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Please reply to: Brisbane Office
Our reference: WGS

29 November 2018

The Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: LACSC@parliament.qld.gov.au

Dear Committee

RE: Civil Liability (Institutional Child Abuse) Amendment Bill 2018

knowmore legal service supports the enactment of legislative reform in Queensland to implement the civil litigation recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse in its 2015 *Redress and Civil Litigation Report*.

We commend the introduction by Mr Michael Berkman MP of the Civil Liability (Institutional Child Abuse) Amendment Bill 2018 ('Mr Berkman's Bill'). The progression of these reforms in Queensland is overdue. They address longstanding barriers that have adversely impacted on the ability of survivors to access justice and to have claims based on child abuse decided on their merits by our courts.

Additionally, Queensland joined the National Redress Scheme (the NRS) on 19 November 2018. Acceptance by survivors of a redress payment under that scheme requires the survivor to relinquish their common law/civil rights against participating institutions and officials.¹ As explained below, our service is seeing large numbers of survivors of institutional child abuse who are living in Queensland now coming forward to seek advice and information about their rights to compensation or redress. Those survivors are currently in the difficult position of having to make decisions about their best option for justice without a clear picture as to their common law and civil rights and their prospects of success, in both establishing liability on the part of an institution and in ultimately being able to recover any award of damages.

Civil litigation reform to remove the barriers addressed in Mr Berkman's Bill has already been implemented in Victoria, New South Wales and Western Australia. Queensland needs to move urgently on these issues.

¹ See s.43 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth)*

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Brisbane QLD

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Our 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 mission 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.

Our service was initially established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse ('the Royal Commission'). knowmore was established by and operates as a program of the National Association of Community Legal Centres (NACLC), with funding from the Australian Government, represented by the Attorney-General's Department.

From 1 July 2018 NACLC has been funded to operate knowmore to deliver legal support services to assist survivors of institutional child sexual abuse to access redress under the NRS. knowmore assists survivors by providing information and advice about the options available to them, including claims under the NRS, access to compensation through other schemes or common law rights and claims.

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

In our Royal Commission related work, from July 2013 to 31 March 2018 knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. 24% of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

In undertaking this work, we assisted 2,571 clients living in Queensland. 29% of those clients identified as Aboriginal and/or Torres Strait Islander peoples.²

In our work relating to the NRS, from 1 July to 31 October 2018 knowmore has completed intake processes for, and has assisted or is currently assisting, 2,703 clients. 56% of these clients are people who have previously engaged with knowmore, and 44% are new clients. We receive more calls from survivors living in Queensland than from any other Australian state. 28% of the 7,853 calls received in the abovementioned period have come from Queenslanders.³

² See knowmore, Service Snapshot (Infographic to 31 March 2018), attached to this submission, for further information about our clients residing in Queensland

³ See knowmore, Service Snapshot (Infographic 1 July to 31 October 2018), attached to this submission, for further information about our NRS related service delivery

The current context and the issues

We note that since the introduction of Mr Berkman's Bill the Government has introduced the Civil Liability and Other Legislation Amendment Bill 2018 (the Government Bill), which has also been referred to the Committee, and we also commend the Government for this progress.

knowmore will be providing a detailed submission to the Committee's inquiry into the Government Bill which will address in detail the importance to survivors of implementing these reforms and the detail of the legal issues that need to be addressed and the form of amending legislation that should ultimately be supported by Parliament. In short, we see the key issues as the following:

- Why the ability to make a child abuse claim against an institution is of key importance to survivors, and the current difficulties facing survivors considering bringing such claims that should be addressed in the reforms.
- Whether the amending legislation should implement recommendations 89 and 90 of the Royal Commission, as to the prospective imposition of a non-delegable duty of care/strict liability for certain categories of institutions, as identified by the Royal Commission (rather than only reform imposing a non-delegable duty of care with a reverse onus defence).
- How the legislation provides for such liability/duty of care, and for what amounts to 'reasonable steps'
- The scope of the duty imposed, which in our submission should extend to related or connected physical and psychological abuse, to recognise the experiences of survivors; to ensure proper access to justice; and to promote consistency with reform in other jurisdictions. In this respect, we fully support the approach take in the current Bill to defining the scope of 'child abuse'⁴ We also fully support corresponding amendment of the *Limitation of Actions Act 1974* and the *Personal Injuries Proceedings Act 2002*, as we have advocated for in previous submissions.⁵
- How an institution is defined, and the scope of who is to be considered to be associated with an institution, for the purposes of the imposition of vicarious liability. We support broad organisational coverage and a broad and non-exhaustive approach to institutional associates, to ensure appropriate application of the new laws and also to limit opportunities for institutions to avoid liability through the delegation of their responsibilities regarding the delivery of services to children.
- The scope of the connection between the institution and the perpetrator, to result in potential liability.

⁴ Civil Liability (Institutional Child Abuse) Amendment Bill 2018, clause 49C

⁵ See knowmore's submission to the Committee's Inquiry into the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 and the Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016, viewed at <https://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/past-inquiries/22-LimitationActions>

- The form of the amending legislation to enable proceedings to be brought against unincorporated institutions, and the scope of the application of those provisions.
- The effect of an appointment, by an institution or the Court, of a proper defendant, and the controls and protections that should be available for that entity.
- How to define what is an associated trust for the purposes of using the assets of that trust to pay an institution's liabilities arising from child abuse claims. We submit a wide definition should be adopted, with appropriate 'anti-avoidance' provisions,⁶ in order to restrict the capacity of institutions to develop trust arrangements that seek to immunise their assets from access to meet child abuse liabilities.
- The need for institutional 'continuity' provisions, as contained in the Government's Bill, and as derived from the legislation already enacted in Western Australia.⁷
- Prospective vs retrospective operation of the amendments, and the Royal Commission's recommendations.

We thank the Committee for the opportunity to make this submission. If you have any queries, please contact me.

Yours faithfully



WARREN STRANGE

Executive Officer

ENCL:

⁶ See, for example, s.6N of the *Civil Liability Amendment (Organisational Child Abuse Liability) Bill 2018 (NSW)*

⁷ See sections 15F-H of the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018 (WA)*

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Data Snapshot – Queensland

as at 31 March 2018

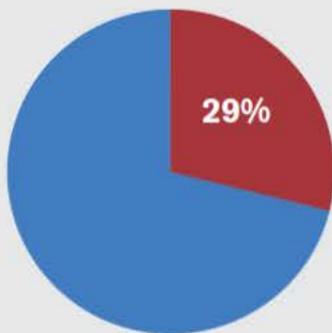


knowmore is an independent service giving free legal advice to people who are considering telling their story or providing information to the Royal Commission into Institutional Responses to Child Sexual Abuse.

This snapshot provides data about our clients living in Queensland

Our clients

knowmore began providing services to the public on 8 July 2013 – as at 31 March 2018, we've helped:



2571

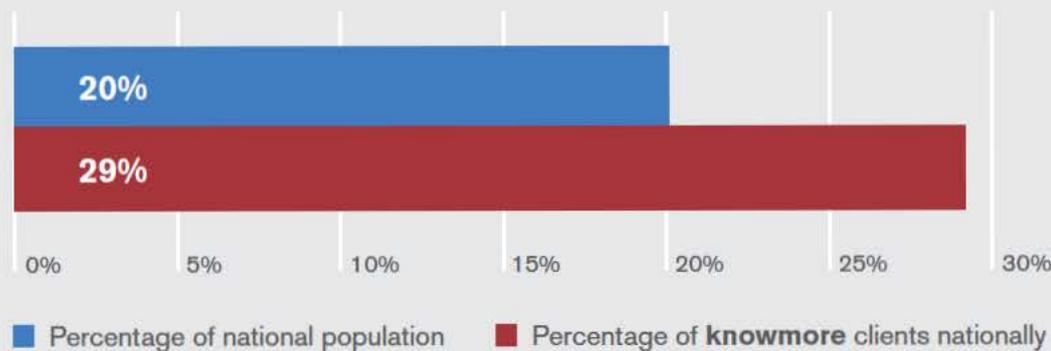
knowmore Queensland clients



8954

Total number of knowmore clients

State representation



Percentage of national population living in QLD

Against

Percentage of knowmore clients living in QLD



30%

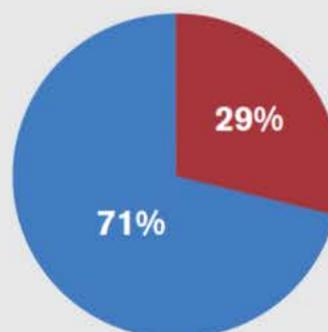
Identified as female



70%

Identified as male

Aboriginal and Torres Strait Islander clients



Identify as Aboriginal or Torres Strait Islander People

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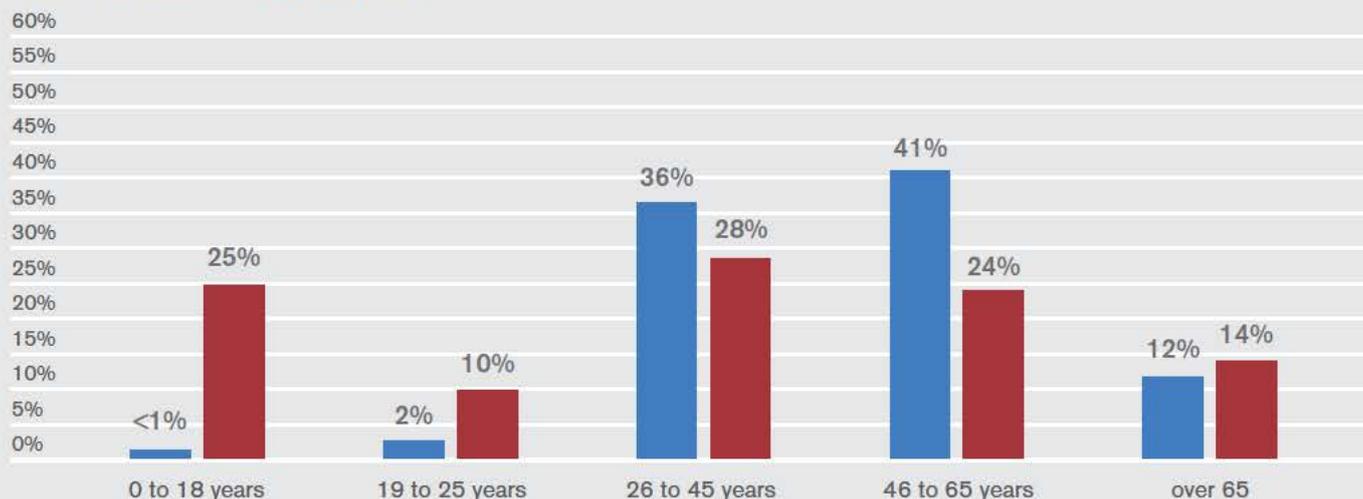
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Data Snapshot – Queensland

as at 31 March 2018



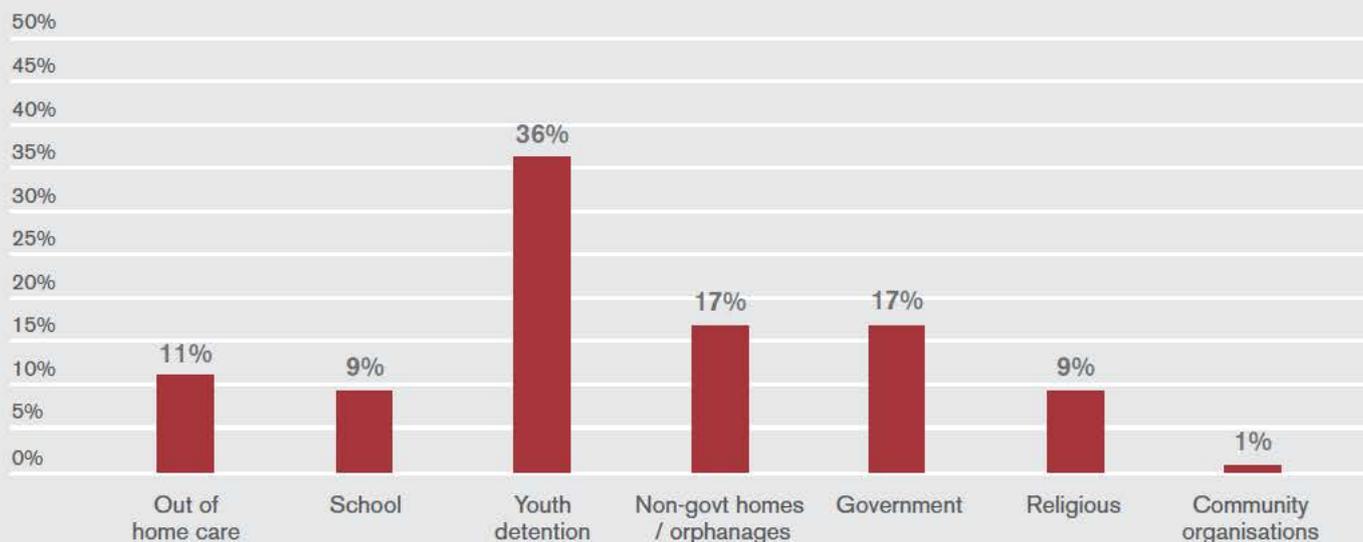
Our clients – Age groups



Percentage of Queensland based **knowmore** clients per age group

Against percentage of Queensland population per age group

Institutions in Queensland where our clients report experiencing childhood sexual abuse



Out of home care: care provided to children who could not be cared for by their parents, including foster care

School: State and private primary and secondary schools

Youth detention: facilities run by the state government for people under 18yrs

Non-govt homes/orphanages: homes run mainly by religious organisations

Government: Government departments and agencies

Religious: Religious settings including churches and church run activities such as camps

Community Organisations: Organisations providing recreational activities to children

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Free legal help to navigate the Royal Commission

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National Redress Scheme

1 July 2018 – 31 October 2018

Total calls and clients

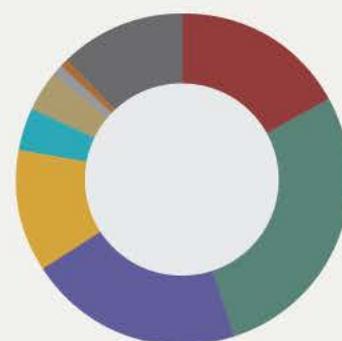


7843
Total 1800 calls nationally (637 in first two days)



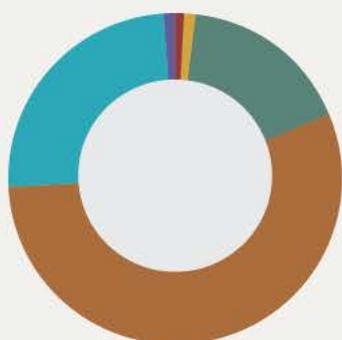
2703
clients (intake completed)
44%
new clients

Calls came from



NSW	17%
QLD	28%
VIC	21%
WA	12%
SA	5%
TAS	3%
ACT	1%
NT	1%
International/Other	12%

Age As at 16 October 2018



0-18	<1%
19-25	1%
26-45	17%
46-65	56%
66-85	25%
86+	<1%

Our clients



12%
priority clients



23%
identify as Aboriginal and/or Torres Strait Islander



32%
identified as female



68%
identified as male

knowmore free legal help for survivors

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* Notes re Priority Clients

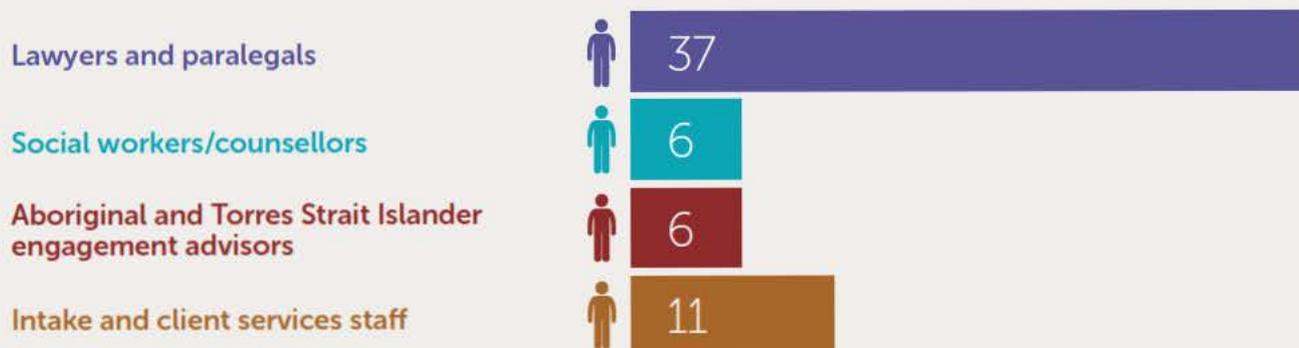
Clients are allocated priority where they are of advanced age, and/or have identified immediate and serious health concerns such as a diagnosis of terminal cancer or other life-threatening illnesses.

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National Redress Scheme

1 July 2018 – 31 October 2018

Service delivery



Brisbane

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www.facebook.com/knowmorecomms

[@knowmorecomms](https://www.instagram.com/knowmorecomms)

knowmore free legal help
for survivors

1800 605 762 | knowmore.org.au

knowmore is a program of National Association of Community Legal Centres ABN 67 757 001 303 ACN 163 101 737.

NACLCL acknowledges the traditional owners of the lands across Australia upon which we live and work. We pay deep respect to Elders past and present.

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