 2018 to 19, less than 5. Number 2019 to 20, less than 5. Number 2020 to 21, 0. Total number, less than 5.

**Establishing the state of the abuse occurrence.** Number 2018 to 19, 0. Number 2019 to 20, less than 5. Number 2020 to 21, 0. Total number, less than 5.

**Under 18.** Number 2018 to 19, 0. Number 2019 to 20, 0. Number 2020 to 21, 0. Total number, 0.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Source: Scheme data.

# Appendix Table 5

## Numbers of applications naming government and non-government institutions, 1 July 2018 to 31 December 2020 (30 months)

**Appendix Table 5** identifies the types of institutions named by applicants, across the Scheme's lifetime. The data will be presented based on the categories for the institutions an application names.

**Applications only naming government institution(s).** Number 2018 to 19, 1,564. Number 2019 to 20, 1,253. Number 2020 to 21, 707. Total number, 3,524.

**Applications only naming a non-government institution(s).** Number 2018 to 19, 884. Number 2019 to 20, 579. Number 2020 to 21, 314. Total number, 1,777.

**Applications naming both a government and non-government institution(s).** Number 2018 to 19, 1,528. Number 2019 to 20, 1,123. Number 2020 to 21, 455. Total number, 3,106.

**Applications where no institutions have been recorded.** Number 2018 to 19, 204. Number 2019 to 20, 170. Number 2020 to 21, 336. Total number, 710.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Source: Scheme data.

## Appendix Table 6

### Applications received from survivors in jail and/or with serious criminal convictions, 1 July 2018 to 31 December 2020 (30 months)

**Appendix Table 6** identifies the number of applications received from survivors in jail and/or with serious criminal convictions across the Scheme's lifetime, based on the jurisdiction the survivor applies from. The data will be presented by jurisdiction.

**New South Wales.** Total requests with serious criminal conviction only, 32. Total requests applying from jail only, less than 5. Total requests applying from jail with a serious criminal conviction, less than 5.

**Victoria.** Total requests with serious criminal conviction only, 27. Total requests applying from jail only, less than 5. Total requests applying from jail with a serious criminal conviction, 14.

**Queensland.** Total requests with serious criminal conviction only, 121. Total requests applying from jail only, 11. Total requests applying from jail with a serious criminal conviction, 14.

**South Australia.** Total requests with serious criminal conviction only, 22. Total requests applying from jail only, less than 5. Total requests applying from jail with a serious criminal conviction, 6.

**Western Australia.** Total requests with serious criminal conviction only, 33. Total requests applying from jail only, less than 5. Total requests applying from jail with a serious criminal conviction, 7.

**Tasmania.** Total requests with serious criminal conviction only, 15. Total requests applying from jail only, less than 5. Total requests applying from jail with a serious criminal conviction, less than 5.

**Northern Territory.** Total requests with serious criminal conviction only, less than 5. Total requests applying from jail only, 0. Total requests applying from jail with a serious criminal conviction, 0.

**Australian Capital Territory.** Total requests with serious criminal conviction only, 0. Total requests applying from jail only, 0. Total requests applying from jail with a serious criminal conviction, 0.

**Overseas.** Total requests with serious criminal conviction only, less than 5. Total requests applying from jail only, 0. Total requests applying from jail with a serious criminal conviction, 0.

**Total.** Total requests with serious criminal conviction only, 252. Total requests applying from jail only, 22. Total requests applying from jail with a serious criminal conviction, 35.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Note b: One applicant did not provide residential information.

Source: Scheme data.

# Appendix Table 7

## Number of requests received and outcomes, to 31 December 2020 (30 months)

**Appendix Table 7** presents the status of applications received for those applicants with a serious criminal conviction and/or applying from jail. This data is across the life of the Scheme and is presented based on the application status.

**Application accepted.** Total requests with serious criminal conviction only, 106. Total requests applying from jail only, less than 5. Total requests applying from jail with a serious criminal conviction, and exceptional circumstances, 9. Total requests applying from jail with a serious criminal conviction, and a serious criminal conviction, less than 5.

**Application not accepted.** Total requests with serious criminal conviction only, 7. Total requests applying from jail only, less than 5. Total requests applying from jail with a serious criminal conviction, and exceptional circumstances, less than 5. Total requests applying from jail with a serious criminal conviction, and a serious criminal conviction, less than 5.

**Application pending.** Total requests with serious criminal conviction only, 139. Total requests applying from jail only, 17. Total requests applying from jail with a serious criminal conviction, and exceptional circumstances, 24. Total requests applying from jail with a serious criminal conviction, and a serious criminal conviction, 7.

**Total applicants.** Total requests with serious criminal conviction only, 252. Total requests applying from jail only, 22. Total requests applying from jail with a serious criminal conviction, 35.

Source: Scheme data.

# Appendix Table 8

## Survivor characteristics for applications received from survivors in jail and/or with serious criminal convictions, 1 July 2018 to 31 December 2020 (30 months)

**Appendix Table 7** includes the applicant characteristics for applicants with a serious criminal conviction and/or applying from jail across the life of the Scheme. This data is presented by the applicant characteristics.

**Male applicants.** Proportion of applicants with serious criminal conviction only, 93%. Proportion of applicants applying from jail only, 95%. Proportion of applicants applying from jail with a serious criminal conviction, 100%.

**Applicants who identified as Aboriginal and Torres Strait Islander.** Proportion of applicants with serious criminal conviction only, 42%. Proportion of applicants applying from jail only, 55%. Proportion of applicants applying from jail with a serious criminal conviction, 34%.

**Applicants who identified as a person with a disability.** Proportion of applicants with serious criminal conviction only, 63%. Proportion of applicants applying from jail only, 55%. Proportion of applicants applying from jail with a serious criminal conviction, 37%.

**Aged 70 or over.** Proportion of applicants with serious criminal conviction only, 9%. Proportion of applicants applying from jail only, 9%. Proportion of applicants applying from jail with a serious criminal conviction, 0%.

Note a: Percentage totals may not add to 100 as more than one attribute may apply to individual applicants.

Source: Scheme data.

# Appendix Table 9

## Number of redress payment offers reduced due to a prior payment, 1 July 2018 to 31 December 2020 (30 months)

### In 2018 to 19:

- 130 applicants had an offer of redress payment reduced due to a prior payment
- 85 applicants identified as a person with disability had a redress offer reduced due to a prior payment
- 65% of applicants that had an offer of redress payment reduced due a prior payment also identified as a person with disability
- the average amount deducted for prior payments by applicants who identify as a person with a disability was \$39,932.

### In 2019 to 20:

- 1,292 applicants had an offer of redress payment reduced due to a prior payment
- 697 applicants identified as a person with disability had a redress offer reduced due to a prior payment
- 54% of applicants that had an offer of redress payment reduced due a prior payment also identified as a person with disability
- the average amount deducted for prior payments by applicants who identify as a person with a disability was \$45,510.

### In 2020 to 21:

- 673 applicants had an offer of redress payment reduced due to a prior payment
- 368 applicants identified as a person with disability had a redress offer reduced due to a prior payment
- 55% of applicants that had an offer of redress payment reduced due a prior payment also identified as a person with disability
- the average amount deducted for prior payments by applicants who identify as a person with a disability was \$43,359.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Source: Scheme data.

# Appendix Table 10

## Revocations of redress offers, 1 July 2018 to 31 December 2020 (30 months)

Appendix Table 10 identifies the number of revocations of redress offers, the outcome of the revocation and the status of revocations. This data applies across the Scheme's lifetime.

**Revocations declined.** Total number, 14.

**Revocations approved and new decision made.** Total number, 28.

**Revocations completed.** Total number, 42.

**Revocation approved but new decision not yet made.** Total number, 20.

**Approved and new decision made, pending informing the applicant.** Total number, 11.

**Revocations currently in progress.** Total number, 31.

**Total completed revocations plus revocations currently in progress.** Total number, 73.

Source: Scheme data.

## Appendix Table 11

Total number of applications received and finalised and number of applications from survivors who identified as people with disability, 1 July 2018 to 31 December 2020 (30 months)

**Number of applications received by the Scheme.** 2018 to 19 total, less than 4,185. 2019 to 20 total, 3,125. 2020 to 21 total, less than 1,820. Total, 9,117.

**Number of applications from survivors who identified as people with disability.** 2018 to 19 total, 1,950. 2019 to 20 total, 1,566. 2020 to 21 total, 840. Total, 4,356.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Source: Scheme data.

## Appendix Table 12

### Survivors that have accessed a redress support service, 1 July 2018 to 31 December 2020 (30 months)

**Number of survivors that have accessed a redress support service.** 2018 to 19 total, 916. 2019 to 20 total, 1,241. 2020 to 21 total, 647. Total, 2,804.

**Number of survivors that identified as a person with a disability who accessed a redress support service.** 2018 to 19 total, 629. 2019 to 20 total, 892. 2020 to 21 total, 456. Total, 1,977.

Note a: The data for 2020 to 21 is incomplete and only accounts for the first half of the financial year.

Note: This data is sourced from question 59 of the National Redress Scheme application form.

# Attachments

## Attachment 1

### Trauma and memory: implications for the National Redress Scheme

This paper briefly explores the understandings of trauma and memory, drawing on the Royal Commission's 'Empirical Guidance on the Effects of Child Sexual Abuse on Memory and Complainants' Evidence' (2017), a small sample of emerging academic research and feedback from submissions from support services and survivors received by the Second Year Review of the National Redress Scheme (the Review). Taken together, this research suggests applicants are capable of recalling traumatic events such as sexual abuse during early childhood. As memories are sometimes the only remaining evidence of institutional sexual abuse, the importance of believing accounts of abuse is significant, as being disbelieved causes further harm. The importance of this to the National Redress Scheme (the Scheme) cannot be underestimated because improved understandings of trauma and memory are integral to a survivor's recovery and pivotal to the just determination of an application for redress.

#### ***The Royal Commission***

To establish the earliest age of reliable recall, the Scheme was designed with reference to the Royal Commission's Empirical Guidance, which states that 'children and adolescents may be able to recall events from before they were aged 5 to 7, but most adults cannot'. However, it is important to note this guidance was prepared to meet the Royal Commission standard of 'beyond reasonable doubt', not the standard of proof required under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* of 'reasonable likelihood'. The Royal Commission, however, also stressed when evaluating the likelihood of child sexual abuse: 'It is difficult to draw general conclusions about the effects of child sexual abuse on children's and adults' memory. Instead, an individualised approach to understanding each complainant is key.'

The difference between the number of memories formed in early childhood and the reliability of these memories has not always been recognised. For applicants who recall abuse during early childhood, to be found ineligible because they were judged too young to be able to form reliable memories, is traumatising and conveys disbelief to the survivor of their experiences.

## ***Emerging academic research***

Emerging research suggests memories of events from the age of five years onwards tend to be more memorable than earlier years. However, they also found it is significantly more likely that traumatic experiences throughout infancy and childhood will form memories that will be reliably remembered into adulthood.

This research supports the number of memories formed during the earliest years of life being minimal but not uncommon. This suggests that, while not uncommon, it is also important to distinguish between the number of memories formed and their accuracy. The number formed may be minimal. However, this does not mean the memories that are formed are any less reliable than those formed in later years. Children in 'maltreatment evaluations' show particularly robust memories of childhood sexual abuse during investigations. Repeatedly, trauma has been shown to strengthen the accuracy of long-term memory after accounting for individual differences.

While there has been confusion around the difference between inconsistent recall and inaccurate recall, concerns have also been raised around the potential for false memory. There is very little contemporary research that supports false memories in disclosure of childhood sexual abuse. While small details like 'Was he standing?' or questions such as 'Was his shirt blue?' may be susceptible to suggestion, the details of taboo acts such as sexual abuse are highly resistant to suggestion.

This research found that only through an intentional process of drugs, hypnosis, doctored images and heavy suggestion by family members was it possible for practitioners to intentionally 'plant' false recovered memories in patients, but these memories faded across time. Contemporary research does not support that 'false memories' are a consideration in the standard practice of psychotherapy, guided imagery, EMDR and hypnosis.

Understanding of trauma and memory continues to evolve through research, with some studies raising the possibility of reliable memories being formed during early childhood. In acknowledging this emerging research, it is reasonable to expect that memories of sexual abuse that took place decades earlier might contain inconsistencies. While trauma changes the way memory is recovered, emerging research suggests that traumatic memory is reliable and that it is not likely that applicants can experience false memories of sexual abuse.

## ***Submissions***

Submissions to the Review from support services and survivors highlighted emerging academic research, which found children start to form reliable memories at an average age of 3.5 years and encoding of memories can occur in the second year of life. From birth to around five years of age, a child undergoes rapid neurological development, particularly in the area of the brain that controls learning and memory.

Blue Knot, a support service and research advocacy group to survivors, found applicants for redress may struggle to disclose the full extent of their abuse in their application if they have

any uncertainty over who will see the contents of the application. Support services advise that memories of details surrounding abuse can resurface over a long time frame, with different details being more dominant at different times. Accounts of memories that do not feature forgetting and gaps are highly unusual, although they are significantly more common as a result of trauma. These gaps often vary across each time the person is requested to disclose their experiences and are reflective of inconsistent recall as opposed to inaccurate recall.

Submissions from support services raised concerns that some applicants had been denied redress because the quality of their memories was inconsistent or not credible. Yet current research raises the possibility that adults can remember traumatic events that took place before the age of five and this unseats previously held understandings of the formation of early traumatic memory. For survivors of abuse that took place during early childhood, the Scheme needs to ensure it is fairly acknowledging the significant trauma of their sexual abuse and their need for access to counselling and services to support their recovery.

### ***Implications for the National Redress Scheme***

In deciding whether an application to the Scheme has met the standard of proof of 'reasonable likelihood', the scheme's independent decision makers (IDMs) must consider the applicant's capacity to form memories at the time they describe the abuse as having occurred. This requires the Scheme to ensure regular trauma informed training of all redress staff, including specifically IDMs, and to embed these understandings within the Scheme. Understanding memory, and the distinctive features of traumatic memory, is crucial for all IDMs making determinations on an applicant's eligibility for redress.

The Scheme must accommodate the way unreported traumatic childhood memories are disclosed in adulthood, as most people who have been sexually abused as children do not disclose until they are adults. Blue Knot is of the strong view that an individual's sense of safety to disclose will influence their capacity to recall or disclose memories at any single time point, as disclosure of abuse is influenced by other people's reactions. It is critical therefore that all applicants for redress are believed pending a determination by the Scheme on a survivor's application for redress and that this determination is based on the findings of contemporary peer-reviewed empirical research.

This suggests that IDMs may require further training based on trauma and memory and its relevance to the standard of proof of 'reasonable likelihood'. It also suggests a strong case to support the peer review and moderation of IDM determinations as part of quality assurance.

In conclusion, the Review found emerging research that suggests traumatic memories can be recalled at an earlier age than is currently understood by some IDMs. Current determinations appear to reflect a misunderstanding of trauma and memory. They indicate that the Royal Commission's guidance had been erroneously interpreted and determinations appear to be inconsistent with the burden of proof of 'reasonable likelihood'. IDMs must be made aware

of contemporary research regarding trauma and memory, as it is critical to their ability to make just determinations that are consistent with section 10(4) of the Act.

Source: Research conducted as part of the Review.