

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

Not Restricted

S ECI 2024 03483

BETWEEN:

BRIAN HOLMES

Plaintiff

v

KNOWMORE LEGAL SERVICE LIMITED (ACN 639 490 912)

First Defendant

and

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

Second Defendant

JUDGE: KEOGH J
WHERE HELD: Melbourne
DATE OF HEARING: 26 March 2025
DATE OF RULING: 8 September 2025
CASE MAY BE CITED AS: Holmes v Knowmore Legal Service Limited
MEDIUM NEUTRAL CITATION: [2025] VSC 561

PRACTICE AND PROCEDURE – Group proceedings – Application by second defendant that proceeding no longer continue as a group proceeding – Where plaintiff alleges that defendants used a ‘system’ for giving legal advice with respect to claims under the National Redress Scheme which did not include advice about common law claims for institutional child sexual abuse – Pleadings give rise to substantial common issues of law and fact, including foreseeable risk of harm, content of duty and features of any ‘system’ – Potential class size and group member characteristics weigh against declassing proceeding – s 33N *Supreme Court Act 1986* (Vic) – *Jones v Waller Legal Pty Ltd* [2025] VSC 42 – Application to strike-out amended statement of claim – Where pleaded amended statement of claim alleged to be embarrassing – Strike out of entire amended statement of claim not warranted – Application dismissed.



APPEARANCES:

Counsel

Solicitors

For the Plaintiff

G Costello KC
with A James-Martin,
M Driscoll and D Seeman

Arnold Thomas & Becker

For the First Defendant

B Petrie

K&L Gates

For the Second Defendant

P Anastassiou KC
with X Teo

Kennedys (Australasia)
Partnership



HIS HONOUR:

- 1 The plaintiff, Brian Holmes, brings this group proceeding on behalf of persons who allege that they experienced institutional child sexual abuse and who retained the defendants as their lawyers in relation to applications for payment of redress under the National Redress Scheme, established by the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth)* ('NRS Act').
- 2 A statutory condition of a person accepting an offer of redress under the NRS Act is that they must release institutions and officials of those institutions from civil liability for their abuse.¹ Holmes alleges that by accepting redress offers, he and group members gave up the opportunity to pursue potentially valuable common law claims against institutions that were responsible for their abuse. He alleges that the defendants breached duties owed to him and group members by failing to take reasonable precautions to ensure that they received common law claims advice before accepting redress offers.
- 3 By summons dated 30 October 2024, the second defendant, National Association of Community Legal Centres Ltd ('NACLCL') applied for an order under s 33N(1) of the *Supreme Court Act 1986 (Vic)* ('Act') that the proceeding no longer continue under Part 4A ('s 33N application'). NACLCL applied in the alternative for an order striking out the amended statement of claim filed on 16 October 2024 ('ASOC') on the ground that Holmes' current pleading may prejudice, embarrass or delay the fair trial of the proceeding ('strike-out application'). In summary, NACLCL argues that:
 - (a) the claims pleaded on behalf of group members give rise to no common questions of law or fact, but are in truth singular claims that each turn upon their own unique circumstances; and
 - (b) the ASOC pleads terms that are nebulous and contains allegations in relation to duty, breach and causation that run counter to the terms of the retainer documents on which the pleading purports to rely. In these circumstances, the

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



ASOC should not be allowed to stand.

- 4 Holmes opposed the s 33N application and strike-out application. He argued that:
- (a) the foundation of the claims pleaded in the ASOC is a system that he alleges was used by the defendants to provide legal services which did not ensure that clients received common law claims advice before accepting a redress offer ('Knowmore system'). The Knowmore system gave rise to or increased the risk that group members would suffer loss and damage by accepting redress offers and consequently be barred from pursuing common law claims. The defendants breached the common law, contractual and fiduciary duties they owed to group members by failing to take reasonable steps to ensure that they received common law claims advice before accepting redress offers. There are common questions in relation to the risk of harm, scope of duty, and reasonable precautions because the defendants used the same system and retainer in representing all or most group members; and
 - (b) there is no basis for striking out the whole of the ASOC. Any infelicities in individual paragraphs of the pleading should be resolved by appropriate case management.

5 The first defendant, Knowmore Legal Service Limited ('Knowmore Legal'), took a neutral position in respect of the s 33N application and strike-out application.

Pleadings

6 Holmes alleges that between July 2018 and 7 December 2020 NACLCL, and from 2 March 2020 Knowmore Legal, carried on a business under the business name 'Knowmore'. The business provided specialist legal services to persons who had suffered child sexual abuse and were considering making a claim under the National Redress Scheme.

7 Holmes alleges that legislative reform in each Australian state and territory between 2015 and 2023 improved the rights of survivors of institutional sexual abuse, and that



since 2015 the quantum of damages and settlement sums awarded to survivors of child sexual abuse who make common law claims for damages against institutions has increased substantially. He alleges that in most cases, the potential quantum in a civil claim would exceed the amount of redress to which an applicant was entitled under the National Redress Scheme ('improved outcomes pleading'). Holmes particularises the improved outcomes pleading by setting out details of a small number of common law judgments and settlements.

8 In its defence, NACLCL alleges that the improved outcomes pleading is vague and embarrassing, and ought be struck out. NACLCL further alleges that whether any individual would have received a higher damages award or settlement for making a common law claim for damages against any 'institution' or 'official', compared to a redress offer received under the National Redress Scheme, inevitably requires assessment of the particular circumstances of that individual's claim.

9 Group members are defined by Holmes in the ASOC as persons who allege they suffered child sexual abuse caused by the acts or omissions of one or more institutions, who retained the defendants as their lawyers to obtain redress under the National Redress Scheme on or after 5 July 2018, and who:

- (d) before releasing one or more of the Institutions to obtain redress under the National Redress Scheme, did not receive current advice (**Common Law Claims Advice**) from Knowmore Legal Service or another lawyer in relation to:
 - (i) the prospects of success of any common law claim from which he or she may be releasing one or more of the Institutions;
 - (ii) the estimated quantum of damages he or she could obtain from one or more of the Institutions via common law action;
 - (iii) the likely comparative outcomes and processes between a National Redress Scheme Claim and a common law claim;
 - (iv) the fact that the Legislative Reform enabled survivors of child sexual abuse to bring common law claims they had previously released Institutions from, with better prospects of success and higher amounts of compensation; and
 - (v) the fact that based on the Improved Outcomes the chances of obtaining a higher damages award or settlement was greater



than had previously been the case and was likely to be higher than the amount they could receive from the National Redress Scheme.

(‘common law claims advice pleading’).

NACLIC alleges that the common law claims advice pleading is vague and embarrassing and ought be struck out.

10 Holmes alleges that the Knowmore system involved the use of standard processes and template documents for the giving of legal advice, which included the following ‘features’:

- (a) generic advice given in a standard initial intake call;
- (b) a standard form initial letter of advice and client agreement letter which included terms of a retainer;
- (c) an internal template referred to as an ‘existing client offer received advice file note’;
- (d) a standard form letter of advice when a redress offer was made;
- (e) not providing common law claims advice to clients;
- (f) not taking steps to ensure clients obtained common law claims advice;
- (g) not warning clients that by accepting a redress offer without obtaining common law claims advice, there was a real risk that they were giving up a common law damages claim worth more than the redress offer; and
- (h) directing clients away from making a common law claim and towards accepting a redress offer by providing advice about the disadvantages of bringing such a claim but not advising of the improved outcomes or likely higher quantum of common law recoveries.

11 Holmes alleges that under the Knowmore system, the defendants held themselves out



as specialist lawyers in historical child sex abuse cases who would competently advise clients about National Redress Scheme applications. He alleges that according to the Knowmore system, the defendants did not exclude from the scope of standard retainers with clients:

- (a) advice on the quantum of a redress offer relative to the amount that could be received if the client pursued a common law claim for historical institutional child abuse instead; and/or
- (b) any obligation to consider, and where necessary advise on, risks which arose in Knowmore Legal Service's provision of advice that the client may forego valuable common law legal claims without understanding the value of those claims compared to the amount the client could obtain under the National Redress Scheme.

12 NACLCL denies that, considered severally or collectively, the 'features' pleaded by Holmes were components of a system. It alleges that the Knowmore system pleading is a self-serving characterisation of a course of practice by which clients of NACLCL and Knowmore Legal were clearly and expressly informed of the scope and content of the retainer undertaken in connection with claims for redress under the National Redress Scheme, specifically that the retainer did not include providing advice about potential common law claims or the comparative advantages and disadvantages between redress under the National Redress Scheme and a common law claim. NACLCL alleges that the legal services provided to each client, and whether a client was provided with common law advice or advised or encouraged to seek that advice from another law firm, requires assessment of that client's interactions throughout the course of their retainer with NACLCL. It pleads that Holmes' allegations about the limits of the client retainer are embarrassing and generalised assertions which are inconsistent with Holmes' own retainer with NACLCL and the advice given to him during the course of that retainer.

13 Holmes pleads the content of the duty he alleges was owed to group members by reference to the pleaded features of the Knowmore system. He alleges that the Knowmore system increased the risk that he and group members would suffer harm by foregoing valuable common law legal claims without understanding the value of those claims compared to the amount of any redress offer under the National Redress

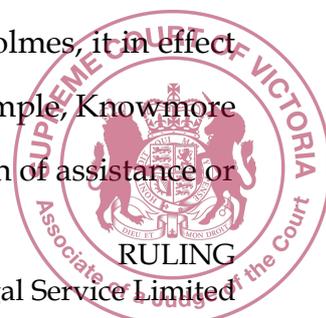


Scheme. He alleges that the defendants breached their duty of care to him and group members by failing to have in place systems, processes, procedures and staff training to ensure that group members obtained common law claims advice, and to ensure group members were advised or warned of the risks of accepting a redress offer without obtaining common law claims advice.

14 NACLCL puts in issue the terms of Holmes' retainer and the resulting content of the duty it owed to him. NACLCL alleges that the risk of harm pleaded by Holmes was properly considered and addressed by the advice given to him. It denies breach of the retainer. It repeats those allegations and denials in respect of group member claims and alleges that those claims would necessarily require individual examination.

15 It is not in issue that the defendants received federal government funding to assist clients seeking redress under the National Redress Scheme. Holmes alleges that the relationships between the defendants and himself and group members gave rise to fiduciary obligations. He claims that the defendants breached those obligations by their response to the conflict of interest between those funding arrangements and the interests of group members in receiving common law claims advice before accepting redress offers. NACLCL has responded by pleading in its defence that the breach of fiduciary duty allegations are 'a self-serving, distorted and pejorative characterisation of the common law 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'. NACLCL alleges that there is no proper basis for Holmes' breach of fiduciary duty allegations, and that they should be struck out.

16 The approach taken by Knowmore Legal in its pleaded defence differs materially from that taken by NACLCL. Knowmore Legal pleads that the terms of its retainer, and the content of the duty it owed as a result, were the same for all or most of its clients. While it denies the features of the Knowmore system pleaded by Holmes, it in effect pleads common features of the retainer upon which it relies. For example, Knowmore Legal alleges there were terms of the retainer that excluded provision of assistance or



advice to group members in connection with potential common law claims. Further, it alleges that in accordance with the retainer and the duty it owed to clients, Knowmore Legal gave express warnings to group members about matters including the consequence of accepting a redress offer on their ability to bring a common law claim. Knowmore Legal pleads that it provided certain other common advice to clients in relation to potential civil claims, including that they could put the client in touch with civil lawyers who specialise in such claims.

17 Knowmore Legal pleads that the ASOC does not comply with r 13.02 of the *Supreme Court (General Civil Procedure) Rules 2015*² in various respects, and is embarrassing. An example is Knowmore Legal's defence to the improved outcomes pleading. However, Knowmore Legal does not seek to have the ASOC struck out. It agrees that the appropriate course is for Holmes to respond to the complaints it has articulated, for the parties to confer, and for any remaining disputes to be determined by the court.

Evidence

18 The following evidence was tendered on the applications:

- (a) Affidavit of Alison Elmes, solicitor for the second defendant, affirmed 5 March 2025; and
- (b) Affidavit of Kim Price, solicitor for the plaintiff, affirmed 12 March 2025.

Legal file documents

19 Elmes exhibited to her affidavit documents from the legal files of the defendants in relation to applications for redress under the National Redress Scheme for Holmes and six putative group members ('legal file documents'). NACLCL relied on those documents as evidence of two things: first, resolving claims of group members fundamentally required an investigation into individual circumstances; and second, the pleaded claims are completely inconsistent with the terms of the retainer between the defendants and group members and the advice given to Holmes.

² Also: *Supreme Court (General Civil Procedure) Rules 2025* r 13.02.



20 The first legal file document related to Holmes is called a 'legal advice call'. It records what appears to be the first telephone call between Holmes and one of the defendants' solicitors. The legal advice call appears to be a template document with a series of standardised questions or prompts. The sixth item is recorded as follows:

Provide brief introduction re knowmore – i.e. free, confidential, independent, multidisciplinary, discuss scope of assistance (understanding of compensation options and assistance with NRS application if required)
Ok

Holmes' instructions about the abuse, previous compensation, injuries and treatment are recorded in item 8. Item 9 refers to compensation options and includes the following in relation to civil claims:

- b. Civil claim/negotiating with the institution directly (and for abuse in SA, the ex gratia scheme). NB: many institutional redress schemes are coming to an end/have ended following 1 July 18.
 - i. these are claims against the institution directly or perpetrator(s)
 - ii. some institutions have their own redress schemes, please contact them directly for information on this or speak with your civil lawyer
 - iii. aim to settle on a mutual agreement
 - iv. can request an apology from the institution as well as financial compensation
 - v. recommend that a lawyer be engaged and can refer to lawyers with expertise in the area (cold or warm) as area of law is complex
 - vi. the claims can take a long time, sometimes years, to settle or be finalised in or out of court
 - vii. no win-no fee operation of our panel lawyers
 - viii. no limit on damages which can be awarded, subtracting lawyers' fees from a successful outcome
 - ix. CSA limitation dates in each state:
 - o No time limit to bring claim: NSW, QLD, WA, TAS VIC, NT
 - o 3 years to bring claim: SA
 - o (NB above correct as of 22.08.2018)
 - x. Consider cold or warm referral[.]

Information that was to be given in relation to the National Redress Scheme included the following:

Overview of process

- Only one application can be made, if you apply you cannot make any future claims against the institution for the abuse
- Recommendation of the Royal Commission
- 10 year scheme administered by the DHS



- Paper application or via MyGov
- Less invasive, straightforward, quicker
- Can request monetary payment, apology and counselling support payment
- Assessment framework guides the award of redress
- Can do it by yourself or knowmore can advise and/or assist[.]

The template document also includes information about victims of crime compensation. The document records what appears to be advice given to Holmes and instructions provided by him:

I advised that if C has not brought a claim against the State then this could still be a viable civil claim and suggest C seek further advice from a civil lawyer about this option. C indicated that the RC and RCT has suggested that redress is the best option – I noted that the law has changed since the RC about time limits so it might be worth double checking on this, given that there is no cap on money under civil law of redress. C thinks he just wants to go with redress, does not want the time or hassle of a further civil claim.³

The document records the lawyer telling Holmes they would send a letter of advice, client agreement and authority to him.

21 The second document is the letter of advice to Holmes ('letter of advice'). After referring to the legal advice call, the letter states:

... we will outline the following compensation options:

- A. National Redress Scheme for survivors of institutional child sexual abuse;
- B. Civil claims in Victoria; and
- C. Victorian victims of crime assistance.

Details of each compensation option are set out in the letter of advice. Information given in relation to the National Redress Scheme included that monetary payments can be up to \$150,000 and that the 'Government intends the scheme to be a quicker, less involved process than a civil claim'. The letter advises that there is no 'cap' or limit on the amount of compensation that can be obtained in a civil claim; that such claims can be costly, difficult to run, take a long time, be governed by fairly complex legal rules; and that a court may refuse to hear a claim if a fair trial cannot be held because of the passage of time that has passed since the abuse. The letter contains the

³ 'C' means client, 'RC' means Royal Commission, and 'RCT' refers to solicitors who acted for Holmes on an earlier claim for compensation in relation to the child sexual abuse.



following suggestion:

We suggest that you get legal advice from an experienced civil lawyer about the following issues:

- whether you can make a civil claim against the institutions;
- whether there is enough evidence to support a civil claim;
- what your chances of success might be;
- whether any prior payment you have received in relation to the abuse will impact upon your ability to make a civil claim;
- what the likely outcome might be; and
- what will happen if you pass away before a civil claim is finished.

The letter of advice sets out the names and contact details of firms that are described as forming part of Knowmore's 'civil lawyer panel'. The letter records Holmes' instructions that he would like Knowmore to assist him to make an application for redress. The letter of advice appears to be a standard form document with options to take account of the client's state of origin and the instructions obtained to that point about how the client wishes to proceed. Attached to the letter of advice were two copies of the Knowmore client agreement letter, which '[set] out everything we can do for you'. Holmes was asked to sign and return one copy of the client agreement letter.

22 The client agreement letter contains the following in relation to Holmes' instructions:

You have instructed us to assist you to prepare and lodge an application to the National Redress Scheme. We have advised you to obtain independent legal advice on all of your compensation options before deciding to make a claim under the National Redress Scheme. You have instructed that you understand that if you choose to pursue another compensation option, such as a civil claim, it may or may not result in an award of damages significantly greater than the amount of financial redress you may receive from the National Redress Scheme. We have provided you with the contact details of specialist personal injury lawyers for you to contact to obtain this advice. You have instructed that you do not wish to obtain this independent advice, or that you have already obtained such advice.

Under a heading 'Advice about Redress payment', the client agreement letter records that '[K]nowmore will provide you with advice concerning any monetary payment you may receive under the National Redress Scheme'. The letter states that after lodging a redress application, Knowmore 'will then provide you with advice on your options if and when you receive a Notice of Determination from the Redress Scheme'.



It appears that Holmes signed and returned a copy of the client agreement letter.

- 23 It is unnecessary to consider the remaining legal file documents for Holmes in the same detail. It is apparent that Knowmore lodged a National Redress Scheme application on his behalf, and that a redress offer was ultimately made. In the letter to Holmes about the offer dated 7 September 2020, Knowmore said:

If you decide to accept one, two or all three parts of the offer, you will need to sign an Acceptance Document. Once this Document has been signed, you will 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 you experienced.

This is an important legal right that you will be giving up.

The letter confirms Holmes' instructions that he required further time to consider the offer, and advises him of the option of referral to a 'specialist lawyer' for advice about a civil claim, again naming three panel lawyers. Holmes was told that if he chose to proceed in that fashion, the panel law firm would give him advice about a potential claim, including what the likely outcome might be. An advice file note on the same date as the letter records similar advice, together with instructions from Holmes including the following:

Client is unhappy, but also wants to get things moving and over with.

and the following discussion:

-Client feels anger about justice not being done. One of the offenders dead, one went to the US. Feeling flabbergasted over what he said. Not upset at Sean, understands that he is just doing what he is told, but just feels like it is a 'kick in the guts'
-AP understands Brian's frustration. A long process, and coming to the end of it doesn't always bring closure. Can't give him the childhood he deserved or bring justice.

A file note made on the following day includes:

Decided to tell them it's not good enough. Wants to ask for another \$30K.

AP explained that unfortunately not a negotiation process. If he does not want to accept the offer, and wants to see if he can receive more money, he can ask for a review.



Knowmore sent a request for review of Holmes' redress offer on or around 29 September 2020. The review did not result in any change to the redress offer. A file note of a discussion with Holmes after the review was completed includes:

C doing ok – spoke to son and brother – thinks civil will take a long time to get and should just take this
Reiterated to C that if he just wanted an opinion from a civil lawyer we could arrange that and they will be able to tell him time frames and costs etc
C thinks he may as well accept it – over it. Dealt with civil lawyers in the past and that took ages and then they take their cut
Advised C that as we discussed yesterday, his choice and his wellbeing needs to be at the forefront

It is not in issue that Holmes accepted the redress offer.

- 24 The two legal file documents tendered in relation to each of the six putative group members were the client agreement letter and the legal advice letter. These documents were in materially the same form for Holmes and each of the group members.

Group members

- 25 In his affidavit, Price set out enquiries he made about Knowmore which revealed that it had acted for almost 20,000 clients since the commencement of the National Redress Scheme in July 2018. Price said that he did not know how many of Knowmore's clients had in fact accepted redress offers. He said that documents published by the National Redress Scheme showed that as at 30 June 2024, over 44,000 applications had been received and almost 17,000 finalised. Price said that the 2022–2023 Knowmore annual report states that Knowmore's clients were located in the following regions:

- a. 43% in major cities
- b. 22% in inner regional Australia
- c. 16% in outer regional Australia
- d. 5% remote Australia
- e. 5% very remote Australia[.]

Price said that in the same document, Knowmore reported that:

- a. 38% of its clients identified as Aboriginal and/or Torres Strait Islander.



- b. 14% of its clients were 'priority clients', including those of advanced age, with immediate and serious health concerns such as terminal cancer or other life threatening illnesses.

Price referred to a National Redress Scheme report that states that as at 30 June 2024, applicant demographics include:

- a. 35% who identify as Aboriginal or Torres Strait Islander;
- b. 14% who were elderly (being over 70 years of age, or 55 years of age for Aboriginal or Torres Strait Islander applicants); and
- c. 35% who self-identified as living with disability.

26 Price said that approximately 490 prospective group members had expressed an interest with the plaintiff's lawyers in participating in the group proceeding. Price said that he has not yet conducted a detailed assessment of whether each person who has expressed interest will meet the pleaded group member definition. He said that the cohort of prospective group members includes individuals residing in each State and the Northern Territory.

Submissions

NACLC

27 A closer examination of the generalised concepts pleaded by Holmes, such as 'common law claims advice' and the 'Knowmore system', reveals that those allegations and the claims of each group member require consideration of individual circumstances. This will include all of the written and oral communications between group members and the defendants, analysis of whether a group member would have received a larger sum of money had they pursued a common law claim against the relevant institution compared to the redress payment they received, and whether that group member would have chosen to pursue a common law claim. Group proceedings are not suitable for resolving claims which are fundamentally an investigation into individual circumstances, such as those of group members in this proceeding.

28 The pleaded features of the Knowmore system are generalised and assertive. They do



not describe a 'system' and therefore do not provide a factual basis upon which common questions may be distilled. Concepts such as 'encourage' and 'directed' as related to obtaining common law claims advice are meaningless in the abstract. The advice that was given to group members and the prospects of their common law claims must be individually analysed.

29 A number of the common questions pleaded by Holmes are not valid because they are inconsistent with and fight against the express terms of the retainer entered into by group members with NACLIC. The terms of the retainer clearly exclude the provision of advice about potential common law claims. The proposed common questions as to duty not only elide the express terms of the retainer but posit a content to the duty which is precisely the opposite of the retainer. This renders the proposed common questions as to duty an untenable basis for advancing a case against NACLIC for negligence, both on an individual basis and most certainly as an asserted common question in a group proceeding. Questions framed on the concept of 'the quantum of recoveries for common law claims in relation to historical child abuse against Institutions' are inevitably infected with vagaries that render them unsuitable as common questions. How is the proposed quantum to be calculated, and by reference to which persons and which institutions? What evidence contemplated should be called to prove these matters?

30 The pleaded features of the Knowmore system are so nebulous and inconsistent with the terms of the retainer between NACLIC and Holmes that they are conducive only of an inefficient and ineffective group proceeding. The case brought is irrational for the same reason. The Court is entitled to consider whether it is in the interests of justice that such a proceeding continue under Part 4A of the Act.

Holmes

31 The defendants deny the existence of the Knowmore system, or that the features alleged in the ASOC gave rise to a 'system' at all. Even at this early stage of the proceeding, it is clear that the common questions will include whether the defendants used the Knowmore system when providing advice to group members, and whether



the features of that system were as alleged in the ASOC.

32 In relation to group member retainers with the defendants, at least the following questions will arise:

- (a) whether the terms of those retainers are substantially the same as the Holmes retainer;
- (b) whether it was a term of the retainers that advice to be given by the defendants to a group member about whether to accept a redress offer would include advice as to what they could recover in a potential common law claim;
- (c) the content of the duty to act with reasonable care, skill and diligence in the provision of legal services to group members; and
- (d) the content of Knowmore's fiduciary obligations to group members.

Separate from the duty governed by the retainer in relation to the alleged fiduciary obligations, there will be common questions about whether the financial imperative for the defendants to assist clients with their National Redress Scheme applications and not common law advice was capable of giving rise to a conflict between the interests of the defendants and those of their clients, and whether as a matter of practice the defendants failed to disclose this conflict to their clients.

33 The evidence discloses that the defendants have provided services to almost 20,000 clients in the relevant timeframe. There are presently approximately 490 prospective group members who have registered their interest in participating in the proceeding. In the event that the proceeding does not continue under Part 4A of the Act, there is a risk of hundreds of proceedings being brought against each defendant in jurisdictions across Australia. This will entail evidence that is common being adduced across a multiplicity of proceedings, resulting in significant inefficiencies and giving rise to a significant risk of inconsistent findings of fact.

34 It is too early for the Court to assess the factors in s 33N(1) of the Act and there is



insufficient material before it to do so.

35 Many group members are vulnerable and may lack the resources or access to legal services to maintain individual claims, even where they have a strong claim. It is consistent with the aims of Part 4A of the Act to maintain the group proceeding because it provides an avenue for those without the necessary resources to obtain a remedy.

Provisions and principles

36 Section 33N(1) of the Act reads:

The Court may, on application by the defendant, order that a proceeding no longer continue under this Part if it is satisfied that it is in the interests of justice to do so because –

- (a) the costs that would be incurred if the proceeding were to continue as a group proceeding are likely to exceed the costs that would be incurred if each group member conducted a separate proceeding; or
- (b) all the relief sought can be obtained by means of a proceeding other than a group proceeding; or
- (c) the group proceeding will not provide an efficient and effective means of dealing with the claims of group members; or
- (d) it is otherwise inappropriate that the claims be pursued by means of a group proceeding.⁴

37 Section 33N(1) of the Act requires consideration of whether the interests of justice are best served by the proceeding continuing under Part 4A, or the numerous group member claims being determined in individual proceedings.⁵ It is implicit that s 33N(1)(c) requires identification and assessment of the significance of the common questions of law or fact in the proceeding.⁶ It is necessary that the interests of justice be considered in the context and having regard to the purpose of Part 4A, such that relevant matters include ‘the public interest of promoting the efficient use of court time and the parties’ resources; providing a remedy for those without the resources to bring individual actions; and protecting defendants against multiple suits and the risk

⁴ *Supreme Court Act 1986* (Vic) s 33N(1).

⁵ *Stack v AMP Financial Planning Pty Ltd (No 2)* (2021) 401 ALR 113, [26] (Beach J).

⁶ *Ibid*; *Perera v GetSwift Ltd* (2019) 363 ALR 394, [60] (Middleton, Murphy and Beach JJ).



of inconsistent findings'.⁷

38 On an application under s 33N(1) of the Act, the Court should consider whether there are common questions of law or fact which the group proceeding can effectively and efficiently determine.⁸ If the court considers that this is not the case, and that the claims made in the proceeding are fundamentally an investigation into individual circumstances, it is likely to be in the interests of justice for the s 33N application to be granted. However, the identification of individual issues that require determination in order to resolve the claims of group members should not distract from consideration of the common issues to be determined in the proceeding.

39 NACLIC placed significant reliance on the decision of Gorton J in *Jones (a pseudonym) v Waller Legal Pty Ltd* ('*Jones*').⁹ The plaintiff in *Jones* had commenced a proceeding under Part 4A of the Act on behalf of group members who alleged they had been sexually abused as minors and who retained the defendant legal firm to represent them in a claim for compensation for that abuse. The essence of the plaintiff's claim was that the defendant did not adequately advise the group members in respect of, or adequately pursue, claims for damages for loss of earning capacity. Damages were sought for the difference between the amounts received by group members in settlements and the amounts they would have obtained had claims for loss of earning capacity been pursued. The defendant applied for an order under s 33N that the proceeding not continue under Part 4A.

40 There was no issue in *Jones* about the content of the duty owed by the defendant to group members. Gorton J observed that the only substantive questions that arose in the proceeding were whether the duty was breached and, if so, what damage was suffered as a result. In that context, the plaintiff identified the factual basis of common questions as being that:

⁷ *Andrianakis v Uber Technologies Inc (Ruling No 1)* [2019] VSC 850, [162] (Macaulay J), citing *Bright v Femcare Ltd* (2002) 195 ALR 574, 605–6, [152] (Finkelstein J); *Beecham Motors Pty Ltd v General Motors Holden Australia NSC Pty Ltd* [2021] VSC 855, [20] (Nichols J).

⁸ *Hall v Australian Finance Direct Ltd (No 2)* [2007] VSC 233, [52] (Hollingworth J).

⁹ [2025] VSC 42 (Gorton J).



...the defendant had a “practice” of providing advice of a particular type or a “strategy” for settling claims that was generally applicable including a “practice” of advising its clients “in lieu of making a ‘formal claim’ of compensation for economic loss Group Members should seek a nominal sum, or an amount for loss of opportunity”. In counsel’s words, an “invariable feature” of Waller Legal’s approach was “a misunderstanding of the law with respect to how economic loss claims are to be determined and therefore, how they should be advanced on behalf of claimants”.¹⁰

The plaintiff in *Jones* submitted that questions about the defendant’s practices or strategies and ‘understanding of the law’ could usefully be determined by the group proceeding procedure. The common question proposed by the plaintiff in relation to practices or strategies was:

Did Waller Legal have a practice of advising clients that a “formal loss of earnings component” may only, or should only, be included in a claim if the client, while a child, had a “genuine career” or a “particular realistic career” in mind and can substantiate that, but for the abuse, they could have “achieved that career path”?¹¹

41 Gorton J observed that what ultimately mattered when determining liability and damage was the advice given to a client, and that evidence about a practice was only relevant to the extent it had an impact on the finding about what advice was likely given. Gorton J said, responding to the plaintiff’s case, that the defendant had an ‘invariable’ practice of giving certain advice:

It seems unlikely that a Court would infer that certain advice was invariably given, in the sense of given to all group members, without hearing evidence of the advice in fact given to all, or nearly all, group members. If evidence were led from only a selection of group members, then the Court would likely not be in a position to infer an invariable practice, in which case the time and cost of leading that evidence would be wasted. If evidence were led from all or nearly all of the group members, any savings in time and cost associated with the group proceeding process on this point would be substantially lost. In my view, endeavouring to prove, in the lead plaintiff’s proceeding, by a process of inference, that advice of a certain type was invariably given, in the sense that it was given to each group member, would probably add to the cost of the group proceeding without resulting in any material benefit.¹²

42 Gorton J gave the following summary reasons for his conclusion that the proceeding should not continue under Part 4A of the Act:

¹⁰ Ibid [23].

¹¹ Ibid [24].

¹² Ibid [32].



The claim of each group member for damages from Waller Legal is distinct and will depend on a detailed assessment of the actual advice that each group member was given assessed in the legal context in existence at that time, the merits of that group member's underlying claim to damages against the relevant institutional defendant including an assessment of that group member's prospects of proving the abuse and establishing liability for that abuse on the part of an institution (not the abuser), and, importantly, on what that particular group member would have done in response to what is said to be the correct advice, and what, in those circumstances, that group member's claim (if properly prosecuted) was worth. The hearing and determination of the proposed common questions would involve significant time and expense but would not, in my judgment, appreciably shorten the process of evaluating each group member's claim or lead to savings of any real significance in that process.¹³

43 For the reasons that follow, I have reached a different conclusion in this case.

Analysis

Section 33N(1) application

44 The pleadings and the legal file documents clearly raise the issue of whether the defendants had a common, structured system for representing clients who had been subjected to child sexual abuse and who wished to make applications to the National Redress Scheme. As the legal file documents show, there were a number of avenues open to group members to seek compensation for the loss and damage they had suffered as a result of being sexually abused. At its most general level, the alleged Knowmore system involved the defendants' representation of group members being exclusively directed to applications to the National Redress Scheme

45 It does not appear controversial that there could be a significant difference in the financial outcomes between the compensation avenues available to a group member. This potential difference was critically important to persons who made applications to the National Redress Scheme, because accepting a redress offer meant that the avenue of a common law claim against institutional defendants was foreclosed. At the heart of Holmes' claim is the risk that persons represented by the defendants would forego the opportunity to pursue a potentially more valuable avenue of compensation by accepting a redress offer without having received comparative

¹³ Ibid [48].



advice as to their compensation entitlements. Holmes alleges that this risk arose because the Knowmore system was not to provide or to ensure clients obtained comparative compensation advice before accepting a redress offer. Holmes further alleges that the features of the Knowmore system increased the risk of harm.

46 While the defendants deny the features of the Knowmore system alleged by Holmes, Knowmore Legal implicitly accepts in its pleaded defence that there was a common system of representation applied to all or most Knowmore clients, and that the commonality extended to the terms of the client retainers. The material before me suggests that there was a common form of retainer governing the relationships between the defendants and their clients.

47 Unsurprisingly, both defendants allege that the content of the duty of care they owed to group members will be determined by the terms of the client retainer.

48 There are centrally important disputes between the parties on the pleadings as to what the common retainer and client documents mean about the content of the duty owed by the defendants to their clients and whether that duty required the defendants to take any, and if so what, precautions against the risk of harm identified by Holmes by providing or taking reasonable steps to ensure a client obtained comparative advice about a redress offer and potential common law claim before accepting the offer and foregoing a common law claim.

49 The following common issues, about which there appears to be significant dispute, emerge:

- (a) Did the defendants represent clients who had experienced institutional child sexual abuse and who wished to make application to the National Redress Scheme in accordance with a system (the Knowmore system)?
- (b) If yes, what were the relevant features of the Knowmore system?
- (c) Was there a risk of harm that Knowmore clients would suffer loss by accepting a redress offer, thus foregoing any potential common law claim against an



institution responsible for the harm they had suffered, without having received comparative advice about their compensation options?

- (d) If yes, did the Knowmore system give rise to or increase the risk of harm?
- (e) Did the content of the duty owed by the defendants pursuant to their retainer and relationship with clients extend to taking precautions against the risk of harm?
- (f) If yes, would a reasonable person in the position of the defendants have taken the precautions alleged by Holmes?

50 The differences between this case and *Jones* are obvious. In *Jones*, it was inevitable that determination of breach and causation would depend on the advice given to an individual group member about their common law claim. The reference to a 'practice' or 'strategy' could not disguise the fact that the enquiry of each group member was wholly individual. In this proceeding, there are common issues about the system the defendants used to represent clients to apply to the National Redress Scheme, where those clients could also pursue common law damages claims against relevant institutions; the risk of harm associated with that system; the content of the duty owed by the defendants; and what a reasonable person could do in response to that risk. As was the case in *Jones*, issues of breach and causation will require individual consideration for each group member. However, that fact should not distract from a consideration of the common issues that arise for determination on the pleadings.

51 The proceeding is at an early stage. It is evident that there are still significant disputes in relation to the form of Holmes' pleading to be resolved. While some exchange of relevant documents has occurred, the scope of discovery has not been resolved. It will be some time before discovery is completed. NACLCL does not have access to many relevant documents because it transferred client legal files to Knowmore Legal when it ceased operating the business in March 2020. While changing circumstances as the proceeding matures might conceivably alter consideration of the relevant common issues, I am satisfied at this early stage that the claims of Holmes and group members



do give rise to substantial common questions of fact and law, and that the group proceeding will provide an efficient effective means of dealing with those matters.

52 It is also relevant to consider the number and characteristics of potential group members. Almost 500 former Knowmore clients have already contacted Holmes' solicitors to express their interest in the proceeding. The evidence given by Price suggests that the number of group members may be measured in the thousands. The very large number of individual claims that might be brought if the s 33N application was granted has obvious implications for the resources of the Court and the parties. Price's evidence also suggests that the characteristics and geographic locations of some of those group members may have significant implications for their capacity to access legal services and prosecute an individual claim. A determination that the proceeding not continue under Part 4A of the Act is likely to result in a large number of claims being made against the defendants in different jurisdictions across Australia, with the attendant risk of inconsistent findings. On a consideration of the interests of justice, these matters weigh against the NACLCL application being granted.

53 I reject NACLCL's submission that the common questions raised by the pleadings are 'invalid', or that they raise a claim that is 'untenable' because of an inconsistency between the facts and matters pleaded by Holmes and the express terms of the retainer between it and group members. Construction of the express and implied terms of the client retainer and consideration of the relationship between NACLCL and its clients, and the implication those matters have for the content of the duty to which NACLCL was subject, are matters put in issue by the pleadings. It is open to Holmes to argue that the defendants did not exclusively and rigidly restrict their representation of clients to National Redress Scheme applications. Further, Holmes argues that an obligation to give advice about a redress offer extends to the giving of advice about the implications of accepting that offer for common law claims based on the same allegations of institutional child sexual abuse. The submissions advanced by NACLCL amounted to an argument for summary dismissal on the basis that there is no real prospect of Holmes' pleaded claim succeeding. On the available materials, I reject that



argument.

54 For the above reasons, I dismiss the application by NACLCL that the proceeding not continue under Part 4A of the Act.

Strike-out application

55 The Court's power to strike out a pleading is discretionary and must be exercised giving effect to the overarching purpose of the *Civil Procedure Act 2010* (Vic). The principles relevant to the exercise of that power include that a pleading will be embarrassing if it places the opposing party in a position of not knowing what is alleged; and the whole pleading may be struck out if the objectionable parts are so intertwined with the rest of the pleading as to make separation difficult.¹⁴

56 The foundation of the strike-out application is paragraphs of NACLCL's defence where it alleges that the 'improved outcomes', 'common law claims advice' and 'Knowmore system' pleadings are embarrassing; and that Holmes' pleadings are so inconsistent with the express terms of the retainer that they are an untenable basis for advancing a case against NACLCL.

57 For reasons already stated, I have rejected the last of these arguments. I have concluded that there are real questions to be determined on the case Holmes seeks to advance about the terms of his retainer with the defendants, the content of the duty of care that arose from that retainer and his relationship with the defendants, and what, if any, precautions a reasonable person in the position of the defendants should have taken in response to the identified risk of harm.

58 There are deficiencies in Holmes' current pleading. However, those deficiencies are not so great that the fundamental substance and structure of the claim that Holmes seeks to advance cannot be identified. Further, I am not satisfied that striking out the entire pleading at this time would facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute that have been identified.

¹⁴ *Wheelahlan v City of Casey (No 12)* [2013] VSC 316, [25]; *Mokbel v State of Victoria* [2024] VSC 528, [10].



59 The better course to follow is that proposed by Knowmore Legal and adopted by Holmes during discussion at the hearing. I will make orders providing for each defendant to serve Holmes with a comprehensive list of its complaints about the current pleading, for Holmes to respond, and for the parties to confer in order to resolve those complaints. I will then determine any residual complaints that have not been resolved, including any application by either defendant for strike-out or summary dismissal.

Conclusion

60 NACLCL's summons dated 30 October 2024 is dismissed. I will hear from the parties as to the appropriate form of orders.

CERTIFICATE

I certify that this and the 23 preceding pages are a true copy of the reasons for Ruling of the Honourable Justice Keogh of the Supreme Court of Victoria delivered on 8 September 2025.

DATED this 8th day of September 2025.

AR

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Associate

