

Submission to the Australian Law Reform Commission Inquiry into justice responses to sexual violence

7 June 2024

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About knowmore

Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our aim is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

From 2013 to 2018, our service assisted people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission). From 1 July 2018, knowmore has delivered legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme (NRS). knowmore also delivers financial counselling services to people participating in the NRS, and works with other services in the NRS support network to support and build their capability. Since 2022, knowmore has also been assisting survivors who experienced child sexual abuse in non-institutional settings, and providing legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme).

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane, Perth, Adelaide and Darwin. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 31 May 2024, knowmore has received 133,180 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 18,719 clients. Almost 2 in 5 clients (38%) identify as Aboriginal and/or Torres Strait Islander peoples. More than 1 in 8 clients (13%) are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

knowmore's submission

knowmore's overall approach to the inquiry

knowmore welcomes the opportunity to contribute to the Australian Law Reform Commission's inquiry into justice responses to sexual violence (the inquiry). As a nation-wide, multidisciplinary service for victims and survivors of child sexual abuse, we have valuable insights relevant to the inquiry.

We acknowledge that the inquiry has a broader scope than child sexual abuse, covering all forms of sexual violence. However, it must also be acknowledged that child sexual abuse is a very significant part of the problem of sexual violence in Australia. The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) highlighted that child sexual abuse has been widespread in Australian institutions, affecting 'countless thousands' of children and occurring 'in almost every type of institution where children reside or attend for educational, recreational, sporting, religious or cultural activities'.¹ Almost 8,000 survivors shared their experiences with the Royal Commission in private sessions, identifying almost 3,500 institutions where child sexual abuse occurred.²

The Royal Commission only presents a partial image of the scale of child sexual abuse in Australia, as many survivors of child sexual abuse did not speak with the Royal Commission.³ Further, the Royal Commission did not address non-institutional child sexual abuse — for example, child sexual abuse within families.⁴ A fuller image has emerged from the Australian Child Maltreatment Study, which recently reported that 28.5% of the Australian population had experienced child sexual abuse.⁵ This suggests that more than 7.6 million people in

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- 1 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Final report: preface and executive summary*, December 2017, pp 1 and 5, <www.childabuseroyalcommission.gov.au/preface-and-executive-summary>.
 - 2 Royal Commission, *Final information update*, December 2017, p 1, <www.childabuseroyalcommission.gov.au/sites/default/files/final_information_update.pdf>.
 - 3 A survivor's decision about whether, when and how to disclose that they have experienced child sexual abuse is influenced by a variety of factors. Survivors often face barriers to disclosure and some survivors never disclose. See Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, December 2017, pp 9–11, <www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse>.
 - 4 Royal Commission, *Final report: volume 1, our inquiry*, December 2017, p 18, <www.childabuseroyalcommission.gov.au/our-inquiry>.
 - 5 D Haslam, B Mathews, R Pacella et al, *The prevalence and impact of child maltreatment in Australia: findings from the Australian Child Maltreatment Study: brief report*, Australian Child Maltreatment Study, 2023, p 17, <www.acms.au/resources/the-prevalence-and-impact-of-child-maltreatment-in-australia-findings-from-the-australian-child-maltreatment-study-2023-brief-report/>.

Australia (7,644,144 people) have experienced child sexual abuse.⁶ We also note that many victims and survivors of child sexual abuse experience multiple episodes of sexual violence across their lives, including in adulthood.⁷ Sexual violence against adults therefore disproportionately affects victims and survivors of child sexual abuse.

The Royal Commission made 409 recommendations,⁸ the majority of which were directed to Australian governments (including federal, state and territory governments). Although Australian governments have made considerable reforms to address child sexual abuse, none have fully implemented all the relevant recommendations from the Royal Commission. In all jurisdictions, many recommendations remain unimplemented, to the detriment of children and victims and survivors of child sexual abuse.

We welcome the Australian Law Reform Commission's commitment to 'avoid duplicating existing work' in the inquiry.⁹ With that in mind, our submission does not repeat all of the sound recommendations that have previously been made. In our view, the starting point for improving legal responses to child sexual abuse is the Royal Commission's recommendations.

In this submission, we have generally used the terminology of 'legal system' rather than 'justice system', recognising that the legal system has often failed to deliver justice and has in fact often exacerbated injustice.¹⁰ We have also generally used the terminology of 'Aboriginal and/or Torres Strait Islander peoples' or 'Aboriginal and/or Torres Strait Islander survivors', reflecting advice from knowmore's Aboriginal and Torres Strait Islander Engagement team.

Our submission proceeds in 4 parts, reflecting the structure of the Issues Paper:

- First, we make general comments, relevant to the inquiry as a whole, about victims' and survivors' experiences of the legal system.
- Second, we make comments about reporting sexual violence in response to pages 4 to 5 of the Issues Paper.

6 28.5% of the population of Australia, which was 26,821,557 at 30 September 2023. See Australian Bureau of Statistics, *National, state and territory population*, 21 March 2024, accessed 3 June 2024, <www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release>.

7 See, for example, M Stathopoulos, *Sexual revictimisation: individual, interpersonal and contextual factors*, ACSSA Research Summary, Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, May 2014, p 1, <aifs.gov.au/resources/practice-guides/sexual-revictimsation>.

8 Royal Commission, *Final report recommendations*, December 2017, <www.childabuseroyalcommission.gov.au/recommendations>.

9 Australian Law Reform Commission, *Justice responses to sexual violence: issues paper* (Issues Paper), April 2024, p 1, <www.alrc.gov.au/wp-content/uploads/2024/04/ALRC-JRSV-Issues-Paper-2024.pdf>.

10 See, for example, C Cunneen, 'The criminal legal system does not deliver justice for First Nations people, says a new book', *The Conversation*, 9 November 2022, <theconversation.com/the-criminal-legal-system-does-not-deliver-justice-for-first-nations-people-says-a-new-book-191005>.

- Third, we make comments about criminal legal responses to sexual violence in response to pages 6 to 23 of the Issues Paper.
- Fourth, we make comments about civil proceedings and other legal responses in response to pages 24 to 28 of the Issues Paper.

List of recommendations

We have provided our recommendations under 4 headings below, reflecting the general structure of our submission:

- recommendations relevant to the inquiry as a whole
- recommendations relevant to reporting sexual violence
- recommendations relevant to criminal legal responses to sexual violence
- recommendations relevant to civil proceedings and other legal responses.

Recommendations relevant to the inquiry as a whole

These recommendations are discussed further on pages 11 to 20.

Recommendation 1

All participants in the legal system should strive to embed a trauma-informed approach to child sexual abuse across all parts of the legal system. This includes the police, lawyers, judges, court staff, government decision-makers and support services.

Recommendation 2

The Australian Government, and all state and territory governments, should ensure that victims and survivors of child sexual abuse have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience.

Recommendation 3

The Tasmanian and Northern Territory governments should urgently establish victims' commissioners, modelled on national best practice.

Recommendation 4

All state and territory governments should ensure that victims' commissioners are independent statutory officers, with 'a specific and dedicated focus on victims of domestic, family and sexual violence and First Nations victim-survivors' and broad functions reflecting recommendation 18 from the Queensland Women's Safety and Justice Taskforce.

Recommendations relevant to reporting sexual violence

These recommendations are discussed further on pages 21 to 28.

Recommendation 5

Australian police agencies should work collaboratively to improve consistency and clarity in the information available about reporting child sexual abuse.

Recommendation 6

The Australian Government should ensure that there is at least 1 webpage specific to child sexual abuse that provides comprehensive information, in an accessible and print-friendly form, for all people who experienced child sexual abuse in Australia while they were under the age of 18. Each state and territory government should ensure that there is an equivalent webpage for its jurisdiction.

Recommendation 7

All Australian police agencies should provide information about child sexual abuse in community languages, including on the police websites. This should include information in Aboriginal and Torres Strait Islander languages.

Recommendation 8

Australian police agencies should ensure that their websites provide clear and accurate information about confidentiality and its limits when reporting child sexual abuse, including information about the mandatory reporting obligations of police officers.

Recommendation 9

All Australian police agencies should provide an option to anonymously report child sexual abuse.

Recommendation 10

All state and territory governments should ensure that reporting hubs are available to victims and survivors of child sexual abuse, including in rural, regional and remote areas.

Recommendations relevant to criminal legal responses to sexual violence

These recommendations are discussed further on pages 29 to 33.

Recommendation 11

The Australian Government, and all state and territory governments, should respond to the issues raised by pages 6 to 23 of the Issues Paper by fully implementing the recommendations from the Royal Commission's Criminal Justice Report.

Recommendation 12

The Australian Government, and all state and territory governments, should ensure that there is a specialist response to child sexual abuse from the start to the end of the police process.

Recommendation 13

The Australian Government, and all state and territory governments, should ensure that all police who may come into contact with victims and survivors of child sexual abuse have at least a basic understanding of the issues (consistent with recommendations 3 and 9 of the Royal Commission into Institutional Responses to Child Sexual Abuse's Criminal Justice Report).

Recommendations relevant to civil proceedings and other legal responses

These recommendations are discussed further on pages 34 to 54.

Recommendation 14

The Australian Government should lead work with the state and territory governments to implement recommendations made by previous reviews of the National Redress Scheme.

Recommendation 15

The Australian Government, and all state and territory governments, should immediately prioritise planning for the legislated end of the National Redress Scheme, in partnership with survivors and survivor support services.

Recommendation 16

The Australian Government, and all state and territory governments, should ensure that all victims and survivors of child sexual abuse have access to adequate redress and compensation options.

Recommendation 17

The Australian Government, and all state and territory governments, should ensure that victims and survivors of child sexual abuse who wish to participate in restorative justice processes have the option to do so. These processes must have appropriate safeguards to ensure that any decision by a victim or survivor to participate in such processes is fully informed, free from the perpetrator's influence and made with appropriate support (including legal advice).

Recommendation 18

The Australian Government, and all state and territory governments, should consider the direct personal response element of the National Redress Scheme and the recognition aspects of Victoria's Victims of Crime Financial Assistance Scheme as a starting point for what restorative justice processes could look like.

Recommendation 19

The Australian Government, and all state and territory governments, should implement the reforms outlined in the Issues Paper to improve victims' and survivors' experiences of civil litigation.

Recommendation 20

State and territory governments should work collaboratively to improve consistency between victims support schemes, based on national best practice.

Recommendation 21

All state and territory governments should strengthen their victims' charters, in line with recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse and having regard to the model provided by the victims' charter from the Australian Capital Territory.

Recommendation 22

All Australian governments that are yet to do so should implement a Human Rights Act.

Recommendation 23

The Australian Government, and all state and territory governments, should ensure that their Human Rights Acts include specific, enforceable protection of victims' and survivors' rights.

General comments relevant to the inquiry as a whole

This section makes general comments, relevant to the inquiry as a whole, about victims' and survivors' experiences of the legal system. It identifies the need to embed a trauma-informed approach to child sexual abuse across all parts of the legal system, including by:

- providing victims and survivors of child sexual abuse with access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience
- establishing victims' commissioners as independent statutory officers with broad functions to promote and protect the needs of victims and survivors.

Victims' and survivors' experiences of the legal system

It takes great courage for victims and survivors of child sexual abuse to even approach the legal system. This is a system that has failed to protect them from harm as children. In many cases, it is the legal system that has exposed victims and survivors to harm.¹¹ Victims and survivors of child sexual abuse experience 'profound and lasting' impacts,¹² which often include a distrust of institutions, including the government and legal institutions.¹³ Other impacts of child sexual abuse are wide-ranging, and often inseparable from victims' and survivors' experiences of the legal system. For example, victims and survivors of child sexual abuse often experience impacts on:

- physical health
- mental health
- relationships
- connection to culture
- education
- employment
- housing

11 This is often the case for victims and survivors who experienced child sexual abuse while in jail or out-of-home care. We discuss this further on pages 12 to 13.

12 Royal Commission, *Final report: volume 3, impacts*, December 2017, p 9, <www.childabuseroyalcommission.gov.au/impacts>.

13 Royal Commission, *Final report: volume 3, impacts*, pp 138–140.

- economic security.¹⁴

These impacts are often interrelated and create further barriers for victims and survivors in navigating a complex legal system.

A victim or survivor's decision to seek a legal response to child sexual abuse is deeply personal, and there are many factors that may influence the victim or survivor's choice between options. These factors may include:

- different experiences of institutions generally or the legal system in particular
- different application processes
- different eligibility criteria or legal tests
- different supports available to help with the process – for example, different access to legal assistance, social work and counselling, cultural support and financial counselling
- different impacts on other supports, such as Centrelink payments
- different costs or other risks, such as risks to confidentiality
- different outcomes available.

Many victims and survivors of child sexual abuse achieve life-changing outcomes through the legal system. However, many are also let down by legal processes that are not survivor-focused – processes that are inaccessible, retraumatising and culturally unsafe. Many victims and survivors never receive justice for the abuse perpetrated against them as children and many feel that the legal system only exacerbated the harm.

These issues are heightened for many victims and survivors of child sexual abuse who experience intersectional marginalisation, such as those identified in Term of Reference 2 for the inquiry. A particularly unjust dynamic exists for Aboriginal and/or Torres Strait Islander peoples, whereby Australian governments disproportionately place Aboriginal and/or Torres Strait Islander children in jail and out-of-home care,¹⁵ where children are at

14 Royal Commission, *Final report: volume 3, impacts*, pp 73–156.

15 58% of young people in detention aged 10 and over are Aboriginal and/or Torres Strait Islander peoples. 43% of children in out-of-home care are Aboriginal and/or Torres Strait Islander peoples. See Australian Institute of Health and Welfare, *Youth justice in Australia 2022–23: detention*, 28 March 2024, accessed 4 June 2024, <www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/detention>; Australian Institute of Health and Welfare, *Child protection Australia 2021–22*, 7 May 2024, accessed 4 June 2024, <www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/contents/insights>.

heightened risk of being sexually abused,¹⁶ only to later deny many of those same Aboriginal and/or Torres Strait Islander people an adequate legal response to the abuse.¹⁷

The combined impact of these issues is a legal system that often fails to provide a just or effective response to child sexual abuse. In our view, significant change is required to embed a trauma-informed approach to child sexual abuse across all parts of the legal system. We make further comments about this below.

Embedding a trauma-informed approach across the legal system

A trauma-informed approach to child sexual abuse would mean that participants in the legal system:

- seek survivor-focused justice
- ensure they do no further harm to victims and survivors
- deliver services to victims and survivors in accordance with the core trauma-informed principles of safety, trustworthiness, choice, collaboration, empowerment and respect for diversity¹⁸
- recognise the particular needs of victims and survivors and respond to these with an increased level of support.¹⁹

These principles must guide participants in all parts of the legal system, including the police, lawyers, judges, court staff, government decision-makers and support services.

Embedding a trauma-informed approach across the legal system would remove barriers that prevent or deter victims and survivors from seeking legal responses to child sexual abuse, and would further improve the quality of decisions – for example, by supporting victims and survivors to provide their best evidence to decision-makers.²⁰ These objectives are wholly

16 The Royal Commission found that 75% of Aboriginal and/or Torres Strait Islander survivors experienced child sexual abuse in out-of-home care, while 15.2% of Aboriginal and/or Torres Strait Islander survivors experienced child sexual abuse in youth detention. See Royal Commission, *Final report: volume 5, private sessions*, December 2017, p 400, table P.13, <www.childabuseroyalcommission.gov.au/final-report-private-sessions>.

17 See knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, 7 February 2023, pp 49–50, <knowmore.org.au/wp-content/uploads/2023/03/submission-joint-standing-committee-on-implementation-of-the-national-redress-scheme-cth.pdf>.

18 See Blue Knot Foundation, *Trauma-informed services*, accessed 3 June 2024, <professionals.blueknot.org.au/resources/trauma-informed-services/>.

19 See, for example, knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse's criminal justice consultation paper*, 31 October 2016, p 7, <knowmore.org.au/wp-content/uploads/2018/06/Consultation-Paper-Criminal-Justice-Submission-32-knowmore.pdf>.

20 See Royal Commission, *Criminal justice report: parts VII to X and appendices*, August 2017, pp 5–8, <www.childabuseroyalcommission.gov.au/criminal-justice>.

consistent with the right to a fair trial and recognise that a fair trial includes fairness to victims, survivors and the broader community.²¹

We make comments below about 2 key reforms that are needed to embed a trauma-informed approach across the legal system:

- providing victims and survivors of child sexual abuse with access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience
- establishing victims' commissioners as independent statutory officers with broad functions to promote and protect the needs of victims and survivors.

Strengthening victims' and survivors' rights through victims' charters and Human Rights Acts is also essential for embedding a trauma-informed approach across the legal system. We make comments about this in response to the relevant questions from the Issues Paper on pages 50 to 54 of this submission.

Recommendation 1

All participants in the legal system should strive to embed a trauma-informed approach to child sexual abuse across all parts of the legal system. This includes the police, lawyers, judges, court staff, government decision-makers and support services.

Providing free legal assistance and wraparound support

As noted on pages 11 to 13, the legal system is complex and often inaccessible and retraumatising for victims and survivors of child sexual abuse. Many inquiries, over many years and across Australian jurisdictions, have highlighted the need to provide victims and survivors with greater support to navigate the legal system.²² For example, the Victorian Victims of Crime Commissioner (VOCC) recently made the following observations in a systemic inquiry into victim participation in the justice system:

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- 21 See, for example, Royal Commission, *Criminal justice report: parts III to VI*, August 2017, p 521, <www.childabuseroyalcommission.gov.au/criminal-justice>; ACT Human Rights Commission, *Submission to the inquiry into Australia's Human Rights Framework*, 1 July 2023, p 8, <www.aph.gov.au/DocumentStore.ashx?id=fc1eeb51-25b9-4b7d-9710-813238c23d5a&subId=745757>.
- 22 See, for example, Royal Commission, *Final report: volume 9, advocacy, support and therapeutic treatment services*, December 2017, pp 15–16, recommendation 9.4, <www.childabuseroyalcommission.gov.au/advocacy-support-and-therapeutic-treatment-services>; Queensland Women's Safety and Justice Taskforce (Queensland Taskforce), *Hear her voice: report two, volume one*, July 2022, p 129, recommendation 9, <www.womenstaskforce.qld.gov.au/publications>; Victorian Victims of Crime Commissioner, *Sidelined and silenced: systemic inquiry into victim participation in the justice system*, November 2023, p 360, <victimsofcrimecommissioner.vic.gov.au/media/lpufjx5h/silenced-and-sidelined_systemic-inquiry-into-victim-participation.pdf>.

There have been sufficient reviews and inquiries, including reviews examining the existing system in depth, to demonstrate that the current approach to victim support is not meeting victims' needs.

...

Victims need, and deserve, a properly resourced victim support system that can provide the type of support they need, including in duration, intensity and specialisation. The current victim support system has already been found to be inadequate and falling short.²³

In relation to legal assistance specifically, the Victorian Victims of Crime Commissioner commented that:

Findings relating to victims' unmet legal needs are not new.

...

Victims' views, consultations with experts and stakeholders, and the overwhelming evidence from previous reviews and inquiries, support the VOCC's conclusion that enhanced legal advice and assistance is fundamental to victim participation in the justice system.²⁴

The Victorian Victims of Crime Commissioner recommended that the Victorian Government 'fund an enhanced victim support system in Victoria' and expand the existing Victims Legal Service in Victoria 'to provide victims with specialist, state-funded legal assistance in relation to the comprehensive range of legal issues that victims face'.²⁵ knowmore supports these recommendations. However, as a nation-wide service that assists victims and survivors of child sexual abuse, we are concerned by the gaps in assistance in all parts of Australia and recognise the importance of a nationally consistent response. In knowmore's view, victims and survivors of child sexual abuse in all parts of Australia should have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience. This is particularly important for ensuring that victims and survivors not only have meaningful access to legal options, but to the full range of services that can assist victims and survivors with redress, justice and healing.

Some elements of such a service already exist, or will soon be piloted, in many parts of Australia. For example:

- As noted on page 3, knowmore provides a range of legal and related support services to victims and survivors of child sexual abuse.
- As noted above, there is a statewide Victims Legal Service in Victoria, which provides legal advice to victims of crime about Victim of Crime Assistance Tribunal (VOCAT) applications and assists victims of crime with orders for restitution or

23 Victorian Victims of Crime Commissioner, *Sidelined and silenced*, p 360.

24 Victorian Victims of Crime Commissioner, *Sidelined and silenced*, pp 369 and 373.

25 Victorian Victims of Crime Commissioner, *Sidelined and silenced*, pp 362 and 376.

compensation from an offender.²⁶ Victoria Legal Aid, Djirra and the Women's Legal Service Victoria have been funded to pilot an expansion of the Victims Legal Service to assist victims and survivors of sexual violence to protect their confidential counselling records and health information, and to support Aboriginal and/or Torres Strait Islander victims and survivors to report sexual violence to the police.²⁷

- The Women's Legal Service WA, Aboriginal Family Legal Services and Ruah Legal Services have been funded to pilot a statewide legal service to assist victims and survivors of sexual assault to navigate the criminal legal system.²⁸
- The Women's Legal Centre ACT and Victim Support ACT have been funded to pilot a legal service to assist victims and survivors of sexual violence to engage with the criminal legal system and related legal issues.²⁹
- The Queensland Government has committed to piloting a statewide victim advocate service for victims of sexual violence.³⁰

As illustrated by the discussion above, the support service system for victims and survivors of child sexual abuse in Australia is complex and fragmented, with fractures typically reflecting the limitations of funding arrangements. There is not presently a service that provides free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors of child sexual abuse experience.

We envisage a comprehensive service assisting victims and survivors of child sexual abuse with at least the broad range of matters identified by the Victorian Victims of Crime Commissioner.³¹ In addition to those matters, the same comprehensive service should be

26 Victims of Crime Victoria, *Victims Legal Service*, 1 March 2024, accessed 3 June 2024, <www.victimsofcrime.vic.gov.au/victims-legal-service>.

27 Victoria Legal Aid, *Expansion of Victims Legal Service*, 22 September 2023, <www.legalaid.vic.gov.au/expansion-victims-legal-service>; M Dreyfus KC MP and A Rishworth MP, *Supporting victims and survivors of sexual violence – piloting new legal services models*, 20 September 2023, <ministers.ag.gov.au/media-centre/supporting-victims-and-survivors-sexual-violence-piloting-new-legal-services-models-20-09-2023>; Victims of Crime Victoria, *Victims Legal Service*.

28 J Quigley MLA and S Ellery MLC, *Legal support pilot to assist sexual assault victims*, 20 September 2023, <www.wa.gov.au/government/media-statements/Cook-Labor-Government/Legal-support-pilot-to-assist-sexual-assault-victims-20230920>; M Dreyfus KC MP and A Rishworth MP, *Supporting victims and survivors of sexual violence*.

29 M Dreyfus KC MP and A Rishworth MP, *Supporting victims and survivors of sexual violence*; ACT Government (Justice and Community Safety Directorate), *Pilot sexual assault legal service for ACT*, 20 September 2023, <www.justice.act.gov.au/latest-news/pilot-sexual-assault-legal-service-for-act#:~:text=The%20new%20pilot%20service%20will,system%20and%20related%20legal%20issues>.

30 Queensland Government, *Action for victim-survivors of sexual violence*, 21 November 2022, <statements.qld.gov.au/statements/96625>.

31 Victorian Victims of Crime Commissioner, *Sidelined and silenced*, pp 373-375.

funded to assist victims and survivors of child sexual abuse to understand and access their redress and compensation options (see further discussion on pages 34 to 50).

Based on our experience as a multidisciplinary service, we consider it essential for this legal assistance to be delivered by dedicated services that can provide wraparound support, recognising the impacts of child sexual abuse and the importance of a trauma-informed response (see pages 11 to 18). We consider it important for any service delivering this assistance to be free from actual, potential or perceived conflicts of interest that may arise from also providing assistance to alleged offenders in relation to their offending. This is important to ensure that victims and survivors are able to access and have confidence in the service.

The following are key features of knowmore's service delivery model that we recommend be embedded as good practice in the delivery of free, independent and trauma-informed legal assistance to victims and survivors:

- a targeted service that ensures funding is first used to assist victims and survivors who most need legal assistance and who are least able to otherwise access this assistance
- an integrated, multidisciplinary team that brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide a holistic, comprehensive response to clients' legal and associated non-legal needs
- a supportive, client-centred culture that focuses on providing victims and survivors with assistance at a pace that is suitable for them
- staff and systems built on an understanding of the profound and life-long impacts of childhood trauma on clients' lives, to drive responses that are trauma-informed and appropriate
- a framework of Aboriginal and/or Torres Strait Islander cultural safety, which has an appreciation and conceptualisation of Aboriginal and Torres Strait Islander cultural knowledge as its own discipline at its centre.

These features can be summarised by describing knowmore as a service that delivers targeted, joined-up, timely, appropriate, survivor-focused, trauma-informed and culturally safe legal assistance and other support to victims and survivors of child sexual abuse.³² We consider this offers a valuable and feasible model for supporting victims and survivors of sexual violence more broadly with the legal issues that they experience.

32 The qualities of targeted, joined-up, timely and appropriate reflect what the Law and Justice Foundation of New South Wales has previously identified as the 4 key precepts of public legal assistance services. See P Pleasence, C Coumarelos, S Forell and HM McDonald, *Reshaping legal assistance services: building on the evidence base, a discussion paper*, Law and Justice Foundation of New South Wales, April 2014, p iii, [www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/$file/Reshaping_legal_assistance_services_web.pdf).

Recommendation 2

The Australian Government, and all state and territory governments, should ensure that victims and survivors of child sexual abuse have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience.

Establishing independent victims' commissioners

All Australian states and territories, except for Tasmania and the Northern Territory, have some form of victims' commissioner.³³ The Queensland Women's Safety and Justice Taskforce (the Queensland Taskforce) has summarised the different approaches of different Australian jurisdictions,³⁴ and made comments highlighting the significant potential of victims' commissioners to improve legal responses for victims and survivors:

*A victims' commissioner will promote and protect the rights of all victims across the criminal justice and service systems. It can monitor compliance with those rights (including by overseeing how agencies manage and respond to complaints), identify systemic trends and issues, and provide an important and ongoing role working towards systemic change (including through influencing policy, practice and systemic reform). It could also have power to intervene and/or represent individual victims where necessary and relevant. Establishment of a victim' commission is needed to provide a mechanism for ongoing improvement across service systems ...*³⁵

The Queensland Taskforce recommended that the Queensland Government 'establish a victims' commissioner as an independent statutory officer to promote and protect the needs of victims of all violent offences'.³⁶ The Queensland Government has since appointed an interim Victims' Commissioner and passed legislation to establish a permanent Victims' Commissioner, to be announced by 30 June 2024.³⁷

Tasmania and the Northern Territory have now fallen behind all other Australian states and territories in not having this important role for the protection of victims' and survivors' rights. We recommend that the Tasmanian and Northern Territory governments urgently establish victims' commissioners, modelled on national best practice. We make further

33 See generally Queensland Taskforce, *Hear her voice: report two, volume one*, p 134. The Queensland Government has appointed an interim Victims' Commissioner and passed legislation to establish a permanent Victims' Commissioner. The Australian Government has also established a Domestic, Family and Sexual Violence Commissioner.

34 Queensland Taskforce, *Hear her voice: report two, volume one*, pp 134–5; Queensland Taskforce, *Hear her voice: report two, volume two*, 2022, pp 760–761, appendix 5, <www.womenstaskforce.qld.gov.au/publications>.

35 Queensland Taskforce, *Hear her voice: report two, volume one*, p 138.

36 Queensland Taskforce, *Hear her voice: report two, volume one*, p 139, recommendation 18.

37 Queensland Government, *Interim Victims' Commissioner appointed*, 2 September 2023, <statements.qld.gov.au/statements/98579>; *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld), section 7.

comments below about what we consider to be features of national best practice for victims' commissioners.

Recommendation 3

The Tasmanian and Northern Territory governments should urgently establish victims' commissioners, modelled on national best practice.

Features of national best practice for victims' commissioners

We note that the Queensland Taskforce identified that South Australia has the strongest model, commenting:

*The South Australian Commissioner for Victims' Rights is seen as model for reform given the established history of the office and the progressive work undertaken in that time. The role is likened to that of a crime victim ombudsman in that it can receive a grievance and consult any public official to resolve the dispute and, where appropriate, recommend an official or agency make a written apology. The powers of the role also go beyond that of a conventional ombudsman. The South Australian Commissioner also has the ability to represent victims and intervene in proceedings with the approval of the victim.*³⁸

Drawing on the Queensland Taskforce's comments about victims' commissioners and our experience assisting victims and survivors of child sexual abuse, we consider that features of national best practice include the following:

- Victims' commissioners should be independent statutory officers, not part of a government department or otherwise involved in the delivery of victims' services.³⁹
- Victims' commissioners should 'have a specific and dedicated focus on victims of domestic, family and sexual violence and First Nations victim-survivors'.⁴⁰
- Victims' commissioners should have broad functions to promote and protect the needs of victims and survivors, including:
 - 'assisting victims in their dealings with government agencies across the criminal justice system'⁴¹

38 Queensland Taskforce, *Hear her voice: report two, volume one*, pp 134–135.

39 See Queensland Taskforce, *Hear her voice: report two, volume one*, p 139, recommendation 18; Women's Legal Service NSW, *Submission to the statutory review of the Victims Rights and Support Act (NSW)*, 11 July 2022, pp 51–53, <dcj.nsw.gov.au/documents/about-us/engage-with-us/public-consultations/review-of-the-victims-rights-and-support-act-2013-/Womens-Legal-Service-NSW-submission.pdf>.

40 Queensland Taskforce, *Hear her voice: report two, volume one*, p 139, recommendation 18.

41 Queensland Taskforce, *Hear her voice: report two, volume one*, p 139, recommendation 18.

- ‘exercis[ing] the rights of victims, upon their request and with consent, including in relation to their interactions with police, other government agencies and the courts (similar to the South Australian model)’⁴²
- making recommendations about any matters affecting victims’ and survivors’ rights, including legislation, government policy, practices, procedures and systems.⁴³

The models adopted by many states and territories fall short of these best practice features. For example:

- Queensland’s Victims’ Commissioner does not have clear functions to intervene in individual cases.⁴⁴
- Western Australia’s Commissioner for Victims of Crime is not statutorily appointed.⁴⁵
- The New South Wales Commissioner of Victims Rights is also the Executive Director Victims Services, which involves ‘budgetary oversight in the delivery of services’, an arrangement that has been widely criticised by support services for victims and survivors.⁴⁶

We consider that all state and territory governments should ensure that victims’ commissioners are independent statutory officers, with ‘a specific and dedicated focus on victims of domestic, family and sexual violence and First Nations victim-survivors’ and broad functions reflecting the relevant recommendation from the Queensland Taskforce.⁴⁷

Recommendation 4

All state and territory governments should ensure that victims’ commissioners are independent statutory officers, with ‘a specific and dedicated focus on victims of domestic, family and sexual violence and First Nations victim-survivors’ and broad functions reflecting recommendation 18 from the Queensland Women’s Safety and Justice Taskforce.

42 Queensland Taskforce, *Hear her voice: report two, volume one*, p 139, recommendation 18.

43 See knowmore, *Submission on the Victims’ Commissioner and Sexual Violence Review Board Bill 2024*, 15 March 2024, p 3, < documents.parliament.qld.gov.au/com/CSLAC-40FE/VCSVRBB202-3271/submissions/00000007.pdf>; Queensland Taskforce, *Hear her voice: report two, volume one*, p 139, recommendation 18.

44 See knowmore, *Submission on the Victims’ Commissioner and Sexual Violence Review Board Bill 2024*, p 2; *Victims’ Commissioner and Sexual Violence Review Board Act 2024* (Qld), section 9.

45 Queensland Taskforce, *Hear her voice: report two, volume two*, p 761.

46 Women’s Legal Service NSW, *Submission to the statutory review of the Victims Rights and Support Act (NSW)*, pp 51–53.

47 Queensland Taskforce, *Hear her voice: report two, volume one*, p 139, recommendation 18.

Reporting sexual violence

In response to pages 4 to 5 of the Issues Paper, we first make some general comments about reporting child sexual abuse. We then make further comments about:

- the information available to victims and survivors about reporting child sexual abuse to the police
- anonymous reporting options
- reporting hubs.

General comments about reporting child sexual abuse

As the Issues Paper acknowledges:

*Many victim survivors of sexual violence do not report their experience to anyone, including the police.*⁴⁸

This is consistent with our experience assisting victims and survivors of child sexual abuse, and with the Royal Commission's findings about when victims and survivors disclose child sexual abuse. While the decision to disclose is different for every victim and survivor, the Royal Commission found that victims and survivors take 23.9 years on average to disclose to another person that they have experienced child sexual abuse. Some victims and survivors never disclose to another person that they have experienced child sexual abuse, let alone report the matter to the police.⁴⁹

The Issues Paper further recognises that a victim or survivor's decision whether to report sexual violence may be influenced by a range of factors, including 'distrust of and lack of faith in the police or the justice system'.⁵⁰ This is also consistent with our experience. knowmore assists many victims and survivors of child sexual abuse who, for a range of reasons, do not trust the police. While we do not make detailed comments about trust in the police in this submission, it is important background to questions 1 to 4 from the Issues Paper – it is a significant part of why many victims and survivors will never report child sexual abuse to the police. We also note that many victims and survivors of child sexual abuse continue to have negative experiences when reporting (see discussion on pages 31 to 33).

We make further comments below in relation to:

- the information available to victims and survivors about reporting child sexual abuse to the police
- anonymous reporting options

48 Issues Paper, p 4.

49 Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, p 30.

50 Issues Paper, p 4.

- reporting hubs.

We also note that most child sexual abuse offences are within the jurisdiction of state and territory police agencies. However, the Australian Federal Police has jurisdiction over a range of child sexual abuse offences, including offences relating to child abuse material and online child sexual abuse.⁵¹

The information available to victims and survivors about reporting child sexual abuse to the police

In knowmore's view, the information available to help victims and survivors decide whether to report child sexual abuse to the police is limited and often inaccessible to many victims and survivors. Our comments below focus on the information available on police websites – an important source of information for many victims and survivors and support services (although we acknowledge that other sources of information exist). We make comments below about 4 significant limitations of the information available on Australian police websites:

1. inconsistencies in the information about reporting child sexual abuse
2. the lack of comprehensive information about reporting child sexual abuse
3. the limited information about child sexual abuse in community languages
4. apparent deficiencies in the information provided about confidentiality and its limits.

Inconsistencies in the information about reporting child sexual abuse

knowmore's perspective on the information available to victims and survivors about reporting child sexual abuse to the police is informed by our experience as a nation-wide service, assisting victims and survivors with police reports in all Australian jurisdictions. A striking feature of this information, from a nation-wide perspective, is the significant inconsistencies in how police agencies present the information in different jurisdictions. These inconsistencies affect almost every aspect of how police agencies present the information, including:

- whether all relevant information is included in specific resources about child sexual abuse, or whether it is necessary to also review resources about child abuse, sexual assault or crimes generally to obtain all the relevant information
- whether the information is presented differently depending on the age of the victim or survivor, and what the relevant age(s) are
- whether the information is presented differently depending on whether the child sexual abuse is current or whether it occurred in the past, however long ago it occurred.

51 See Australian Federal Police, *Reporting Commonwealth crimes*, accessed 3 June 2024, <www.afp.gov.au/report-crime>; *Criminal Code* (Cth), sections 474.22 to 474.34.

There is no good reason for this level of inconsistency between jurisdictions. It results in significantly different experiences for victims and survivors depending on where the abuse occurred and creates difficulties for victims and survivors whose experiences cross borders – for example, victims and survivors who have experienced child sexual abuse in more than one jurisdiction. Given the significant role of discretion in policing,⁵² it is difficult to know when differences in how police agencies present information represent differences in presentation only, and when they represent genuine differences in police processes or practices. This makes it difficult for support services to advise victims and survivors about what to expect if they choose to report child sexual abuse to the police.

In knowmore's view, Australian police agencies should work collaboratively to improve consistency and clarity in the information available about reporting child sexual abuse.

Recommendation 5

Australian police agencies should work collaboratively to improve consistency and clarity in the information available about reporting child sexual abuse.

The lack of comprehensive information about reporting child sexual abuse

We are not aware of any police website that provides comprehensive information about reporting child sexual abuse in Australia. Instead, the information is fragmented across the different police websites for the 9 different Australian jurisdictions (including the federal jurisdiction). These jurisdiction-specific websites themselves often do not have any one part of the website that provides comprehensive information about reporting child sexual abuse in that jurisdiction. For example, on the Western Australia Police website, the relevant information is fragmented across webpages relating to child abuse in general,⁵³ sexual assault in general,⁵⁴ and sexual assault in relation to people who are 16 years or older.⁵⁵ This is difficult to navigate and contributes to a lack of clarity as to which information applies to any particular person's circumstances. Problems of this nature are not unique to the Western Australia Police website – they are widespread across Australian police websites.

52 See, for example, Australian Law Reform Commission, *Pathways to justice – an inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples: final report*, December 2017, chapter 14, paragraph 14.21, <www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>.

53 Western Australia Police Force, *Child abuse*, 28 July 2023, accessed 3 June 2024, <www.police.wa.gov.au/Your-Safety/Child-abuse>; Western Australia Police Force, *How to report child abuse*, 31 July 2023, accessed 3 June 2024, <www.police.wa.gov.au/Your-Safety/Child-abuse/How-to-report-child-abuse>.

54 Western Australia Police Force, *Sexual assault*, 1 August 2023, accessed 3 June 2024, <www.police.wa.gov.au/Your-Safety/Sexual-assault>.

55 Western Australia Police Force, *Telling your story and getting help: reporting sexual offences, information for persons who are 16 years and older*, accessed 3 June 2024, <www.police.wa.gov.au/~media/Victim-Info-Booklet-June-2023.pdf?la=en>.

In our view, the Australian Government should ensure that there is at least 1 webpage specific to child sexual abuse that provides comprehensive information, in an accessible and print-friendly form, for all people who experienced child sexual abuse in Australia while they were under the age of 18. Each state and territory government should ensure that there is an equivalent webpage for its jurisdiction.

Recommendation 6

The Australian Government should ensure that there is at least 1 webpage specific to child sexual abuse that provides comprehensive information, in an accessible and print-friendly form, for all people who experienced child sexual abuse in Australia while they were under the age of 18. Each state and territory government should ensure that there is an equivalent webpage for its jurisdiction.

Limited information about child sexual abuse in community languages

Australian police websites often do not provide all of the relevant information about child sexual abuse in languages other than English. Many appear to rely on automated translation tools, such as Google Translate,⁵⁶ despite the high risk of mistranslation with such tools.⁵⁷

This is despite the fact, as of the Census in 2021, 5.6 million people in Australia – that is, almost a quarter (23%) of the population – used a language other than English at home. 3.4% of the population in Australia reported that they spoke English not well or not at all.⁵⁸ Even victims and survivors with a high level of English proficiency may feel safer accessing information in a language other than English.

In knowmore's view, providing information in community languages is respectful of the diversity that exists in a multicultural society, reduces barriers to reporting child sexual abuse and is a key part of a trauma-informed response. We recommend that all Australian police agencies provide information about child sexual abuse in community languages, including on the police websites. This should include information in Aboriginal and Torres Strait Islander languages.

56 See, for example, Western Australia Police, *Accessibility*, 20 November 2018, accessed 4 June 2024, <www.police.wa.gov.au/Accessibility>; Tasmania Police, *Sexual violence*, accessed 4 June 2024, <www.police.tas.gov.au/what-we-do/family-and-sexual-violence/sexual-violence/>.

57 Multicultural NSW, *NSW Government Language Services Guidelines*, 2022, p 14, <multicultural.nsw.gov.au/wp-content/uploads/2022/11/Language-Services_Guidelines_OCT22.pdf>.

58 Australian Bureau of Statistics, *Cultural diversity of Australia*, 20 September 2022, <www.abs.gov.au/articles/cultural-diversity-australia>.

Recommendation 7

All Australian police agencies should provide information about child sexual abuse in community languages, including on the police websites. This should include information in Aboriginal and Torres Strait Islander languages.

Apparent deficiencies in the information provided about confidentiality and its limits

The Royal Commission recognised the ‘critical importance’ of confidentiality for victims and survivors when disclosing child sexual abuse.⁵⁹ This is consistent with our experience – many of our clients express heightened concern as to the confidentiality of their information. It is an important feature of trauma-informed services that survivors are not only assured of the confidentiality of their information, but informed of any limits to confidentiality. This helps empower survivors to make an informed choice as to whether to engage with the service and trust that the service will do what it says.⁶⁰

knowmore holds concerns as to whether police websites provide accurate information in all places about the confidentiality of information provided to the police. For example, the *How to report child abuse* page of the Western Australia Police website says that ‘Information supplied to the Child Abuse Squad is treated with the strictest of confidence’.⁶¹ However, police officers in Western Australia are mandatory reporters, who are required to report child sexual abuse to the Department of Communities.⁶² It is difficult to see how the Western Australia Police can guarantee ‘the strictest of confidence’ while also complying with mandatory reporting obligations. We make further comments about this in relation to anonymous reporting options on pages 26 to 27.

In knowmore’s view, Australian police agencies should ensure that their websites provide clear and accurate information about confidentiality and its limits when reporting child sexual abuse, including information about the mandatory reporting obligations of police officers.

Recommendation 8

Australian police agencies should ensure that their websites provide clear and accurate information about confidentiality and its limits when reporting child sexual abuse, including information about the mandatory reporting obligations of police officers.

59 Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, p 86.

60 See generally Blue Knot Foundation, *Trauma-informed services*.

61 Western Australia Police Force, *How to report child abuse*.

62 *Children and Community Services Act 2004* (WA), section 124B.

Anonymous reporting options

The Issues Paper considers ‘enabling victim survivors to report anonymously, so that the “pattern of offending” by the person responsible for sexual violence becomes apparent over time’.⁶³ knowmore generally supports anonymous reporting options of this nature for child sexual abuse. We note that New South Wales, Queensland and Western Australia have anonymous reporting options.⁶⁴

Anonymous reporting options are consistent with the trauma-informed principle of choice for victims and survivors.⁶⁵ In our experience, many victims and survivors would rather report child sexual to the police anonymously than make a traditional police report. There are victims and survivors who would not make a traditional police report who will anonymously report child sexual abuse to the police. As victims support schemes generally require victims and survivors to report the crime to the police (see discussion on pages 49 to 50), anonymous reporting options can play an important role in assisting victims and survivors to access support. We recommend that all Australian police agencies provide an option to anonymously report child sexual abuse.

Recommendation 9

All Australian police agencies should provide an option to anonymously report child sexual abuse.

While we support anonymous reporting options, our experience suggests that several issues may arise in practice. For example:

- As noted on page 25, many victims and survivors have confidentiality concerns and require clear and accurate information about how the police will use their information to feel safe reporting child sexual abuse. It is often difficult to find clear information about this.
- As noted above, victims support schemes generally require survivors to report the crime to the police as a condition of accessing support. There may be difficulties in relying upon the anonymous reporting option to meet this requirement in all cases – for example, if no reference number is provided (as in Western Australia)⁶⁶ or if the victim or survivor loses their reference number. Further, linking a reference number to the victim or survivor’s name in a victims support application may itself raise

63 Issues Paper, p 5.

64 New South Wales Police, *Sexual assault reporting option*, accessed 4 June 2024, <portal.police.nsw.gov.au/adultsexualassault/s/sexualassaultreportingoption?language=en_US>; Queensland Police, *Alternative reporting options*, 27 July 2023, accessed 4 June 2024, <www.police.qld.gov.au/units/victims-of-crime/support-for-victims-of-crime/adult-sexual-assault/alternative-reporting>; Western Australia Police Force, *Sexual assault and child abuse reporting*, accessed 4 June 2024, <wa-police-force-sex-crime.safe2say.com.au/report/57296573-19ce-4241-b9b0-35e703922272>.

65 See Blue Knot Foundation, *Trauma-informed services*.

66 Western Australia Police Force, *Sexual assault and child abuse reporting*.

confidentiality concerns. We make further comments about the requirements of victims support schemes on pages 46 to 50.

Reporting hubs

The Issues Paper refers to ‘safe places where people can seek help and information and be supported to report to the police if they choose to do so’.⁶⁷ We make comments here about a specific type of place for accessing support and reporting sexual violence to the police – that is, reporting hubs. Western Australia’s Office of the Commissioner for Victims of Crime describes reporting hubs as follows:

*The reporting hubs include services for sexual offending victim-survivors in one location. This may include police, forensic, specialist counselling and legal services. The aim of hubs is to provide a wraparound response for sexual offending victim-survivors, making it easier for them to get the help they need without having to go to lots of separate places and re-tell their story to a new person each time. All staff working in these hubs are specially trained to work with victim-survivors of sexual offending and provide trauma-informed services.*⁶⁸

knowmore has some experience of reporting hubs in Victoria, called Multidisciplinary Centres (MDCs). Generally, we have received positive feedback from victims and survivors about their experiences in reporting child sexual abuse to the police at MDCs. Consistent with the description of reporting hubs above, the police staff at MDCs are specialists in sexual offences and child abuse.⁶⁹ Our clients generally report that these specialist police are well informed about child sexual abuse, and are often familiar with the fact that child sexual abuse has occurred at particular institutions or been perpetrated by particular offenders. Clients have said that this has helped them to feel immediately believed when reporting the abuse perpetrated against them to the police, establishing the foundation for a positive experience of the investigation process.

We note the parallels between our clients’ experience of MDCs in Victoria and the findings of the Australian Centre for Child Protection in its evaluation of Perth reporting hubs in 2017. This evaluation found ‘that police investigations and child protection responses were faster under the [Perth reporting hub] model and that staff and caregivers felt that the service provided a more victim-centred approach for children and families’.⁷⁰

67 Issues Paper, p 5.

68 Office of the Commissioner for Victims of Crime (Western Australia), *Review of criminal justice system responses to sexual offending: discussion paper 2, reporting sexual offences*, 2023, p 14, <www.wa.gov.au/organisation/departments-of-justice/commissioner-victims-of-crime/review-of-criminal-justice-responses-sexual-offending>.

69 Victoria Police, *Multidisciplinary centres*, 21 December 2021, accessed 3 June 2024, <www.police.vic.gov.au/options-guide-victim-survivors-victoria-police-perpetrated-family-violence-or-sexual-offences/reporting-in-person-at-mdcs>.

70 Office of the Commissioner for Victims of Crime (Western Australia), *Review of criminal justice system responses to sexual offending: discussion paper 2, reporting sexual offences*, p 15.

In knowmore's view, reporting hubs have significant potential to reduce barriers to reporting child sexual abuse, reduce barriers to accessing support and reduce the risk of further harm to victims and survivors in their interactions with the police, child protection agencies and support services. We recommend that all state and territory governments ensure that reporting hubs are available to victims and survivors of child sexual abuse, including in rural, regional and remote areas.

Recommendation 10

All state and territory governments should ensure that reporting hubs are available to victims and survivors of child sexual abuse, including in rural, regional and remote areas.

Criminal legal responses to sexual violence

In response to pages 6 to 23 of the Issues Paper, we first make some general comments about criminal legal responses to child sexual abuse. We then make further comments about police responses to child sexual abuse, highlighting the need for a specialist response from the start to the end of the police process.

General comments about criminal legal responses to child sexual abuse

We welcome the Issues Paper's recognition that:

*Over the last 40 years, there have been many inquiries into, and reports about, criminal justice responses to sexual violence.*⁷¹

In considering criminal legal responses to child sexual abuse, knowmore considers that the starting point must be the findings and recommendations of the Royal Commission in its Criminal Justice Report. While the Royal Commission recognised that the criminal legal system 'is unlikely ever to provide an easy or straightforward experience' for victims and survivors,⁷² the Royal Commission also recognised the importance of effective criminal legal responses to child sexual abuse and made 85 recommendations for this purpose.⁷³ These recommendations address issues across the criminal legal system, including:

- reporting child sexual abuse to the police⁷⁴
- police responses to child sexual abuse⁷⁵
- prosecution responses to child sexual abuse⁷⁶
- special measures for evidence in child sexual abuse trials⁷⁷

71 Issues Paper, p 6.

72 Royal Commission, *Criminal justice report: executive summary and parts I and II*, August 2017, p 13, <www.childabuseroyalcommission.gov.au/criminal-justice>.

73 Royal Commission, *Criminal justice report: outline of recommendations*, accessed 3 June 2024, p 2, <www.childabuseroyalcommission.gov.au/criminal-justice>.

74 Royal Commission, *Criminal justice report: executive summary and parts I and II*, p 22, recommendations 4–6.

75 Royal Commission, *Criminal justice report: executive summary and parts I and II*, pp 17–37, recommendations 2–20.

76 Royal Commission, *Criminal justice report: parts III to VI*, pp 272–408, recommendations 37–43.

77 Royal Commission, *Criminal justice report: parts VII to X and appendices*, pp 5–108, recommendations 52–63.

- ground rules hearings in child sexual abuse trials⁷⁸
- cross-examination of witnesses in child sexual abuse trials⁷⁹
- jury directions in child sexual abuse trials, including jury directions about the credibility and reliability of complainants⁸⁰
- the use of interpreters in the criminal legal process for child sexual abuse⁸¹
- tendency and coincidence evidence in child sexual abuse trials⁸²
- training for judges and lawyers about child sexual abuse⁸³
- delays in the criminal legal process in relation to child sexual abuse⁸⁴
- guilty pleas in relation to child sexual abuse⁸⁵
- sentencing of child sexual abuse offences⁸⁶
- appeals against convictions and sentences for child sexual abuse offences.⁸⁷

We do not repeat all of these recommendations in this submission. Many of these recommendations have not been fully implemented in all parts of Australia, to the detriment of victims and survivors. knowmore recommends that the Australian Government, and all state and territory governments, respond to the issues raised by pages 6 to 23 of the Issues Paper by fully implementing the recommendations from the Royal Commission's Criminal Justice Report.

78 Royal Commission, *Criminal justice report: parts VII to X and appendices*, pp 92 and 101, recommendations 54 and 60.

79 Royal Commission, *Criminal justice report: parts VII to X and appendices*, p 92, recommendations 52 and 54.

80 Royal Commission, *Criminal justice report: parts VII to X and appendices*, pp 190–194, recommendations 64–66.

81 Royal Commission, *Criminal justice report: executive summary and parts I and II*, p 483, recommendation 9(i); Royal Commission, *Criminal justice report: parts VII to X and appendices*, p 108, recommendation 63.

82 Royal Commission, *Criminal justice report: parts III to VI*, pp 633–652, recommendations 44–51.

83 Royal Commission, *Criminal justice report: parts VII to X and appendices*, p 196, recommendations 67–68.

84 Royal Commission, *Criminal justice report: parts VII to X and appendices*, p 266, recommendations 72–73.

85 Royal Commission, *Criminal justice report: parts III to VI*, p 351, recommendation 39.

86 Royal Commission, *Criminal justice report: parts VII to X and appendices*, pp 272–325, recommendations 74–78.

87 Royal Commission, *Criminal justice report: parts VII to X and appendices*, pp 341–355, recommendations 79–82.

Recommendation 11

The Australian Government, and all state and territory governments, should respond to the issues raised by pages 6 to 23 of the Issues Paper by fully implementing the recommendations from the Royal Commission's Criminal Justice Report.

In our experience, victims and survivors of child sexual abuse are often particularly frustrated by barriers that impact on their ability to meaningfully participate in police and prosecution processes. Key concerns that victims and survivors have raised include:

- not having anyone to contact or not being given meaningful information about the progress of the police investigation
- not being consulted about police and prosecution decisions, including decisions to withdraw or downgrade charges or accept pleas of guilty to lesser charges
- a lack of accessible information about the criminal legal process and the reasons for certain decisions
- a lack of understanding or consideration of the impacts of child sexual abuse – for example, in relation to memory⁸⁸
- having no voice to raise concerns or ask questions, or simply not knowing the right questions to ask because of a lack of information about relevant legal issues.⁸⁹

These problems are compounded by a lack of appropriate, dedicated support for victims and survivors of child sexual abuse throughout their engagement with the criminal legal system (see discussion on pages 14 to 18 above). While many of our clients have been very grateful for the information and assistance provided by prosecution and victims support agencies, they often remain frustrated by their inability to access truly independent support and have their individual interests represented throughout the process.⁹⁰ In assisting victims and survivors of child sexual abuse to access redress (see further discussion on pages 35 to 42), our trauma-informed approach is to be guided by the client's needs as to how frequently we contact them to provide updates and offer support. While this varies between clients, many clients require frequent contact to navigate the process safely.

As knowmore's role in the criminal legal process is generally limited to assisting victims and survivors to report child sexual abuse to the police, our further comments below focus on police responses to child sexual abuse (addressing questions 1 to 4 from the Issues Paper).

Police responses to child sexual abuse

In our experience, there continue to be significant issues with police responses to child sexual abuse. The experience of our clients indicates that one of the most significant aspects

88 See Royal Commission, *Criminal justice report: executive summary and parts I and II*, p 253.

89 See further discussion in knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse's criminal justice consultation paper*, pp 28–30.

90 See further discussion in knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse's criminal justice consultation paper*, pp 28–30.

of victims' and survivors' interactions with the police is the initial police response to a report of child sexual abuse. The initial police response is also likely to be central to the criminal legal system's response overall. As the Royal Commission noted:

*A victim or survivor's initial contact with the police is likely to be highly influential in determining how they view the criminal justice system as a whole and whether they are prepared to continue to seek a criminal justice response.*⁹¹

Our comments here therefore focus on the initial police response to reports of child sexual abuse, although we also support improving other aspects of the police investigation process as recommended by the Royal Commission.⁹²

We often hear from victims and survivors that they have had negative experiences when reporting child sexual abuse to the police. These experiences include:

- not being treated with courtesy and respect by all police staff
- not being provided with clear and accurate information about processes
- encountering misunderstandings or misconceptions about sexual abuse, sometimes called rape myths⁹³
- not having their complaint taken seriously
- not being asked questions in a sensitive way
- not being connected with appropriate support
- being dissuaded from pursuing a police investigation.

These experiences are often re-traumatising for victims and survivors, deter victims and survivors from reporting child sexual abuse to the police, and contribute to many victims and survivors choosing not to pursue their complaints after reporting. This impacts on the ability of the police to keep children safe by identifying and responding to child sexual abuse. It may also have implications for the type of support available to victims and survivors. For example, victims and survivors may face barriers to accessing victims support in many states and territories, due to requirements to report the perpetrator to the police and assist with the prosecution of the offence (see further discussion on pages 49 to 50).⁹⁴

Overall, our clients' experiences demonstrate the importance of police officers having specialist expertise to deliver survivor-focused, trauma-informed and culturally safe responses to child sexual abuse. We consider that the Australian Government, and all state and territory governments, should ensure that there is a specialist response to child sexual

91 Royal Commission, *Criminal justice report: executive summary and parts I and II*, p 395.

92 See for example, *Criminal justice report: executive summary and parts I and II*, pp 23–28, recommendations 7–11.

93 See Law Reform Commission of Western Australia, *Project 113 sexual offences: discussion paper, volume 1*, December 2022, pp 7–9, <www.wa.gov.au/system/files/2022-12/LRC-Project-113-Discussion-Paper-Vol-1.pdf>.

94 See, for example, *Criminal Injuries Compensation Act 2003* (WA), section 38; Legal Aid Western Australia, *Compensation for victims of crime*, 30 March 2022, accessed 4 June 2024, p 1, <www.legalaid.wa.gov.au/sites/default/files/inline-files/Compensation_victims_of_crime.pdf>.

abuse from the start to the end of the police process. This may include reporting hubs (see discussion on pages 27 to 28).

Recommendation 12

The Australian Government, and all state and territory governments, should ensure that there is a specialist response to child sexual abuse from the start to the end of the police process.

In addition to ensuring a specialist police response, and in the interim, all Australian police agencies should improve generalist police responses to child sexual abuse. We note that the Royal Commission made recommendations with a view to ensuring that all police who may come into contact with victims and survivors of institutional child sexual abuse should have at least a basic understanding of the issues (recommendations 3 and 9 of the Criminal Justice Report).⁹⁵ knowmore supports these recommendations, with the comment that they should extend to all police who may come into contact with victims or survivors of any form of child sexual abuse.

Recommendation 13

The Australian Government, and all state and territory governments, should ensure that all police who may come into contact with victims and survivors of child sexual abuse have at least a basic understanding of the issues (consistent with recommendations 3 and 9 of the Royal Commission into Institutional Responses to Child Sexual Abuse's Criminal Justice Report).

95 Royal Commission, *Criminal justice report: executive summary and parts I and II*, pp 20 and 26, recommendations 3 and 9.

Civil proceedings and other legal responses

In response to pages 24 to 28 of the Issues Paper, we first make some general comments about civil proceedings and other legal responses. We then make comments about specific legal options, highlighting the need for all victims and survivors of child sexual abuse to have access to adequate redress and compensation options.

General comments about civil proceedings and other legal responses

As noted on page 5, the Royal Commission made 409 recommendations. 99 of these recommendations were specifically directed at improving victims and survivors' options for redress and compensation.⁹⁶

In making its recommendations, the Royal Commission identified some guiding principles for providing redress to victims and survivors that are particularly relevant to the current inquiry. The Royal Commission commented that:

*Although these principles may seem obvious, it seems to us to be worth stating them, particularly given that we have heard enough to know that they have not always been applied in the past.*⁹⁷

The Royal Commission's guiding principles include:

- survivor-focused redress
- 'no wrong door' for survivors in accessing redress
- a trauma-informed and culturally appropriate approach
- regard for the needs of survivors who are experiencing particular vulnerability.⁹⁸

In knowmore's view, these guiding principles are generally sound, and are relevant when considering all redress and compensation options for victims and survivors of child sexual abuse.

Depending on the circumstances, a victim or survivor of child sexual abuse may have a range of redress and compensation options. These may include civil compensation, the National

96 Royal Commission, *Redress and civil litigation report*, September 2015, pp 61 to 79, <www.childabuseroyalcommission.gov.au/redress-and-civil-litigation>.

97 Royal Commission, *Redress and civil litigation report*, pp 132–133.

98 Royal Commission, *Redress and civil litigation report*, pp 95 and 135, recommendations 1 and 4.

Redress Scheme (NRS) or victims support.⁹⁹ Some victims and survivors of child sexual abuse have received redress payments in the past under time-limited, state-based redress schemes in Queensland, Western Australia and Tasmania.¹⁰⁰

As noted on page 12, a victim or survivor's decision to seek redress or compensation is deeply personal, and there are many factors that may influence a victim or survivor's choice between options. The Royal Commission highlighted the importance of suitable legal support for victims and survivors to navigate their redress and compensation options. This is particularly reflected in the Royal Commission's recommendation for a legal advice and referral service for survivors,¹⁰¹ as we deliver at knowmore. As we recommended on page 18, all victims and survivors of child sexual abuse should have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience. Without adequate legal and other support, many victims and survivors in Australia will experience further injustice and re-traumatisation as they navigate their redress and compensation options.

We make further comments below in relation to:

- the NRS (responding to pages 24 to 28 from the Issues Paper generally)
- legal options for victims and survivors of child sexual abuse who are not eligible for the NRS (responding to pages 24 to 28 from the Issues Paper generally)
- restorative justice (responding to questions 45 to 47 from the Issues Paper)
- civil litigation (responding to questions 48 to 49 from the Issues Paper)
- victims support schemes (responding to questions 52 to 53 from the Issues Paper)
- victims' charters (responding to questions 54 to 56 from the Issues Paper).

The National Redress Scheme

The NRS is an important option for victims and survivors of institutional child sexual abuse. Since the start of the NRS on 1 July 2018, the NRS has now provided redress to more than 15,500 victims and survivors of institutional child sexual abuse.¹⁰²

99 A victim or survivor may also be eligible for a redress scheme provided by an institution where abuse occurred, or for a compensation or restitution order against a perpetrator as part of a criminal law process. See knowmore, *Compensation options*, accessed 24 May 2024, <knowmore.org.au/for-survivors/compensation-options/>.

100 Finity Consulting, *National Redress Scheme participant and cost estimates: Royal Commission into Institutional Responses to Child Sexual Abuse*, July 2015, pp 29–38, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/national_redress_scheme_participant_and_cost_estimates_report.pdf>.

101 Royal Commission, *Final report: volume 9, advocacy, support and therapeutic treatment services*, p 176, recommendation 9.4.

102 *National Redress Scheme – update*, 23 May 2024, <www.nationalredress.gov.au/about/updates/1951>.

Our comments below are structured as follows:

- First, we make some general comments about the NRS.
- Second, we express our broad support for the many, outstanding recommendations to improve the NRS.
- Third, we raise our concern about the NRS's capacity to deliver redress to all eligible victims and survivors before the legislated end of the NRS on 1 July 2028.

General comments about the National Redress Scheme

Australian governments established the NRS in response to recommendations made by the Royal Commission, following detailed consideration of the issues in the Royal Commission's Redress and Civil Litigation Report. In explaining the need for redress, the Royal Commission noted the severe impacts of child sexual abuse and concluded that, for many victims and survivors, civil litigation was not a feasible option (see further discussion on pages 45 to 46).¹⁰³ Holding institutions accountable for child sexual abuse was an important feature of the NRS's design.¹⁰⁴ In relation to governments, the Royal Commission added:

*Governments may also have an additional level of responsibility because of their roles as regulators of institutions and government policies that encouraged or required the placement of children in institutions.*¹⁰⁵

The NRS generally offers eligible victims and survivors:

- a redress payment of up to \$150,000 depending on the type of abuse experienced – the average payment is about \$89,000, with some survivors receiving a higher payment and some survivors receiving a lower payment¹⁰⁶
- counselling and psychological care
- a direct personal response from the institution(s) responsible for the abuse – that is, is an opportunity for victims and survivors to receive an apology or other recognition from the institution(s) for the harm they experienced (discussed further on pages 43 to 45).

Although the governing legislation for the NRS is a federal law,¹⁰⁷ all state and territory governments have important roles in relation to the NRS, including a governance role as

103 Royal Commission, *Redress and civil litigation report*, pp 91–92.

104 Royal Commission, *Redress and civil litigation report*, p 248.

105 Royal Commission, *Redress and civil litigation report*, p 248.

106 Australian Government (Department of Social Services), *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme* (submission 9, supplementary submission 8), accessed 4 June 2024, p 41, <www.aph.gov.au/DocumentStore.ashx?id=e043ba05-6fce-4d46-a65f-97ddddd5797&subId=734158>.

107 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

parties to the intergovernmental agreement underlying the NRS.¹⁰⁸ In other words, all Australian governments have responsibility for the fairness and effectiveness of the NRS.¹⁰⁹

Recommendations to improve the National Redress Scheme

For many victims and survivors, the redress they have received from the NRS has been life-changing. Our clients frequently tell us that their redress outcomes have helped to address the impacts of the child sexual abuse perpetrated against them. For example, some of our clients have used their redress payments to establish a stable housing situation, in turn providing them with the security to pursue education or employment opportunities. Many of our clients have also benefitted from the counselling and psychological care component of redress, experiencing improved mental health and relationships, with positive flow-on effects across their lives. These outcomes clearly have important benefits – for victims and survivors, for their families, for governments, and for people and communities in Australia broadly.¹¹⁰

Despite this, there remain significant problems with the NRS that are preventing it from consistently delivering redress in accordance with the guiding principles identified by the Royal Commission. As noted on page 34, these principles include:

- survivor-focused redress
- ‘no wrong door’ for survivors in accessing redress
- a trauma-informed and culturally appropriate approach
- regard for the needs of survivors who are experiencing particular vulnerability.¹¹¹

There have been 3 major reviews of the NRS in the past 6 years:

1. the inquiry of the former Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission (final report published in April 2019)¹¹²

108 *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse*, 1 February 2023, <www.dss.gov.au/national-redress-scheme-information-for-institutions/intergovernmental-agreement-on-the-national-redress-scheme-for-institutional-child-sexual-abuse>.

109 See also knowmore, *Submission to the inquiry into the options available to survivors of institutional child sexual abuse in Western Australia who are seeking justice*, 11 August 2023, pp 35–36, <knowmore.org.au/wp-content/uploads/2023/11/submission-inquiry-into-the-options-available-to-survivors-of-institutional-child-sexual-abuse-seeking-justice-wa.pdf>.

110 This is consistent with the Royal Commission’s observations about the ripple effects of child sexual abuse. See Royal Commission, *Final report: volume 3, impacts*, pp 202–234.

111 Royal Commission, *Redress and civil litigation report*, pp 95 and 135, recommendations 1 and 4.

112 Australian Parliament (Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse), *Getting the National Redress Scheme right: an overdue step towards justice*, April 2019, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Royal_Commission_into_Institutional_Responses_to_Child_Sexual_Abuse/RoyalCommissionChildAbuse/Report>.

2. the inquiry of the former Joint Select Committee on Implementation of the NRS (first interim report published in May 2020¹¹³ and second interim report published in November 2021)¹¹⁴
3. the second year review of the NRS conducted by independent reviewer Ms Robyn Kruk AO (final report published in June 2021).¹¹⁵

There are many recommendations outstanding from these reviews that, if implemented, would result in significant improvements to the NRS. Further, there is a current inquiry into the operation of the NRS,¹¹⁶ to which knowmore has made detailed submissions.¹¹⁷

knowmore broadly supports the recommendations made by the previous reviews of the NRS. We consider that the Australian Government should lead work with the state and territory governments to implement these recommendations.

Recommendation 14

The Australian Government should lead work with the state and territory governments to implement recommendations made by previous reviews of the National Redress Scheme.

The Australian Government has recently made amendments to the NRS Act.¹¹⁸ While knowmore supported many of these amendments, we also expressed some concerns.¹¹⁹ In particular, we note that the amendments leave much unfinished business from the second year review of the NRS. The Australian Government's final response to the second year

113 Australian Parliament (Joint Select Committee on Implementation of the National Redress Scheme), *First interim report of the Joint Select Committee on Implementation of the National Redress Scheme*, May 2020, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/National_Redress_Scheme/NationalRedressScheme/Interim_Report> .

114 Australian Parliament (Joint Select Committee on Implementation of the National Redress Scheme), *Second interim report of the Joint Select Committee on Implementation of the National Redress Scheme*, November 2021, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/National_Redress_Scheme/NationalRedressScheme/Second_Interim_Report>.

115 R Kruk AO, *Final report: second year review of the National Redress Scheme*, 26 March 2021, <www.nationalredress.gov.au/document/1386>.

116 Australian Parliament (Joint Standing Committee on Implementation of the National Redress Scheme), *Inquiry into the operation of the National Redress Scheme*, accessed 4 June 2024, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme_Standing/Redress47>.

117 See especially knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, 27 February 2023, <knowmore.org.au/wp-content/uploads/2023/03/submission-joint-standing-committee-on-implementation-of-the-national-redress-scheme-cth.pdf>.

118 *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2024* (Cth).

119 knowmore, *A new law for the National Redress Scheme*, 12 April 2024, <knowmore.org.au/a-new-law-for-the-national-redress-scheme/>.

review expressed the Australian Government's support for recommendations that have not been fully implemented and are not addressed by the amendments – for example, combining the recognition of sexual abuse payment and the impact of sexual abuse payment to recognise that child sexual abuse impacts the life of every victim and survivor.¹²⁰

The Australian Government has also said it supports recommendations where it is not clear if and how the recommendations have been fully implemented. These include recommendations to:

- strengthen consistency and integrity in decision-making¹²¹
- improve redress for victims and survivors who experienced child sexual abuse in a medical setting¹²²
- improve the treatment of prior payments received by victims and survivors, including Stolen Generations payments¹²³
- improve counselling support¹²⁴
- improve direct personal responses.¹²⁵

Our clients continue to experience harm as a result of inadequate action on these recommendations and others.

Concern about the capacity of the National Redress Scheme to deliver redress to all eligible victims and survivors

As noted on page 36, knowmore holds concerns about the capacity of the NRS to deliver redress to all eligible victims and survivors before the legislated end of the NRS on 1 July 2028. Our concerns are reinforced by data about the number of eligible victims and survivors who have applied for redress and data about delays in processing applications, which we discuss on pages 40 to 41. While we acknowledge the limitations of this data, it is nonetheless indicative of the NRS's capacity to deliver redress to all eligible victims and survivors. This data suggests that the NRS and the redress support system for victims and survivors are approaching a dangerous crunch point in the final year of the NRS (30 June 2027 to 1 July 2028).

120 Australian Government, *The Australian Government response to the Final Report of the Second Year Review of the National Redress Scheme*, May 2023, pp 11–12, <www.nationalredress.gov.au/document/1626>.

121 Australian Government, *The Australian Government response to the Final Report of the Second Year Review of the National Redress Scheme*, pp 10–11.

122 Australian Government, *The Australian Government response to the Final Report of the Second Year Review of the National Redress Scheme*, p 6.

123 Australian Government, *The Australian Government response to the Final Report of the Second Year Review of the National Redress Scheme*, p 14.

124 Australian Government, *The Australian Government response to the Final Report of the Second Year Review of the National Redress Scheme*, p 17.

125 Australian Government, *The Australian Government response to the Final Report of the Second Year Review of the National Redress Scheme*, p 18.

The number of eligible victims and survivors who have applied for redress

The Royal Commission estimated that 60,000 eligible victims and survivors would make a claim for redress.¹²⁶ The most recent data we are aware of suggests that the NRS is not presently on-track to deliver redress to 60,000 victims and survivors by 1 July 2028.

For example, the Department of Social Services (DSS) reported that, as at 15 September 2023, 14,045 applications to the NRS had been determined to be eligible.¹²⁷ This indicates that, as at 15 September 2023, less than a quarter (about 23%) of eligible applicants had applied and been found eligible for redress by the NRS.

Similarly, the NRS recently reported that, as at 17 May 2024, there had been 41,665 applications to the NRS and 15,504 payments made.¹²⁸ These figures are only of partial assistance in considering the NRS's capacity to deliver redress to all eligible victims and survivors, as they do not directly correspond to the Royal Commission's estimate that 60,000 eligible victims and survivors would make a claim for redress.¹²⁹ Nonetheless, these figures indicate that, as at 17 May 2024, only about a quarter (26%) of eligible victims and survivors had applied and received a payment.

Both of the dates that we have referred to (15 September 2023 and 17 May 2024) are past the halfway point for the NRS. As we acknowledged on page 39, this data has limitations and is only indicative. However, we find it deeply concerning that, past the halfway point for the NRS, the published data indicates that redress may have only been delivered to about a quarter of eligible victims and survivors.

Delays in processing applications

Delays in processing applications for redress raise further concerns about the capacity of the NRS to deliver redress to all eligible victims and survivors. Every major review of the NRS has raised concerns about delays in processing redress applications.¹³⁰ The second year review reported that the NRS takes an average of 12.5 months to process an application and 13.4

126 Royal Commission, *Redress and civil litigation report*, p 22.

127 Australian Government (Department of Social Services), *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme* (submission 9, supplementary submission 8), p 7.

128 *National Redress Scheme – update*, 23 May 2024.

129 For example, the number of applications presumably includes applications that do not lead to an eligible outcome. The number of payments made is likely to be closer to the number of survivors who have applied and been found eligible for redress, but presumably does not include survivors who were found eligible but rejected a redress offer or survivors who accepted a redress offer with a nil payment.

130 Australian Parliament (Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse), *Getting the National Redress Scheme right: an overdue step towards justice*, pp 151–153; Australian Parliament (Joint Select Committee on Implementation of the National Redress Scheme), *First interim report*, pp 53–63; Australian Parliament (Joint Select Committee on Implementation of the National Redress Scheme), *Second interim report*, pp 59 and 86–87; Kruk AO, *Final report*, pp 43–45 and 252.

months to process a priority application, commenting that ‘applicants should not wait 13.4 months or more for an outcome’.¹³¹ Despite this, recent data suggests little to no improvement in processing times.¹³² It remains common for our clients to face delays of this nature or longer, causing distress as clients do not know whether they will be believed and receive a redress payment.

DSS recently reported that the NRS finalised 3,862 applications in the 2022–23 financial year.¹³³ If the NRS maintains this rate of processing, it will finalise a further 19,310 applications by the end of the NRS, not all of which will lead to eligible outcomes. This will not even clear the present backlog of applications (22,110 applications as at 17 May 2024),¹³⁴ let alone deliver redress to all eligible victims and survivors by the end of the NRS. We acknowledge that the 2024–25 federal budget has committed an additional \$33.3 million over 4 years ‘to support applicants of the [NRS] who submit incomplete applications to improve the efficiency of the Scheme and to better support survivors of institutional child sexual abuse through the application process’.¹³⁵

A dangerous crunch point for the National Redress Scheme

In light of the issues discussed above, knowmore is concerned that we are approaching a dangerous crunch point for the NRS. We anticipate a surge in redress applications just before the legislated deadline for applications on 30 June 2027.¹³⁶ knowmore recognises and supports survivors’ legal right to apply for redress at any time before the deadline. However, we are also concerned that the final year of the NRS (2027–28) is likely to be accompanied by increased pressure on an already overwhelmed system of survivor support services and a worsening of the already lengthy delays in processing redress applications. We noted above that average processing times for redress applications exceed 12 months. In light of this, and the other data discussed above, we hold serious concerns that the NRS

131 Kruk AO, *Final report*, pp 43 and 115.

132 The recently published data is likely to provide a conservative indication of average processing times, as the data dates to when an applicant was notified of a redress outcome, not when the application was finalised (the measure used in the second year review). The NRS has reported that, as at 29 December 2023, the average processing time for applications was 12.2 months. DSS has reported that, as at 15 September 2023, the average processing time for a priority application for the 2023–24 financial year was 12.5 months. See National Redress Scheme, *Strategic Success Measures: December 2023*, 24 April 2024, p 3, <www.nationalredress.gov.au/document/1921>; Australian Government (Department of Social Services), *Supplementary submission to the Joint Standing Committee on implementation of the National Redress Scheme* (submission 9, supplementary submission 11), p 2, <www.aph.gov.au/DocumentStore.ashx?id=67aa065c-292c-491d-b3ea-a7d50c622ccd&subId=734158>; Kruk AO, *Final report*, p 44.

133 Australian Government (Department of Social Services), *Annual report 2022–23*, 11 October 2023, p 117, <www.dss.gov.au/sites/default/files/documents/10_2023/dss-annual-report-published-version_0.pdf>.

134 *National Redress Scheme – Update*, 23 May 2024.

135 Australian Government, *Budget 2024–25: budget paper no. 2, budget measures*, 14 May 2024, p 174, <budget.gov.au/content/bp2/download/bp2_2024-25.pdf>.

136 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 20(1)(e). See also Finity Consulting, *National Redress Scheme participant and cost estimates*, p 30.

will not be in a position to process the volume of applications required in the final year of the NRS, let alone to do this in a way that is survivor-focused, trauma-informed and culturally safe.

We are facing a situation in which many thousands of eligible victims and survivors of institutional child sexual abuse are at risk of missing out on the redress that they are legally entitled to, with many thousands more facing retraumatisation with the approaching NRS crunch point.

These issues cannot wait for the next legislated review of the NRS, which is not due to begin until the second half of 2026 – at most, 6 months before the crunch point.¹³⁷ knowmore recommends that the Australian Government, and all state and territory governments, immediately prioritise planning for the legislated end of the NRS, in partnership with survivors and survivor support services.

Recommendation 15

The Australian Government, and all state and territory governments, should immediately prioritise planning for the legislated end of the National Redress Scheme, in partnership with survivors and survivor support services.

Legal options for victims and survivors of child sexual abuse who are not eligible for the National Redress Scheme

While the NRS is an important legal option for eligible victims and survivors (see discussion on pages 35 to 37), many victims and survivors of child sexual abuse are not eligible for the NRS. This includes victims and survivors who experienced non-institutional child sexual abuse – for example, child sexual abuse within families. It also includes victims and survivors who experienced institutional child sexual abuse after 30 June 2018.¹³⁸ This results in a significant gap in the redress and compensation options available to many victims and survivors of child sexual abuse. In the experience of many of our clients who are not eligible for the NRS, being told this feels like not being believed and is retraumatising.¹³⁹ Depending on the circumstances, many of our clients may also feel that the people responsible for the child sexual abuse perpetrated against them have escaped accountability based on a technicality.

As highlighted on pages 34 to 35, civil litigation and victims support schemes are important legal options for many victims and survivors of child sexual abuse. This is especially the case for victims and survivors who are not eligible for the NRS. While we do not diminish the

¹³⁷ *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 192(3).

¹³⁸ *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 14(1)(c).

¹³⁹ See also Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, pp 70–71.

importance of civil litigation or victims support schemes, these options generally have significant limitations in providing redress, justice and healing to victims and survivors of child sexual abuse. Victims and survivors of child sexual abuse who are not eligible for the NRS generally find themselves wedged between the complexity of civil litigation and the inadequate payments available under victims support schemes.

This is an unacceptable outcome. In knowmore's view, the Australian Government, and all state and territory governments, should ensure that all victims and survivors of child sexual abuse have access to adequate redress and compensation options.

Recommendation 16

The Australian Government, and all state and territory governments, should ensure that all victims and survivors of child sexual abuse have access to adequate redress and compensation options.

As noted on page 41, the legislated deadline for NRS applications is 30 June 2027. From this date, civil litigation and victims support schemes are likely to take on a significantly greater role as options for victims and survivors of institutional child sexual abuse. It is important that civil litigation and victims support schemes are equipped to do this in a way that is survivor-focused, trauma-informed and culturally safe.

We make further comments about civil litigation on pages 45 to 46 and about victims support schemes on pages 46 to 50.

Restorative justice

Under the right conditions, restorative justice processes can be an important part of the journey to redress, justice and healing for victims and survivors of child sexual abuse. In particular, we note a review into the use and effectiveness of restorative justice following child sexual abuse, adult sexual abuse, and similar harms conducted for the Royal Commission. This review concluded that 'under specific conditions, participation [in restorative justice processes] improves victim wellbeing and is perceived by victim-survivors as satisfying, worthwhile and procedurally fair'.¹⁴⁰ We note some similar findings in Victoria from the Community-Based Survivor-Victim Focussed Restorative Justice Pilot conducted by the South Eastern Centre Against Sexual Assault and Family Violence between 2016 and 2018. In that study, all participants said that they would recommend the process to other victims and survivors, with some conditions.¹⁴¹

140 J Bolitho and K Freeman, *The use and effectiveness of restorative justice in criminal justice systems following child sexual abuse or comparable harms*, 2016, p 7, <www.childabuseroyalcommission.gov.au/getattachment/9f328928-a343-4c65-b98e-94e3185894c7/Restorative-justice-following-child-sexual-abuse-o>.

141 B Loff, B Naylor and L Bishop, *A Community-Based Survivor-Victim Focussed Restorative Justice — a pilot*, Report to the Criminology Research Advisory Council, July 2019, pp 30–31, <www.aic.gov.au/crg/reports/crg-3314-15>.

knowmore has particularly seen the value of restorative justice options in our work supporting victims and survivors of institutional child sexual abuse to access the NRS. As noted on page 36, the redress available to eligible victims and survivors under the NRS includes a direct personal response. For many of our clients, having someone recognise the abuse perpetrated against them and acknowledge how that abuse has impacted their lives is an important part of redress, justice and healing.

Similar options to the direct personal response exist under other redress and compensation schemes. For example:

- Under the Territories Stolen Generations Redress Scheme, eligible survivors can receive a personal acknowledgement from a senior government representative.¹⁴²
- Victoria's new Victims of Crime Financial Assistance Scheme includes specific provisions relating to victim recognition.¹⁴³ Specifically, victims who receive assistance under the scheme will be able to ask the scheme for a 'victim recognition statement' or 'victim recognition meeting' to acknowledge the effects of the crime on them.¹⁴⁴ Victim recognition meetings will be held with a scheme decision-maker and give victims the opportunity to speak about how the crime has affected them and discuss these effects with the decision-maker.¹⁴⁵

We also note that a committee of the Queensland Parliament has recently recommended that the Queensland Government 'investigate developing a "victim recognition statement" or "victim recognition meeting", as occurs in the Victorian victim financial assistance scheme'.¹⁴⁶ The Queensland Government supported this recommendation in principle.¹⁴⁷

While restorative justice processes are not suitable for all situations,¹⁴⁸ noting the trauma-informed principle of choice,¹⁴⁹ we consider that victims and survivors who wish to

142 National Indigenous Australians Agency, *Territories Stolen Generations Redress Scheme: personal acknowledgment*, accessed 4 June 2024, <territoriesredress.gov.au/personal-acknowledgement>. For more information about the Territories Stolen Generations Redress Scheme, see knowmore, *Territories Stolen Generations Redress Scheme*, accessed 4 June 2024, <knowmore.org.au/redress-schemes/territories-stolen-generations-redress/>.

143 Victoria's new Victims of Crime Financial Assistance Scheme is expected to begin in 2024. See Victorian Government, *Victims of Crime Financial Assistance Scheme*, 5 July 2023, accessed 4 June 2024, <www.vic.gov.au/victims-crime-financial-assistance-scheme#recognising-victims>.

144 *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic), sections 40 and 41.

145 *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic), sections 41(1) and 41(3).

146 Queensland Parliament (Legal Affairs and Safety Committee), *Inquiry into support provided to victims of crime: report*, May 2023, p 19, recommendation 11, <www.parliament.qld.gov.au/docs/find.aspx?id=5723T648>.

147 Queensland Government, *Inquiry into support provided to victims of crime: Queensland Government response*, 19 May 2023, p 7, <documents.parliament.qld.gov.au/com/LASC-C96E/202324BE-8296/Government%20Response%20to%20LASC%20Report%20No.%2048,%20Inquiry%20into%20support%20provided%20into%20victims%20of%20crime.pdf>.

148 See Royal Commission, *Criminal justice report: executive summary and parts I and II*, p 190.

149 See Blue Knot Foundation, *Trauma-informed services*.

participate in restorative justice processes should have the option to do this. These processes must be:

- evidence-based and informed by the insights of experts and experienced practitioners, as well as victims and survivors themselves
- survivor-focused, trauma-informed and culturally safe
- accompanied by appropriate safeguards to ensure that any decision by a victim or survivor to participate in such processes is fully informed, free from the perpetrator's influence and made with appropriate support (including legal advice).

Recommendation 17

The Australian Government, and all state and territory governments, should ensure that victims and survivors of child sexual abuse who wish to participate in restorative justice processes have the option to do so. These processes must have appropriate safeguards to ensure that any decision by a victim or survivor to participate in such processes is fully informed, free from the perpetrator's influence and made with appropriate support (including legal advice).

We agree with the Royal Commission that a restorative justice approach similar to the direct personal response is 'more likely to be taken up by more survivors and in general likely to be more effective for survivors' than many other types of restorative justice approaches.¹⁵⁰ In our view, the Australian Government, and all state and territory governments, should consider the direct personal response element of the NRS and the recognition aspects of Victoria's Victims of Crime Financial Assistance Scheme as a starting point for what restorative justice processes could look like. We acknowledge that there have been recommendations to improve the direct personal response element of the NRS, which knowmore also supports (see discussion on pages 37 to 39).

Recommendation 18

The Australian Government, and all state and territory governments, should consider the direct personal response element of the National Redress Scheme and the recognition aspects of Victoria's Victims of Crime Financial Assistance Scheme as a starting point for what restorative justice processes could look like.

Civil litigation

As knowmore does not provide legal advice about civil litigation, we do not make comprehensive comments about this topic. We note the Royal Commission's observation that 'the current civil litigation systems ... have not provided justice for many survivors'.¹⁵¹ At the time of the Royal Commission, a significant barrier to civil litigation was time

¹⁵⁰ Royal Commission, *Criminal justice report: executive summary and parts I and II*, p 190.

¹⁵¹ Royal Commission, *Redress and civil litigation report*, p 5.

limitations on bringing actions, which have now been abolished for child sexual abuse in line with the Royal Commission's recommendations.¹⁵² However, the Royal Commission also recognised that victims and survivors of child sexual abuse seeking compensation through civil litigation may face difficulties including 'legal costs, difficulties in bringing class or group actions and the burden of giving evidence and being subject to cross-examination'.¹⁵³ Our clients are often not able to bring viable civil actions for child sexual abuse because the perpetrator has died or does not have sufficient assets to satisfy a judgment.

In our experience, the lack of free legal assistance and wraparound support in relation to civil litigation is one of the most significant barriers to victims and survivors of child sexual abuse pursuing civil litigation (see discussion on pages 14 to 18). While there are private law firms that act on a 'no win, no fee' basis, multidisciplinary support is generally not provided by private law firms. Many of our clients request further support from knowmore, even once they have civil lawyers. This is especially the case in relation to the cultural support provided by Aboriginal and Torres Strait Islander engagement advisors at knowmore. However, it is not possible for us to provide ongoing support of this nature under our current funding agreements and with our current capacity.

These barriers to pursuing civil litigation contribute to a situation in which this important legal option is not safe or feasible for many victims and survivors of child sexual abuse. This has especially significant impacts for victims and survivors of child sexual abuse who are not eligible for the NRS (see discussion on pages 42 to 43).

We note that the Issues Paper outlines a range of reforms for improving victims' and survivors' experiences of civil litigation.¹⁵⁴ knowmore generally supports reforms of this nature. In our view, many of the reforms support each other and could be simultaneously progressed.

Recommendation 19

The Australian Government, and all state and territory governments, should implement the reforms outlined in the Issues Paper to improve victims' and survivors' experiences of civil litigation.

Victims support schemes

Each Australian state and territory has a government-based scheme that provides support to victims and survivors of crime. We use 'victims support' as a general term for these schemes, although the name varies between states and territories. For example, in Western Australia, the victims support scheme is called Criminal Injuries Compensation. We note that the Issues Paper refers to these schemes as 'compensation schemes'.¹⁵⁵

152 Royal Commission, *Redress and civil litigation report*, p 459, recommendations 85–88.

153 Royal Commission, *Redress and civil litigation report*, p 432.

154 Issues Paper, p 26.

155 Issues Paper, p 27.

For many victims and survivors of child sexual abuse, a victims support scheme is an important option. This is especially the case for victims and survivors of child sexual abuse who are not eligible for the NRS (see discussion on pages 42 to 43). Below, we first make some general comments about victims support schemes in Australia. We then make further comments below about what we consider to be features of national best practice in victims support and widespread concerns about victims support schemes, relevant to many states and territories in Australia.

Our comments in this section address the present victims support scheme in each state and territory. Many victims of survivors of child sexual abuse are covered by previous victims support schemes, which raise their own issues that negatively affect applicants today.

General comments about victims support schemes in Australia

As with our perspective on the information available about reporting child sexual abuse to the police (see discussion on pages 22 to 23), our perspective on victims support is informed by our experience as a nation-wide service, assisting victims and survivors with victims support matters in all Australian states and territories. Our general comments about victims support schemes in Australia largely mirror our comments above about inconsistencies in the information available about reporting child sexual abuse.

A striking feature of victims support, from a nation-wide perspective, is the significant inconsistencies between victims support schemes in different states and territories. These inconsistencies affect almost every aspect of victims support, including:

- the types of support available
- the maximum amount of payments
- the eligibility criteria
- the application process
- interaction with other support options
- review options.

There is no good reason for this level of inconsistency between states and territories. It results in significantly different experiences and outcomes for victims and survivors, depending on where the abuse occurred, and creates difficulties for victims and survivors whose experiences cross borders – for example, victims and survivors who have experienced abuse in more than one state or territory.

In knowmore's view, state and territory governments should work collaboratively to improve consistency between victims support schemes, based on national best practice (see further discussion below).

Recommendation 20

State and territory governments should work collaboratively to improve consistency between victims support schemes, based on national best practice.

Features of national best practice in victims support

Generally speaking, we consider that features of national best practice in victims support include:

- higher maximum payments that better recognise the impacts of criminal offences on victims and survivors – Queensland has the highest maximum amount of financial assistance available to primary victims under its Victim Assist scheme (\$120,000),¹⁵⁶ although:
 - this is still lower than the maximum payment under the NRS (\$150,000)¹⁵⁷
 - the special assistance payment under Victim Assist is only \$15,000¹⁵⁸
 - many victims and survivors of child sexual abuse do not receive more than the special assistance payment (see further discussion pages 49 to 50 about the generally inadequate payments available under victims support schemes).
- no time limit for victims or survivors of child abuse to apply for victims support¹⁵⁹
- allowing victims and survivors of sexual offences (among others) the option to report the criminal offence to a range of support services, instead of the police¹⁶⁰
- no requirement for the perpetrator to be charged with an offence in order for the victim or survivor to receive victims support¹⁶¹
- a document-based application process that does not require a victim or survivor to attend a hearing¹⁶²
- access to counselling, without requiring the victim or survivor to apply for a payment or wait for and receive approval for the payment¹⁶³
- the option to ask for a victim recognition statement or victim recognition meeting to acknowledge the effects of the crime (see discussion about restorative justice on pages 43 to 45)¹⁶⁴

156 *Victims of Crime Assistance Act 2009* (Qld), section 38(1).

157 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 16(1).

158 *Victims of Crime Assistance Act 2009* (Qld), schedule 2, section 2.

159 See *Victims of Crime Assistance Act 1996* (Vic), section 29(1A).

160 See, for example, *Victims of Crime Assistance Act 2009* (Qld), section 81.

161 See, for example, Women's Legal Service WA, *Criminal Injuries Compensation application information: a guide for potential applicants*, 20 March 2020, accessed 4 June 2024, p 5, <www.wlswa.org.au/wp-content/uploads/2020/03/20200320-WLSWA-CIC-Booklet.pdf>.

162 This is a relative weakness of Criminal Injuries Compensation in Western Australia compared to many other victims support schemes. See *Criminal Injuries Compensation Act 2003* (WA), section 24.

163 See, for example, Women's Legal Service NSW, *A practitioner's guide to domestic violence law in NSW*, accessed 4 June 2024, chapter 10, <www.wlsnsw.org.au/resources/dv-law-nsw/ch-10-dv-victims-support/>.

164 See *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic), sections 40 and 41.

- clear, legislative protection against victims support payments being reduced by redress payments received under the NRS.¹⁶⁵

Widespread concerns about victims support schemes

As noted on page 47, we also hold widespread concerns about victims support schemes, relevant to many states and territories. For example:

- Victims support schemes generally have inadequate payments that do not appropriately recognise the impacts of child sexual abuse or adequately support victims' and survivors' healing.¹⁶⁶
- Victims support schemes generally have time limits that do not realistically reflect the time taken to disclose child sexual abuse – for example, time limits of 3 years, which are not automatically extended for victims and survivors of child sexual abuse.¹⁶⁷ As noted on page 21, the Royal Commission found that victims and survivors take 23.9 years on average to disclose to another person that they have experienced child sexual abuse.¹⁶⁸
- Standards of proof under victims support schemes are generally higher than the 'reasonable likelihood' standard used by the NRS.¹⁶⁹
- There are generally requirements to report the crime to the police in order to be eligible for victims support (see discussion on pages 21 to 22 about the barriers to reporting child sexual abuse).¹⁷⁰
- There are often requirements for victims and survivors to prove that they have been injured or suffered a loss as a result of the crime.¹⁷¹ In our view, requiring any victim or survivor of child sexual abuse to prove that they have been injured or suffered a loss is unnecessary and inappropriate given the significant body of research

165 Queensland provides this in the *Victims of Crime Assistance Act 2009* (Qld), schedule 3, definition of 'relevant payment', paragraph (d).

166 See, for example, Victims Support Services Tasmania, *Financial assistance*, 3 May 2024, accessed 4 June 2024, < www.justice.tas.gov.au/victims/financial-assistance>.

167 See, for example, *Criminal Injuries Compensation Act 2003* (WA), section 9(1); Western Australian Government (Department of Justice), *Report on the findings of the review of the Criminal Injuries Compensation Scheme in Western Australia: final*, November 2019, p 37, <[www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/4013095a635e6b4de55bc20f4825850b00306861/\\$file/3095.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/4013095a635e6b4de55bc20f4825850b00306861/$file/3095.pdf)>.

168 Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, p 30.

169 See, for example, *Victims of Crime Assistance Act 2009* (Qld), section 78; *Victims of Crime Act 2001* (SA), section 22(2); *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 12(2)(b).

170 See, for example, *Criminal Injuries Compensation Act 2003* (WA), section 38; Legal Aid Western Australia, *Compensation for victims of crime*, p 1.

171 See, for example, *Victims of Crime Assistance Act 2009* (Qld), section 26(1).

demonstrating the inherent, debilitating and often life-long health impacts of abuse.¹⁷²

- There are often requirements for victims and survivors to provide considerable detail or supporting documentation as part of the application process.¹⁷³
- There are often risks that perpetrators may be told about the victim or survivor's application for victims support.¹⁷⁴
- There is generally inadequate support for victims and survivors in navigating the process, and particularly limited access to multidisciplinary support, linked to inadequate government funding for support services (see discussion on pages 14 to 18).

We refer to previous submissions for detailed comments about victims support schemes in New South Wales, Queensland and Western Australia.¹⁷⁵

Victims' charters

We made comments on pages 13 to 14 about the need to embed a trauma-informed approach to child sexual abuse across all parts of the legal system. As noted on page 14, strengthening victims' and survivors' rights through victims' charters and Human Rights Acts is essential to driving this change.

All states and territories have some form of victims' charter.¹⁷⁶ However, these charters differ significantly between different states and territories. In knowmore's view, the victims' charter from the Australian Capital Territory is one of the stronger models. This is because it

172 See further discussion in knowmore, *Submission to the inquiry into youth justice reform in Queensland*, 9 January 2024, pp 38–39, <knowmore.org.au/wp-content/uploads/2024/01/submission-inquiry-into-youth-justice-reform-qld.pdf>.

173 See, for example, Women's Legal Service WA, *Criminal Injuries Compensation application information: a guide for potential applicants*, pp 8–11; knowmore, *Submission to the inquiry into youth justice reform in Queensland*, p 40.

174 See, for example, Office of Criminal Injuries Compensation Western Australia, *Application process*, 29 September 2020, <cict.justice.wa.gov.au/A/application_process.aspx>.

175 knowmore, *Submission to the statutory review of New South Wales's Victims Rights and Support Act 2013*, 11 July 2022, <knowmore.org.au/wp-content/uploads/2023/06/submission-statutory-review-victims-rights-and-support-act-2013-nsw.pdf>; knowmore, *Submission to the inquiry into youth justice reform in Queensland*, pp 34–43; knowmore, *Submission to the inquiry into the options available to survivors of institutional child sexual abuse in Western Australia who are seeking justice*, pp 68–72.

176 *Victims Rights and Support Act 2013* (NSW), part 2, division 2; *Victims' Charter Act 2006* (Vic); *Victims of Crime Assistance Act 2009* (Qld), schedule 1AA; *Victims of Crime Act 1994* (WA), schedule 1; *Victims of Crime Act 2001* (SA), part 2; Victims Support Services Tasmania, *Charter of Rights for Victims of Crime*, 30 March 2022, accessed 4 June 2024, <www.justice.tas.gov.au/victims/victims-rights/charter-of-victims-rights>; Northern Territory Government, *Northern Territory Charter of Victims' Rights*, accessed 4 June 2024, <nt.gov.au/_data/assets/pdf_file/0014/1301261/victim-of-crime-charter.pdf>; *Victims of Crime Act 1994* (ACT), part 3A.

is contained in legislation,¹⁷⁷ rather than government policy,¹⁷⁸ and recognises a broader range of victims' rights than some other victims' charters.

A significant and fundamental shortcoming of victims' charters is their unenforceability. For example, even the victims' charter from the ACT is legally unenforceable.¹⁷⁹

In knowmore's view, all state and territory governments should strengthen their victims' charters, in line with recommendations from the Royal Commission and having regard to the model provided by the victims' charter from the Australian Capital Territory.

Recommendation 21

All state and territory governments should strengthen their victims' charters, in line with recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse and having regard to the model provided by the victims' charter from the Australian Capital Territory.

All state and territory governments should also ensure that their victims' charters are both enforceable and enforced in practice. We note that the Issues Paper recognises that recommendations from previous inquiries have included 'considering whether [victims'] charter rights should be incorporated into Human Rights Acts'.¹⁸⁰ We consider that one benefit of this could be to provide pathways to enforcing victims' rights and make further comments about this below.

The need for Human Rights Acts with specific protection of victims' and survivors' rights

In knowmore's view, all Australian jurisdictions should have Human Rights Acts that include specific protection of victims' and survivors' rights. At present, no Australian jurisdiction has a Human Rights Act that includes this specific protection. This creates a significant gap in protection for victims and survivors, in all parts of Australia and at all levels of government.

We first make some general comments about Human Rights Acts, then some comments about specific protection of victims' and survivors' rights.

General comments about Human Rights Acts

The Australian Human Rights Commission (AHRC) has described Australia's human rights protections as 'patchy', 'forming an incomplete and piecemeal framework, with many gaps'.¹⁸¹ The AHRC summarised the significance of these gaps as follows:

177 *Victims of Crime Act 1994* (ACT), part 3A.

178 See Victims Support Services Tasmania, *Charter of Rights for Victims of Crime*; Northern Territory Government, *Northern Territory Charter of Victims' Rights*.

179 *Victims of Crime Act 1994* (ACT), section 18K.

180 Issues Paper, p 28.

181 Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia*, December 2022, p 46, <humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf>.

*The gaps in our legal coverage of human rights mean that there is not a consistent, principled and complementary framework for protecting human rights. Decision makers are not required to consider and act in accordance with human rights. There are limited avenues to seek review of government decisions or actions that violate a person's human rights.*¹⁸²

Of particular relevance to our clients, the AHRC noted:

*The consequences of Australia's lack of legal human rights protections acutely affect people who experience disadvantage, marginalisation and discrimination. It is the most vulnerable people who can fall through the cracks in the existing frameworks.*¹⁸³

Victoria, Queensland and the Australian Capital Territory have taken significant steps to address this problem by implementing Human Rights Acts.¹⁸⁴ While knowmore advocates to improve these laws to better protect the human rights of children, victims and survivors,¹⁸⁵ these laws nonetheless provide valuable guidance about how Human Rights Acts in other Australian jurisdictions could work.

We also note the valuable guidance provided by the AHRC in its position paper, *Free and Equal: A Human Rights Act for Australia*. The Australian Parliament's Joint Committee on Human Rights has recently recommended that the Australian Government establish a Human Rights Act, broadly reflecting the model proposed by the AHRC.¹⁸⁶

We have made detailed comments in previous submissions about the benefits of Human Rights Acts for children and victims and survivors of child sexual abuse.¹⁸⁷ We recommend that all Australian jurisdictions that are yet to do so should implement a Human Rights Act.

182 Australian Human Rights Commission, p 47.

183 Australian Human Rights Commission, p 48.

184 *Charter of Human Rights and Responsibilities Act 2006* (Vic); *Human Rights Act 2019* (Qld); *Human Rights Act 2004* (ACT).

185 See, for example, knowmore, *Submission to the inquiry into youth justice reform in Queensland*, pp 30–31; knowmore, *Inquiry into Australia's Human Rights Framework – answer to Question on Notice*, 17 October 2023, <www.aph.gov.au/DocumentStore.ashx?id=e5c11b69-d922-446b-9a77-aa4dcacc7235>.

186 Australian Parliament (Parliamentary Joint Committee on Human Rights), *Inquiry into Australia's Human Rights Framework*, May 2024, p 310–311, recommendation 2, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report>.

187 See knowmore, *Submission to the inquiry into Australia's Human Rights Framework*, 17 July 2023, pp 9–11, <knowmore.org.au/wp-content/uploads/2023/08/submission-inquiry-into-australias-human-rights-framework-cth.pdf>; knowmore, *Submission to the inquiry into the potential for a Human Rights Act for South Australia*, 15 February 2024, pp 12–15, <knowmore.org.au/wp-content/uploads/2024/02/submission-inquiry-into-the-potential-for-a-human-rights-act-for-sa.pdf>.

Recommendation 22

All Australian governments that are yet to do so should implement a Human Rights Act.

Specific protection of victims' and survivors' rights

As noted on page 51, a significant and fundamental shortcoming of victims' charters in Australia is their unenforceability. We commented above that one benefit of incorporating the rights from victims' charters into Human Rights Acts could be to provide pathways to enforcing victims' and survivors' rights.

There would be further benefits to incorporating specific protection of victims' and survivors' rights into Human Rights Acts. This would include clear recognition of victims' and survivors' rights as human rights equal to all other human rights. It would also assist to embed a trauma-informed approach to victims and survivors across the legal system, and would better recognise that the right to a fair trial includes fairness to victims and survivors and the broader community (see discussion on pages 13 to 14).¹⁸⁸

The Queensland Human Rights Commission (QHRC) has powerfully articulated the importance of specific protection of victims' rights in a Human Rights Act:

*It has been noted that promoting rights for victims is an attempt to address the persistent difficulties experienced by institutions and professionals to adequately meet the expectations of victims of crime. Having violence inflicted on them and experienced victimisation separates victims from their usual place in society. It disrupts the sense of trust and belonging people generally (though variably) have in others.*¹⁸⁹

Specific protection of victims' and survivors' rights also aligns with recommendations from several inquiries. For example:

- The Queensland Taskforce and the Queensland Parliament's former Legal Affairs and Safety Committee both recommended that the Queensland Government consider incorporating victims' rights into Queensland's Human Rights Act. These recommendations have been supported by the Queensland Government.¹⁹⁰ The

188 See, for example, Royal Commission, *Criminal justice report: parts III to VI*, p 521; ACT Human Rights Commission, *Submission to the inquiry into Australia's Human Rights Framework*, p 8.

189 Queensland Human Rights Commission, *Submission to the inquiry into Australia's Human Rights Framework*, 3 July 2023, p 51, paragraph 265, <www.aph.gov.au/DocumentStore.ashx?id=b3699ab7-9b83-4b0f-b47b-a45ba35794da&subId=745481>.

190 Queensland Government, *Response to the report of the Queensland Women's Safety and Justice Taskforce, hear her voice – report two: women and girls' experienced across the criminal justice system*, 21 November 2022, p 13, <www.publications.qld.gov.au/dataset/wsjskforcercerresponse/resource/a0705c73-62bd-4263-ab2c-694e5735d058>; Queensland Government, *Inquiry into support provided to victims of crime: Queensland Government response*, p 4.

independent review of Queensland's Human Rights Act is currently considering the matter.¹⁹¹

- The Victorian Law Reform Commission recommended that Victoria's Charter of Human Rights and Responsibilities be amended to include specific minimum guarantees for victims, namely:
 - to be acknowledged as a participant with an interest in the criminal proceedings
 - to be treated with respect at all times
 - to be protected from unnecessary trauma, intimidation and distress when giving evidence.¹⁹²

Recommendation 23

The Australian Government, and all state and territory governments, should ensure that their Human Rights Acts include specific, enforceable protection of victims' and survivors' rights.

191 Independent review of the Human Rights Act (Queensland), *Terms of reference*, 15 May 2024, accessed 4 June 2024, <www.humanrightsreview.qld.gov.au/about-the-review/terms-of-reference>.

192 Victorian Law Reform Commission, *Victims in the criminal trial process: report*, 22 November 2016, chapter 3, <www.lawreform.vic.gov.au/publication/the-role-of-victims-of-crime-in-the-criminal-trial-process-report-2/>.

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Image inspired by original artwork by Ngunawal man Dean Bell, depicting knowmore's connection to the towns, cities, missions and settlements within Australia.

knowmore acknowledges the Traditional Owners of the lands and waters across Australia upon which we live and work. We pay our deep respects to Elders past and present for their ongoing leadership and advocacy.

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