



IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

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Filed on: 20/02/2026 01:59 PM

BETWEEN

BRIAN HOLMES

Plaintiff

and

**KNOWMORE LEGAL SERVICE LIMITED
(ACN 639 490 92)**

First Defendant

**NATIONAL ASSOCIATION OF COMMUNITY
LEGAL CENTRES LTD (ACN 163 101 737)**

Second Defendant

DEFENCE TO FURTHER AMENDED STATEMENT OF CLAIM

Date of Document: ~~320-14~~ February 2026~~5~~

Solicitors' Code: CR114828

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MELBOURNE VIC 3000

To the allegations in the further amended statement of claim filed on 28 January 2026 ~~16 October 2024~~
(**FASOC**), the second defendant (**NACLC**) says by way of defence as follows:

1. It admits the allegations in paragraph 1.
2. [Not used]
3. As to paragraph 3, it:
 - (a) says that s 29 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) (**NRS Act**) provides that if a person makes an application for redress, the Operator must make a determination to approve, or not approve, the application;
 - (b) says that if the Operator approves a person's application for redress, the Operator must give the person a written offer of redress that complies with s 39 of the *NRS Act*;
 - (c) says that the making of a determination under s 29 of the *NRS Act* and approval of the correlative application for redress do not constitute two separate steps; and
 - (d) otherwise denies the allegations in paragraph 3.

4. As to paragraph 4, it:
- (a) says that since at all material times from 5 July 2018, under s 43 of the *NRS Act*, if a person accepts an offer of redress in accordance with s 42 of the *NRS Act*, then, at the time the person gives the acceptance and by force of s 43:
 - (i) the person releases and forever discharges every released institution or official from civil liability for abuse of the person that is within the scope of the scheme; and
 - (ii) the person cannot bring or continue civil proceedings against a released institution or official in relation to that abuse;
 - (b) says that:
 - (i) the term ‘institution’ is defined in s 6 of the *NRS Act* as ‘any body, entity, group of persons or organisation (whether or not incorporated), but does not include a family or an individual’;
 - (ii) the term ‘official’ of an institution is defined in s 6 of the *NRS Act* as ‘a person who is or has been an officer, employee, volunteer or agent of the institution’;
 - (iii) says that plaintiff’s definition of ‘Institution’ in paragraph 4(a) of the FASOC is different from the definition of ‘institution’ in s 6 of the *NRS Act*, including because the plaintiff’s definition includes officials; and
 - (c) otherwise denies the allegations in paragraph 4.
5. As to paragraph 5, it:
- (a) admits the allegations in paragraphs 5(a) and 5(b);
 - (b) as to paragraph 5(c):
 - (i) refers to and repeats paragraph 4(b) above;
 - (ii) says that the National Redress Scheme provides for redress in the form of a direct personal response from each participating institution (as defined in s 6 of the *NRS Act*); and
 - (iii) otherwise denies the allegations in paragraph 5(c).
6. As to paragraph 6, it:
- (a) admits the allegations in paragraphs 6(a) and (b);

- (b) as to paragraph 6(c):
- (i) says that between 1 July 2018 and 4 November 2020, NACLCLC owned the business name 'knowmore' under which name it held itself out as providing legal services in relation to the National Redress Scheme;
 - (ii) says further that NACLCLC did not, relevantly to the allegations in this proceeding, hold itself out as having any expertise to provide legal advice about the prospects of success and likely outcome of any civil (including common law) claims that might be made by its clients with respect to allegations of child sexual abuse;
 - (iii) says that the phrase 'legal related services' is vague; and
 - (iv) otherwise denies the allegations in paragraph 6(c);
- (c) as to paragraph 6(d):
- (i) says that the FASOC does not define the jurisdictions in which the '*Legal Profession Uniform Law*' is alleged to apply;
 - (ii) admits that from 1 July 2018 to on or about 4 November 2020, NACLCLC provided legal services under the business name 'knowmore' which was a community legal service and law practice within the meaning of the Legal Profession Uniform Law (Vic); and
 - (iii) otherwise does not admit the allegations in paragraph 6(d).

7. It does not admit the allegations in paragraph 7.

8. As to paragraph 8, it:

- (a) refers to and repeats paragraph 6(b) above;
- (b) says that at all material times between 5 July 2018 and on or about 4 November 2020, NACLCLC carried on business under the business name 'knowmore' providing legal advice in each State and Territory to persons who had allegedly suffered child sexual abuse and were considering making a claim, or had made a claim, under the National Redress Scheme;
- (c) says that the conflation of NACLCLC and the first defendant (**Knowmore Limited**) as 'Knowmore Legal Service' is factually incorrect, and is embarrassing and should be struck out; and

Particulars

NACLC refers to the facts and matters referred to in paragraph 11(h) below;

(d) otherwise does not admit the allegations in paragraph 8.

9. ~~It admits the allegations in As to paragraph 9-, it:~~

(a) does not admit that the Director of the Department of Community Welfare Services was succeeded by the Department of Health and Human Services; and

(b) otherwise admits the allegations in paragraph 9.

Scope of Holmes Retainer and advice given by NACLC (trading as knowmore)

10. As to paragraph 10, it:

(a) says that on 19 December 2018, the plaintiff (**Holmes**) retained NACLC (trading as knowmore) to provide him with legal services in relation to the National Redress Scheme in accordance with the written terms of the retainer between NACLC and Holmes pleaded in paragraph 10(b) below (**Holmes Retainer**);

(b) says that the terms of the Holmes Retainer were contained in:

(i) the letter dated 10 December 2018 titled ‘Legal advice’ from NACLC to Holmes (**Holmes’ Initial Letter of Advice**), to which was enclosed the letter referred to in paragraph 10(b)(ii) below; and

(ii) the letter dated 10 December 2018 titled ‘Client agreement for legal assistance – knowmore legal service’ from NACLC to Holmes, which Holmes signed on 19 December 2018 (**Holmes’ Client Agreement Letter**);

(c) says that the scope of the Holmes Retainer was expressly and by agreement confined to:

(i) preparing Holmes’ application to the National Redress Scheme, including by taking instructions from Holmes to enable NACLC to complete the application form;

(ii) obtaining supporting information about his involvement with the relevant institution(s);

(iii) reviewing his national redress application with him, ensuring the statutory declaration is signed, and lodging the application with the National Redress Scheme;

- (iv) providing advice to Holmes on his options if and when he received a Notice of Determination from the National Redress Scheme;
- (v) providing advice to Holmes concerning any monetary payment he may receive under the National Redress Scheme;

Particulars

Holmes' Client Agreement Letter under the headings '1) Your Instructions', '2) What we will do for you', 'Advice about Redress payment' and 'Preparing your application'.

- (d) says that it was a term of the Holmes Retainer that NACLCL would not provide legal advice to Holmes about the prospects of success and likely outcome of any civil claim;

Particulars

Holmes' Initial Letter of Advice and Holmes' Client Agreement Letter.

- (e) says that a civil claim includes any common law claim;
- (f) says that the Holmes' Initial Letter of Advice expressly stated that 'knowmore is funded to provide free legal advice' in relation to the National Redress Scheme established by the Australian Government;
- (g) says that prior to making an application for redress under the National Redress Scheme, NACLCL advised Holmes:
 - (i) that a payment under the National Redress Scheme:
 - A. is not 'common law' damages and will not be compensation;
 - B. will not include any amount for loss of income or pain and suffering;
 - C. is purposed to recognise and acknowledge the impact of past institutional child sexual abuse and related abuse;
 - ~~C.D.~~ would involve him signing a statutory release, with the effect that he would not be able to continue or commence any civil or common law proceedings against the responsible institution, and this is an important right he would be giving up;

Particulars

The advice was in writing and contained in the Holmes' Initial Letter of Advice and Holmes' Client Agreement Letter.

- (ii) to obtain independent legal advice on all of his compensation options, including civil claims;

Particulars

The advice was in writing and oral. Insofar as it was in writing, it was contained in the Holmes' Client Agreement Letter. Insofar as it was oral, it was given during a telephone discussion between Holmes and by Lisa Nicholas of NACLIC on 22 November 2018.

- (iii) to get legal advice from an experienced civil lawyer about the following issues:
 - A. whether he could make a civil claim against the institutions responsible for his sexual abuse;
 - B. whether there was enough evidence to support a civil claim;
 - C. what his chances of success might be;
 - D. whether any prior payment he had received in relation to the abuse would impact upon his ability to make a civil claim;
 - E. what the likely outcome might be; and
 - F. what would happen if he passes away before a civil claim is finished;

Particulars

The advice was in writing and oral. Insofar as it was in writing, it was contained in the Holmes' Initial Letter of Advice. Insofar as it was oral, it was given during a telephone discussion between Holmes and by Lisa Nicholas of NACLIC on 22 November 2018.

- (iv) that a civil claim may or may not result in an award of damages significantly greater than the amount of financial redress he may receive from the National Redress Scheme;

Particulars

The advice was in writing and contained in the Holmes' Client Agreement Letter.

- (v) that if he wished to obtain legal advice about a civil claim, he could obtain such advice from specialist personal injury lawyers such as Waller Legal, Angela Sdrinis Legal or Maurice Blackburn, who were experienced in historical child sexual abuse matters and were prepared to work on a 'no win, no fee' basis;

Particulars

The advice was in writing and contained in the Holmes' Initial Letter of Advice and Holmes' Client Agreement Letter.

- (vi) that there was no 'cap' or limit on the amount of compensation that Holmes may be able to obtain in a civil claim, and such compensation may include a range of payments, such as for pain and suffering, for past and future medical expenses and for loss of earnings;

Particulars

The advice was in writing and contained in the Holmes' Initial Letter of Advice.

- (vii) that there was no time limit by which Holmes had to make a civil claim in Victoria for child sexual abuse; ~~and~~

Particulars

The advice was in writing and contained in the Holmes' Initial Letter of Advice.

- (h) says as to sub-paragraph 10(b) of the FASOC that it assisted Holmes to make an application for redress under the National Redress Scheme as pleaded in paragraph 11 below and in the circumstances pleaded in paragraphs 10(a) to 10(g) above and paragraph 11 below;
- (i) says that the phrase 'legal advice' in sub-paragraphs 10(a) and (c) of the FASOC is vague;
- (j) says that there is no proper basis for purporting to withdraw the allegation that Holmes retained Knowmore Legal Service while maintaining that Knowmore Legal Service acted as Holmes' Lawyer as alleged in paragraph 10;
- (k) says that the allegations in paragraph 10 are rolled up, vague, self-serving and conflated contentions as to retainer and breach and should be struck out; and
- ~~(h)~~(l) otherwise denies the allegations in paragraph 10.

Key correspondence relating to Holmes' redress application

11. As to paragraph 11, it:

- (a) refers to and repeats paragraph 10 above;
- (b) says that Holmes instructed NACLC to prepare and lodge an application to the National Redress Scheme after NACLC gave him the advice referred to in paragraph 10(g) above;

- (c) says that on 21 November 2019, NACLC made an application for redress under the National Redress Scheme on behalf of Holmes;
- (d) says that on 7 September 2020, Holmes received an offer of redress under the National Redress Scheme with the following components:
 - (i) redress payment of \$43,463.84 as acknowledgement of the wrong he experienced;
 - (ii) access to counselling and psychological services in Victoria; and
 - (iii) access to direct personal responses on behalf of The Salvation Army (Victoria) Property Trust and the Department of Health and Human Services;
- (e) says that on 7 September 2020, NACLC advised Holmes:
 - (i) that prior to making a decision about whether to accept the offer of redress, Holmes had the option of discussing a further civil claim with a civil lawyer;
 - (ii) that there was no pressure to make a decision straight away with respect to the offer of redress;
 - (iii) that if he would like, NACLC could refer him to a specialist lawyer to give him advice about a civil claim;
 - (iv) of the names and details of three law firms with experience in historic child sexual abuse matters and advised that if he would like to speak with one of those firms, NACLC would provide the firm with some background information about his matter and his contact details so that they could contact him to set up an appointment;
 - (v) that the legal advice that Holmes receives from the law firm of his choice about a civil claim will include advice about:
 - A. whether he could make a claim against the perpetrator(s) or the institution(s) responsible;
 - B. whether the perpetrator(s) were alive and would have the assets to settle any potential claim;
 - C. whether there was enough evidence to support his claim;
 - D. what his chances of success might be; and
 - E. what the likely outcome might be;

- (vi) accepting the offer of redress would mean that Holmes releases (that is, he would not be able to begin or continue any civil legal proceedings against) The Salvation Army (Victoria) Property Trust, Department of Health and Human Services (Victoria), their associates or officials in relation to the abuse he experienced;
- (vii) accepting the offer of redress does not step Holmes from beginning or continuing civil legal proceedings against the perpetrator/s;

Particulars

The advice was given orally and in writing. Insofar as it was oral, it was given by Andrea Pearson of NACLCL during a telephone conference with Holmes at approximately 3.00 pm on 7 September 2020. Insofar as it was in writing it was recorded in the letter dated 7 September 2020 from NACLCL to Holmes titled 'Your National Redress Scheme offer'.

- (f) says that on 8 September 2020:
 - (i) NACLCL again advised Holmes that he had the option of seeking legal advice about a civil claim;
 - (ii) Holmes instructed NACLCL to apply for review of the offer of redress;

Particulars

NACLCL's advice and Holmes' instructions were oral and given during a telephone discussion between Andrea Pearson of NACLCL and Holmes at approximately 10.47 am on 8 September 2020.

- (g) says that on 29 September 2020, NACLCL applied to the National Redress Scheme for review of the offer of redress made to Holmes on 7 September 2020;

Particulars

The application was made in writing and was constituted by a letter dated 29 September 2020 from NACLCL to the National Redress Scheme attaching written submissions prepared by NACLCL requesting that the redress payment be increased to \$150,000.

- (h) says that from on or about 4 November 2020 onwards, NACLCL ceased to, and Knowmore Limited started to, provide legal services to Holmes further to the retainer referred to in paragraphs 10(a) to 10(e) above;
- (i) says that on 23 November 2020:
 - (i) at approximately 1.57 pm, a representative of the National Redress Scheme by the name of 'Clive' informed Holmes that following a review, the redress offer remained the same;

- (ii) immediately after Clive left the telephone discussion referred to in the preceding sub-paragraph, Knowmore Limited advised Holmes:
- A. of his options to accept, reject or take time to consider the offer;
 - B. that he had time to consider what to do;
 - C. that he could speak with a civil lawyer before deciding what to do about the redress offer;
 - D. that Knowmore Limited would support Holmes with whatever he decided;

Particulars

The information in paragraph 11(i)(i) was given during a telephone conference on 23 November 2020 attended by ‘Clive’ from the National Redress Scheme, Holmes, Lisa Fowler who was a senior lawyer of Knowmore Limited and Danielle Raymond in Knowmore Limited’s support services team.

Knowmore Limited’s advice referred to in paragraph 11(i)(ii) was oral and given by Ms Fowler during the telephone conference she attended with Holmes and Ms Raymond on 23 November 2020, immediately after Clive left the conference.

- (j) says that on 24 November 2020:
- (i) Knowmore Limited advised Holmes that:
 - A. if he wanted an opinion from a civil lawyer, Knowmore Limited could arrange for that to occur before he decided what to do about the redress offer, and the civil lawyer would be able to tell him time frames associated with civil litigation, associated costs and other matters relevant to pursuing a civil claim;
 - B. his choice and wellbeing needed to be at the forefront of any decision he made;
 - C. if he accepted any part of the redress offer, he would give up ‘an important legal right’ of being able to begin or continue any civil legal proceedings against The Salvation Army (Victoria) Property Trust, Department of Health and Human Services (Victoria), their associates or officials in relation to the abuse he experienced;
 - (ii) Holmes instructed Knowmore Limited that:
 - A. he would accept the offer for redress;

- B. he did not wish to take advice from a civil lawyer, and that he did not want anything from the Salvos;
- C. he understood that by accepting the offer of redress, he would not be able to bring any civil legal proceedings against the Salvation Property Trust (Victoria) and the Department of Health and Human Services (Victoria), their associates or officials in relation to the abuse he experienced;

Particulars

Knowmore Limited's advice was given orally and in writing. Insofar as it was oral, it was given by Ms Fowler during a telephone conference with Holmes at approximately 11.00 am to 11.25 am on 24 November 2020. Insofar as it was in writing it was recorded in the letter dated 24 November 2020 from Knowmore Limited to Holmes titled 'Your National Redress Scheme offer'.

Holmes' instructions were oral and given during a telephone discussion between Lisa Fowler and Holmes at approximately 11.00 am to 11.25 am on 24 November 2020.

- (k) says that NACLCLC and Knowmore Limited advised Holmes on at least six occasions that he should consider seeking advice about a civil claim prior to his acceptance of any offer under the National Redress Scheme;

Particulars

Paragraphs 10(g)(ii), 10(g)(iii), 11(e), 11(f), 11(i)(ii) and 11(j)(i) above.

- (l) says that prior to Holmes' acceptance of the offer of redress under the National Redress Scheme, NACLCLC and Knowmore Limited made it clear to Holmes that they would not provide legal advice to Holmes about his prospects of success and likely outcome of a civil claim (including a common law claim);

Particulars

Paragraphs 10(c), 10(g), 11(e), 11(f), 11(i)(ii) and 11(j)(i) above.

- (m) says that NACLCLC could not compel Holmes to seek advice about any civil law claim he may have had prior to his acceptance of the offer of redress under the National Redress Scheme and that it would have been ethically improper to attempt to do so;
- (n) says that NACLCLC did all that it could properly do to urge and advise Holmes to seek legal advice as to his rights to bring a common law claim before accepting redress under the National Redress Scheme; and
- (o) otherwise denies the allegations in paragraph 11.

‘Legislative Reform’

12. As to paragraph 12, it.
- (a) relies the full terms of the legislative provisions alleged to constitute the ‘Legislative Reform’²² at trial; and
 - (b) otherwise admits the allegations in paragraph 12.

Allegations of ‘Improved Outcomes’

13. It denies the allegations in paragraph 13 and says further that:
- (a) the allegations in paragraph 13, including the ill-defined allegation of ‘Improved Outcomes’, are vague and embarrassing and ought be struck out;
 - (b) monetary payments made under the National Redress Scheme:
 - (i) were and are not compensation for any damage that might have been suffered by applicants which received offers under the National Redress Scheme;
 - (ii) are a means of recognising the wrong survivors have suffered;

Particulars

Section 3(2)(b)(i) of the *NRS Act*, paragraphs 10(g)(i) and 11(d)(i) above.

- (c) whether any individual would have received a higher damages award or settlement from making a common law claim for damages against any ‘institution’ or ‘official’ (as these terms are defined in the *NRS Act*) compared to the offer they received under the National Redress Scheme requires assessment of each individual’s circumstances, including their specific injuries, medical histories, period over which the alleged abuse occurred, regularity and nature of abuse, context in which the abuse took place, ~~and~~ institution(s) involved, whether the institutions or officials involved still exist or are alive, the financial capacity of the institutions or officials involved, the availability and adequacy of any insurance policies that respond to each claim, the individual’s preparedness to make a common law claim, availability and quality of evidence; and
- (d) the FASOC fails to plead that the factual circumstances of any of the common law judgments particularised under paragraph 13 of the FASOC are the same as or closely similar to the factual circumstances of Holmes or any putative group member.

13A. It denies paragraph 13A and refers to and repeats paragraphs 10, 11 and 13 above.

Allegations about ‘group members’ and ‘Common Law Claims Advice’

14. As to paragraph 14, it:

- (a) admits that Holmes purports to bring this proceeding on behalf of himself and person who satisfy all of the elements pleaded in paragraph 14(a) to 14(e)(d) of the FASOC;
- (b) says that the term ‘Common Law Claims Advice’ purportedly defined in paragraph 14(d) of the FASOC is vague and embarrassing and ought be struck out; and
- (c) refers to and repeats paragraphs 10, 11, 13 and 13A above.

14A. In further answer to paragraph 14 of the FASOC, NACLCLC:

- (a) says that the description of the group members defined by reference to the characteristics in paragraph 14 of the FASOC is misconceived and untenable because:
 - (i) it proceeds on the false premise that NACLCLC failed in a duty to provide ‘current advice’ ‘~~Common Law Claims Advice~~’, when in fact it was a term of the retainer between NACLCLC and Holmes that NACLCLC would not provide such advice;
 - (ii) accordingly, the criteria for membership of the group is inconsistent with the express terms of the retainer between Holmes and NACLCLC and is therefore legally incapable of constituting a characteristic upon which a group may be defined or ascertained; and
- (b) refers to the Holmes Retainer referred to in paragraphs 10(a) to 10(e) above.
- (c) says that the deletion of the words ‘in relation to the National Redress Scheme’ from the description of the scope of the retainer renders the criterion for the determination of group members vague and uncertain;
- (d) says that having regard to the terms of the retainer contained in writing referred to in paragraph 10 above, there is no proper basis for deleting the words ‘in relation to the National Redress Scheme’ from the description of the retainer;
- (e) says that the allegations in sub-paragraph 14(c) are ungrammatical, further rendering the criterion for determination of group members vague and uncertain; and
- (f) says that paragraph 14 should be struck on the grounds that it is likely to distract from the examination of the real issues for determination.

15. It does not admit the allegations in paragraph 15.

Alleged ‘Knowmore System’

16. As to paragraph 16, it:

- (a) says that paragraph 16 of the FASOC is embarrassing by reason of the factually incorrect conflation of NACLCL and Knowmore Limited;
- (b) subject to the production of documents relevant to the retainer of the client in question, it admits that it provided advice in connection with claims for redress under the National Redress Scheme; and
- (c) otherwise does not admit the allegations in paragraph 16.

17. As to paragraph 17, it:

- (a) says that the allegations are embarrassing by reason of the factually incorrect conflation of NACLCL and Knowmore Limited;
- (b) says alleged ‘features’ referred to in paragraphs 18 to 26G of the FASOC are not components of a system, considered severally or collectively;
- (c) says the alleged ‘Knowmore System’ is a self-serving characterisation of a course of practice by which clients of NACLCL and Knowmore Limited were clearly and expressly informed of the scope and content of the retainer undertaken by NACLCL and Knowmore Limited in connection with claims for redress under the National Redress Scheme, specifically that the retainer did not include providing advice about any common law claims that may be available or the comparative advantages and disadvantages between a claim for redress under the National Redress Scheme and any common law claim;
- (d) does not admit the allegations in paragraph 17 insofar as it makes allegations against Knowmore Limited; and
- (e) otherwise denies the allegations in paragraph 17.

18. As to paragraph 18, it:

- (a) refers to and repeats paragraph 17 above;
- (b) says that NACLCL trading as knowmore provided legal services to its clients pursuant to letters of advice and client agreement letters that defined the scope of its retainer, specifically NACLCL made clear that NACLCL would not provide legal advice about the prospects of success and likely outcome of any civil claim;

- (c) says that Holmes has provided the identities of six persons who allegedly meet the definition of ‘group member’ (as it then was) in paragraph 14 of the his amended statement of claim filed on 16 October 2024 ASOC, being [REDACTED] [REDACTED] (Six Putative GMs);
- (d) says that terms of the retainer between NACLCL and each of the Six Putative GMs are materially the same as the Holmes Retainer;

Particulars

- (i) As to [REDACTED]: Letter dated 24 September 2018 titled ‘Client agreement for legal assistance – knowmore legal service’ from NACLCL to [REDACTED]; and letter dated 24 September 2018 titled ‘Legal advice’ from NACLCL to [REDACTED].
- (ii) As to [REDACTED]: Letter dated 22 October 2018 titled ‘Client agreement for legal assistance – knowmore legal service’ from NACLCL to [REDACTED]; and letter dated 22 Oct 2018 titled ‘Legal advice’ from NACLCL to [REDACTED].
- (iii) As to [REDACTED]: Letter dated 20 November 2018 titled ‘Client agreement for legal assistance – knowmore legal service’ from NACLCL to [REDACTED]; and letter dated 20 November 2018 titled ‘Legal advice’ from NACLCL to [REDACTED].
- (iv) As to [REDACTED]: Letter dated 12 September 2019 titled ‘Client agreement for legal assistance – knowmore legal service’ from NACLCL to [REDACTED]; and letter dated 12 September 2019 titled ‘Legal advice’ from NACLCL to [REDACTED].
- (v) As to [REDACTED]: Letter dated 14 February 2019 titled ‘Client agreement for legal assistance – knowmore legal service’ from NACLCL to [REDACTED]; and letter dated 14 February 2019 titled ‘Legal advice’ from NACLCL to [REDACTED].
- (vi) As to [REDACTED]: Letter dated 16 July 2019 titled ‘Client agreement for legal assistance – knowmore legal service’ from NACLCL to [REDACTED]; and letter dated 2 April 2019 titled ‘Legal advice’ from NACLCL to [REDACTED].
- (e) says that NACLCL consistently and properly informed Holmes and the Six Putative GMs that the scope of each of their retainers with NACLCL did not include the provision of legal advice by NACLCL about the prospects of success and likely outcome of any civil claim;
- (f) says that the content of the legal services that NACLCL provided to each of its clients requires assessment of each clients’ interactions with NACLCL throughout the course of their specific retainer with NACLCL; and
- (g) otherwise does not admit the allegations in paragraph 18.

20. [Not used]
21. As to paragraph 21, it:
- (a) refers to and repeats paragraphs 6(b)(ii), 14, 14A, 17 and 18 above;
 - (b) says that whether any particular client received from NACLCL any component of the ‘Common Law Claims Advice’ (as sought to be defined in paragraph 14(b) of the FASOC) requires assessment of each client’s specific communications with NACLCL; and
 - (c) otherwise does not admit the allegations in paragraph 21.
22. ~~[Not used]~~ As to paragraph 22, it:
- (a) relies on the terms of the retainer and oral and written communications between it and each of its clients as to the advice it gave to each client;
 - (b) refers to and repeats paragraphs 6(b)(ii), 10, 11, 13, 14, 14A, 17 and 18 above; and
 - (c) otherwise denies the allegations in paragraph 22.
23. As to paragraph 23, it:
- (a) says that it did encourage clients who sought its assistance with respect to the National Redress Scheme to seek advice concerning any civil claims they may have and the prospects of success of any such claims as referred to in paragraph 10 above;
 - (b) says that NACLCL and Knowmore Limited repeatedly encouraged Holmes to obtain legal advice from suitably qualified law firms about making a civil (including common law) claim before accepting any offer under the National Redress Scheme, but Holmes elected not to do so and he also elected not to pursue any civil claim throughout the course of the Holmes Retainer; and

Particulars

Paragraph 11(k) above.

- (c) says that the extent to which it advised and encouraged any of its other clients to seek advice from other law firms about the prospects of success and likely outcome of any civil claim (including common law claim) before deciding whether to accept offers of redress made to them under the National Redress Scheme requires assessment of each client’s specific communications with NACLCL;
- (d) refers to and repeats paragraphs 6(b)(ii), 10, 11, 13, 14, 14A, 17 and 18 above; and

(e) otherwise does not admit the allegations in paragraph 23.

24. As to paragraph 24, it:

(a) refers to and repeats paragraphs 6(b)(ii), 10, 11, 13, 14, 14A, 17, 18 and 23 above; and

(b) otherwise does not admit the allegations in paragraph 24.

25. As to paragraph 25, it:

(a) refers to and repeats paragraphs 6(b), 10, 11, 13, 14, 14A, 17, 18 and 23 above; and

(b) otherwise denies the allegations in paragraph 25.

26. As to paragraph 26, it:

(a) refers to and repeats paragraphs 6(b)(ii), 10, 11, 13, 14, 14A, 17, 18 and 23 above;

(b) says that the allegations are wholly inconsistent with the terms of the retainer of NACLC of Holmes referred to in paragraph 10 above and the terms of the retainers of the Six Putative GMs;

(c) says that the allegations are wholly inconsistent with the advice given to Holmes referred to in paragraphs 10 and 11 above;

(d) says that the allegations are embarrassing as they are generalised assertions which are inconsistent with the written advice given to Holmes and the Six Putative GMs;

(e) says that the allegation of failing to advise about the 'Improved Outcomes' is embarrassing for the reasons referred to in paragraph 13 above; and

(f) otherwise denies the allegations in paragraph 26.

26A. ~~[Not used] As to paragraph 26A, it:~~

~~(a) refers to and repeats paragraph 17 above;~~

~~(b) admits that relevantly it operated on the basis that it was not funded to provide advice to its clients about the prospects of success and likely outcome of common law claims for alleged institutional child sex abuse;~~

~~(c) says that the funding arrangements with the Commonwealth were reflected in the scope of the retainer it entered into with Holmes and other clients seeking assistance in relation to claims under the National Redress Scheme;~~

~~(d) says it will rely upon the funding arrangements as relevant contextual evidence that confirms the terms of its retainer by Holmes, and other clients who sought assistance in relation to claims under the National Redress Scheme, were each confined as described in paragraph 10 above;~~

~~(e) says that it was funded by the Commonwealth to provide free legal advice to assist survivors of institutional child abuse to access redress payments under the National Redress Scheme;~~

Particulars

~~Commonwealth Standard Grant Agreement between the Commonwealth represented by the Attorney General's Department and NACLC signed on behalf of the Commonwealth on 28 June 2018 and on behalf of NACLC on 25 June 2018 (Commonwealth Grant Agreement).~~

~~(f) says that as part of its funding arrangements with the Commonwealth, NACLC was required to establish and maintain referral arrangements to private lawyers for assistance with claims falling outside the National Redress Scheme;~~

Particulars

~~Section B.1 (Deliverables) of the Commonwealth Grant Agreement.~~

~~(g) says that on 4 November 2020, the Commonwealth Grant Agreement was novated from NACLC to Knowmore Limited; and~~

Particulars

~~Deed of Novation dated 23 February 2021 between the Commonwealth, NACLC and Knowmore Limited.~~

~~(h) otherwise denies the allegations in paragraph 26A.~~

26B. As to paragraph 26B, it:

(a) refers to and repeats paragraphs 10, 11, 13, 17 and 23 above;

(b) says that the allegations that the Commonwealth Grant Agreement created any 'financial imperative' and 'rewarded' NACLC for assisting clients to access the National Redress Scheme is an are embarrassing, pejorative, self-serving characterisations;

(c) says that NACLC was a not-for-profit charity;

(de) says that the allegations are embarrassing, rolled-up, self-serving assertions inconsistent with the express terms of the retainer referred to in paragraph 10 above;

- (e) says that it operated on the basis that it was not funded to provide advice to its clients about the prospects of success and likely outcome of common law claims for alleged institutional child sex abuse;
- (f) says that the funding arrangements with the Commonwealth were reflected in the scope of the retainer it entered into with Holmes and other clients seeking assistance in relation to claims under the National Redress Scheme;
- (g) says it will rely upon the funding arrangements as relevant contextual evidence that confirms the terms of its retainer by Holmes, and other clients who sought assistance in relation to claims under the National Redress Scheme, were each confined as described in paragraph 10 above;
- (g) says that it was funded by the Commonwealth to provide free legal advice to assist survivors of institutional child abuse to access redress payments under the National Redress Scheme;

Particulars

Commonwealth Standard Grant Agreement between the Commonwealth represented by the Attorney-General's Department and NACLC signed on behalf of the Commonwealth on 28 June 2018 and on behalf of NACLC on 25 June 2018 (Commonwealth Grant Agreement).

- (h) says that as part of its funding arrangements with the Commonwealth, NACLC was required to establish and maintain referral arrangements to private lawyers for assistance with claims falling outside the National Redress Scheme;

Particulars

Section B.1 (Deliverables) of the Commonwealth Grant Agreement.

- (i) says that on 4 November 2020, the Commonwealth Grant Agreement was novated from NACLC to Knowmore Limited;

Particulars

Deed of Novation dated 23 February 2021 between the Commonwealth, NACLC and Knowmore Limited.

- (jd) says that it disclosed to Holmes, and to other clients seeking assistance in relation to claims under the National Redress Scheme, the fact that it was funded by the Commonwealth to provide legal advice and assistance in relation to claims under the National Redress Scheme without charge to the client;

(~~ke~~) says that it established and maintained referral arrangements with private lawyers for its clients to seek assistance with civil claims (including common law claims); and

(~~lf~~) otherwise denies the allegations in paragraph 26B.

26C. As to paragraph 26C, it:

(a) says that by 31 October 2022, it had transferred to Knowmore Limited all of its documents, books and records (including client files) relating to the legal services it had previously provided as part of its 'knowmore' business;

Particulars

The transfer was made pursuant to the terms of the Transfer of Assets Deed dated 31 October 2022 between NACLCL and Knowmore Limited.

(b) says that by on or about 4 November 2020, it ceased to employ any lawyers to provide legal services in relation to the National Redress Scheme;

(c) as a consequence of the transfers referred to in paragraphs 26C(a) and (b) above, NACLCL no longer has it in its possession, custody or control any of its former client files nor documents that may have constituted 'templates' that may have been used by its former employees to communicate with its former clients;

(d) subject to the production of the relevant documents and reference to their full terms and effect, admits that from 1 July 2018 onwards, the letters it sent to clients as part of their retainer with NACLCL included the matters in paragraph 26C(d) of the FASOC;

(e) says that the content of the advice it gave to each client from time to time requires assessment of its specific communications with each client throughout the course of their engagement with either or both defendants; and

(f) otherwise does not admit the allegations in paragraph 26C.

26D. As to paragraph 26D, it:

(a) refers to and repeats paragraph 26C(a) to (c) above;

(b) says that the documents referred to speak for themselves and that it will rely upon the full terms and effect of the documents; and

(c) otherwise does not admit the allegations in paragraph 26D.

26E. As to paragraph 26E, it:

- (a) refers to and repeats paragraphs 10, 11, 13, 17, 23 and 26C(e) above; and
- (b) says that the allegation is embarrassing; and
- (c) otherwise does not admit the allegations in paragraph 26E.

26F. As to paragraph 26F, it:

- (a) refers to and repeats paragraphs 10, 11, 13, 17, 23 and 26C(e) above; and
- (b) otherwise does not admit the allegations in paragraph 26F.

26G. As to paragraph 26G, it:

- (a) refers to and repeats paragraphs 10, 11, 13, 14, 14A, 17, 23, 26C(e) and 26D(b) above; and
- (b) otherwise denies the allegations in paragraph 26G.

Holmes' claims

27. It admits the allegations in paragraph 27.

28. It admits the allegations in paragraph 28 and says further that the Children's Court made an order on 20 August 1974 that Holmes be admitted 'to the care of the Social Welfare Branch'.

29. As to paragraph 29, it:

- (a) refers to and repeats paragraph 28 above;
- (b) says that the 'Social Welfare Department' was established under s 5 of the *Social Welfare Act 1970* (Vic);
- (c) says that the Director-General of Social Welfare was, subject to the Minister for Social Welfare, responsible for administering the Social Welfare Department pursuant to s 7 of the *Social Welfare Act 1970* (Vic);
- (d) says that the Social Welfare Department became known as the 'Department of Community Welfare Services' from 1979 onwards pursuant to s 6 of the *Community Welfare Services Act 1978* (Vic);
- (e) says that the Director-General of Social Welfare became the Director-General of Community Welfare Services for the purpose of the *Community Welfare Services Act 1978* (Vic) pursuant to s 6 of that *Act*;

- (f) the 'period' when Holmes was admitted to Bayswater Boys Home pleaded in paragraph 31 of the FASOC, being 27 September 1974 to 2 February 1976, pre-dated the enactment of the *Community Welfare Services Act 1978* (Vic); and
- (g) otherwise does not admit the allegations in paragraph 29.
30. As to paragraph 30, it:
- (a) says that the *Social Welfare Act 1970* (Vic) contained the following provisions:
- (i) the Director-General of Social Welfare may deal with any child admitted to the care of the Social Welfare Department in any of the ways listed in s 40 of that Act;
- (ii) in placing a child pursuant to the provisions of s 40, the welfare of the child shall be the first and paramount consideration and any provision made for his physical, intellectual, and spiritual development shall be such as a good parent would make for his child; and
- (b) otherwise does not admit the allegations in paragraph 30.
31. It admits the allegations in paragraph 31.
32. It admits the allegations in paragraph 32.
33. It does not admit the allegations in paragraph 33.
34. As to paragraph 34, it
- (a) admits that Holmes alleged that he was sexually abused by Mr Beyer by way of the conduct pleaded in sub-paragraphs (a) to (c); and
- (b) otherwise does not admit the allegations in paragraph 34.
- ~~(a) admits that the conduct pleaded in sub-paragraphs (a) to (c) took place; and~~
- ~~(b) does not admit the number of occasions on which the pleaded conduct took place.~~
35. It admits the allegations in paragraph 35.
36. It admits the allegations in paragraph 36.
37. It admits the allegations in paragraph 37. For the avoidance of doubt, it does not admit the particulars thereunder.
38. ~~It does not admit the allegations in~~ As to paragraph 38, it:-

- (a) says that Holmes bears the onus of establishing that he had a valuable civil claim against the Salvation Army;
- (b) refers to and repeats paragraph 23(b) above and paragraphs 85 to 87 below; and
- (c) otherwise does not admit the allegations in paragraph 38.
39. It does not admit the allegations in As to paragraph 39, it:-
- (a) refers to and repeats paragraphs 23(b) and 38(a) above and paragraphs 85 to 87 below; and
- (b) otherwise does not admit the allegations in paragraph 39.
40. It does not admit the allegations in As to paragraph 40, it:-
- (a) refers to and repeats paragraphs 23(b) and 38(a) above and paragraphs 85 to 87 below; and
- (b) otherwise does not admit the allegations in paragraph 40.
41. It does not admit the allegations in As to paragraph 41, it:-
- (a) refers to and repeats paragraphs 23(b) and 38(a) above and paragraphs 85 to 87 below; and
- (b) otherwise does not admit the allegations in paragraph 41.
42. As to paragraph 42, it:
- (a) relies on the terms of the deed dated 18 December 2008 for their full terms and effect as if set out in full herein;
- (b) says that Holmes entered into a deed of settlement and release dated 18 December 2008 with 'The Salvation Army' which included the following terms:
- (i) 'The Salvation Amy' would pay Holmes \$48,000 inclusive of costs and any amount due to Medicare Australia; and
- (ii) Holmes would release 'The Salvation Army' from any actions he might have whilst in the care of 'The Salvation Army' in accordance with the terms of clause 4 of that deed; and
- (c) otherwise does not admit the allegations in paragraph 42.
43. It admits the allegations in paragraph 43.

44. As to paragraph 44, it:

(a) does not admit that the deed pleaded was ‘finalised’ on 14 February 2014;

~~(a)(b)~~ relies on the terms of the deed pleaded for their full terms and effect as if set out in full herein; and

~~(b)(c)~~ otherwise admits the allegations in paragraph 44.

45. It admits the allegations in paragraph 45.

Specific communications and the Holmes Retainer

46. As to paragraph 46, it:

(a) says that on 22 November 2018, Holmes had a telephone discussion with Lisa Nicholas of NACLCLC;

(b) says that the instructions given by Holmes to NACLCLC during the telephone discussion referred to in the preceding sub-paragraph are recorded in the Holmes Initial Letter of Advice; and

(c) otherwise admits the allegations in paragraph 46.

47. As to paragraph 47, it:

(a) refers to and repeats paragraph 10(a) to 10(e) above;

~~(a)(b)~~ says that NACLCLC and Holmes entered into the Holmes Retainer when Holmes signed the Holmes’ Client Agreement Letter on 19 December 2018; and

~~(b)(c)~~ otherwise admits the allegations in paragraph 47.

47A. As to paragraph 47A, it:

(a) relies on the contents of the Holmes Initial Letter of Advice for their full terms and effect as if set out in full herein;

(b) says that in the Holmes Initial Letter of Advice, NACLCLC recorded instructions that Holmes had given to NACLCLC during the telephone conversation on 22 November 2018 referred to in paragraph 46 above, which include that Holmes had already sought advice about making a civil claim and that he had instructed NACLCLC to assist him in making an application for redress;

(c) admits the allegations in paragraphs 47A(c) and (d); and

(d) otherwise denies the allegations in paragraph 47A.

47B. As to paragraph 47B, it:

- (a) relies on the contents of the Holmes' Client Agreement Letter for their full terms and effect as if set out in full herein;
- (b) says that it was clear from the content of the the Holmes' Client Agreement Letter and Holmes Initial Letter of Advice that NACLCL would not be providing advice to Holmes about the quantum of compensation he was likely to receive by making a further common law claim;
- (c) refers to and repeats paragraphs 10 and 11 above; and
- (c) otherwise denies the allegations in paragraph 47B.

47C. As to paragraph 47C, it:

- (a) refers and repeats paragraphs 10, 11, 13 and 17 ~~and 26C~~ above;
- (b) does not admit the allegations in paragraph 47C(a); and
- (cb) otherwise denies the allegations in paragraph 47C.

48. [Not used]

49. It admits the allegations in paragraph 49.

50. As to paragraph 50, it:

- (a) relies on the contents of the letter dated 7 September 2020 from the National Redress Scheme to NACLCL titled 'Your offer of redress' for their full terms and effect as if set out in full herein;
- (b) relies on the contents of the letter dated 7 September 2020 from NACLCL to Holmes titled 'Your National Redress Scheme offer' for their full terms and effect as if set out in full herein;
- (c) relies on the contents of the 'Existing Client Offer Received Advice file note' made by Andrea Pearson of NACLCL of the discussion that took place at approximately 3.00 pm on 7 September 2020 between Holmes, Ms Pearson and 'Sean' from the National Redress Scheme for their full terms and effect as if set out in full herein;
- (d) refers to and repeats paragraph 11(e) above; and

(e) otherwise admits the allegations in paragraph 50.

51. As to paragraph 51, it:

- (a) relies on the contents of the file note made by Andrea Pearson of NACLIC of her discussion with Holmes that took place at approximately 10.47am to 11.12 am on 8 September 2020 for their full terms and effect as if set out in full herein;
- (b) refers to and repeats paragraph 11(f) above; and
- (c) otherwise denies the allegations in paragraph 51.

52. It admits the allegations in paragraph 52.

53. As to paragraph 53, it:

- (a) says that on or about 23 November 2020, an independent decision maker of the National Redress Scheme had decided to affirm the decision of the first independent decision maker;
- (b) refers to and repeats paragraphs 11(i) and 11(j) above; and
- (c) otherwise denies the allegations in paragraph 53.

54. As to paragraph 54, it:

- (a) relies on the terms of the release in the ‘Acceptance Document’ signed by Holmes on 3 December 2020 for their full terms and effect as if set out in full herein;
- (b) says that the terms of the release in the ‘Acceptance Document’ did not include the words ‘all liability’ but rather ‘all civil liability...’; and
- (c) otherwise admits the allegations in paragraph 54.

54A. It admits the allegations in paragraph 54A.

55. It admits the allegations in paragraph 55.

56. As to paragraph 56, it:

- (a) refers to and repeats paragraphs 10, 11, 13, 14, 14A, 18, 23(b), 26B and 47B above;
- ~~(b) — says that the term ‘Legislative Improvements’ is not defined in the ASOC;~~
- ~~(e)(b)~~ admits the allegations in paragraphs 56(a) and (b);
- ~~(d)(c)~~ otherwise does not admit the allegations in paragraphs 56(c), (d), (f) and (h); and

~~(e)(d)~~ otherwise denies the allegations in paragraph 56.

57. As to paragraph 57, it:

- (a) refers to and repeats paragraphs 10, 11, 13, 14, 14A, 18, 26 and 47B above; and
- (b) otherwise denies the allegations in paragraph 57.

57A. ~~[Not used] As to paragraph 57A, it:~~

- ~~(a) refers to and repeats paragraphs 10, 11, 14, 14A, 18, 26, 46, 47 and 47B above;~~
- ~~(b) otherwise denies the allegations in paragraph 57A.~~

57B. As to paragraph 57B, it:

- (a) refers to and repeats paragraphs 10, 11, 14, 14A, 18, 26 and 47B above;
- (b) admits that it was a term of the retainer referred to in paragraphs 10(a) to 10(e) above that NACLIC was required to provide Holmes with legal advice at all material times with reasonable care, skill and diligence subject to and in accordance with the terms of the Holmes Retainer; and
- (b) otherwise denies the allegations in paragraph 57B.

58. As to paragraph 58, it:

- (a) refers to and repeats paragraphs 6(b), 10, 11, 14, 14A, 18, 26 and 47B above;
- (b) admits the allegations in paragraphs 58(b) insofar as it relates to the period 1 July 2018 to and on or about 4 November 2020 and otherwise does not admit paragraph 58(b);
- (b)(c) admits that from 22 November 2018 to 4 November 2020, it knew that Holmes was not himself legally qualified, and otherwise does not admit paragraph 58(c);
- ~~(e)(d)~~ does not admit the allegations in paragraphs 58(c) ~~and~~; (d) ~~and~~ ~~(e)~~; and
- ~~(d)(e)~~ otherwise denies the allegations in paragraph 58.

58A. It admits the allegations in paragraph 58A.

59. As to paragraph 59, it:

- (a) says that it owed Holmes a duty of care to act with reasonable care, skill and diligence in the performance of the services it provided under and in accordance with the retainer referred to in paragraph 10 above; and

- (b) otherwise denies the allegations in paragraph 59.

59B. As to paragraph 59B, it:

- (a) says that the content and scope of the duty of care that it owed to Holmes is governed by the retainer referred to in paragraph 10 above;
- (b) refers to and repeats paragraphs 10(a) to 10(e) above; and
- (c) otherwise denies the allegations in paragraph 59B.

59C. As to paragraph 59C, it:

- (a) refers to and repeats paragraphs 10(g), 11(e), 11(f), 11(i)(ii), 11(j), 11(k), 11(l), 11(m), 11(n), 13(b), 17, 18 and 47B(b) above;
- (b) says any risk of harm as alleged was properly considered and addressed by the advice given to Holmes that he should seek advice as to his rights to bring a civil claim, including a common law claim, as referred to in paragraphs 10 and 11 above; and
- (c) otherwise denies the allegations in paragraph 59C.

59D. It refers to and repeats paragraph 59C above and otherwise denies the allegations in paragraph 59D.

59E. It refers to and repeats paragraph 59C above and otherwise denies the allegations in paragraph 59E.

59F. It refers to and repeats paragraph 59C above and otherwise denies the allegations in paragraph 59F.

60. As to paragraph 60, it:

- (a) refers to and repeats paragraphs 10, 11, 13, 14, 14A, 17, 18, 26, 49B and 59C above; and
- (b) otherwise denies the allegations in paragraph 60.

Holmes' claim in negligence

61. As to paragraph 61, it:

- (a) ~~It~~ refers to and repeats paragraph 59C above;

(b) says that it did not have control over Holmes to compel him to obtain advice as to his prospects of being awarded damages at common law before accepting the offer of redress under the National Redress Scheme; and

~~61.(c)~~ otherwise denies the allegations in paragraph 61.

62. As to paragraph 62, it:

(a) refers to and repeats paragraphs 10(g), 11(b), 11(e), 11(f), 11(i)(ii), 11(j), 11(k), 11(l), 11(m), 11(n) and 47B(b) above; and

(b) otherwise does not admit the allegations in paragraph 62.

63. As to paragraph 63, it:

(a) relies on the terms and effect of s 43 of the *NRS Act*;

(b) says that Holmes's acceptance of the offer of redress occurred in the circumstances pleaded in paragraphs 10 and 11, ~~11(e) and 11(f)~~ above; and

(c) otherwise admits the allegations in paragraph 63.

64. As to paragraph 64, it:

(a) refers to and repeats paragraph 63 above; and

(b) otherwise denies the allegations in paragraph 64.

65. As to paragraph 65, it:

(a) refers to and repeats paragraph 63 above; and

(b) otherwise denies the allegations in paragraph 65.

Holmes' claim for breach of retainer

66. It denies the allegations in paragraph 66.

67. It denies the allegations in paragraph 67.

68. It denies the allegations in paragraph 68.

Holmes' claim for breach of fiduciary obligations

68A-68H: To the allegations in paragraphs 68A to 68H, it says:

- (a) the allegations in paragraph 68A, read together with paragraphs 68C to 68E, assert a self-serving, distorted and pejorative characterisation of the Commonwealth funding arrangements as creating a ‘financial imperative’ for NACLCL to breach its equitable duty not to prefer its own financial interests to those of Holmes’ in undertaking and carrying out the legal services for which it had been retained;
- (b) in truth and in fact, NACLCL was funded by the Commonwealth to provide legal advice within a defined scope, namely concerning claims under the National Redress Scheme;
- (c) the fact of the funding and the scope of services for which NACLCL was funded was disclosed to Holmes;
- (d) there is no proper basis for the allegations in paragraphs 68A to 68H;
- (e) by reason of the matters referred to in sub-paragraphs (a) to (d) above, the allegations should be struck out;
- (f) subject to the objections referred to above, admits the allegations in paragraph 68B; and
- (g) otherwise it denies the allegations in paragraphs 68A to 68H.

Putative group members’ claims

69-83B. To the allegations in paragraphs 69 to 83B it:

- (a) ~~(a)~~ says, noting that the allegations are a repetition of the corresponding allegations made in respect of Holmes’ claim, that it refers and repeats mutatis mutandis the matters referred to above in respect of the corresponding allegations made in relation to Holmes’ claim;
- (b) says that it did not have control over individual Group Members who neglected, failed or refused to obtain advice as to his or her prospects of being awarded damages at common law before accepting an offer of redress under the National Redress Scheme;
- (b) says further that the allegations in paragraphs 77 and 80:
 - (i) are bare assertions for which there is no proper basis; and
 - (ii) any decisions or actions that may have been taken by the putative group members upon the postulated counterfactual require individual examination;
- (c) refers to and repeats paragraphs 6(b), 10, 11,13, 14, 14A, 17, 18, 21(b), 23, and 26 to 26C above; and
- (d) otherwise denies the allegations in paragraphs 69 to 83B.

No common questions

84. It denies the allegations in paragraph 84.

Contributory negligence and proportionate liability with respect to Holmes

85. If, contrary to the allegations above, Holmes suffered any loss or damage by reason of any matters alleged against NACLCL in the FASOC (which is denied), then NACLCL advances the allegations below.

86. Holmes failed to obtain, alternatively failed to obtain adequate, legal advice from a suitably qualified lawyer about:

- (a) the matters in paragraph 10(g)(iii) above;
- (b) further or alternatively, his prospects of success and likely outcome of a civil claim.

87. If Holmes suffered any loss or damage by reason of any matters alleged against NACLCL in the FASOC (which is denied), then:

- (a) Holmes suffered such loss or damage as a result of his own failure to take reasonable care;

Particulars

The matters in paragraphs 10(g), 11(e), 11(f), 11(i)(ii), 11(j), 11(k), 11(l), 11(m), 11(n), 47B(b) and 86 above. Further particulars may be provided prior to trial.

- (b) by reason of the failure of Holmes to take reasonable care, he suffered the loss or damage;
and
- (c) any damages recoverable by Holmes from NACLCL are to be reduced to such extent as the Court thinks just and equitable;
 - (i) such reduction being 100% with the result that the claim for loss and damages against NACLCL is defeated pursuant to s 63 of the *Wrongs Act 1958* (Vic) (***Wrongs Act***);
 - (ii) alternatively, having regard to Holmes' share in the responsibility for the loss or damage pursuant to s 26 of the *Wrongs Act*.
- (d) Further or alternatively, if Holmes suffered any loss or damage by reason of any matters alleged against NACLCL in the FASOC (which is denied), then:
 - (i) his claims against NACLCL are apportionable claims within the meaning of Part IVAA of the *Wrongs Act* (**Holmes apportionable claims**);

- (ii) Knowmore Limited's acts or omissions caused the loss or damage the subject of the Holmes apportionable claims such that Knowmore Limited is a concurrent wrongdoer pursuant to s 24H of the *Wrongs Act*; and

Particulars

Having regard to the matters in paragraph 11(h) above, Knowmore Limited's act or omissions comprise the allegations made against Knowmore Limited in the FASOC insofar as Knowmore Limited is found liable for them.

- (iii) NACLCL's liability in relation to the Holmes apportionable claims is limited to an amount reflecting the proportion of the loss and damage claims that is just, having regard to the extent of NACLCL's responsibility for the loss or damage suffered, pursuant to s 24AI of the *Wrongs Act*.

Contributory negligence and proportionate liability with respect to putative group members

88. If, contrary to the allegations above, any putative group member suffered any loss or damage by reason of any matters alleged against NACLCL in the FASOC (which is denied), then NACLCL advances the allegations below.
89. The group member failed to obtain, alternatively failed to obtain adequate, legal advice from a suitably qualified lawyer about:
- (a) the matters in paragraph 10(g)(iii) above;
 - (b) further or alternatively, their prospects of success and likely outcome of a civil claim.
90. If group member suffered any loss or damage by reason of any matters alleged against NACLCL in the FASOC (which is denied), then:
- (a) the group member suffered such loss or damage as a result of their own failure to take reasonable care;

Particulars

The matters in paragraphs 17(b), 18(b), 18(d), 18(e) and 23 above. Further particulars may be provided before trial.

- (b) by reason of their failure to take reasonable care, they suffered the loss or damage; and
- (c) any damages recoverable by the group member from NACLCL are to be reduced to such extent as the Court thinks just and equitable;

- (i) such reduction being 100% with the result that the claim for loss and damages against NACLCL is defeated pursuant to s 63 of the *Wrongs Act*;
 - (ii) alternatively, having regard to the group member's share in the responsibility for the loss or damage pursuant to s 26 of the *Wrongs Act*.
- (d) Further or alternatively, if the group member suffered any loss or damage by reason of any matters alleged against NACLCL in the FASOC (which is denied), then insofar as any group member received advice from Knowmore Limited after 4 November 2020:
- (i) their claims against NACLCL are apportionable claims within the meaning of Part IVAA of the *Wrongs Act* (**group member apportionable claims**);
 - (ii) Knowmore Limited's acts or omissions caused the loss or damage the subject of the group member apportionable claims such that Knowmore Limited is a concurrent wrongdoer pursuant to s 24H of the *Wrongs Act*; and

Particulars

Knowmore Limited's act or omissions comprise the allegations made against Knowmore Limited in the FASOC insofar as Knowmore Limited is found liable for them.

- (iii) NACLCL's liability in relation to the group member apportionable claims is limited to an amount reflecting the proportion of the loss and damage claims that is just, having regard to the extent of NACLCL's responsibility for the loss or damage suffered, pursuant to s 24AI of the *Wrongs Act*.

Date: ~~20 February 2026~~ 14 February 2025

Paul Anastassiou

Xuelin Teo



Kennedys (Australasia) Partnership
Solicitors for the second defendant