

Feedback - Release 2a – Funding for Support at Home program

Thank you for the opportunity to provide feedback on the New Aged Care Act Rules consultation – Release 2a – Funding for Support at Home program. My feedback focuses on the specific need to expand the exemption within an Aged Care assessment of an individuals' assets or income to include civil claim payments received by individuals where the payment has been made by an institution in recognition of institutional child sexual abuse experienced by the individual. Currently, this exemption, which I will refer to as the Aged Care assessment exemption, only applies to individuals who have received payments under the National Redress Scheme (NRS)ⁱ. Both NRS recipients and civil claimants should be treated equally within the *Aged Care Rules 2024*, currently they are not. This expansion needs to be reflected in section 314CA Amounts to be disregardedⁱⁱ, alongside any other reference to the NRS in Chapter 4.

A number of individuals have received compensation amounts directly from institutions, through civil claims since the release of the *Royal Commission Inquiry into Institutional Responses to Child Sexual Abuse* Final Report. The NRS is not the only avenue to receive redress payments/compensation for individuals who have experienced institutional child sexual abuse and this needs to be recognised within the *Aged Care Rules 2024*. To only exempt those who have received payments via the NRS, ignores a large cohort of individuals who have experienced traumatic childhood experiences and consequential life-long impacts and sought justice through a civil claim to help them heal and recover from this abuse. These individuals should also be accorded the same recognition and full right to use their payments however they choose as are NRS recipients, and these payments should never cause individuals disadvantage in the form of increased costs of aged care services. These payments should never lead the Australian Government to earn a discount on its funding of the individual's aged care.

To limit the Aged Care assessment exemption to only those who have received payment via the NRS, is not in the spirit of the *Royal Commission Inquiry into Institutional Responses to Child Sexual Abuse*, who particularly recommended ensuring justice for victims through the provision of redress by institutionsⁱⁱⁱ and viewed civil claims as an appropriate form of justice for survivors. The Royal Commission stated "... through our recommendations on reforms to civil litigation in Part IV of this report, these reforms if implemented, will make civil litigation a far more effective means of providing justice for survivors"^{iv}. Recommendations 85 and 86^v concerning the removal of limitation periods so claimants can pursue civil claims have been agreed to by the Australian Government^{vi}, where it has jurisdiction to do so, and States and Territories have broadly implemented recommendations to provide civil litigation access for potential claimants^{vii}. Given this agreement by the Australian Government, for Chapter 4 of the *Aged Care Rules 2024* to leave out the civil payment cohort from the Aged Care assessment exemption would be unfair and unequitable. It would mean the Australian Government would not recognise the form of justice accorded for civil claimants but would recognise the form of justice accorded for recipients of the NRS. The Australian Government's preferential treatment of NRS recipients would become discriminatory towards civil claim recipients.

To limit the Aged Care assessment exemption only to NRS recipients would completely contradict the spirit of the Aged Care reforms for those who have experienced institutional child sexual abuse and I note this would undermine the government's vision for an aged care system that:

- Puts older people first^{viii}
- Considers the needs of individuals^{ix}
- Delivers services that are 'culturally safe, culturally appropriate, trauma-aware and healing-informed'^x

Limiting the Aged Care assessment exemption of an individual's assets and income to only those who received NRS payments, not recipients of civil claim payments, becomes especially problematic as the new Aged Care Act recognises survivors of institutional child sexual abuse as people whose life experiences warrant special consideration in the delivery of aged care services.^{xi} The NRS cohort would be treated differently from the civil claim payment cohort, even though they have experienced the same traumatic effects of institutional child sexual abuse, with both cohorts having received payments in recognition of this, despite payment coming from different legal avenues.

I urge you to include civil payments to Part 2-Means testing Division, 1-Means testing in a home or community setting, Subdivision C- Valuing an individual's assets, 314CA Amounts to be disregarded, and anywhere else within Chapter 4 where the NRS is referred to. This will ensure a just, fair, equitable and non-discriminatory approach to all survivors of institutional child sexual abuse who access Aged Care services.

Thank you for the opportunity to provide this feedback.

Regards

[Redacted signature block]

ⁱ *Aged Care Rules 2024*, Chapter 4, Part 2-Means testing Division, 1-Means testing in a home or community setting, Subdivision C- Valuing an individual's assets, 314CA Amounts to be disregarded (b) any redress payment paid to the individual, or to an administrator for the individual, under section 48 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018.*, P43 (<https://www.health.gov.au/sites/default/files/2024-11/new-aged-care-act-rules-consultation-release-2a-funding-for-support-at-home-program.pdf>)

ⁱⁱ *Aged Care Rules 2024*, Chapter 4 (<https://www.health.gov.au/sites/default/files/2024-11/new-aged-care-act-rules-consultation-release-2a-funding-for-support-at-home-program.pdf>)

ⁱⁱⁱ <https://www.childabuseroyalcommission.gov.au/redress-and-civil-litigation> "(d) what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services."

^{iv} Executive Summary, P6, Royal Commission Inquiry into Institutional Child Sexual Abuse Redress and Civil Litigation Report (https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf)

^v P53, Royal Commission Inquiry into Institutional Child Sexual Abuse Redress and Civil Litigation Report (https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf)

^{vi} Australian Government response to the Royal Commission Inquiry into Institutional Child Sexual Abuse Final Report, Recommendations 85 and 86. (<https://www.childsafety.gov.au/system/files/2023-11/Australian%20Government%20Response%20to%20the%20Royal%20Commission%20into%20Institutional%20Responses%20to%20Child%20Sexual%20Abuse%20-%20full%20version.PDF>)

^{vii} Australian Government response to the Royal Commission Inquiry into Institutional Child Sexual Abuse Final Report, Recommendations 87 and 89. (<https://www.childsafety.gov.au/system/files/2023->

[11/Australian%20Government%20Response%20to%20the%20Royal%20Commission%20into%20Institutional%20Responses%20to%20Child%20Sexual%20Abuse%20-%20full%20version.PDF](#))

^{viii} *Aged Care Bill 2024* The object of the new Aged Care act in paragraph 5(b)(iii), and the statement of Principles at Subsections 22 (1) and 22(2).

^{ix} *Aged Care Bill 2024* The object of the new Aged Care act in paragraph 5(b)(iii), and the statement of Principles at Subsections 22 (4).

^x *Aged Care Bill 2024* Statement of Rights at subsections 20(2) and 20(3) and the Statement of Rights at subsection 22(4).

^{xi} *Aged Care Bill 2024* Subsection 22(4) in the draft Aged Care 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 or life experiences. The note to this says: This may include individuals who: ... (g) are adult survivors of institutional child sexual abuse ...