

Free advice line 1800 605 762  
Website [knowmore.org.au](http://knowmore.org.au)

**knowmore**

Our Ref: WGS  
Please reply to: Sydney office

9 July 2018

Committee Secretary  
HCDSDFVPC  
Parliament House  
George Street  
Brisbane QLD 4000

By email: [health@parliament.qld.gov.au](mailto:health@parliament.qld.gov.au)

Dear Sir/Madam,

1. About our service

knowmore is a free legal service that 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. knowmore was established by 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 National Redress Scheme ('the Scheme'). knowmore assists survivors by providing information and advice about the options available to them, including claims under the Scheme, access to compensation through other schemes or common law rights and claims. Advice will also be provided on key steps in the redress application process, including

- a) prior to application so survivors understand eligibility requirements and the application process of the Scheme and their legal options;
- b) during completion of a survivor's application;
- c) after a survivor has received an offer of redress or refusal and elects to seek an internal review; and
- d) on the effect of signing a deed of release, including its impact on the prospect of future litigation.

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knowmore operates as a national community legal centre, using a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. Since the service commenced in July 2013, to 31 March 2018 knowmore has assisted 8,948 individual clients. The majority of those clients are survivors of institutional child sexual abuse. 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. 24% of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples. 29% of those clients were living in Queensland at the time of engaging with our service.<sup>1</sup>

## 2. The National Redress Scheme

knowmore supports the establishment of a national, independent redress scheme for survivors of institutional child sexual abuse, funded by relevant institutions and Commonwealth, State and Territory governments.<sup>2</sup> knowmore acknowledges and commends the Australian Government's leadership in establishing the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (the scheme) and in doing so implementing the Royal Commission's key redress recommendation; namely, that a single national redress scheme is the most effective structure for ensuring justice for survivors.<sup>3</sup>

Similarly, knowmore recognises and commends Queensland's decision to participate in the Scheme. That decision will in turn allow non-government institutions in Queensland to also join the Scheme, and in doing so, demonstrate a commitment to taking responsibility for the sexual abuse of children in institutions under their administration.

knowmore's support for a national redress scheme recognises what has been a community-wide failure to protect children from institutional sexual abuse and as such, Australia's shared responsibility for the ongoing suffering experienced by survivors.

Implementation by the States and Territories of the Royal Commission's reforms for civil litigation systems will operate to assist more survivors in being able to pursue claims for damages through the courts. However, notwithstanding the implementation of those reforms, considerable evidentiary and other barriers still exist for many survivors in bringing common law/civil claims, particularly in cases of historical abuse. It is therefore vital that survivors have an alternate way to access compensation and support in recognition of each individual's experiences. We also note the fundamental importance of ensuring that survivors are afforded meaningful opportunities to access justice and most importantly, choice in how to pursue justice outcomes that are appropriate and important to them.

Our work with clients reflects that survivors wish to access a redress process, as an alternative to litigation, for many reasons. Some wish to use a redress process to obtain some element of financial recompense for

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<sup>1</sup> See knowmore, Service Snapshot (Infographic to 31 March 2018), attached to this submission

<sup>2</sup> knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues Paper 6, Redress Schemes and knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Consultation Paper, *Redress Schemes and Civil Litigation*. knowmore's publicly available submissions can be viewed at <http://knowmore.org.au/resources/>

<sup>3</sup> Royal Commission, *Redress and Civil Litigation Report* (2015). Recommendation 26

the abuse they occurred, but many also wish to seek non-financial and/or therapeutic outcomes including counselling support; an acknowledgement of the abuse perpetrated against them, and an apology. Importantly, to be effective a redress process must also ensure institutional accountability for that abuse and its impacts upon the survivor. The Scheme will be able to provide those outcomes by:

- providing a monetary payment to survivors as a tangible means of recognising the wrong they have suffered; and
- providing access to counselling and psychological services to survivors; and
- facilitating a direct personal response to survivors from the participating, responsible institutions.

While knowmore supports the establishment of the Scheme and the participation of all relevant non-government institutions, we do hold some ongoing concerns about some aspects of the Scheme's design and operation, where those matters reflect significant departures from the recommendations of the Royal Commission. These matters are addressed later in our submission.

### 3. Comments on the Queensland Bill

It follows from our above comments that knowmore fully supports the participation of the Queensland Government and other non-government Queensland based institutions in the Scheme. Accordingly, knowmore supports the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (Queensland), and recommends that it should be passed.

In looking at the current provisions of the Bill, we note that those clauses relating to the adoption of the Commonwealth legislation establishing the Scheme, and the referral of the amendment reference, largely follow the wording and approach of the comparable legislation that has been passed in New South Wales. We have compared the wording of the Queensland Bill with the NSW and Victorian Acts;<sup>4</sup> while there are some differences in the drafting of the comparable provisions, these are not substantive.

We support the inclusion in the Bill of the provision that will amend the *Victims of Crime Assistance Act 2009* (Queensland) to ensure that redress payments made to survivors may not be deducted from victim assistance payments made under that Act.

We also note the information sharing provisions in the Bill. Sub-clauses (1) and (3) of Clause 11 of the Bill provides that a State agency that receives a notice given to it for the purposes of the scheme must comply with that request by providing particular information in the agency's possession or control. However, Clause 11(4) specifically provides that a person who fails to comply does not commit an offence. We note that during the public briefing about the Bill provided to the Committee by officers of the Department of Child Safety, Youth and Women on 25 June 2018 the Committee was advised, in the context of noting that the Bill does not include a penalty provision, that this was consistent with the national approach and that the hope is that agencies will work collaboratively to provide information.<sup>5</sup>

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<sup>4</sup> The *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018* (NSW) and the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018* (Vict)

<sup>5</sup> Committee Public Briefing, 25 June 2018, transcript p. 14, evidence of Ms Donna Burnett

Given the clear public interest in State agencies complying with notices given for the purpose of the scheme, we would suggest that some consideration be given by the Department to an appropriate method of ensuring that instances of non-compliance with notices are addressed.

Potentially, a refusal of a State agency to comply with a notice given under Clause 11, in the absence of any lawful excuse, may amount to conduct that may enliven the Ombudsman's jurisdiction to investigate the administrative actions of government agencies. However, it would seem unlikely that any such instances would ever come to the attention of the survivor/redress claimant who may be disadvantaged by such non-compliance, for the purposes of that individual making a specific complaint. Accordingly, we suggest that some mechanism should be developed through which any such instances of non-compliance are identified and referred to enable investigation to occur, such as through a Parliamentary reference, following upon reporting by the chief executive of any such instances.

In recommending that the Bill be passed, knowmore would also strongly recommend that Parliament accords priority to its further consideration of the Bill and its enactment. As the Committee will know, the Scheme commenced operation on 1 July 2018. While the Operator of the Scheme will hold applications from survivors relating to institutions which are not yet participants in the Scheme, we understand that these applications will not be determined, and certainly the elements of redress provided for in the Scheme cannot be provided, until those institutions have formally joined the Scheme.

Survivors have already waited many years to be able to access some form of justice for their childhood sexual abuse. Many are of advanced age now, and often in poor health. It is important that the Queensland Parliament acts quickly to now ensure those survivors can access the Scheme and progress their applications so that they may be able to obtain redress as soon as possible.

#### 4. Departures from the Royal Commission's recommendations

As noted, the current Scheme does not entirely reflect the Scheme recommended by the Royal Commission, and as informed by the comprehensive body of all of its work. We have addressed these issues at length in previous submissions made to the Senate Community Affairs Committee during its inquiries into first the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017<sup>6</sup> and secondly the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018.<sup>7</sup> Those submissions, and many others made to each Senate Committee Inquiry, contain detailed analysis of how the current Scheme departs from the Royal Commission's recommended model, and the impacts of those departures upon survivors. The key issues include:

- The lowering of the maximum redress payment from \$200,000 to \$150,000
- The limitations imposed upon the provision of the redress element of counselling and psychological care services

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<sup>6</sup> See Submission # 31 at

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/AbuseRedressScheme/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AbuseRedressScheme/Submissions)

<sup>7</sup> See Submission # 20 at

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/NationalRedressScheme/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/NationalRedressScheme/Submissions)

- The restrictions upon eligibility that impact upon categories of survivors, including non-citizens; survivors currently in prison and survivors who have at some time of their life been sentenced to a term of imprisonment of five years or more.
- The approach taken to providing a funder of last resort to provide redress in situations where the responsible institution no longer exists and/or has no assets or successor.
- The shortening of the period for accepting redress offers to six months as opposed to the recommended 12 months.
- The requirement that redress applications be in the form of a statutory declaration.

These are important issues. We raise these issues again at this time to note them for the Committee, and for all members of Queensland's Parliament, in the hope that in the future Queensland, as a participating Government, can influence amendment of the Commonwealth legislation to ensure that the Scheme reflects the Royal Commission's recommendations and operates as the Commission intending in providing survivors with access to justice.

While we will not repeat our earlier submissions here we would be pleased to provide any further explanation or information required by the Committee in order to inform its understanding of these issues.

#### 5. Civil litigation reforms

While the Queensland Parliament has enacted reforms to implement the Royal Commission's recommendations about the removal of limitation periods arising from claims involving childhood sexual abuse, implementation of the Commission's other recommendations about civil litigation reform remain outstanding.

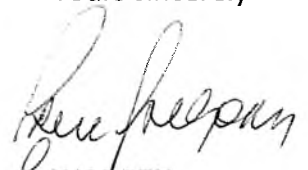
While a discussion paper was released in late 2016 and consultations followed, survivors still await any amending legislation. Other States have progressed with implementing these reforms. Queensland needs to do the same now.

#### 6. Concluding comments

We thank the Committee for the opportunity to make this submission. We would be pleased to expand upon any issue addressed. We have no concern about the publication of this submission.

Thank you again for the opportunity to comment on the Government's proposed reforms. We look forward to the timely introduction of the relevant amending legislation.

Yours sincerely



**WARREN STRANGE**  
Executive Officer