

**Our Ref:** LH:JM

16 February 2024

New Aged Care Act Consultation  
Department of Health and Aged Care  
GPO Box 9848  
CANBERRA ACT 2601

**Via email:** [AgedCareLegislativeReform@health.gov.au](mailto:AgedCareLegislativeReform@health.gov.au)

## Submission on the new Aged Care Act — consultation paper no. 2

Thank you for the opportunity to make a submission on the exposure draft of the bill for a new Aged Care Act. Our submission focuses on a specific issue related to fees and means testing — survivors of institutional child sexual abuse and survivors of the Stolen Generations being forced to pay higher aged care fees after receiving redress payments to recognise their experiences of childhood trauma.

While we acknowledge that the government plans to consider more significant changes to funding and means testing arrangements after the Aged Care Taskforce has made its recommendations, we believe that survivors deserve to have their problems addressed more urgently.

### Our interest in the new Aged Care Act

knowmore is a nation-wide, independent community legal centre for victims and survivors of child abuse. As part of our service, we support people engaging with the following redress schemes:

- the National Redress Scheme (NRS), which offers a redress payment and other forms of redress to survivors of institutional child sexual abuse<sup>1</sup>

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<sup>1</sup> See <[www.nationalredress.gov.au/](https://www.nationalredress.gov.au/)>.

- the Territories Stolen Generations Redress Scheme,<sup>2</sup> which offers financial and wellbeing support to some Stolen Generations survivors who were removed as children from their families or communities in the Northern Territory, Australian Capital Territory and Jervis Bay Territory
- the Victorian Stolen Generations Reparations Package,<sup>3</sup> which offers a range of financial and restorative reparations to some Stolen Generations survivors who were removed as children from their families in Victoria.

A significant proportion of knowmore’s clients are older people — 25% are Aboriginal and/or Torres Strait Islander people over the age of 50 and a further 15% of clients are over the age of 65 — and a large number access aged care services.<sup>4</sup>

### What payments can survivors receive from redress?

#### National Redress Scheme

- A redress payment of up to \$150,000
- A counselling and psychological services payment of up to \$5,000 (for survivors living in South Australia only; other survivors receive access to services)

#### Territories Stolen Generations Redress Scheme

- A redress payment of up to \$75,000
- A healing assistance payment of \$7,000

#### Victorian Stolen Generations Reparations Package

- A reparations payment of \$100,000

*Note that all 3 schemes also offer survivors some kind of non-financial support e.g. access to counselling, an apology.*

### The problem for survivors

If a person living in or seeking to access residential aged care receives a redress payment that puts them over the relevant asset threshold (currently \$58,500 for the asset-free threshold), they are liable to pay higher aged care fees. Survivors we have assisted have felt the harsh effects of this.

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<sup>2</sup> See <[territoriesredress.gov.au/](http://territoriesredress.gov.au/)>.

<sup>3</sup> See <[www.vic.gov.au/stolen-generations-reparations-package](http://www.vic.gov.au/stolen-generations-reparations-package)>.

<sup>4</sup> See the Attachment for more information about knowmore’s services and clients.

- One survivor received an NRS payment of about \$72,000. The survivor paid their aged care fees from their age pension, and had no other income, no house and no other assets. After receiving their NRS payment (which was treated as an asset), the survivor was required to pay an accommodation contribution of \$12.84 per day, equating to more than \$4,000 extra for their aged care in one year.
- Another survivor we assisted received an NRS payment of \$100,000. They too received the age pension as their only source of income and had only \$2,000 in savings. After receiving their NRS payment (which was treated as an asset), the survivor was required to pay an accommodation contribution that equated to more than \$6,000 extra for their aged care in one year.

Survivors can end up even worse off, as these further examples show.<sup>5</sup>

- A survivor who receives the maximum NRS payment of \$150,000 would lose more than 10% of their payment to increased aged care fees in the first year alone.<sup>6</sup>
- A survivor who receives the maximum redress payment from both the NRS and the Territory Stolen Generations Redress Scheme would face the prospect of having to pay the full cost of their aged care accommodation, which may total tens of thousands of dollars a year.

These outcomes are clearly unfair — indeed, ‘cruel and unjust’, as the Administrative Appeals Tribunal has said on this matter.<sup>7</sup> Redress payments are intended to recognise survivors’ traumatic childhood experiences, acknowledge the significant, life-long impacts of those experiences, and help survivors in their healing and recovery. Survivors should have the right to use the full amount of these payments in whichever way they choose. Redress payments should never cause survivors disadvantage in the form of increased costs of living. They also certainly should never lead the Australian Government to earn a discount on its funding of the survivor’s aged care.

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<sup>5</sup> Both examples are for a single survivor with no assets receiving the full age pension.

<sup>6</sup> As per the My Aged Care fee estimator, <[www.myagedcare.gov.au/how-much-will-i-pay](http://www.myagedcare.gov.au/how-much-will-i-pay)>.

<sup>7</sup> *The Tribunal found that the determination to include the Applicant’s lump sum payment [from the NRS] as an asset for the calculation of his [daily accommodation contribution], whilst correct at law, nevertheless seems cruel and unjust ... The Tribunal concluded that the Applicant had suffered enough and shared his former wife’s disbelief that his redress payment could be considered an asset ... See YFFS and Secretary, Department of Health [2022] AATA 728 (11 April 2022), paragraphs 54 and 56, available at <[www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2022/728.html](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2022/728.html)>.*

## The new Aged Care Act as an opportunity for reform

We welcome a new Aged Care Act that will place people and their rights at the centre of decision-making and service delivery. We think this presents a valuable and important opportunity for the government to make the changes survivors need.

It would completely contradict the spirit of the reforms for survivors who receive redress to continue to be forced to pay higher aged care fees under the new Act. We particularly note how such a situation would undermine the government's vision for an aged care system that:

- puts older people first<sup>8</sup>
- considers the needs of individuals<sup>9</sup>
- delivers services that are 'culturally safe, culturally appropriate, trauma-aware and healing-informed'.<sup>10</sup>

Maintaining the status quo would be especially problematic given that the new Act specifically recognises survivors of the Stolen Generations and survivors of institutional child sexual abuse as people whose life experiences warrant special consideration in the delivery of aged care services.<sup>11</sup>

We therefore urge the government to implement two changes to put survivors first and eliminate the injustice they are currently experiencing.

First, means testing arrangements in the new Act should align with what the Royal Commission into Aged Care Quality and Safety recommended.<sup>12</sup> By significantly raising the income and asset thresholds so that more people are fully supported residents (including all

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<sup>8</sup> We note, for example, the object of the new Aged Care Act in paragraph 5(b)(iii), the definition of high quality care in section 19, and the Statement of Principles at subsections 22(1) and 22(2).

<sup>9</sup> We note, for example, the object of the new Aged Care Act in paragraph 5(b)(iii) and the Statement of Principles at subsection 22(4).

<sup>10</sup> We note, for example, the Statement of Rights at subsections 20(2) and 20(3) and the Statement of Principles at subsection 22(4).

<sup>11</sup> Subsection 22(4) in the draft bill states the principle that: *The Commonwealth aged care system offers accessible, culturally safe, culturally appropriate, trauma-aware and healing-informed funded aged care services, if required by an individual and based on the needs of the individual, regardless of the individual's location, background and life experiences.* The note to this says: *This may include individuals who: (a) are Aboriginal or Torres Strait Islander persons, including those from stolen generations; or ... (g) are adult survivors of institutional child sexual abuse ...*

<sup>12</sup> Royal Commission into Aged Care Quality and Safety, *Final report — volume 3B: the new system*, <[agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-3b\\_0.pdf](https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-3b_0.pdf)>.

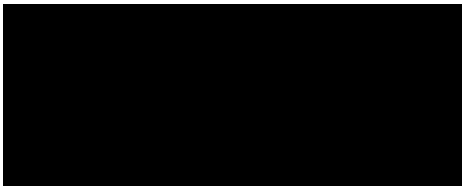
full and part-pensioners),<sup>13</sup> most survivors would face no increase in their aged care fees even after receiving the highest possible redress payments. This is how it should be.

Second, all redress payments should be specifically excluded from means testing arrangements — that is, redress payments should not be regarded as either assessable income or assessable assets. In our view, this is a simple change that can, and should, happen now.

Thank you again for the opportunity to provide these comments. We have no concerns about this letter being published.

Should we be able to provide any further assistance, Lauren Hancock, Manager Law Reform and Advocacy, can be contacted on 07 3218 4500 or at [REDACTED]

Yours faithfully,



**JACKIE MEAD**

Chief Executive Officer

**ENCL.**

- Attachment: About knowmore

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<sup>13</sup> For single non-homeowners.

## Attachment: 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 (the 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.

From 23 December 2022, knowmore has also been assisting survivors who experienced child sexual abuse in non-institutional settings.

From 1 March 2022, knowmore has been providing legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme). Since 2022, knowmore has also received some funding from the Victorian Government to provide some services (mainly financial counselling) to support Stolen Generations survivors accessing the Victorian Stolen Generations Reparations Package.

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.

### 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, and 24% identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the NRS for survivors of institutional child sexual abuse on 1 July 2018 to 31 October 2023, knowmore has received 100,736 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 16,784 clients. Almost 2 in 5 clients (38%) identify as Aboriginal and/or Torres Strait Islander

peoples. About 1 in 7 clients (14%) are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.