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Review of Model Defamation Provisions
Integrity, Legal and Law Reform
VIC Department of Justice and Community Safety
GPO Box 4356
MELBOURNE VIC 3001

Via email:

Submission on the draft Part B Model Defamation Amendment Provisions 2022

Thank you for the opportunity to make a submission to the Victorian Department of Justice and Community Safety on the draft Part B Model Defamation Amendment Provisions 2022. As a legal service dedicated to helping victims and survivors of child sexual abuse, knowmore strongly supports reforms to defamation law to better protect survivors from the threat of defamation claims and remove barriers to reporting child sexual abuse.

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 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 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). From 1 July 2018, knowmore has been funded to deliver legal support

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.

knowmore Legal Service Limited | ABN 34 639 490 912 | ACN 639 490 912. knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme (NRS). knowmore also receives funding to deliver financial counselling services to people participating in the NRS, and to work with other services in the NRS support network to support and build their capability. From 1 January 2022, our services were expanded to assist survivors who experienced child sexual abuse in non-institutional settings. From 1 March 2022, we have also been funded to provide 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.

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 per cent 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 August 2022, knowmore has received 72,554 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 12,469 clients.¹

knowmore's comments on the draft Part B Model Defamation Amendment Provisions

We support the key reform proposed by the Review of the Model Defamation Provisions Stage 2 Part B (the Review) — that is, to extend absolute privilege to publications made to police and other relevant bodies about alleged unlawful personal conduct.² This will mitigate the detrimental impact of defamation law on victims and survivors and remove barriers to reporting child sexual abuse. We have made some further comments in support of this reform below. We have also made brief comments about the implementation of the proposed reform.

¹ knowmore, *Service Snapshot August 2022*, 1 July 2018 to 31 August 2022, <knowmore.org.au/wp-content/uploads/2022/09/Infographic-August-2022.pdf>.

² Victorian Government, *Review of the Model Defamation Provisions Stage 2 Part B – Policy Options*, 2022, p. 5, <engage.vic.gov.au/download/document/28542>.

The impact of defamation law on survivors

From working with survivors of child sexual abuse, we know that the risk of a defamation claim frequently silences survivors. This holds back our ability as a society to prevent child sexual abuse before it occurs, support healing for survivors and ensure accountability for perpetrators.

It is not only successful defamation claims that silence survivors — the threat of a claim, or even just the knowledge that perpetrators frequently threaten survivors with legal action, can be enough to prevent a survivor from speaking out. As the Consultation Paper notes in relation to sexual harassment and sexual assault generally, “high-profile cases can create public perceptions that question the credibility of victim-survivors and a culture of fear of reporting allegations”.³ This is consistent with the findings of the Royal Commission that shame and fear are significant barriers to disclosing child sexual abuse.⁴ It is also consistent with our experience assisting survivors. Our clients frequently express fears that they will not be believed or face retaliation for speaking about what happened to them. In many cases, we have to inform clients that there is a risk of being sued for defamation if they speak out.

In addition to silencing survivors, an actual or threatened defamation claim can also be re-traumatising. From the perspective of our clients, a defamation claim replicates the abuse of power inherent in child sexual abuse and the secrecy that typically surrounds it. These are significant features of child sexual abuse, as noted by the Royal Commission,⁵ which also reported that engaging with the legal system can be traumatic and triggering for survivors.⁶ With these experiences in mind, we strongly support reforms to better protect survivors from inappropriate defamation claims.

Extending absolute privilege

As indicated in the Consultation Paper, absolute privilege provides a simple, clear-cut defence that discourages defamation claims and allows any such claims to be quickly

³ Victorian Government, *Review of the Model Defamation Provisions Stage 2 Part B – Policy Options*, p. 10.

⁴ Royal Commission, *Final Report: Volume 4, Identifying and Disclosing Child Sexual Abuse*, 2017, p. 77, <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_4_identifying_and_disclosing_child_sexual_abuse.pdf>.

⁵ Royal Commission, *Final Report: Volume 2, Nature and Cause*, 2017, pp. 147 and 169, <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_2_nature_and_cause.pdf>.

⁶ Royal Commission, *Final Report: Volume 3, Impacts*, 2017, p. 184, <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_3_impacts.pdf>.

defeated.⁷ Extending absolute privilege will therefore better protect victims and survivors from inappropriate defamation claims and reduce the chilling effect of defamation law on reporting child sexual abuse.

The Review has given significant consideration to the question of which entities should be within the scope of the proposed reform.⁸ In addition to police, the Consultation Paper proposes that the entities within scope should be:

- Statutory investigative bodies
- Human rights, equal opportunity and anti-discrimination commissions
- Professional disciplinary bodies.⁹

We consider it appropriate to extend absolute privilege to publications made to these entities. These entities can play an important role in investigating and responding to unlawful personal conduct, including child sexual abuse — there is a strong public interest in supporting this role via the free flow of information. While many survivors disclose child sexual abuse to police and other government authorities, the Royal Commission also identified significant problems with underreporting.¹⁰ We consider that extending absolute privilege to a broad range of these relevant entities will help remove one barrier to reporting.

We particularly note that professional disciplinary bodies could play an expanded role in preventing and responding to child sexual abuse, given that child sexual abuse often occurs in institutions where professional oversight could be expected. For example, the Royal Commission commonly heard about child sexual abuse that occurred in schools or health institutions.¹¹ Human rights commissions could also play an expanded role, given that all Australian jurisdictions with a human rights act recognise a child's right to protection.¹² A

⁷ Victorian Government, *Review of the Model Defamation Provisions Stage 2 Part B – Policy Options*, p. 7.

⁸ Victorian Government, *Review of the Model Defamation Provisions Stage 2 Part B – Policy Options*, pp. 26–39; NSW Government, *Review of Model Defamation Provisions – Stage 2*, April 2021, pp. 88–92, <www.justice.nsw.gov.au/justicepolicy/Documents/review-model-defamation-provisions/discussion-paper-stage-2.pdf>.

⁹ Victorian Government, *Review of the Model Defamation Provisions Stage 2 Part B – Policy Options*, pp. 29–30.

¹⁰ Royal Commission, *Final Report: Volume 4, Identifying and Disclosing Child Sexual Abuse*, pp. 39–40.

¹¹ Royal Commission, *Final Report: Volume 2, Nature and Cause*, p. 13.

¹² *Human Rights Act 2004* (ACT) section 11(2); *Charter of Human Rights and Responsibilities Act 2006* (Vic) section 17(2); *Human Rights Act 2019* (Qld) section 26(2).

person should not face the threat of a defamation claim when reporting child sexual abuse to entities of this nature.

Implementation of the proposed reform

We agree with the recommendation in the Consultation Paper that the Model Defamation Provisions do not need to include additional safeguards, which would limit the effectiveness of the reform.¹³ The relevant entities typically have robust processes for managing reports.

The Consultation Paper proposes that each jurisdiction list the relevant entities in a schedule to their legislation.¹⁴ If this approach is taken, there must be ongoing collaboration between Commonwealth, state and territory governments to ensure the lists are comprehensive and consistent. As a nation-wide service, we frequently see inconsistencies between jurisdictions that create confusion and distress for our clients. There is no reason that survivors in different Australian jurisdictions should have different protections against defamation claims. Further, a survivor should not need a lawyer to work out whether they will be protected if they report child sexual abuse within their jurisdiction.

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

Yours faithfully,

SIMON BRUCK
Principal Lawyer

¹³ Victorian Government, *Review of the Model Defamation Provisions Stage 2 Part B – Policy Options*, pp. 40–42.

¹⁴ Victorian Government, *Review of the Model Defamation Provisions Stage 2 Part B – Policy Options*, 2022, p. 29.