



PEOPLE WITH DISABILITY
AUSTRALIA

**A voice
of our
own**

**Submission to the Joint Select Committee on
Implementation of the National Redress
Scheme**

**NOVEMBER
2020**

About PWDA

People with Disability Australia (PWDA) is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation; we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation.

PWDA's primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

We have a vision of a socially just, accessible and inclusive community, in which the human rights, belonging, contribution, potential and diversity of all people with disability are recognised, respected and celebrated with pride. PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.

PWDA is a NSW and national peak organisation and founding member of Disabled People's Organisations Australia (DPO Australia) along with Women With Disabilities Australia, First Peoples Disability Network Australia, and National Ethnic Disability Alliance. Disabled Peoples Organisations (DPOs) are organisations that are led by, and constituted of, people with disability. The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes, strategic priorities and opportunities.

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1. Introduction

PWDA welcomes this opportunity to provide a submission in response to the *First Interim Report of the Joint Select Committee on Implementation of the National Redress Scheme* (First Interim Report).

Our policy positions in this submission are informed by our Redress-related work. PWDA's Redress project is funded by the Department of Social Services (DSS) to provide timely and seamless access to trauma informed and culturally appropriate community-based support services to enable people to engage with the National Redress Scheme. One way we perform this role is by providing advice and assistance to the Scheme Operator and staff, and Redress Support Services so that they can effectively support people with disability to engage with the Scheme. Our Redress team has been engaging with service providers, including providers of group homes, disability advocacy organisations, government agencies, health, justice, housing and homelessness services and other sectors to promote awareness of the scheme and PWDA's Redress support options. PWDA also provides information and assisted referral through a telephone helpline. And we have individual advocates who are assisting people directly with the application process in New South Wales and Queensland.

A redress scheme was envisaged by the Royal Commission as an essential means of delivering overdue justice for survivors of past child sexual abuse. PWDA believes that the Scheme is vital to ensure that survivors can access justice and essential supports throughout the course of their lives. We support the continuous improvement of the National Redress Scheme (the Scheme) to realise this goal, through redress and financial compensation by institutions that perpetrated and largely ignored the sexual abuse that occurred against children in their care. The first recommendation in the Royal Commission's *Redress and Civil Litigation Report*, focusing on justice for survivors, was for a redress scheme that provided 'fairness', in response to concerns raised by survivors:

"A number of survivors, and many survivor advocacy and support groups, have highlighted the importance to survivors of 'fairness' in the sense of equal access to redress for survivors and equal treatment of survivors in redress processes. They regard equal access and equal treatment as essential elements if a redress scheme is to deliver justice."¹

This recommendation framed the questions of 'fairness' and 'equality' around factors such as location, nature or type of institution and the continued existence or assets of the institution.² PWDA supports ongoing work to reduce inequalities of access and treatment connected to these factors. However, PWDA has grave concerns about the Scheme's fairness when it comes to delivering justice to the most marginalised survivors, many of whom are people with disability. Our recommendations aim to prevent the most marginalised people with disability being left behind by the Scheme and ensure they

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* . (2015) 4.

² Ibid.

benefit from efforts to provide greater consistency for survivors engaging with the Scheme including people in closed or 'hard to reach' settings such as boarding houses, group homes, mental health and forensic mental health units and prisons.

PWDA supports the four general principles for providing redress recommended in the *Redress and Civil Litigation Report*:

- a. Redress should be survivor focused.
- b. There should be a 'no wrong door' approach for survivors in gaining access to redress.
- c. 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.
- d. All redress should be offered, assessed and provided with appropriate regard to the needs of particularly vulnerable survivors.³

However, we are concerned that the Scheme operates in a manner that too frequently does not give effect to these principles.⁴ Part 1 of this submission is devoted to discussing issues contributing to this shortfall that impact people with disability in particular.

PWDA supports the Joint Select Committee's recommendations for immediate action (Recommendations 4 (removing the requirement for a Statutory Declaration to accompany redress applications), 5 (removing the practice of indexation of prior payments, to be reconsidered for the Second Interim Report, and in the interim applying indexation only until the date of application submission), 10-11 (new arrangements to ensure non-participating institutions join the Scheme) and 13 (close monitoring of operations during the COVID-19 pandemic)). These changes should be implemented as soon as possible.

The failure of certain institutions to join the Scheme has presented an insurmountable barrier to accessing justice for many survivors, leaving them in states of uncertainty, stress and distress. PWDA is pleased to see that the Committee recommended specific steps be taken towards publishing a final list of institutions who are not able to or do not intend to join the scheme and imposing penalties in appropriate cases and that these steps are being implemented. Survivors who are elderly or have health conditions placing their lives at risk desperately need clarity about the status of institutions they will be making a claim against.

While a list of certain institutions that have not yet joined the Scheme or signified their intent to join has now been published on the Scheme website, this list is not an accessible list which can be accessed and viewed by all people with disability. PWDA recommends that this list be published on the website or otherwise made available in accessible formats as soon as possible. It is stated on the website that the current list available at <https://www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined> is not exhaustive because it does not include, for example, defunct institutions. It is imperative that an accurate list of all non-participating and defunct institutions is published and/or made available in accessible formats as soon as possible, and that additional information be provided, where appropriate, to assist survivors to make a decision about whether to

³ Ibid, 135.

⁴ Ibid, 5.

pursue a Redress application. This could include any statement regarding an institution's intent to join the Scheme in future as well as information about funders of last resort in the relevant jurisdiction.

The majority of reform areas considered by the Joint Select Committee have been referred to the second anniversary review for consideration. It is disappointing to see that many of these deferred issues were the subject of clear recommendations, or at the least a potential reform agenda, in the final report of the previous Joint Select Committee, *Getting the National Redress Scheme right: An overdue step towards justice*. PWDA considers the delay in deciding on appropriate changes on many of these issues unacceptable, considering that the Scheme is now around two years old. Given that many Redress recipients, applicants and prospective applicants are ageing and/or in circumstances that intensify their need for emotional and financial support, the timeliness of changes in these areas will be crucial to protecting their rights and delivering justice.

Part 2 of our submission discusses several of these deferred areas of reform as well as aspects of the priority areas for the Second Interim Report.

Part 3 addresses two issues that are not addressed in the First Interim Report: (1) exclusions of certain groups from eligibility for Redress; and (2) accountability mechanisms, including the introduction of a direct complaint mechanism.

2. List of recommendations

Recommendation 1 – That the Department of Social Services review its data collection methods for the National Redress Scheme, in consultation with redress support services and survivors, to identify additional information to collect in order to improve the operation of the Scheme.

Recommendation 2 – That public education efforts to enhance awareness of the Scheme are increased as a matter of priority.

Recommendation 3 – That the Department of Social Services develop a proactive plan to enhance its engagement and outreach work to raise awareness of and access to the Scheme by people with disability.

Recommendation 4 – That the Department of Social Services revise funding arrangements for disability-specific redress support services to do outreach work with a view to facilitating longer-term relationship building with support services.

Recommendation 5 – That the Department of Social Services implement changes to the current application process to reduce the level of trauma caused, in consultation with redress support services and survivors.

Recommendation 6 – That additional funding be provided to disability redress support services to build the capacity of mainstream services to support people with disability seeking to apply for redress, or that some of this work be undertaken directly by the Department of Social Services.

Recommendation 7 – That the Department of Social Services review the Scheme's existing services, systems and technologies and implement a strategy for enhancing their accessibility to prevent discrimination against people with disability.

Recommendation 8 – That the funding and contracting arrangements for redress support services are reviewed, giving consideration to whether they are adequately resourced and incentivised to operate in an accessible and disability-inclusive manner.

Recommendation 9 – That the Committee comprehensively review the issue of counselling quality and standards in addition to the reform areas listed in Recommendation 7, including:

- Considering the specific skills and training needed for counsellors to provide services to people with disability.
- Reviewing existing professional standards, frameworks and regulatory mechanisms for psychologists who work with survivors of child sexual abuse and people who have experienced trauma, to inform an assessment about appropriate standards and quality assurance mechanisms specifically for the National Redress Scheme.
- Considering intersectional needs of survivors around Aboriginality, culture, ethnicity, gender and sexuality.

Recommendation 10 – That the Committee consider the need for explicit guidance and resources to be provided to the Department of Social Services and redress support services to ensure that the legal capacity of survivors is respected and adequate supports are in place to allow this to occur.

Recommendation 11 – That the Department of Social Services develop a proactive engagement strategy to support people who have had particular difficulties accessing and engaging with the Scheme due to the COVID-19 pandemic.

Recommendation 12 – That the Assessment Framework be revised to implement the model proposed by the Royal Commission which would allow the decision maker to consider type of abuse as one of several factors within the broader category of ‘severity of abuse’.

Recommendation 13 – That the existing Guidelines, or at the least a summarised version, be made available so that survivors can be provided with appropriate legal advice about preparing their application.

Recommendation 14 – That the maximum monetary payment be increased to \$200,000 as recommended by the Royal Commission, rather than \$150,000.

Recommendation 15 – That lump sum payments for the counselling and psychological component of redress be assessed primarily on severity of the impact of abuse, reflecting the extent to which the abuse has disrupted the survivor’s life and created ongoing psychological problems for them.

Recommendation 16 – That consideration be given to implementing a legal and policy framework containing requirements for private lawyers and law firms providing services in the Redress space, and that it would be appropriate to legislate to impose caps on the legal fees that can be charged.

Recommendation 17 – That the provisions regarding assessment of applicants who are imprisoned and the eligibility of people who are in gaol when seeking to make an application be applied in the inverse, so that these groups can access redress *unless* the Operator makes a determination that providing redress would bring the scheme into disrepute.

Recommendation 18 – That the Committee consider the viability of arrangements whereby state and territory governments agree to consistently act as funders of last resort in cases where an institution within their jurisdiction is defunct, regardless of whether the government institution has been determined as being equally responsible for the abuse.

Recommendation 19 – That in reviewing current processes for arranging a direct personal response, consideration be given to requiring a contact person from the institution to make initial contact with survivors seeking a direct personal response.

Recommendation 20 – An early payment scheme for sick and elderly survivors be established as a matter of priority.

Part 1

Part 1 of our submission addresses and makes recommendations about the following issues that impact people with disability specifically, or disproportionately:

- Lack of awareness and inadequate outreach services to survivors with disability, including through the provision of information and advice to Redress support services.
- Ableism pervading the Scheme and mainstream support services, which operate in a manner that too frequently treats disability as an ‘add-on’ rather than as integral to the Scheme’s workings.
- Inadequate access to timely and effective counselling and psychological services and lack of alternative social supports survivors may need throughout their lives as possible Redress outcomes.
- Arrangements impacting survivors’ legal capacity and decision-making about engagement with the Scheme.

3. Awareness of the scheme and outreach

Recommendation 9 in the First Interim Report is that the second anniversary review should examine the reasons for the relatively low rate of applications for redress. Of the estimated 60,000 people eligible for redress under the NRS, just over one tenth had made applications to the National Redress Scheme as at February 2020.⁵ While improved accessibility of civil justice avenues following reforms flowing from the Royal Commission into Institutional Responses to Child Sexual Abuse is likely playing a part, it is unlikely to be the sole reason for the discrepancy. Further, if many more people are opting to litigate, as raised by the Australian Lawyers Alliance when giving evidence before the Joint Select Committee,⁶ this raises questions about awareness and accessibility of the Scheme, given that civil litigation is a much more expensive process.

As noted in the First Interim Report, re-traumatisation is an issue for many survivors. Many survivors of child sexual abuse live with disability and trauma *as a result of* the sexual and other forms of abuse they experienced as children, and the Redress process can be a stressful and distressing process that exacerbates and creates trauma because it forces people to recount and relive horrific experiences of abuse. However, the Scheme’s data

⁵ Joint Select Committee on Implementation of the National Redress Scheme, Parliament of the Commonwealth of Australia, *First Interim Report of the Joint Select Committee on Implementation of the National Redress Scheme* (2020) 45.

⁶ *Ibid*, 48.

collection methods mean that it is not possible to say with certainty how many people with disability are engaging with the Scheme and whether people with disability are underrepresented amongst applicants.

The Committee heard a substantial amount of evidence from survivors and organisations about the potential factors involved in low uptake generally. However, the First Interim Report referred this issue to the second anniversary review, recommending that in examining the relatively low rate of applications for redress, the Committee should, among other things, consider the role of state and territory reforms to improve civil litigation options and the extent to which survivors are discouraged from accessing the Scheme due to the application process in addition to possible impacts of re-traumatisation.

As noted by the Committee, this issue requires urgent attention. PWDA believes there was enough information before the Committee to make recommendations that would provide an initial response. We discuss below the changes and initiatives we believe are appropriate, bearing in mind that there are increased barriers to people with disability accessing the Scheme. This section of our submission also addresses the low rate at which people with disability are using Redress support services and ways of improving outreach so that more people utilise these services. Basic accessibility issues affecting both the Scheme and mainstream support services are among those that place people with disability at a disadvantage and, closely connected to this, ableist attitudes and practices permeating the Redress space also play a role; we take up these issues in the following section.

Who is using the scheme?

According to the DSS national data set as at October 2019, 47% of Scheme applicants had a disability.⁷ Since the experience of childhood sexual abuse often causes or leads to individuals having disability, it is possible that the proportion of eligible people who have disability is higher than this. The DSS data does not tell us with certainty how many people with disability are among the applicants to the Scheme. Data about the scheme is based on information collected in the application form; the question whether a person has a disability is optional. The only other questions that are potentially relevant to disability on the form are: whether or not a person has a Power of Attorney, Guardianship or Financial Management Order in place; and whether a person would like to appoint a nominee to act for them.

While it is appropriate for the question about disability to be optional in light of privacy obligations, PWDA believes it would be beneficial for some additional data about the disability cohort to be collected. Even bearing in mind limitations of an optional question, minor adjustments could be made to the application form to allow for a more useful dataset to be generated. In particular, it would be useful from a practical perspective to know what assistance people with disability make use of, such as whether they access disability supports specifically, and what supports they would need to engage with the Scheme. PWDA also recommends that an additional question be asked about whether a person has

⁷ Department of Social Services 'Redress Support Services and redress application data.' (2019).

‘a mental illness or psychosocial disability’. While some people understand ‘psychosocial disability’ as falling under the banner of disability, others in this category would identify only as a person with mental illness. Chronic illness is another condition classified as a disability, but which some people may not understand as such. Alternatively, a definition of disability could be provided in the form to indicate the circumstances that are covered.

Currently the data DSS *generates* about the scheme does not include the percentage of Redress *recipients* who have disability. It would be useful to have this information in order to understand whether people with disability are progressing through the application process, in addition to information about the reasons why people might leave before completing the application process. DSS engagement staff have been actively reviewing the approach to data collection and collaborating with Redress support organisations such as our own in this endeavour. We look forward to further discussions with DSS about refining data collection methods and adding additional data points to put the Scheme in the best position to understand the needs of the eligible person, applicant and recipient populations.

Recommendation 1 – That the Department of Social Services review its data collection methods for the National Redress Scheme, in consultation with redress support services and survivors, to identify additional information to collect in order to improve the operation of the Scheme.

Awareness and accessibility of the scheme

Our Redress project team has been engaging with service providers, including providers of group homes; disability advocacy organisations; government agencies; health, justice, housing and homelessness services; and other sectors to promote awareness of the scheme and PWDA's Redress support options.

In our work to proactively improve awareness of and access to the Scheme by people with disability, our focus has been people who are facing additional barriers to accessing the scheme. We have been particularly focused on people who are still, or who have recently been, institutionalised in large residential settings, group homes, boarding houses and mental health units. These are people with disability who are survivors and who are living in what we might call ‘hard-to-reach’, or closed or institutional settings. We are concerned that the Scheme and Redress Support Services are unknown to, or inaccessible for, many people with disability living in situations such as these.

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

When working with people with disability who are aware of the scheme and are potentially eligible for redress, we're also finding that they often face multiple social or systemic barriers preventing them from making an application safely:

- A significant proportion of survivors are unwilling to apply for Redress because they are still deeply traumatised by the experience of abuse and do not want to be re-traumatised.
- Survivors are often living in marginalised, unsafe or insecure housing with insufficient access to social security and income or faced with threats of terminating tenancies.
- They may be currently experiencing violence and be unable to access domestic violence services or mental health support, or face various other barriers which prevent them from engaging with the scheme.

People whose daily life circumstances are so all-consuming are unlikely to engage with the Scheme without appropriate and effective supports in place.

Based on our advocacy experiences many people with disability also live lives overshadowed by complexities or experience intersectional oppression which make it disproportionately difficult for them to access the Scheme, even if they are aware of it. Intersectionality is a framework for analysing the 'interrelationship between multiple categories of identity and systems of oppression.'⁸ Intersectional oppression is a significant issue for people with disability; simultaneous oppressions of disability and income inequality in particular interact to heighten barriers for people with disability engaging with the Scheme. Some of our clients, for example, have very high needs in terms of support to assist them with daily living and livelihood; others live in unsafe or insecure housing, with insufficient social security. Drug and alcohol dependency, prior or current experiences of violence, and difficulties accessing effective mental health support are other factors impacting the support needs of our Redress clients. Such issues may cause people either to choose not to access the Scheme, or to give up while their application is in train.

Use of redress support services

The October 2019 DSS Redress dataset tells us that the number of people with disability who are using Redress support services is disproportionately low. At the national level, only 13% of clients with disability are accessing support services compared to 47% of applicants who have disability.⁹ PWDA is concerned that the low uptake of Redress support services may mean that people with disability are less likely to complete the application process. As noted above, DSS currently does not provide Redress support services with data about the proportion of Redress *recipients* who have disability, so it is not possible to determine whether this number is disproportionately low compared to the number of applicants who have disability. The reasons for the low use of Redress support services by people with disability are not clear from the DSS data. However, in PWDA's experience a background of violence, forced treatments and other harms in institutional and other service settings and contexts can and does prevent people from engaging with

⁸ Louise St Guillaume and Cate Thill, 'An intersection in population control: welfare reform and indigenous people with partial capacity to work in the Australian northern territory' (2018) 5(2) *Disability and the Global South* 1508, 1509.

⁹ Above n 7.

social services including those services that are funded to assist with Redress applications.

Improving engagement, outreach and advocacy support

One of the recommendations made by the previous Joint Select Committee was that ‘the government ensure that redress support services are appropriately funded so that they are available to all survivors, regardless of the survivor’s location, cultural or other barriers.’¹⁰

Currently we are among only three disability-specific Redress support services. While it is vital that disability-specific services are funded to provide support, other Redress support services must also be equipped to assist people with disability when needed, using approaches that are disability inclusive. It is simply not possible for the small number of disability organisations who are also Redress support services to meet the needs of all people with disability who are engaging with the Scheme or wish to do so. Furthermore, PWDA believes that more understanding of the complexity of some of the circumstances of survivors including people with disability needs to be built into the design of the overall engagement, outreach and advocacy support funded by DSS. More work is needed to ensure that mainstream services are engaging constructively and effectively with 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.

PWDA urges the government to take action to improve awareness and accessibility of the scheme as soon as possible, noting that the Committee considered the issue of the relative lack of public education about the Scheme now, when compared to the Scheme’s commencement.

Our recommendations are:

Recommendation 2 – That public education efforts to enhance awareness of the Scheme are increased as a matter of priority.

Recommendation 3 – That the Department of Social Services develop a proactive plan to enhance its engagement and outreach work to raise awareness of and access to the Scheme by people with disability.

Recommendation 4 – That the Department of Social Services revise funding arrangements for disability-specific redress support services to do outreach work with a view to facilitating longer-term relationship building with support services.

¹⁰ Above n 5, 150.

Currently given the small number of disability-specific Redress support services and our level of resourcing, we are not able to meet the needs of all people with disability wishing to engage with the Scheme and provide information and advice to relevant support services across the country.

Our understanding is that the engagement work undertaken by DSS has tended to focus on specific geographical areas likely to need additional attention in terms of support, outreach and advocacy. We urge the government to ensure that the engagement, outreach and advocacy work undertaken and funded by DSS responds specifically to barriers discussed above confronting people with disability in engaging with the Scheme, including whether people are in closed institutional 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. This would respond to Recommendation 50 in the *Redress and Civil Litigation Report*, which was that the Scheme ‘should consider adopting particular communication strategies for people who might be more difficult to reach, including ... people with disability and people with mental health difficulties’.¹¹

Recommendation 9 in the First Interim Report recommends that the second anniversary review in examining the reasons for the relatively low rate of applications for redress should consider ‘[w]hether the application process causes undue harm to survivors through re-traumatisation’.¹² It is clear to us from our work, and evident from the evidence presented by survivors and organisations to the Committee that the application process does in fact cause significant trauma for a proportion of survivors. Further consideration of whether the application process is re-traumatising is likely to result in similar submissions to those currently before the Committee.

Recommendation 5 – That the Department of Social Services implement changes to the current application process to reduce the level of trauma caused, in consultation with redress support services and survivors.

4. Ableism and disability inclusion

This section of our submission addresses the issue of ableism permeating the Redress space and measures that could be implemented in response, as well as accessibility issues that continue to make the Scheme disproportionately difficult for people with disability to access and navigate. These barriers diminish the Scheme’s ability to realise

¹¹ Above n 1, 360.

¹² Above n 5, 53.

the core vision in the National Disability Strategy (NDIS) for an ‘inclusive Australian society that enables people with disability to fulfil their potential as equal citizens.’¹³

It is essential that people with disability are able to access justice through the National Redress Scheme on an equal basis with others, including through the provision of supports, accommodations and advocacy where necessary. Equality has been foregrounded as central to the effective operation of the Scheme; it is also at the heart of the Convention on the Rights of Persons with Disabilities (CRPD), which Australia has signed and ratified. Inclusive equality is a model of equality developed throughout the Convention that ‘embraces a substantive model of equality and extends and elaborates on the content of equality’, including through ‘an accommodating dimension to make space for difference as a matter of human dignity’.¹⁴ Article 5 of the CRPD protects the right to equality before the law without any discrimination.

Reflecting the centrality of disability to the Scheme

PWDA has found through our Redress project work that there are shortcomings of the National Redress Scheme and mainstream services facilitating the Scheme’s operation when it comes to the inclusion and full and equal participation of people with disability. PWDA acknowledges the steps taken by DSS to accommodate and engage with the concerns of survivors with disability, including through consultation with disability specific Redress support services. Yet our Redress project workers and advocates have observed a number of ableist assumptions and practices embedded in the Scheme and mainstream support services that place people with disability at a disadvantage.

Disability is central to the Redress space in the sense that many survivors were disabled by the sexual abuse they suffered as a child, or developed a disability as a consequence. Some people have physical or cognitive disability or chronic illness due to being sexually abused and many survivors of child sexual abuse live with psychosocial disability and complex trauma because the experience of abuse was so disturbing and debilitating. The inclusion of counselling and psychological support as a core redress outcome recognises the centrality of psychological harm as an impact of child sexual abuse. However, we have found that disability tends to be treated in certain contexts as an ‘add-on’ or ‘special’ category by the Scheme and mainstream support services rather than being rightly acknowledged as central to the Scheme. There is a sense that the needs of people with disability can be largely met through specialist Redress support services such as PWDA. Limited funding and resources make this impossible. People with disability need to access a range of services in the course of engaging with the Scheme over and above disability specific Redress support services.

It is crucial that the Scheme itself, as well as mainstream support services, adapt their systems and processes and develop the necessary expertise to accommodate and support people with disability beyond physical accessibility measures. Many mainstream services, for example, have not embedded a Disability Action Plan within their planning and policy development. We have found that there are cases where mainstream support services and policies are actively harmful for people with disability because of a lack of

¹³ Commonwealth of Australia, *National Disability Strategy 2010-2020* (2011) 22.

¹⁴ Committee on the Rights of Persons with Disabilities, *General comment No. 6* (2018) *on equality and non-discrimination* (26 April 2018), CRPD/C/GC/6, 3.

understanding of the complex circumstances confronting many people with disability in their daily lives, particularly people with psychosocial disability and complex trauma.

Given the high proportion of people with disability amongst potential Scheme applicants, mainstream services involved in Redress must be resourced and trained to engage effectively and constructively with people with disability, giving them the same level of attention and quality of service as their non-disabled clients. This will often require adjustments and accommodations to be made and may require specific training in working with disabled clients. It is vital, for example, that the Scheme's staff and all Redress support services are trained in trauma-informed and disability inclusive approaches to service provision and in working with people with a history of violence. The National Redress Scheme risks alienating and leaving behind a significant proportion of eligible survivors if workers and services supporting the Scheme's operation do not understand the impacts of trauma and violence and how to support people impacted by these experiences.

DSS currently relies on disability redress support services to be capacity builders for mainstream services. However, given current funding levels and the numerous organisations across Australia working in the redress space, our capacity building work does not go nearly far enough.

Recommendation 6 – That additional funding be provided to disability redress support services to build the capacity of mainstream services to support people with disability seeking to apply for redress, or that some of this work be undertaken directly by the Department of Social Services.

Accessibility

Accessibility is one of the rights enshrined in the CRPD and is a precondition for the full and equal participation of people with disability in society. Article 9 of the CRPD requires States Parties to take appropriate measures to ensure that people with disability have equal access to:

“the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”

Measures to be taken by States Parties include identifying and eliminating obstacles and barriers to accessibility.

PWDA is concerned that the Scheme has from the outset been, and continues to be, inaccessible for many people with disability. This includes the information and communications technologies and systems the Scheme uses to communicate information to the public, clients and Redress recipients on the website and in brochures and correspondence, including documentation intended specifically for people with disability such as Easy Read versions of documents. One of the Easy Read options, for example, was a 30 page form that was far too unwieldy for some people with disability to make sense of. Options such as augmentative and alternative communication and assistive

technology for visually impaired and blind people are also not comprehensively incorporated within the Scheme and Redress support services.

PWDA has also found that the application form requires a level of detail that is challenging for people who have a cognitive disability, communication issues or problems with memory and would recommend that consideration be given to amending the form, or providing an alternative version of the form, that would enable these people to engage with the process on an equal basis with others. Many aspects of the Scheme's operation assume that everyone has internet access when this isn't always the case, such as forms you download from the web. Many people with disability do not have access to the internet for reasons connected to poverty and income inequality, making it a lot more difficult for them to access a variety of essential resources and documents relating to the Scheme.

Recommendation 7 – That the Department of Social Services review the Scheme's existing services, systems and technologies and implement a strategy for enhancing their accessibility to prevent discrimination against people with disability.

Recommendation 8 – That the funding and contracting arrangements for redress support services are reviewed, giving consideration to whether they are adequately resourced and incentivised to operate in an accessible and disability-inclusive manner.

Review mechanisms and engagement with survivors and survivor groups

Recommendations 1 and 2 in the First Interim Report address engagement with survivors and survivor groups and the constitution of the review panel. It is imperative that the National Redress Scheme make efforts specifically to engage with survivors with disability and their representative organisations, and that the review panel includes members who are people with disability. Representation of people with disability within these processes is one pathway towards design, initiatives and reforms that will be informed by the lived experience of people with disability and therefore be more likely to enhance the accessibility of the Scheme and Redress support services.

5. Counselling and social supports

The *Redress and Civil Litigation Report* recognised the value of counselling and psychological support in facilitating healing from child sexual abuse. The Royal Commission responded to comments from survivor advocacy and support groups emphasising how important it is that 'practitioners who work with survivors have appropriate capabilities, including trauma-specific training and relevant experience to work with survivors.'¹⁵ Considering the issue of the competency of counsellors, it was recommended that a public register of practitioners 'with appropriate capabilities to work

¹⁵ Above n 1, 182.

with clients with complex trauma' be designed and implemented by a group of professionals led by the Australian Psychological Society.¹⁶ It was envisaged that a practitioner's competency 'should be assessed against guidelines or requirements determined by those who we recommend be involved in the design and implementation of the public register.'¹⁷

The previous Joint Select Committee identified a number of disparities between the recommendations of the Royal Commission and the way in which counselling and psychological care is being facilitated by the National Redress Scheme, leading to Recommendation 19:

"In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments consider mechanisms to ensure that survivors have life-long access to counselling and psychological care that is available on an episodic basis, is flexible and is trauma-informed."¹⁸

One year later the First Interim Report has commented on concerning gaps and inequalities in the arrangements for counselling and psychological report. However, instead of recommending that immediate action be taken in response, the committee made a recommendation for the second anniversary review committee to examine four areas for reform of these arrangements, with the first being increasing access to counselling and psychological care services including financial counselling.¹⁹

That survivors continue to experience sometimes insurmountable difficulties with the accessibility and availability of counsellors is unacceptable. Despite the recommendations of the Royal Commission around the need for counsellors to have appropriate capabilities including skills working with people who have complex trauma, Redress support services have found that the ongoing inadequacy of counselling support provided through the Scheme is leaving many survivors without consistent, ongoing access to quality counselling and psychological support services. Inequalities identified by the Joint Select Committee in the provision of counselling between jurisdictions, and between urban, regional and rural areas,²⁰ detract from the Scheme's ability to deliver justice in a fair and equal manner.

PWDA is particularly concerned about the paucity of counsellors who are skilled, experienced and competent to work with people with disability, particularly people with cognitive disability, intellectual disability and those who need supports and accommodations in order to communicate with others, among the registered counsellors approved on the public register. Additional psychologists can be approved, but generally

¹⁶ Ibid, 196.

¹⁷ Ibid, 191.

¹⁸ Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, Parliament of the Commonwealth of Australia, *Getting the National Redress Scheme right: An overdue step towards justice* (2019) p. xii.

¹⁹ Ibid, 42.

²⁰ Above n 5, 29.

need to agree to specific terms with Victims Services agencies including fee limits, which may be a disincentive.

While PWDA acknowledges that some of the difficulties with counselling and psychological care arrangements for the Scheme are extraordinarily complex and relate to wider issues with counselling and psychological care services beyond the Redress context, these issues need to be addressed – to the extent that they can be dealt with via the Scheme – as a matter of priority.

Accessibility, availability and choice

Inconsistency between and within jurisdictions in terms of accessibility, availability and choice is a persistent problem with counselling and psychological care arrangements, resulting in some survivors being left entirely without support, while others are able to access ongoing services with few limits. Whether or not a person receives an up-front payment or accesses counselling and psychological services by a state or territory based declared provider of services depends on whether the jurisdiction in which they live is a declared provider of services under the Scheme. This leads to gross unfairness, in particular for people in Western Australia and South Australia and those who live overseas, who must rely on the up-front payment to cover their counselling costs. The maximum payment amount is \$5,000, and then only if the abuse the person suffered is classified as penetrative abuse. If the abuse is classified as exposure abuse the maximum drops drastically to \$1,250. Both of these amounts are entirely inadequate to support the many survivors who will need to use counselling services throughout their lives.²¹

Limits on the amount of counselling a person can receive also create inequalities in terms of availability depending on where a person lives. While Victoria places a cap on counselling hours per year, other jurisdictions that are declared providers of counselling and psychological services, such as NSW, do not cap counselling hours in this way. In regional and rural areas there is highly limited availability of counselling and psychological support services able to work with survivors of child sexual abuse, and the travel and costs involved can prevent people from using the services that are available. The Scheme is therefore operating in a manner which discriminates against people living in certain areas, especially survivors in remote areas, a situation that does not live up to the Royal Commission's vision for life-long access to counselling and psychological care and for equal access to redress.

Limits on the ability to choose a counsellor is another critical issue that was addressed in the First Interim Report. In jurisdictions which are declared providers of services, clients can generally only access counselling through services approved by the state or territory rather than private or specialist services. There is no certainty that payments can be made via the Scheme to enable a person to continue to work with an existing counsellor or choose a counsellor who is not on the approved list, with access and allocation practices varying between jurisdictions. This lack of choice may lead some people to decide not to take up an offer of counselling and psychological care under the Scheme. It was also

²¹ Australian Government, *National Redress Guide*, Version 1.03. '5.2 Counselling & psychological care under the Scheme' (2019) <<https://guides.dss.gov.au/national-redress-guide/5/2>>.

noted in the First Interim Report that there is uncertainty around the availability of counselling prior to a Redress offer being made, before or during the application process. PWDA has found that in NSW people are able to access counselling through the Scheme while they have an application in train, but it appears that this is not the case in all jurisdictions.

PWDA has also found that a significant number of people with disability are choosing not to take up offers of counselling, and we are concerned that this is in part due to ableist attitudes permeating services. Counselling services are often aligned with the medical model of disability and increasingly medicalised and risk-adverse approaches to trauma which are harmful, unhelpful and ineffective for many people with disability. Furthermore, navigating the Scheme's processes for accessing counselling can be complex and confusing for clients with disability, particularly for survivors with cognitive disability. The information and advice available through DSS is not always accessible, which can leave people in a position where they give up rather than pressing on through with the process. Given the relatively low number of applicants with disability who are making use of Redress support services, as mentioned above, we are concerned that numerous survivors with disability are attempting to make sense of the counselling and psychological care arrangements on their own and that the complexities involved may lead them not to pursue what could be a much needed avenue for healing and wellbeing.

Also of concern is that the process for finding and applying for counsellors is to a significant degree dependent on survivors having internet access. We would reiterate our recommendations made in the above section in relation to reviewing the Scheme's accessibility on this issue.

Quality and standards

While the discussion of counselling services in the First Interim Report highlighted various gaps in the provision of services via the Scheme, there was little consideration of serious problems relating to the quality of counselling and psychological services currently available apart from the comment that this matter would be reviewed as part of the second anniversary review.²² This issue should be addressed as a matter of priority. As noted in the report, many survivors have only been offered the option to use existing government funded counselling services instead of specialised providers with appropriate training.²³

Working with people who have lived through child sexual abuse requires specialist counsellors competent to provide 'trauma competent' or 'trauma informed' services. However, the Royal Commission's recommendation for a public register of practitioners 'with appropriate capabilities to work with clients with complex trauma' to be created for the Scheme has not been adequately implemented, which means that there is no guarantee survivors will be able to work with a psychologist who will provide them with services of an appropriate quality and standard, using evidence based treatments. It would not be

²² Above n 5, 41.

²³ Above n 5, 39.

appropriate, for example, for a forensic psychologist to be working with adult survivors of child sexual abuse.

As mentioned above, PWDA is particularly concerned about 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.

Even outside the context of the Scheme, there is a lack of rigorous requirements around practice standards for counsellors working with survivors of child sexual abuse and people who have suffered trauma. The counselling that is available for survivors of child sexual abuse is often grounded in a problematic medicalised model that works to pathologise people's experiences and behaviour, such as through 'behaviour management plans', when there are more effective responses that could be used. Our advocates have also found that when people with disability do not receive useful therapeutic support from counsellors, they can end up experiencing great distress in isolation, and this can lead them to seek emotional support from advocates, helplines or other helping professionals who have limited time, skill and capacity.

The Scheme has not implemented a system mandating that psychologists must meet appropriate practice standards, despite the client group needing an intensive specialised level of support and attention. PWDA recommends that accreditation should be a requirement to work with the Scheme's clients, incorporating standards for working with people with disability. The Blue Knot Foundation and the National Centre for Child Sexual Assault are organisations with resources and guidelines for practitioners working specifically with people who have experienced complex trauma.

Recommendation 9 – That the Committee comprehensively review the issue of counselling quality and standards in addition to the reform areas listed in Recommendation 7, including:

- Considering the specific skills and training needed for counsellors to provide services to people with disability.
- Reviewing existing professional standards, frameworks and regulatory mechanisms for psychologists who work with survivors of child sexual abuse and people who have experienced trauma, to inform an assessment about appropriate standards and quality assurance mechanisms specifically for the National Redress Scheme.
- Considering intersectional needs of survivors around Aboriginality, culture, ethnicity, gender and sexuality.

The recommendations made could therefore feed into continuous improvement of counselling and psychological care arrangements under the Scheme, as well as influencing ongoing reform of counselling services beyond the Scheme and into the future.

Wider social support services and healing

The Royal Commission's *Redress and Civil Litigation Report* acknowledged that survivors may have a range of service and support needs over and above counselling and

psychological care.²⁴ Support with various life circumstances might be needed to get a person to a point where they feel able to engage with counselling services. Culturally sensitive healing options are important for some survivors, particularly First Nations' survivors. It is disappointing that the Royal Commission did not recommend that the Scheme outcomes include a wider range of healing and support options, instead opting for a narrow model of Western psychological support aligning with a medical model. Our advocates have found that some of our clients may need a more intensive level of support than is available through counselling, encompassing a range of emotional, material, social and financial challenges they may face. While survivors with disability may be NDIS recipients, the services provided through the NDIS are often inadequate to meet the specific needs of survivors of child sexual abuse.

PWDA supports the recommendation for the second anniversary review to consider expanding 'the provision of culturally sensitive services with a particular emphasis on the needs of First Nation's people' (Recommendation 7), especially given the limited number of Aboriginal and Torres Strait Islander counsellors currently on the registered list. It is imperative that First Nations' survivors are provided with counselling, support and healing modalities tailored to their individual and collective needs, as requested. Many Aboriginal and Torres Strait Islander survivors are members of the Stolen Generations and have lost connection to culture due to being institutionalised as children. Successful healing programs for First Nations people who have experienced multiple traumas have been found to include activities that assist people to reconnect with their culture, language and spirituality, as discussed in the *Redress and Civil Litigation Report*.²⁵ It is especially concerning that First Nations' survivors may limit themselves to a monetary payment because counselling services available within a Western medical model do not meet their wider needs for healing, such as through Aboriginal healing programs.

6. Legal capacity and decision-making arrangements

PWDA urges the second anniversary review committee to review how the National Redress Scheme interacts with the issues of legal capacity and decision-making arrangements, considering the requirements of Article 12 of the CRPD which include the following:

"2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity."

²⁴ Above n 1, 177.

²⁵ Ibid, 183.

The CRPD, while contemplating that individual *mental capacities* exist on a spectrum and may vary over time,²⁶ insists on the recognition of people with disability ‘as persons before the law’ on an equal basis with others. Respecting the legal capacity of people with disability means that substitute decision-making arrangements, such as guardianship and other measures facilitating the making of decisions on behalf of an individual in their best interests, should be dismantled. Instead, governments should, where necessary, ensure that a range of supports are available to *assist* a person to exercise their inherent legal capacity.

We acknowledge the challenges involved in immediate implementation of Australia’s obligations under Article 12 of the CRPD. Nonetheless, it is incumbent on the Australian Government to review legal and policy mechanisms impacting upon legal capacity, and take immediate steps in each case to progressively eliminate substitute decision making models, or reduce the extent to which they are used as far as possible.

Nominees

The arrangements for nominees in Part 4-2 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) do not protect the right to legal capacity and instead implement a ‘best interests’ model of representative decision-making. PWDA has had to become an Assistance Nominee on behalf of some clients in order to assist them to apply for Redress and engage with DSS. As a disability rights organisation we are committed to self-determination and recommend that an Authorisation to Act or consent to share information process would be more suitable. PWDA encourages the second anniversary review committee to consider whether there are alternatives to the current nominee arrangements which would comply with Australia’s obligations as a State Party to the CRPD.

Redress support services

Another issue of concern for PWDA is that Redress support services and legal firms and services may not always be respecting the legal capacity of their clients with disability and, in particular, that they are not necessarily ensuring that adequate supports are in place to enable these clients to exercise their legal capacity. Supports to exercise legal capacity cover a range of processes including support persons to assist a person to make decisions, peer support, advocacy, assistance with communication, providing information in accessible formats and the development of non-conventional methods of communication such as for people who use non-verbal forms of communication.²⁷

Some of PWDA’s Redress clients have sought assistance regarding legal issues after attending legal services, which suggests that these services may not be providing information in an accessible fashion or otherwise supporting people sufficiently to understand their options.

Recommendation 10 – That the Committee consider the need for explicit guidance and resources to be provided to the Department of Social Services and redress support

²⁶ Committee on the Rights of Persons with Disabilities, *General Comment No. 1* (2014) (19 May 2014), CRPD/C/GC/1.

²⁷ Ibid, 4-5.

services to ensure that the legal capacity of survivors is respected and adequate supports are in place to allow this to occur.

Part 2

Part 2 addresses certain issues falling within the five priority areas for consideration in the Second Interim Report:

- Survivor experience – impact of COVID-19 upon survivors
- Assessment Framework Matrix and payments
- Legal advice and private law firms; and
- Participation in the scheme.

In the section on participation in the scheme, we discuss scheme exclusions, funder of last resort provisions, final determination and offer, Direct Personal Response and accountability mechanisms including a direct complaints mechanism.

The Joint Select Committee deferred certain of these issues to the second anniversary review for consideration: final determination and offer, Direct Personal Response and accountability mechanisms. PWDA is of the view that these issues require urgent action and should result in final recommendations as a result of the second anniversary rather than being further deferred.

6. Survivor experience – impact of COVID-19 upon survivors

PWDA welcomes the recommendation in the First Interim Report for the Scheme to closely monitor operations throughout the COVID-19 pandemic to ensure the Scheme is as responsive as possible to the increased levels of anxiety and more limited access to counselling.

The mental strain the pandemic places on people generally is exacerbated for many people with disability for various reasons; existing mental health conditions of people with psychosocial disability may be intensified due to isolation. The pandemic has created situations of uncertainty for people with disability, particularly those in need of continuity of supports. People in social housing, including group homes, who have intellectual, cognitive or psychosocial disability often experience systemic issues with accommodation services due to lack of flexibility and lack of training in trauma-informed practice. Additionally, there is often a view within the NDIA that crisis and trauma-informed work is the responsibility of mainstream services rather than the NDIS, leaving people with disability in this situation without funded support. People with disability, who disproportionately experience poverty and financial hardship, are in turn disproportionately impacted by the general financial strain created by COVID; this can lead to tenancy issues or homelessness. Against a

backdrop of disability services withdrawing assistance due to the pandemic, securing fundamental supports and navigating existing service systems has become the focus for many survivors with disability. People in positions such as these may have little time and energy to devote to pursuing a Redress application, even with access to assistance and/or advocacy.

Recommendation 11 – That the Department of Social Services develop a proactive engagement strategy to support people who have had particular difficulties accessing and engaging with the Scheme due to the COVID-19 pandemic.

7. Operation of the National Redress Scheme

Assessment Framework Matrix and Payments

The Assessment Framework for the Scheme uses an approach based on a narrow range of factors that do not allow for accurate assessments to be made of the actual impact of child sexual abuse upon an individual. This means that the Scheme is not working in the manner intended by the Royal Commission, which recommended a matrix requiring a far broader and more sophisticated range of factors to be taken into account when making an assessment. PWDA strongly believes that the current Assessment Framework based primarily on type of abuse produces unjust outcomes that do not adequately compensate many survivors.

The Royal Commission recommended a matrix encompassing three elements: (1) severity of abuse; (2) severity of impact of abuse; and (3) additional elements. The Scheme's Assessment Framework instead privileges an initial assessment using a rigid hierarchy based on type of abuse, being: (1) penetrative abuse; (2) contact abuse; and (3) exposure abuse, with the highest maximum monetary payment being available for penetrative abuse. PWDA considers that the tremendous gap between the maximum payment for penetrative abuse (\$70,000) and those for contact abuse and exposure abuse (\$30,000 and \$5,000 respectively) do not reflect the horrific experience of child sexual abuse across the board, regardless of 'type' of abuse.

Instead of these rigid categorisations, the Royal Commission discussed a range of additional factors that could contribute to the severity of abuse suffered by a child over and above the type of abuse, including whether force was used, high frequency of sexual contact, the duration of the abuse, the age of the child at the time of the first sexual assault and the existence of multiple perpetrators.²⁸

Although the Assessment Framework requires four further factors to be taken into account, these are very limited in scope when compared to the model proposed by the Royal

²⁸ Above n 1, 234-235.

Commission. And in relation to the 'impact of sexual abuse' factor in Column 3 of the table, the maximum monetary payment is again much higher in the case of penetrative abuse in a way which is skewed and unfair. The proposed category of 'severity of impact of abuse' was to require a nuanced assessment to be made of impacts of child sexual abuse in adulthood 'that may affect the survivor's psychological and social functioning, physical health and interpersonal relationships.'²⁹ This was intended to measure how disruptive and damaging child sexual abuse had been throughout the survivor's life or, in the case of a young adult, the likely impact into adulthood. The 'impact of sexual abuse' factor in the existing Assessment Framework results in relatively low monetary payments, compared to the 'type of abuse' factor, in a way that simply fails to account for how severely impacted some individuals may be by child sexual abuse regardless of the type of abuse suffered.

A number of further factors were also raised in the Royal Commission's report as relevant to a third category in the proposed Matrix, 'Additional elements'. These included whether a person experienced other forms of abuse in conjunction with the sexual abuse as well as institutional factors.³⁰ These two factors are incorporated into Columns 4-5 of the Assessment Framework table, in addition to 'Recognition of extreme circumstances of sexual abuse in Column 6'. However, we question the rigid identification of these three additional factors as opposed to the open-ended 'Additional elements' category proposed by the Royal Commission, which would enable the assessment to be tailored to individual circumstances and could potentially take into account a non-exhaustive list of additional elements rather than being so highly circumscribed. It is particularly disappointing that the current table does not include the factor relating to disability that was explicitly recognised as an additional value to be included when assessing additional elements: 'whether the applicant was particularly vulnerable to abuse because of his or her disability'.³¹ An open-ended 'Additional elements' category would allow for this value to be incorporated into an assessment in appropriate cases.

We also believe restricting the additional payment option for the Column 6 factor, 'Recognition of extreme circumstances of sexual abuse' to cases of penetrative abuse results in unfair outcomes; there are many situations in which the other two 'types' of abuse may involve 'extreme circumstances' deserving of an additional payment.

The current factors and categorisations in the Assessment Framework table are overly narrow and unfairly privilege the category of 'penetrative abuse'. This approach is grossly unfair. A child who suffered penetrative abuse is entitled to receive the full \$150,000 if they meet the four further criteria in the table, whereas a child subjected to contact abuse such as fondling and touching over a period of many years cannot receive more than \$50,000. The problems regarding assessment based on 'type' of abuse are carried over to the assessment of payments for the counselling and psychological component of redress. In jurisdictions where a lump sum payment is made, there is a stark discrepancy in the

²⁹ Ibid, 235.

³⁰ Ibid, 243.

³¹ Ibid, 243.

payment amount depending on type of abuse, with the maximum amount being \$5,000 in the case of penetrative abuse but a meagre \$1,250 for exposure abuse.

The current Guidelines on applying the Assessment Framework are not made public, which is at odds with approaches in other areas of administrative law. The 'extreme circumstances' factor in Column 6 is particularly opaque without any guidance.

We make the following recommendations:

Recommendation 12 – That the Assessment Framework be revised to implement the model proposed by the Royal Commission which would allow the decision maker to consider type of abuse as one of several factors within the broader category of 'severity of abuse'.

Recommendation 13 – That the existing Guidelines, or at the least a summarised version, be made available so that survivors can be provided with appropriate legal advice about preparing their application.

Recommendation 14 – That the maximum monetary payment be increased to \$200,000 as recommended by the Royal Commission, rather than \$150,000.

Recommendation 15 – That lump sum payments for the counselling and psychological component of redress be assessed primarily on severity of the impact of abuse, reflecting the extent to which the abuse has disrupted the survivor's life and created ongoing psychological problems for them.

8. Legal advice and private law firms

PWDA is extremely concerned that some law firms are engaging in predatory and exploitative practices in relation to survivors seeking to access redress through the Scheme. These include charging survivors exorbitant fees to prepare applications, without telling them about the existence of the free legal service knowmore or other funded Redress support services who could assist them to prepare an application. These practices have now been exposed in several media reports, including an ABC Radio National program focusing on cases in New Norcia, Western Australia.³² Some child abuse survivors are particularly vulnerable to exploitation by private law firms wishing to profit from providing advice about and preparing Redress applications, including people in prison and some people with intellectual, cognitive and psychosocial disability. Child abuse often produces intense and ongoing psychological impacts which intensify such vulnerability. PWDA has heard through other Redress support services of cases where private lawyers

³² Jeremy Story Carter, 'Who Seeks to profit from the trauma of abuse survivors?' ABC, *Background Briefing* <<https://www.abc.net.au/radionational/programs/backgroundbriefing/who-seeks-to-profit-from-the-trauma-of-abuse-survivors/12370020>>.

have been providing their Redress clients with inaccurate advice and low-quality services, including advice that could lead an eligible applicant to believe they are not eligible for Redress.

Although it is not unlawful for a private lawyer to charge a client to provide advice and assistance relating to a Redress application, reports indicate that some firms are charging their clients excessive amounts to prepare applications, which may drastically reduce the sum that a survivor ends up with after they've paid the legal fee. PWDA is of the view that regulation is needed to prevent exploitative practices and ensure that services of an appropriate professional standard are being provided, bearing in mind the complex and precarious situations many survivors find themselves.

Recommendation 16 – That consideration be given to implementing a legal and policy framework containing requirements for private lawyers and law firms providing services in the Redress space, and that it would be appropriate to legislate to impose caps on the legal fees that can be charged.

9. Participation in the Scheme

Applicants – Scheme exclusions

PWDA opposes two of the exclusions that continue to prevent certain categories of people from applying for Redress:

- eligibility being limited to people who are Australian citizens or permanent residents;
- the exclusion for people who are in gaol; and
- special assessments of applicants sentenced to imprisonment for 5 years or longer.

PWDA can see no reason for the eligibility restriction preventing people who are Australian citizens or permanent residents from applying for Redress. In line with Recommendation 6 of the former Joint Select Committee, PWDA recommends that consideration be given to allowing non-citizens and non-permanent residents access to redress provided that they meet all other eligibility criteria.

People sentenced to imprisonment for 5 years or longer, before or after making their application for redress, are not entitled to redress under the Scheme unless a relevant Attorney General makes a determination that they are not barred from applying on the basis that providing them with redress would not bring the scheme into disrepute or adversely affect public confidence in, or support for, the Scheme. People who are in gaol cannot make an application unless the Scheme Operator determines that there are exceptional circumstances justifying the application being made.

PWDA is concerned that these exclusions may unfairly prevent a significant proportion of survivors from accessing the Scheme. One study of the prevalence of childhood sexual

abuse amongst NSW male prisoners found that approximately 16% reported being sexually abused as a child.³³ Research indicates that people who are abuse survivors are more likely to engage in all types of criminal behaviours, including violent, sexual and other offending.³⁴ Given that the severely damaging experience of child sexual abuse appears to increase the propensity to engage in criminal behaviour,³⁵ these exclusions can be considered punitive, and effectively results in double punishment by preventing people from accessing needed supports for horrific abuses they suffered as children.

Recommendation 17 – That the provisions regarding assessment of applicants who are imprisoned and the eligibility of people who are in gaol when seeking to make an application be applied in the inverse, so that these groups can access redress *unless* the Operator makes a determination that providing redress would bring the scheme into disrepute.

Funder of last resort provisions

Recommendation 12 regarding the funder of last resort provisions is identical to the comparable recommendation made in the report of the former Joint Select Committee. Reform in this area will have a significant impact on the equal delivery of justice by the Scheme. The delay in taking action to address problems with the existing funder of last resort provisions leaves many survivors in stressful and precarious positions while their applications are being processed.

While PWDA supports Recommendation 12, we believe that reforms in this area need to go further to ensure the Scheme provides equitable outcomes. Survivors should not be left without compensation and support solely because the institution responsible for their abuse is now defunct. PWDA therefore strongly supports the proposal in the First Interim Report that the second anniversary review:

“consider how provisions can be expanded to ensure all survivors have equal access to redress and examine mechanisms so that survivors are not waiting for long periods for their financial redress.”

Recommendations by the second anniversary review for immediate implementation on this issue would be very welcome, given the uncertainty and delays caused by the current arrangements. PWDA recommends that consideration be given to removing the requirement for the Scheme Operator to make a determination in each individual case that the relevant government institution is equally responsible with the defunct institution for the abuse to trigger the funder of last resort role.

Recommendation 18 – That the Committee consider the viability of arrangements whereby state and territory governments agree to consistently act as funders of last resort

³³ T Butler, B Donovan, J Fleming, M Levy and J Kaldor, ‘Childhood sexual abuse among Australian prisoners’ (2001) 14(3) *Venerology* 109-155.

³⁴ N Papalia, J Ogloff, M Cutajar and P Mullen, ‘Child sexual abuse and criminal offending: gender-specific effects and the role of abuse characteristics and other adverse outcomes’ (2018) 23(4) *Child Maltreatment: Journal of the American Professional Society on the Abuse of Children* 399-416.

³⁵ Nina Papalia, Stefan Lubbers, James R P Ogloff, ‘Child sexual abuse and the propensity to engage in criminal behaviour: A critical review and examination of moderating factors’ (2018) 43 *Aggression and Violent Behavior* 71-89.

in cases where an institution within their jurisdiction is defunct, regardless of whether the government institution has been determined as being equally responsible for the abuse.

Direct Personal Response

PWDA is concerned that the current arrangements for obtaining a direct personal response are unwelcoming and inaccessible, contributing to the low rate of completion despite the high rate of interest. Requiring survivors to make contact with a representative of the responsible institution places a heavy onus on survivors with a disability, many of whom will have been retraumatised by the application process and find it overwhelming to initiate contact with someone unknown to them. PWDA agrees that current processes for arranging a direct personal response should be urgently reviewed in line with Recommendation 8 in the First Interim Report, with consideration given to changing the process so that a contact person from the institution is responsible for making contact at the outset to support survivors to seek a direct personal response.

Recommendation 19 – That in reviewing current processes for arranging a direct personal response, consideration be given to requiring a contact person from the institution to make initial contact with survivors seeking a direct personal response.

10. First Interim Report

Review – early payment scheme

It is a tragic and unacceptable that some survivors of child sexual abuse have died before receiving financial compensation from the Redress Scheme due to chronic delays.³⁶ People with disability are more likely to be within the cohort of survivors with health conditions for whom time is of the essence in processing their applications, because of the heightened prevalence of health issues for people with disability. Elderly survivors are especially at risk of passing away before their application has been processed.

To date the federal government has not acted on concerns about the need for an early or interim payment scheme for sick and elderly survivors. Such a scheme would provide essential support to sick and elderly survivors and would ensure they do not miss out on redress altogether and have the time to benefit from any payment made. Interim payments could come from emergency funding, to be reimbursed where appropriate by the responsible institution after the application has been processed.

Recommendation 20 – That an early payment scheme for sick and elderly survivors be established as a matter of priority.

³⁶ Alexandra Beech, 'Survivors of child sexual abuse waiting too long for redress scheme payments, Social Services Minister says', *ABC News*, 29 April 2020.



PEOPLE WITH DISABILITY
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