**31 August 2018**

Committee Secretariat

Joint Select Committee on the Royal Commission into Institutional Responses to Child Sexual Abuse – oversight of redress related recommendations

Department of the Senate

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Thank you for the opportunity to provide a response to the inquiry into the Australian Government policy, program and legal response to the redress-related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, including the establishment and operation of the National Redress Scheme (NRS) and ongoing support of survivors.

People with Disability Australia ([PWDA](http://www.pwd.org.au/)) has been funded by the Department of Social Services to support people with disability who have been affected by the Royal Commission into Institutional Responses to Child Sexual Abuse. We have also been an active member of the Commonwealth Redress Advisory Council, and have previously provided submissions to the Senate Standing Committee on Community Affairs regarding the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and related Bill, as well as the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and related Bill.

Firstly, we would like to endorse knowmore’s submission to this inquiry, and echo their concerns in relation to the implementation of the NRS. We also support the comments made by our colleague, Children and Young People with Disability Australia (CYDA) to this inquiry.

In addition to our support for these submissions, we would also like to reiterate some of the concerns that we have raised in previous work on this topic.

For instance, we remain concerned about the exclusions that apply to some groups of people. This includes those who will not be covered by the Scheme because the institutions in which they experienced institutional child sexual abuse have not signed up to the NRS, and those who have been deemed ineligible due to having been imprisoned for five or more years. While the latter category can be approved in certain circumstances by the relevant state or territory Attorney General or the Commonwealth Attorney General, there is no publicised or transparent criteria outlining the situations in which such a determination may be made. The only criteria appears to be whether approving redress for the person in question would bring the Scheme into disrepute or negatively affect public confidence in or support for the NRS. We are concerned that such decisions will therefore be subjective, and will deny people deemed ineligible for the Scheme a right to appeal the Attorney General’s decision. Indeed, this speaks to a broader concern of the decisions made under the NRS not being overseen by any external review processes.

Furthermore, through our work with survivors with disability we have become concerned about the impact that the NRS will have on compensation payments that are possible through civil litigation and/or mediated compensation claims. We have heard from a few of our clients that some lawyers, upon reaching a certain figure in mediation, have told them that if that amount of compensation is not accepted, the client will then have to take their matter to court. This figure is often equivalent to a likely NRS payment. This has been a distressing experience for our affected clients, some of whom have felt coerced into accepting these amounts. Given that compensation payments made through civil litigation and monetary payments available through the NRS have quite different purposes and are based upon different criteria, we are therefore concerned to ensure that the NRS does not pose a barrier to civil litigation.

PWDA’s individual advocates have sought information from various law firms regarding what impact the NRS will have on civil compensation claims and the amount of compensation that will be made available to those who have experienced institutional child sexual abuse. These law firms were unsure of what the impact would be, and were unsure how such an impact would be addressed. Some survivors with disability might feel, due to the potentially larger amount of money they could get, that civil litigation is their preferred option financially, even if it doesn’t support them in the same ways psychologically (through the provision of counselling support, a direct personal response and the general person-centred and trauma-informed principles of the NRS). Clear information about the relationship between these options is therefore necessary – not only for potential applicants, but also for support services who may be supporting them through this process.

PWDA is also concerned to ensure that people accessing the NRS are adequately supported to engage throughout this entire process. We feel that counselling and support services must be available throughout the entire application stage, not just after an offer of redress has been made and accepted. Furthermore, we are concerned by the limits imposed on counselling services, particularly as these limits do not reflect a trauma-informed response, nor recognise that survivors may continue to require a range of different supports across their lifespan.

The limit of (up to) $5,000 available for counselling is prescriptive and inadequate, particularly where the provision of this counselling is constrained to certain providers. This may lead to inequities between states and territories. Furthermore, we are aware of poor counselling support that has been offered to victims through the Royal Commission, where organisations were funded to provide counselling, rather than allowing and funding individuals to contract their own counsellor. Our advocates and clients found that many of the services and counsellors were not suitably qualified in working with trauma, and even fewer appeared to have expertise in working with people with intellectual disability or specific cultural needs. This limitation must not be replicated through the NRS. There must be sufficient flexibility to allow survivors to choose their preferred counselling provider.

Finally, PWDA has concerns about the access that institutions will have to the information provided by NRS applicants. While the application form explicitly outlines which sections will be shared with the institutions responsible for the survivor’s abuse, we are concerned that this may deter and confront possible applicants. Survivors may not feel comfortable having their supporting documentation, such as victim’s impact statements, shared with the responsible institution. Furthermore, this may negatively impact survivors who initially explore the supports (financial and otherwise) that would be available to them through the NRS, before ultimately deciding to go down the route of civil litigation.

Thank you again for the opportunity to provide comment on the NRS. We would welcome any further consultation or discussion on the matters we have raised.

Yours sincerely,



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Co-Chief Executive Officer

People with Disability Australia