



**PEOPLE WITH DISABILITY
AUSTRALIA**

**A voice
of our
own**

National Redress Scheme

**People with Disability Australia's supplementary submission to
the Joint Select Committee on the Implementation of the
National Redress Scheme**

**AUG
2021**

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. We help individuals by advocating for their interests, and groups through our systemic advocacy efforts. We also encourage people to engage in self-advocacy.

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 employ many people with disability.

We have a vision of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated.

PWDA is committed to human rights and believes human rights are for everyone, regardless of race, religion, ethnicity, indigeneity, disability, age, displacement, caste, gender, gender identity, sexuality, sexual orientation, poverty, class or socio-economic status.

Our organisation 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. DPOs are organisations that are led by, and constituted of, people with disability. We are a DPO and work as a disabled people's representative organisation, representing the interests of our members.

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1. About this submission

This submission, informed by our redress-related work, builds on our earlier submission to the Joint Select Committee on Implementation of the National Redress Scheme (Committee).¹

PWDA's Redress project is funded by the Department of Social Services 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 (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 both disability and mainstream services, including providers of group homes, disability advocacy organisations, government agencies, health, justice, housing and homelessness services and other sectors to provide education and promote awareness about the scheme, Redress Support Services 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.

In this submission we provide a response to the second anniversary review report. This includes dedicated consideration of PWDA's concerns about the Scheme's counselling and psychological care component.

The review recommendations and government interim response

PWDA welcomes the report of the second anniversary review of the Scheme (Independent Review Report), supports the majority of recommendations made in the Independent Review Report and encourages their prompt implementation.

¹ People with Disability Australia, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \(November 2020\)](#).

In our view there is a pressing need to implement the review recommendations:

- to remove the exclusions for non-citizens, non-permanent residents, prisoners, those with serious criminal convictions and care leavers, and
- to establish an advance payment scheme for urgent applications.

PWDA is disappointed to see that the Government has only expressed support for 28 of the 38 review recommendations in its interim response.² Many of the unsupported recommendations are for measures that are vital to ensure the delivery of justice to survivors. PWDA urges the Committee to comprehensively consider issues associated with the unsupported recommendations in finalising its next report.

PWDA's strong view is that all review recommendations should be implemented as soon as possible.

We draw the attention of the Committee to recommendations concerning the following areas that were not supported by the Government in its interim response, that PWDA believes require urgent implementation:

- Amending the eligibility criteria to remove the exclusions for non-citizens, non-permanent residents, prisoners, those with serious criminal convictions and care leavers (Recommendation 3.2).
- Amending the Assessment Framework to shift the focus away from penetrative abuse (Recommendation 3.11).
- Amending key policy guidance for independent decision makers (Recommendation 3.12).
- Making the Assessment Framework Policy Guidelines publicly available (Recommendation 3.13).
- Reviewing the internal review process (Recommendation 5.1).
- Establish an advance payment scheme for urgent applications (Recommendation 4.2).

² Australian Government, *Interim Australian Government response to the Final Report of the Second year review of the National Redress Scheme* (2021) 4-22.

In our view the recommendations relating to the independent review process do not go far enough to ensure that the Scheme operates in a fair and transparent manner.

Access and equality for people with disability

It is essential that the Australian Government take timely action on the suggestions and actions relating to people with disability in the Independent Review Report. However, PWDA is concerned that some of the relevant discussion and recommendations do not adequately consider, or provide guidance on, the circumstances of survivors with disability.

Based on our outreach and individual advocacy work, we know that ensuring the Scheme operates in a disability aware and inclusive manner, and focuses on the need to improve the accessibility of the Scheme and Redress Support Services, is needed.

Increasing engagement with the Scheme by people with disability requires additional strategies to improve awareness of the Scheme among all organisations and professionals, including mainstream services, who work with people with disability.

We welcome the government's support of the recommendations aimed at simplifying the application form and the language of the Letter of Offer (Recommendations 3.6 and 3.10). However, a more comprehensive assessment of the Scheme's accessibility needs to be carried out to ensure equitable access.

We also strongly support the Government's commitment to provide more assertive outreach to people with disability, and to consider alternative mechanisms of facilitating access to the Scheme (Recommendation 3.7 and 3.8).

Redress outcomes for First Nations survivors

PWDA is very concerned that the Scheme's redress outcomes are operating in a way that is not tailored to the individual and collective circumstances of Aboriginal and Torres Strait Islander people with disability.

Our concerns relate to the limitations of the Redress model in consistently facilitating access to appropriate healing, counselling and redress avenues for First Nations survivors.

We have seen at first hand through our outreach work to regional and remote areas of NSW and Queensland, and our connections with Aboriginal and Torres Strait Islander organisations in these areas, that there is very little knowledge of the Scheme's existence.

We will continue in our endeavours to ensure that information about the Scheme reaches these communities, and that they receive culturally appropriate support in accessing the Scheme. We appreciate the government's commitment to more assertive and appropriate support in these areas as well (Recommendations 3.7 and 3.8)

Counselling, alternative therapies and social supports

PWDA's first submission to the Committee, in response to the First Interim Report, included our concerns about counselling arrangements under the Scheme.³

In this submission we further discuss the serious problems with the counselling and psychological care component of the Scheme, highlighting issues associated with: availability, accessibility, flexibility and standards.

We emphasise that gaps and inequalities in counselling arrangements connected to accessibility amount to human rights denials, contravening the international human right to equality and non-discrimination.

We welcome the Government's undertaking to improve the equity, scope and quality of counselling support (Recommendation 4.6).

We strongly urge the Committee to consider how the Scheme can more equitably facilitate access to alternative therapies and social supports as part of the redress outcomes.

³ People with Disability Australia, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \(November 2020\)](#) 18-22.

2. Summary of recommendations

Recommendation 1 – The Scheme’s legislative and policy frameworks be amended to ensure that natural justice is provided to survivors as part of the internal review process, including through independent decision makers: providing applicants with an opportunity to comment on adverse information; and providing sufficiently detailed reasons for an internal review decision.

Recommendation 2 – In developing a targeted communication strategy to build trust and increase awareness of the Scheme among survivors, the Australian Government fund, or undertake, increased outreach work to both disability and mainstream services, including in regional, rural and remote areas, to support them to provide information and assistance to survivors with disability.

Recommendation 3 – The Scheme’s legislative and policy frameworks be reviewed to establish amendments needed to make evidentiary standards and their application sufficiently flexible and tailored in order to protect and support the exercise of legal capacity by people with disability.

Recommendation 4 – The Committee reinforce the recommendations of the Independent Review Report relating to improving counselling and social support arrangements to promote Aboriginal and Torres Strait Islander healing approaches and culturally appropriate service provision, with regard to the intersectional needs of survivors and extending to consideration of direct personal responses.

Recommendation 5 – Australian governments collaborate to develop a strategy to address the shortfall in suitably qualified, specialised counsellors enrolled by the Scheme, including counsellors skilled in working with people with disability and in a culturally safe manner, with a particular focus on enhancing the provision of face-to-face services in regional, rural and remote areas, as a matter of priority.

Recommendation 6 – The Department of Social Services review services, systems and technologies involved in counselling arrangements, and accessing these arrangements, and develops a strategy for enhancing their accessibility in order to prevent discrimination against people with disability.

Recommendation 7 – The Committee consider options for maximising flexibility in the approach taken to counselling arrangements within and across jurisdictions, with a view to promoting choice and self-determination.

Recommendation 8 – The government service responsible for counselling arrangements within each jurisdiction establish more stringent processes to verify that practitioners are qualified to provide trauma competent services, such as a brief certification process.

Recommendation 9 – The Committee develop standards for the provision of trauma competent psychological care and counselling services for survivors of child sexual abuse, in collaboration with organisations and professional bodies with appropriate expertise, for gradual implementation by the National Redress Scheme and to inform future professional training and regulation.

Recommendation 10 – The Committee consider how the Scheme can develop mechanisms to facilitate equal access to a diverse range of counselling, therapy and social support options for redress recipients, regardless of jurisdiction or place of residence.

3. Improving the Scheme's operation

PWDA strongly supports the recommendations made in the Independent Review Report as a means to improve serious problems with the Scheme. We urge the Committee to give detailed consideration to those recommendations that have not been supported in the interim Government response.

As detailed below, we draw the Committee's attention to several review recommendations that were not supported by the Government that call for urgent implementation. In our view the recommendations relating to the independent review process do not go far enough to ensure that the Scheme operates in a fair and transparent manner.

Eligibility criteria

The Scheme's legislative framework excludes several categories of survivors from eligibility for redress. PWDA is of the view that these exclusions operate to unfairly deny access to the Scheme, as discussed in our previous submission.⁴

PWDA supports Recommendation 3.2 in the Independent Review Report, which proposes that the eligibility criteria should be changed to include a single application process for all applicants and to allow applications to be made by the classes of survivors currently excluded from eligibility: non-citizens, non-permanent residents, people in prison, those with serious criminal convictions and certain care leavers.

We are concerned that excluding people in prison from eligibility may disproportionately impact people with disability, given that people with disability are overrepresented in prison. People with disability comprise around 29% of the prison population, compared to 18% of the general population.⁵

⁴ People with Disability Australia, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \(November 2020\)](#), 30-31.

⁵ Australian Institute of Health and Welfare, *The health of Australia's prisoners 2018* (2019), 77-78.

We note also that people in prison are particularly disadvantaged when it comes to accessing justice through *any* avenue because it is more difficult to access and engage advocacy services and lawyers from within prison.

Assessment framework

PWDA supports the review recommendations relating to the Assessment Framework:

- Amending the Assessment Framework to shift the focus away from penetrative abuse as the key indicator of abuse and recognise the impacts of child sexual abuse on all survivors' lives (Recommendation 3.11)
- Amending key policy guidance to ensure clarity for independent decision makers in applying the Assessment Framework and weighing guidance material provided by the Scheme in making decisions under the Assessment framework (Recommendation 3.12).
- Making the Assessment Framework Policy Guidelines publicly available through removal of existing legislative protections (Recommendation 3.13).

The Australian Government has 'noted' these recommendations and indicated that they will be given further consideration in consultation with state and territory governments.

The current hierarchy for assessing applications is overly rigid in its focus on, and privileging of, 'penetrative abuse'. This approach fails to acknowledge the intense harm that is caused by *all* child abuse.

It results in huge discrepancies in the payment a redress recipient is entitled to receive in a manner that fails to account for the lasting impacts and disruptions produced by sexual abuse regardless of the type of abuse suffered.

Ensuring that independent decision makers have adequate guidance to make decisions about redress will greatly improve the Scheme in terms of fairness and consistency in decision making, particularly in relation to the Assessment Framework.

In addition, making the Assessment Framework Policy Guidelines publicly available will assist applicants and their supporters and advocates when preparing applications, as well as enhancing accountability.

In PWDA's view these recommendations are a crucial means of improving the Scheme's operation and ensuring it can deliver justice to all redress applicants and recipients.

Internal review process

At Recommendation 5.1 the review recommends that the Australian Government review the process for internal review and amend the legislation to:

- allow for the provision of additional information with an internal review request
- ensure all reviews are to be without prejudice to the original determination, and
- publish and make easily accessible an approved mandatory template for review requests.

The interim Government response 'notes' this recommendation, while acknowledging the benefits of allowing survivors to provide further information to support their application.

In PWDA's view this recommendation should be implemented as a matter of priority to ensure that the Scheme operates in a fair and transparent manner. It is unacceptable that redress applicants may be reluctant to apply for a review because they are concerned that they could be left worse off by the review outcome.

PWDA strongly supports the recommendation that all reviews are to be without prejudice to the original determination.

PWDA is disappointed to see that the review recommendations in this area did not go further in terms of measures to provide natural justice to survivors. It is especially important that redress applicants are not only given an opportunity to provide additional information with an internal review request, but also:

- provided with adverse information that may be used in deciding an internal review and given an opportunity to comment on this information, and
- given adequate reasons for a review decision.

Recommendation 1

PWDA recommends that the Scheme's legislative and policy frameworks be amended to ensure that natural justice is provided to survivors as part of the internal review process, including through independent decision makers: providing applicants with an opportunity to comment on adverse information; and providing sufficiently detailed reasons for an internal review decision.

Access and equality for people with disability

The Independent Review Report discusses specific issues impacting people with disability in several places, based on commissioned research into the awareness of and experience with the Scheme by people with disability, in addition to consultations and submissions. Below we provide comment on recommendations and suggested actions that relate to people with disability.

The application process and accessibility

The Independent Review Report, in discussing the need to simplify the application process, comments on the need to make changes to the application process to accommodate and meet the needs of people with disability.

We note that the associated recommendation (Recommendation 3.6) speaks generally about simplifying the application form and does not provide specific guidance on ensuring this process assists survivors with disability.

It is stated in the report that

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 support services.⁶

PWDA supports this suggested action and reiterates that the Scheme's *accessibility* for people with disability requires comprehensive improvement. We note that many of the challenges implicit in the review recommendations and suggested actions relating to people with disability concern the accessibility of the Scheme.

⁶ R. Kruk, *Final Report: Second year review of the National Redress Scheme (2021)*, 78.

The international human right of equal access to public services is established in Article 25(c) of the *International Covenant on Civil and Political Rights* and Article 5(f) of the *International Convention on the Elimination of All Forms of Racial Discrimination*.

Article 9, of the CRPD (Accessibility) expands on the right to access as applicable in the disability context, with accessibility also incorporated as a general principle of the Convention in Article 3.

Article 9 specifies that achieving accessibility requires States Parties to the Convention to take measures to ensure that people with disability can access the physical environment, transportation, information and communications—including information and communications technologies and systems—and facilities and services.

Environmental, communication, attitudinal and systemic barriers that create inequality of access to the disadvantage of people with disability involve indirect segregation, underpinned by ableism.⁷

The United Nations Committee on the Rights of Persons with Disabilities emphasises in its General Comment on accessibility that ‘accessibility is indeed a vital precondition for persons with disabilities to participate fully and equally in society and enjoy effectively all their human rights and fundamental freedoms’.⁸

Without accessibility, the Scheme cannot effectively deliver justice to all survivors. Submissions to the second anniversary review 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.⁹

It is unacceptable that people with disability may abandon an application or not take up redress outcomes because diverse communication methods and support

⁷ Children and Young People with Disability Australia, Women with Disabilities Australia, National Ethnic Disability Alliance, Australian Federation of Disability Organisations, Inclusion Australia, Disability Advocacy Network Australia, First Peoples Disability Network Australia and People with Disability Australia, [Segregation of People with Disability is Discrimination and Must End, Position Paper \(September 2020\)](#), 7.

⁸ Committee on the Rights of Persons with Disabilities, *General comment No. 2, Article 9: Accessibility*, Eleventh session (2014), UN Doc CRPD/C/GC/2 (22 May 2014) 4 (para 12).

⁹ Kruk, *Final Report: Second year review of the National Redress Scheme* (2021), 216.

options to accommodate disability at all stages have not been comprehensively established within the Scheme and redress support services.

Consistent with Recommendation 7 in our previous submission, PWDA urges the Committee to recommend that the Scheme's processes, including information and communication technologies, require comprehensive review in order to enhancing their accessibility.¹⁰ This measure is essential if the Scheme is to deliver on the promise of equality and fairness.

People living in disability institutions

The Independent Review Report contains discussion of issues for survivors in disability institutions, concluding 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 ... [and to] introducing additional specialist support services to assist with redress applications and increasing awareness within these supported institutions and their residents.¹¹

Much of PWDA's Redress work involves raising awareness of the Scheme among people living in disability institutions. We have especially focused on people in 'hard to reach' settings such as boarding houses, group homes, mental health and forensic mental health units and prisons and assisting these people to engage with the Scheme, including by providing information to service providers.

However, we are only funded and resourced to perform this essential outreach work in NSW, and our individual advocacy services for survivors only operate in NSW and Queensland.

There is only one other Department of Social Services funded specialist disability Redress Support Service. This leaves much of the country without any support services dedicated to providing advocacy and undertaking outreach to assist survivors in disability institutions.

¹⁰ People with Disability Australia, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \(November 2020\)](#), 17-18.

¹¹ Kruk, *Final Report: Second year review of the National Redress Scheme* (2021), 70.

PWDA strongly supports this suggested action to develop strategies and increase funding to facilitate access to the Scheme by people with disability living in institutions and 'closed' settings. We would welcome an opportunity to collaborate with the Scheme to assist in implementing this proposal.

Awareness and access for people with disability

Two recommendations made in the Independent Review Report regarding awareness of, and access to, the Scheme refer to people with disability:

- **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 [applicants] and applicants with disability, including but not limited to face-to-face application assistance.
- **Recommendation 7.1** '[T]he Australian Government improve communication and engagement by ... 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 ...

As mentioned above, there are only two disability specialist Redress Support Services funded by the Department of Social Services, including PWDA. As discussed in our first submission to the Committee,¹² it is not possible for such a small cohort of specialist services to fulfil the roles of facilitating access to the scheme for all survivors with disability across the country, and of raising awareness of the Scheme among all relevant service providers.

A targeted plan to fund additional specialist disability Redress Support Services to undertake advocacy and outreach work may go some way to increasing awareness in this area. However, more concerted efforts are needed to improve disability awareness and tailored service provision within the overall Scheme design and processes, including among all Redress Support Services.

¹² People with Disability Australia, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \(November 2020\)](#), 14.

There is a concerning concentration of Redress Support Services and Support Services generally in metropolitan areas, causing a problematic gap when it comes to access and awareness among clients and service providers in regional, rural and remote areas.

Much of our outreach work in the last six months has involved travelling to regional and remote areas of NSW to meet with and provide information to a range of disability and mainstream services. Our advocates have been surprised by the lack of knowledge about the Scheme among almost all of the services visited. These services have valued receiving information and advice about the Scheme that can be passed on to their clients.

Outreach to the breadth of services that engage with survivors with disability, including mainstream services and extending to regional, rural and remote areas, is a crucial way of increasing awareness of the Scheme among survivors, in addition to advertising and public education measures. How can marginalised survivors be expected to know about the Scheme if the services they have regular contact with do not have this knowledge?

We reiterate recommendations from our earlier submission to revise funding and contracting arrangements for both specialist disability and other Redress Support Services to facilitate the provision of advocacy and outreach work in a disability aware and inclusive manner and to raise awareness of the Scheme among people with disability.¹³

PWDA strongly supports Recommendations 3.8 and 7.1 and welcomes the Government's commitment in its interim response to implementing these recommendations.

PWDA recommends that in developing the proposed targeted communication strategy the Australian Government should fund, or undertake, increased outreach work to both disability and mainstream services to support them to provide information and assistance to survivors with disability.

¹³ People with Disability Australia, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \(November 2020\)](#), 14, 17-18.

Recommendation 2

PWDA recommends that in developing a targeted communication strategy to build trust and increase awareness of the Scheme among survivors, the Australian Government should fund, or undertake, increased outreach work to both disability and mainstream services, including in regional, rural and remote areas, to support them to provide information and assistance to survivors with disability.

Legal capacity

PWDA is concerned that evidentiary standards applied by the Scheme may unfairly disadvantage some people with disability, including people who require communication aids or are non-verbal.

Our understanding is that decision-makers may assume people in these groups do not have the capacity to engage in the redress process on the basis that they are not able to identify how the abuse impacted them, *even where there is documentary evidence of the abuse*.

The Independent Review Report contains discussion about respecting and supporting the legal capacity of survivors engaging with the scheme, noting that disability advocacy groups raised concerns that:

- the legal capacity of applicants ‘may not always be respected or supported by redress support services and legal firms’, and
- substitute decision-making arrangements under the Scheme such as guardianship and nominee arrangements should be dismantled.¹⁴

We reiterate our call for the Committee to 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.¹⁵

In addition, we recommend that consideration should be given to amending the Scheme’s legislative and policy frameworks to ensure that evidentiary standards, and their application, do not unfairly disadvantage people with disability and are implemented in a way that supports the legal capacity of people with disability.

¹⁴ Kruk, *Final Report: Second year review of the National Redress Scheme* (2021), 217-218.

¹⁵ People with Disability Australia, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \(November 2020\)](#), 24-25.

Recommendation 3

PWDA recommends that the Scheme's legislative and policy frameworks be reviewed to establish amendments needed to make evidentiary standards and their application sufficiently flexible and tailored in order to protect and support the exercise of legal capacity by people with disability.

4. Redress outcomes for First Nations survivors

Current arrangements for counselling and direct personal responses, while they may meet the needs of some Indigenous survivors, run counter to Aboriginal and Torres Strait Islander concepts of healing, wellbeing and connection to community.

One Aboriginal survivor has explained that the Scheme does not consider “all of the other issues that sexual abuse brings about... how it contributes to ongoing removal and trauma, and grief and the impact that it has on mums that can’t parent their own children because of their own trauma.”¹⁶

Institutional abuse suffered by Indigenous survivors must be understood in the context of colonisation and the common practice of children being forcibly removed from their families and communities under government policies.¹⁷ These practices denied children connection to community and culture, to language, and produced harms associated with disease, alcohol and drugs and violence.¹⁸

Indigenous organisations and researchers who have worked with Indigenous communities highlight the need for redress schemes to respond holistically and systemically, as well as individually, and in a culturally appropriate manner.¹⁹

Collective redress should include working with services controlled by Indigenous communities and across the full breadth of harms and injustices perpetrated

¹⁶ R. Hocking, ‘From reparations to cultural camps – the road to healing’ *SBS, NITV* (26 May 2020).

¹⁷ Healing Foundation, *Looking Where the Light is: creating and restoring safety and healing – A cultural framework for addressing child sexual abuse in Aboriginal and Torres Strait Islander communities* (2018), 7; T. Libesman and H. McGlade, ‘Redress in Response to Institutional Sexual Abuse of Indigenous Children’ *Indigenous Law Bulletin* (2015) 8(17), 34.

¹⁸ Healing Foundation, *Looking Where the Light is: creating and restoring safety and healing – A cultural framework for addressing child sexual abuse in Aboriginal and Torres Strait Islander communities* (2018), 7.

¹⁹ Healing Foundation, *Looking Where the Light is: creating and restoring safety and healing – A cultural framework for addressing child sexual abuse in Aboriginal and Torres Strait Islander communities* (2018); Libesman and McGlade, ‘Redress in Response to Institutional Sexual Abuse of Indigenous Children’ *Indigenous Law Bulletin* (2015) 8(17); L. Peeters, S. Hamann and K. Kelly, ‘The Marumali Program: Healing for Stolen Generations’ in P. Dudgeon, H. Milroy and R. Walker (eds), *Working Together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice* (Commonwealth of Australia, 2014) 493-507.

against individuals and communities.²⁰ Indigenous agencies and services have emphasised that responses to child sexual abuse must ‘consider local context, family connections and ... [adopt] an approach that supports healing.’²¹

The Healing Foundation’s model for culturally based healing is based on Aboriginal and Torres Strait Islander world views, with safety—physical, emotional, social, cultural and spiritual—as the centrepiece.²²

The Healing Foundation proposes that government programs to address child sexual abuse ‘need to reflect a holistic understanding of social and emotional wellbeing and its impact on individuals, families and communities.’²³

It is recommended in the Independent Review Report that:

- Australian governments collaborate to ensure that ‘counselling services are culturally appropriate, including Aboriginal and Torres Strait Islander healing approaches’ (Recommendation 4.6), and
- the Scheme, where appropriate, fund support services that facilitate Aboriginal and Torres Strait Islander healing approaches (Recommendation 7.1.c).

In both cases it is also recommended that the enhanced focus on Aboriginal and Torres Strait Islander healing approaches and culturally appropriate service provision take into account the diversity of survivors’ needs relating to disability, gender, sexuality, culture and language.

The Scheme has many years left of operation; improvements made now in approaches to redress outcomes will benefit existing and future redress recipients and the impacts will be long-lasting.

PWDA strongly supports these recommendations intended to ensure that the Scheme delivers justice and facilitates healing for First Nations survivors and

²⁰ Libesman and McGlade, ‘Redress in Response to Institutional Sexual Abuse of Indigenous Children’ *Indigenous Law Bulletin* (2015) 8(17).

²¹ Queensland Centre for Domestic and Family Violence Research, *Prevention, Early Intervention and Support for Aboriginal and Torres Strait Islander People who have Experienced Sexual Violence*, Practice Paper (2019), 6.

²² Healing Foundation, *Looking Where the Light is: creating and restoring safety and healing – A cultural framework for addressing child sexual abuse in Aboriginal and Torres Strait Islander communities* (2018), 13.

²³ Healing Foundation, *Looking Where the Light is: creating and restoring safety and healing – A cultural framework for addressing child sexual abuse in Aboriginal and Torres Strait Islander communities* (2018), 15.

suggests that these actions should also extend to improving the approach to direct personal responses.

We note that different jurisdictions take differing approaches to involving Aboriginal and Torres Strait Islander organisations and providing counselling beyond conventional individualised models.²⁴

Recommendation 4

PWDA recommends that the Committee reinforce the recommendations of the Independent Review Report relating to improving counselling and social support arrangements to promote Aboriginal and Torres Strait Islander healing approaches and culturally appropriate service provision, with regard to the intersectional needs of survivors and extending to consideration of direct personal responses.

²⁴ Kruk, *Final Report: Second year review of the National Redress Scheme* (2021), 129.

5. Counselling and social support arrangements

Survivors are resilient, and many find their own ways to cope with the sexual abuse they suffered as children within their existing social networks. For a significant proportion of survivors, however, structured support services are vital to help people live through and counter the painful effects of early experiences of violence and reclaim a sense of self and place in the world.

The long-term impacts of child sexual abuse can include adverse outcomes across a person's life, from childhood into adulthood. Adverse psychological and associated consequences can be particularly challenging.

One longitudinal study on outcomes of child sexual abuse found rates of psychosocial disability were 2.4 times higher for survivors.²⁵ At the extreme end, mental health related consequences extend to suicidal thoughts and suicide attempts.²⁶

There is no downplaying the lasting, potentially devastating effects of child sexual abuse on emotional wellbeing, which can make it difficult to tackle everyday activities, sustain interpersonal relationships and hold down a job.

Against this background, redress as implemented in the Scheme is a means of doing justice beyond the conventional senses of accountability and financial compensation, as recognised in the *Redress and Civil Litigation Report* of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission).

The report states that '[s]urvivors' needs for counselling and psychological care should be singled out from the broader range of needs and addressed through redress as a necessary part of ensuring justice for victims.'²⁷

²⁵ D.M. Fergusson, J.M. Boden and I.J. Horwood, 'Exposure to childhood sexual and physical abuse and adjustment in early adulthood (2008) 32 *Child Abuse & Neglect* 607-619, 616.

²⁶ J. Cashmore and R. Shackel, *The long-term effects of child sexual abuse* (2013) Australian Institution of Family Studies, Child Family Community Australia Paper No. 11, 8.

²⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (2015), 13.

Responding to the psychological support needs of survivors through the Scheme is a way of assisting individuals to live well and fulfil their potential. This response also recognises that many survivors are not able to take steps to deal with the impacts of abuse—whether through justice or social systems—until later in life, by which time unaddressed psychosocial needs may have cumulated and intensified.

PWDA notes with concern that the Australian Government in its interim response has only expressed support for Recommendation 4.6 concerning the counselling and psychological care component ‘in principle’, noting that many of the issues raised in the Independent Review Report concern inequality of access to the counselling and psychological care component by redress recipients.

It is imperative that equal access to counselling arrangements is facilitated for all survivors. Ensuring a ‘fair’ scheme was a central plank of the model for redress envisaged by the Royal Commission—the ability of the Scheme to deliver fairness and justice was seen as closely linked to equality in treatment by redress processes, and equality of access to redress outcomes.²⁸

We draw the Committee’s attention to shortcomings in counselling arrangements in four key areas: availability; accessibility; flexibility and standards.

This section also discusses the unequal way in which jurisdictions have been arranging for redress recipients to choose alternative therapies and support options. We recommend that a consistent approach be taken to facilitating access to these outcomes.

Low uptake of psychological care and counselling services

The Independent Review Report states that only 20% of redress recipients (204 people) who contacted the state or territory to take up an offer of counselling actually accessed counselling, whereas 2008 survivors had initially accepted offer.²⁹

The reasons for this discrepancy call for deeper investigation. There is currently insufficient data to make sense of these trends.

²⁸ Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (2015), 4.

²⁹ Kruk, *Final Report: Second year review of the National Redress Scheme* (2021), 123.

PWDA would especially like to see additional data collected and reported on that would assist in understanding how disability may be interacting with decisions not to proceed with counselling after initially accepting an offer.

We commend the government initiatives directed at improving counselling arrangements and the uptake of counselling, including the dedicated working group on low uptake and the inclusion of improvements in this area as a priority of the Ministers' Redress Scheme Governance Board for 2021. Strategies to address barriers to equal access to lifelong, suitably skilled psychological care and counselling services are urgently needed to guarantee just outcomes for survivors.

PWDA supports all actions listed at Recommendation 4.6 of the Independent Review Report:

- Counselling arrangements require prompt review through collaboration between all Australian governments to ensure the provision of seamless support.
- Giving survivors *lifelong* access to trauma informed redress counselling should be a priority.
- Arrangements should not vary between states and territories in a way that disadvantages survivors depending on jurisdiction *or place of residence*.
- Psychological care and counselling services must meet the diversity of survivors' needs, including the specific needs of survivors with disability and tailoring to ensure that services are culturally safe and appropriate.
- Counselling should be provided for families of survivors where needed.

We also support the following actions suggested in Section 4.3:

- Enhancing *flexibility* in service choice across all jurisdictions.
- Making consistent provision for alternative support and therapeutic services to cater for individuals who require these services.
- Providing seamless end-to-end support before, during and after application process, as well as after a redress offer has been made.
- Ensuring greater transparency in data collection and reporting on the Scheme's counselling and psychological care component.
- Allowing survivors to access counselling even if they did not tick the relevant box on the acceptance document.

Availability and access

Limited availability of enrolled and suitably qualified, skilled and specialised counsellors across jurisdictions and regardless of place of residence, and difficulties survivors experience when trying to access counselling services, are issues that are on the Committee's agenda.

There are varied reasons for the well-recognised shortage of counsellors on approved lists of practitioners overseen by government services who facilitate access to counselling. It appears that there are few, or no, suitably qualified practitioners living in some locations, particularly regional, rural and remote areas.

Whereas other locations have a pool of practitioners who could potentially provide services through the Scheme but have not opted to enrol. We have heard that some counsellors do not want to go through the government approval process because it is overly bureaucratic, and that others are not willing to accept the lower fees provided under the Scheme.

PWDA suggests that a targeted campaign is needed to raise awareness of the Scheme among suitably qualified counsellors throughout Australia and encourage recruitment, including implementation of communication strategies such as advertising and consideration of the need to revise the approval and fee arrangements.

It has become increasingly apparent through our outreach work outside of metropolitan areas that there is an extreme shortage of enrolled and suitably qualified counsellors in regional, rural and remote areas of NSW and Queensland.

The Independent Review Report notes that counselling is limited or non-existent 'in rural and remote locations',³⁰ but implies that the shortage is not as severe in regional areas.³¹ While this may be the case, the limited availability of counselling services in regional areas, in addition to rural and remote locations, poses a problematic barrier to equality of access to quality psychological care and counselling services.

³⁰ Kruk, *Final Report: Second year review of the National Redress Scheme* (2021), 118.

³¹ Kruk, *Final Report: Second year review of the National Redress Scheme* (2021), 130.

Options are worryingly limited when it comes to accessing counsellors able to support redress recipients with disability and provide services in a disability aware manner, especially in regional, rural and remote areas. This requires skills in tailoring services to accommodate the requirements of individual clients with disability.

A search of the 'Find a Counsellor' form on the NSW Victims Services website page results in a find of 'no available counsellors' within a 15km radius of Broken Hill on a search for practitioners experienced in working with:

- adult survivors of child sexual assault
- people who have experienced domestic and family violence, or
- any of the listed disability categories (mental illness, cognitive impairment, acquired brain injury, intellectual disability and physical disability).

There are no counsellors with experience working with clients who have cognitive impairment, acquired brain injury or physical disability, and only one counsellor with a background in assisting clients with intellectual disability, listed for New England and Tamworth.

Some survivors are severely disadvantaged when it comes to accessing a counsellor because of their location. We are aware of some redress recipients living in Broken Hill who would be able to travel to parts South Australia to see a counsellor because these areas are closer than areas in NSW with suitably qualified counsellors. However, this is not an option due to the manner in which counselling arrangements are divided along jurisdictional lines.

Although counselling by teleconference may be more readily available in some regional, rural and remote areas, this mode is not suitable for many survivors with disability. Face-to-face counselling will be the only means of effective service provision for people with disability who require communication aids such as augmentative and alternative communication devices.

Recommendation 5

PWDA recommends Australian governments collaborate to develop a strategy to address the shortfall in suitably qualified, specialised counsellors enrolled in the Scheme, including counsellors skilled in working with people with disability and in a

culturally safe manner, with a particular focus on enhancing the provision of face-to-face services in regional, rural and remote areas, as a matter of priority.

While all benefits of such a strategy may not be felt immediately, they will flow through within the Scheme's lifetime and beyond to ensure fairer lifelong outcomes for survivors.

Accessibility

The review recommendations relating to counselling arrangements include that

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 (Recommendation 4.6.c).

Service accessibility is critical for people with disability.

Guaranteeing accessibility for redress applicants and recipients in the context of counselling arrangements calls for attention to the accessibility of:

- Schemes application processes and processes for accessing psychological care and counselling services
- Redress Support Services, and
- psychological care and counselling services themselves.

As discussed above, the availability of psychological care and counselling services that are accessible for clients with disabilities, particularly in regional, rural and remote areas, is concerningly limited.

Further, based on the experience of PWDA advocates assisting Redress clients in NSW and Queensland, there are a range of accessibility issues people with disability experience when seeking to access a counsellor, as reflected in the following case study:

One of my Redress clients (who is still in the process of making an application) has accessed [the approved counselling] service When I became involved, my client wanted me to be able to communicate with [the government service] directly on his

behalf. This was an issue because they have a form they wanted filled out and signed by the client, and my client is blind. It took several phone calls and a few weeks to get this sorted out.

Whether or not government services that facilitate access to counsellors provide redress applicants and recipients with assistance to arrange counselling will impact the accessibility of these services. Some people with disability, especially if they do not have an advocate or support person, require support to complete a redress application, use online processes and contact counsellors.

The publicly available data does not provide a clear picture about cohorts of survivors who are not pursuing an application to its end or decide not to proceed with counselling. PWDA is concerned that survivors with disability are more likely to give up part way through the application process, or the process of accessing a counsellor, due to accessibility barriers.

Such inequalities in treatment and outcome connected to accessibility contravene Article 9 of the CRPD (Accessibility). They also need to be recognised as denials of human rights, inconsistent with the international human right to equality before the law enshrined in Article 26 of the *International Covenant on Civil and Political Rights*. This provision prohibits discrimination on any ground.

Article 5 of the CRPD (Equality and non-discrimination), which elaborates on this right as it applies in the disability context, includes the following statements:

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

Recommendation 6

PWDA recommends that the Department of Social Services review services, systems and technologies involved in counselling arrangements, and accessing these arrangements, and develops a strategy for enhancing their accessibility in order to prevent discrimination against people with disability.

Flexibility

Ensuring survivors can exercise choice in relation to service provision is a critical issue that should be addressed in reviewing and improving counselling arrangements.

The limited availability of psychological care and counselling services in some parts of the country, as discussed above, means that many survivors are not able to choose a suitably qualified counsellor, able to meet their unique needs.

In addition, redress recipients are not always permitted to keep seeing their own counsellor via the Scheme's counselling arrangements. As noted by submissions to the independent review, it can take years to build up trust with a practitioner;³² it will be unreasonable to expect some survivors to change to a different counsellor.

The Independent Review Report suggests that survivors who think they cannot keep seeing their own counsellor are misunderstanding counselling arrangements. However, PWDA has been made aware of examples where, even in jurisdictions that in principle can arrange for a redress recipient to see a particular counsellor, this is not borne out in practice.

This can be because the counsellor a person would like to see does not want to accept the lower fee available under the Scheme, compared to what can be charged in private practice.

PWDA recommends the introduction of greater flexibility across jurisdictions in counselling arrangements, including how counselling services are paid, to promote greater choice and autonomy.

For example, allowing eligible applicants to receive a lump sum to pay for services in *all* jurisdictions may assist in ensuring that survivors can pay for at least some of their ongoing counselling needs to be met by their own counsellor, where counsellors prefer not to go through the Scheme's approval processes.

³² Kruk, *Final Report: Second year review of the National Redress Scheme* (2021), 125.

Conversely, the expansion of counselling arrangements in South Australia and Western Australia to allow for referral to a free government-funded service may be preferred by some survivors who need lifelong counselling.

The Independent Review Report states that in jurisdictions using the lump sum approach there is no follow up to ensure that applicants use the counselling payments for their intended purpose.³³

However, in PWDA's experience, it is not always the case that counselling payments in Queensland, for example, are made directly to the applicant; limitations are sometimes placed on the range of counsellors who can be engaged through the Scheme. This can present a barrier to survivors with disability being able to work with a counsellor of their choice.

Recommendation 7

PWDA recommends that the Committee consider options for maximising flexibility in the approach taken to counselling arrangements within and across jurisdictions, with a view to promoting choice and self-determination.

Standards

In our previous submission to the Committee, PWDA recommended that the Committee review the issue of counselling quality and standards. In our view the approval processes established in each jurisdiction too often do not guarantee that survivors can access practitioners who are qualified to provide 'trauma competent' services using evidence-based treatments.³⁴

'Trauma informed' service provision by practitioners is unlikely to equal the provision of psychological care and counselling in a 'trauma competent' or 'trauma specific' manner. Any organisation working with survivors, counselling or otherwise, can relatively quickly gain valuable knowledge to ensure the provision of trauma informed services. Training sessions can be comprehensive, or as short as one day in length.

³³ Kruk, *Final Report: Second year review of the National Redress Scheme* (2021), 121.

³⁴ People with Disability Australia, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \(November 2020\)](#), 21-22.

The ideal model for the provision of trauma competent or trauma specific *psychological care and counselling* services, however, is based on dedicated units of study within tertiary and vocational courses, or professional development programs.

The national service standards adopted the Royal Commission's recommendation that 'service providers must be appropriately qualified and skilled in working with survivors with complex trauma, [and] have an understanding of the effects of institutional child sexual abuse.'³⁵

PWDA has found that in practice counselling services provide via NSW and Queensland government arrangements do not always give effect to this standard. In part this is because approval processes do not always look behind practitioners' assurances that they have appropriate skills in trauma informed redress counselling.

Recommendation 8

PWDA recommends that responsible government services establish more stringent processes to verify that practitioners are qualified to provide trauma competent services, such as a brief certification process.

Recommendation 9

PWDA recommends that the Committee develop detailed standards for the provision of trauma competent psychological care and counselling services for survivors of child sexual abuse, in collaboration with organisations and professional bodies with appropriate expertise, for gradual implementation by the National Redress Scheme and to inform future professional training and regulation.

Alternative therapies and social supports

PWDA is concerned that there is currently unequal access to alternative therapies and social supports, beyond conventional counselling services, for redress recipients who take up an offer of counselling.

³⁵ Kruk, *Final Report: Second year review of the National Redress Scheme* (2021), 127.

As discussed in the Independent Review Report, some jurisdictions have established mechanisms to allow survivors to take up alternative options on a case-by-case basis, such as group therapy, equine therapy and recreational activities.³⁶

Broadening the range of social supports available within redress outcomes is likely to have benefit for numerous redress recipients, some of whom will not want counselling.

Flexibility in the provision of the counselling and psychological care component of redress is recommended in the Independent Review Report. This creates some confusion given that the alternatives mentioned do not necessarily fall under the banner of ‘counselling and psychological care’.

PWDA reiterates the comments made in our first submission to the Committee about the potential value of the Scheme providing access to alternative social supports within redress outcomes, responsive to the diversity of emotional, material, social and financial challenges survivors face.³⁷

PWDA acknowledges that this may give rise to complexity in terms of ensuring fairness for people who have already taken up a redress offer. However, we encourage the Committee to consider strategies to promote a flexible approach, broadening beyond counselling, to facilitate access to alternative therapies and a range of social supports, ensuring that survivors are consistently offered flexibility—across and within jurisdictions.

Recommendation 10

PWDA recommends that the Committee consider how the Scheme can develop mechanisms to facilitate equal access to a diverse range of counselling, therapy and social support options for redress recipients, regardless of jurisdiction or place of residence.

³⁶ Kruk, *Final Report: Second year review of the National Redress Scheme* (2021)

³⁷ People with Disability Australia, [Submission to the Joint Select Committee on Implementation of the National Redress Scheme \(November 2020\)](#), 23.



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