

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

No. S EC



Case: S ECI 2024 03483

Filed on: 28/01/2026 11:54 AM

BETWEEN:

**BRIAN HOLMES**

Plaintiff

and

**KNOWMORE LEGAL SERVICE LIMITED (ACN 639 490 912)**

First Defendant

and

**NATIONAL ASSOCIATION OF COMMUNITY LEGAL CENTRES LTD**  
**(ABN 67 757 001 303) (ACN 163 101 737).**

Second Defendant

**FURTHER AMENDED STATEMENT OF CLAIM**  
**(AMENDED PURSUANT TO THE ORDER OF THE HONOURABLE JUSTICE KEOGH**  
**DATED 17 DECEMBER 2025)**

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Date of document: ~~05.07.24~~ ~~16 October 2024~~

~~18 December 2025~~ 16 January 2026

Filed on behalf of: The Plaintiff

Prepared by:

Arnold Thomas & Becker

573-577 Lonsdale Street

Melbourne VIC 3280

Solicitors' code: 38

Telephone: (03) 9614 1433

Email:

[kprice@arnoldthomasbecker.com.au](mailto:kprice@arnoldthomasbecker.com.au)

Ref: 322412

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1. The National Redress Scheme for Institutional Child Sexual Abuse (**National Redress Scheme**) was established by the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) (**National Redress Scheme Act**) and commenced operation on 1 July 2018.
2. ~~Hundreds of non government institutions, as well as State, Territory and Commonwealth Governments have joined the National Redress Scheme.~~
3. Under the National Redress Scheme, if after making a determination under s 29 of the *National Redress Scheme Act* the National Redress Scheme Operator approves a person's application for redress, the Operator must give the person a written offer of

~~redress in compliance with s 39 of the *National Redress Scheme Act* the National Redress Scheme Operator may offer redress to survivors of institutional child sexual abuse.~~

### **Particulars**

Under section 9 of the *National Redress Scheme Act*, the Secretary of the Department is the National Redress Scheme Operator and is responsible for operating the National Redress Scheme.

4. ~~Upon acceptance of an offer of redress, the survivor must release from liability the institutions determined to have been responsible for the survivor's abuse, including the institution's officials, associates and the officials of their associates (together, the **Institutions**).~~ At all material times from 5 July 2018, under s 43 of the *National Redress Scheme Act*, if a person accepts an offer of redress in accordance with s 42 of the *National Redress Scheme Act*, then, at the time the person gives the acceptance and by force of s 42:
- (a) the person releases and forever discharges every released institution or official (together the **Institution**) from civil liability for abuse of the person that is within the scope of the scheme; and
  - (b) the person cannot bring or continue civil proceedings against a released **Institution** or official in relation to that abuse.

### **Particulars**

'Institution' means any institution that had or has registered to participate in the National Redress Scheme and which was released from liability by any client of Knowmore Legal Service (as defined in paragraph 8 below) who obtained redress under the National Redress Scheme from 5 July 2018 onwards.

5. From 5 July 2018, the National Redress Scheme **has** provideds for redress in the form of:
- (a) payments of amounts up to and not exceeding the capped amount of \$150,000;
  - (b) access to counselling and psychological services or a counselling and psychological services payment of up to \$5,000; and

- (c) a direct personal response from one or more of the Institutions.

Particulars

The nature of the redress components alleged above arose from National Redress Scheme Act, s 16.

6. At all material times from 5 July 2018, the Second Defendant (**NACLCL**):
- (a) is and was incorporated as a company and capable of being sued in its own name;
  - (b) is and was registered as a charity with the Australian Charities and Not-For-Profit Commission (**ACNC**) and operated on a not-for-profit basis;
  - (c) from around July 2018 to around ~~2 March~~ 7 December 2020 owned the business name “Knowmore Legal Service” under which name it held itself out as providing a program of legal or legal related services that were:
    - (i) directed generally to people who were disadvantaged in accessing the legal system or in protecting their legal rights; or
    - (ii) were otherwise conducted in the public interest;
  - (d) from at least 1 July 2018, was a community legal service and law practice within the meaning of the *Legal Profession Uniform Law*.
7. At all material times from 2 March 2020, the First Defendant (**Knowmore Limited**):
- (a) is and was incorporated as a company limited by guarantee and capable of being sued in its own name;
  - (b) is and was registered as a charity with the ACNC;
  - (c) was a community legal service and law practice within the meaning of the *Legal Profession Uniform Law*; and
  - (d) from around 5 November 2020, owned the business name “Knowmore Legal Service”.

8. At all material times, NACLCLC and Knowmore Limited (together, **Knowmore Legal Service**) carried on business under the business name “Knowmore” providing specialist legal services, including legal advice in each State or Territory to persons who had suffered child sexual abuse and were considering making a claim, or had made a claim, under the National Redress Scheme.

#### **Particulars**

In the premises of paragraphs 6 and 7 above, NACLCLC carried on business under the business name “Knowmore ~~Legal Service~~” between July 2018 and 2 March 2020 and Knowmore Limited carried on business under the business name “Knowmore ~~Legal Service~~” from 2 March 2020 and ongoing.

For convenience, this pleading refers to the Defendants collectively as Knowmore Legal Service, but it is not alleged that either Defendant is liable for conduct that occurred outside the period in which that Defendant was carrying on business under the name “Knowmore ~~Legal Service~~”.

‘Specialist legal services’ means legal services that are provided in respect of a particular area of law in which the law practice in question has, or purports to have, particular expertise or experience. A law practice may purport to have particular expertise or experience by operating exclusively in one particular area of law.

9. The Plaintiff (**Holmes**) is an alleged survivor of historical child sexual and physical abuse caused by the acts or omissions of the Salvation Army (Victoria) Property Trust (**Salvation Army**) and the Director of the Department (defined in paragraph 30 below) as succeeded by the Department of Health and Human Services (**DHHS**).

#### **Particulars**

The alleged sexual and physical abuse is that referred to in paragraphs 34 to 36 below. The potential liability of the Salvation Army for that abuse arose from the matters pleaded at paragraphs 31 to 33 below and of the State of Victoria from the matters pleaded at paragraphs 28 to 30 below.

10. In ~~December~~ Between November 2018 and December 2020, ~~Holmes retained~~ Knowmore Legal Service under a retainer (**Retainer**) to provide him with legal services

~~in relation to the National Redress Scheme~~ Knowmore Legal Service assisted Holmes by acting as his lawyer in relation to:

- (a) purported legal advice about his compensation options for claims of institutional child sex abuse;
- (b) assisting him to apply to the National Redress Scheme for compensation; and
- (c) purported legal advice in relation to the redress offer he received from the National Redress Scheme.

### **Particulars**

Formation of the Holmes Retainer and the terms of the Holmes Retainer are pleaded and particularised at paragraphs 46 and 47 and 57B below.

11. In December 2020, Knowmore Legal Service assisted Holmes to release the State of Victoria and the Salvation Army from liability for any common law claims Holmes had against them in respect of the child abuse he had suffered, in exchange for \$43,463 plus \$5,000 for counselling and psychological services obtained through the National Redress Scheme from the Salvation Army and the State of Victoria on behalf of DHHS.

### **Particulars**

Holmes refers to paragraphs 46 to 57B below.

12. Between 2015 and 2023 there had been substantial legislative reform (**Legislative Reform**) in each Australian State and Territory which improved the legal rights of survivors of institutional child sexual abuse in three ways:
  - (a) removing limitation periods for actions founded on the personal injury to a person resulting from child abuse;
  - (b) requiring the nomination or appointment of an entity to act as the proper defendant on behalf of an unincorporated non-government organisation in child abuse cases to overcome the *Ellis* defence; and
  - (c) providing that an action for personal injury resulting from child abuse may be brought on a previously settled cause of action by allowing a plaintiff to apply to the court to set aside settlement agreements.

### Particulars

In Victoria, the Legislative Reform was comprised of the following Acts:

- (1) the *Limitation of Actions Amendment (Child Abuse) Act 2015* (Vic), which from 2015 removed the six-year time limit for survivors of child sexual abuse to bring a claim for damages upon a cause of action against the State of Victoria.
- (2) the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic), which from 2018 operated to overcome the *Ellis* defence.
- (3) the *Children Legislation Amendment Act 2019* (Vic), which from 2019 operated to permit survivors of child sexual abuse who had entered into deeds prior to 1 July 2015 to apply to a Court to have those deeds set aside.
- (4) the *Justice Legislation Amendment Act (Drug Court and Other Matters) Act 2020* (Vic), which from 2020 operated to extend the period in respect of which deeds could be set aside to deeds entered into prior to 1 July 2018.

Particulars of the reforming legislation of each other state and territory are included in Schedule A ~~will be provided upon request.~~

13. In the period 2015 to the present the quantum of damages awards and settlement sums going to survivors of child sex abuse who make common law claims for damages against Institutions has increased ~~have grown~~ substantially (the **Improved Outcomes**) and since 1 July 2018, in the majority of cases were likely to exceed the amount recoverable to an applicant under the *National Redress Scheme*.

### Particulars

The Improved Outcomes over time will be a matter of expert evidence.

The common law judgments and settlements include, *inter alia*:

- (1) *TB v State of New South Wales and Quinn; DC v State of New South Wales and Quinn* [2015] NSWSC 575; two sisters who had been abused by their stepfather brought a claim against the Department of Protective Services. General damages were assessed at \$377,500 and \$269,000 respectively and past and future economic loss at \$1,313,789 for TB and \$700,219.90 for DC subject to *DC v State of New South Wales* [2016] NSWCA 198 in which the Court of Appeal ordered damages in the amount of

\$536,463.60 in respect of DC and \$939,435.60 in respect of TB.

- (2) *Erlich v Leifer* [2015] VSC 499; the plaintiff was abused by the principal of the Adass Israel School. The Court ordered damages of \$300,000 for general damages, \$50,358 past economic loss, \$501,422 for future economic loss, \$156,007 for past medical expenses, \$16,641 for future medical expenses, \$150,000 in exemplary damages against the offender and \$100,000 in exemplary damages against school, giving a total of \$1,274,420.
- (3) *Hand v Morris* [2017] VSC 437; the plaintiff was sexually abused by his teacher at 9 years of age and sustained psychiatric injury in the form of an anxiety disorder. General damages were assessed at \$260,000 and past and future economic loss at \$420,000.
- (4) In *The Age* on 14 August 2017 a report was published titled, "Fifty years after a mum first raised the alarm, men get \$7m for teacher's abuse." The article stated: "Ten men abused as children by a paedophile teacher who was shuffled between primary schools for 14 years have been paid more than \$7 million by the Victorian government...Two survivors of Morris' abuse received between \$1.5 and almost \$2 million, thought to be record figures in Victorian sex abuse claims.
- (5) *Perez v Reynolds & Anor* [2020] VSC 537; the plaintiff had been sexually abused by his primary school teacher and was awarded general damages of \$265,000 and damages for past and future economic loss of \$1, 269,000.
- (6) *PCB v The Geelong College* [2021] VSC 633; the plaintiff had been abused by volunteer at a school and was awarded \$300,000 for general damages and \$2,311,578 for economic loss.
- (7) *O'Connor v Archbishop Peter A Comensoli* [2022] VSC 313; the plaintiff had been sexually abused by a priest and was awarded \$525,000 for general damages and \$1,500,000 less his Melbourne Response payment for economic loss.
- (8) *ABCD v Bird* [2020] NSWSC 1379; two of the four plaintiffs were abused by the first defendant while in the care of a childcare centre. In respect of B, the Court ordered damages of \$270,000 for non-economic loss, \$70,000 in exemplary damages, \$25,000 for future out-of-pocket expenses, \$100,000 for future economic loss and superannuation, totalling \$465,000. In respect of D, the Court ordered damages of \$260,000 for non-economic loss, \$70,000 in exemplary damages, \$25,000 for future

out-of-pocket expenses, \$100,000 for future economic loss and superannuation, totalling \$455,000.

- (9) *Lawrence v Province Leader of the Oceania Province of the Congregation of the Christian Brothers* [2020] WADC 27; the plaintiff was abused when living at orphanages operated by the Christian Brothers. The Court ordered damages of \$400,000 for general damages, \$620,000 for loss of earnings, \$6,000 for future medical and medication expenses and \$14,500 in special damages, totalling \$1,040,500 (not including interest on past loss and before deduction of prior compensation). The total award was increased on appeal due to a miscalculation error and pre-judgment interest calculation: *Province Leader of the Oceania Province of the Congregation of the Christian Brothers v Lawrence* [2021] WASCA 77.
- (10) *Lonergan v Trustees of The Sisters of Saint Joseph* [2021] VSC 651; the plaintiff was abused by a parish priest when he was a student at a Catholic school. The Court awarded damages of \$250,000 for general damages, \$10,000 for future treatment expenses and \$390,000 for economic loss, totalling \$650,000. An appeal as to the quantum of damages was dismissed: *Lonergan v The Trustees of the Sisters of Saint Joseph* [2022] VSCA 208.
- (11) *SR v Trustees of the De La Salle Brothers* [2023] NSWSC 66. The plaintiff was abused by a teacher at De La Salle College, Revesby Heights. The Court awarded damages of \$300,000 for general and aggravated damages, \$334,761.20 for past loss of income, \$150,000 for loss of earning capacity up to 2016 as a buffer (see *SR v Trustees of the De La Salle Brothers (No 2)* [2023] NSWSC 150), \$456,243.40 for future loss of earning capacity, \$70,510.50 for loss of superannuation and \$20,000 for future medical treatment, totalling \$1,331,515.10 (not including interest on past general damages and past loss of income).
- (12) *Kneale v Footscray Football Club Ltd* [2023] VSC 679; the plaintiff was abused by a volunteer of the Footscray Football Club. The jury awarded damages of \$3,250,000 for pain and suffering and loss of enjoyment of life, \$2,605,578 for past loss of earnings and loss of earning capacity and \$87,573 for future medical and related expenses, totalling \$5,943,151.
- (13) *Steen v Trustees of the Diocese of Tasmania* [2024] TASSC 3; the plaintiff was abused by an Anglican priest employed by the Diocese of Tasmania. The Court awarded damages of \$275,000 for pain, suffering and loss of enjoyment of life, \$125,000 for aggravated damages, \$100,000 for exemplary damages, \$350,000 for past impairment of earning capacity, \$1,182,720 for future

impairment of earning capacity, \$155,940 for future loss of superannuation benefits, \$10,000 for past medical and associated expenses, \$71,711 for future medical and associated expenses, totalling \$2,270,371 (not including interest).

- (14) *TJ (pseudonym) v Bishop of the Roman Catholic Diocese of Wagga Wagga* [2023] VSC 704; the plaintiff was abused by a Catholic priest. The Court (based on a jury verdict) ordered damages of \$1,100,000 for pain and suffering, \$896,000 for past economic loss, \$69,000 for future economic loss and \$1,300,000 for exemplary damages, totalling \$3,365,000 (not including interest). This award of damages was altered on appeal to reduce damages for pain and suffering to \$550,000 and to set aside the award of exemplary damages. Bringing the recalculated total to \$1,515,000 (not including interest): *Bishop of the Roman Catholic Diocese of Wagga Wagga v TJ (a pseudonym)* [2024] VSCA 262.

13A. In the period July 2018 to the present, lawyers acting with due care, skill and diligence in providing legal services to victims of historical child sexual abuse seeking money for their injury and losses, knew that plaintiffs would be able to receive significantly more money by bringing civil claims against Institutions than by applying to the National Redress Scheme for a redress payment because the lawyers knew of the Improved Outcomes and Legislative Reform.

### Particulars

The knowledge of lawyers acting with due care, skill and diligence will be a matter of expert evidence.

### **GROUP MEMBERS**

14. Holmes brings this representative proceeding under Part 4A of the *Supreme Court Act 1984* (Vic) on behalf of himself and all persons (**group members**) who:
- (a) alleged that they suffered child sexual abuse and related abuse (**sexual abuse**) caused by the acts or omissions of one or more of the Institutions, resulting in personal injury; and
  - (b) ~~in the period from 1 July 2018,~~ retained in writing Knowmore Legal Service as its their lawyer ~~in relation to the National Redress Scheme;~~

- (c) to obtain redress under the National Redress Scheme, released from liability on or after 5 July 2018 one or more of the Institutions ~~whose acts or omissions caused their personal injury;~~
- (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; and
- (ii) the estimated quantum of damages he or she could obtain from one or more of the Institutions via common law action; and

(Common Law Claims Advice):

- ~~(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 because:~~
- ~~1. statutory limitation periods for historic sexual abuse had been removed;~~
  - ~~2. the defendant had to nominate an entity to act as the proper defendant on behalf of an unincorporated non government organisation to overcome the *Ellis* defence; and~~
  - ~~3. settlement deeds entered into in relation to sexual abuse could be set aside/ Institutions may not rely upon them; 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.

- (e) before releasing one or more of the Institutions to obtain redress under the National Redress Scheme, were not warned by Knowmore Legal Service that by accepting the National Redress Scheme payment they were losing the opportunity to bring a civil claim against an Institution that was likely to get them significantly more money than the National Redress Scheme payment.

### Particulars

As to:

- (1) paragraph 14(d) ‘current advice’ means advice based on the state of the law within around 12 to 18 months before the release was given that took into account relevant facts, circumstances and instructions up until that point; and
- (2) paragraph 14(e) ‘significantly more money’ means upwards of \$100,000 more, than the amount which would have been obtained as a redress payment.

15. At the time of commencement of this proceeding, there were more than seven group members.

### **THE KNOWMORE SYSTEM**

16. At all material times from 1 July 2018 and ongoing, Knowmore Legal Service provided legal services to its clients, including:
- (a) the provision of legal advice in relation to the National Redress Scheme generally;
  - (b) assistance in preparing an application to the National Redress Scheme;
  - (c) assistance in preparing submissions to the National Redress Scheme;
  - (d) the provision of legal advice in relation to any offer of redress made under the National Redress Scheme, including the consequences of accepting or declining an offer;
  - (e) obtaining evidence about the clients’ child sexual abuse;

- (f) obtaining documents from its clients' previous lawyers such as expert reports about the clients' injuries, and files about past legal claims and settlements; and
- (g) communicating with the National Redress Scheme and third parties on behalf of the client.

### Particulars

As to paragraph 16(g), 'third parties' means group members' previous lawyers (if any), health professionals engaged to prepare reports for group members, government agencies such as Centrelink, and any other person (other than a group member or the National Redress Scheme) with whom it was necessary to communicate for the purpose of preparing the relevant group member's National Redress Scheme application, including for the purpose of gathering evidence.

### **The Knowmore System**

17. At all material times from 1 July 2018 and ongoing, Knowmore Legal Service provided legal services to its clients through its employees and agents, including employed solicitors and non-legally trained staff (collectively **Staff**) pursuant to a system which had the features described in paragraphs 18 to 26G below (the **Knowmore System**).

### Particulars

Holmes refers to and repeats paragraphs 18 to 26G below, in which the features of the system alleged by the Plaintiff are enumerated.

18. Under the Knowmore System, Knowmore Legal Service provided legal services to its clients by using standard processes and template documents including:
- (a) providing generic advice in a standard initial intake call (**Intake Call**);
  - (b) contemporaneously sending to prospective clients after the Intake Call: issuing
    - (i) a standard form letter of advice at or around the commencement of its retainer with its clients which was in standard form or contained default replaceable text (**Initial Letter of Advice**);
    - (ii) two copies of an enclosed letter which was providing a in standard form or contained default text letter titled "client agreement" (**Client**

Agreement Letter) which purported to set out clients' instructions and the terms of a retainer;

- (c) using an internal template referred to as an "existing client offer received advice file note" (**Telephone Conversation Template**); and
- (d) issuing a standard form letter of advice issued when the National Redress Scheme made an offer of redress (**Offer Letter of Advice**).

### Particulars

- (1) A template document is a document that comprises a standard format and structure and may contain pre-populated text, which is to be adapted and used across similar matters. Further particulars about the template documents used by Knowmore Legal Service may be provided following the First Defendant's production of critical documents, discovery and interrogatories.
- (2) The generic advice was, broadly (subject to minor variations over time and as between clients) as set out in template letters of advice. Further particulars may be provided after receipt of the First Defendant's critical documents and/or after discovery and interrogatories.

~~19. Under the Knowmore System, Knowmore Legal Service provided legal advice to its clients over the telephone from time to time.~~

~~20. Under the Knowmore System, Knowmore Legal Service provided legal services to its clients in relation to the National Redress Scheme without assessing, or obtaining an assessment from another lawyer of, the prospects of success and likely quantum of any common law claim that its client may have against any Institutions.~~

21. Under the Knowmore System, Knowmore Legal Service did not provide its clients with the Common Law Claims Advice.

~~22. Under the Knowmore System, Knowmore Legal Service advised its clients that they could obtain the Common Law Claims Advice from another lawyer but did not ensure that its clients obtained the Common Law Claims Advice from another lawyer.~~ Under the Knowmore System, Knowmore Legal Service advised its clients that pursuing another legal option such as a civil claim "may or may not" result in an award of damages significantly greater than the amount they may receive from a redress payment

rather than advising them that it was likely they would receive significantly more money from a civil claim than from a payment under the National Redress Scheme.

### Particulars

“Significantly more money” has the meaning in the particulars subjoined to paragraph 14 above.

23. Under the Knowmore System, Knowmore Legal Service did not encourage its clients to obtain the Common Law Claims Advice ~~nor explain~~ by telling them they were more likely to ~~its clients~~ get more money if they brought civil action against the Institutions than from the National Redress Scheme and explaining to them that ~~such advice~~ Common Law Claims Advice was important so that they could understand how much more money they could receive ~~by making a common law claim.~~
24. Under the Knowmore System, Knowmore Legal Service did not ~~advise~~ warn its clients not to release any Institutions by accepting offers made under the National Redress Scheme until they had obtained the Common Law Claims Advice either from Knowmore Legal Service or another lawyer because there was a real risk that they were giving up a common law damages claim worth more than the National Redress Scheme would give them.
25. Under the Knowmore System, Knowmore Legal Service held themselves out as specialist lawyers in historical child sex abuse cases who would competently advise clients about their legal rights arising from that sexual abuse ~~National Redress Scheme applications when in fact Knowmore Legal Service did not provide the Common Law Claims Advice, which was necessary in order for its clients to properly understand their legal rights.~~

### **Particulars**

That Knowmore Legal Service held itself out as legal experts is implicit in the fact that it offered and provided legal services in relation to the National Redress Scheme.

The Plaintiff also refers to:

- (1) The fact that in a media release dated 19 February 2018, the NACLC referred to a government announcement that Knowmore Legal Service would be provided with ongoing funding to support survivors of institutional child sexual

abuse to access redress under the National Redress Scheme, and described the funding as “recognition of the need for ongoing support for survivors and of the expertise of Knowmore as a trusted and specialist community legal centre in providing that support”.

- (2) Knowmore Legal Service’s logo and letterhead contained the byline “free legal help for survivors”.
- (3) Further particulars may be provided after discovery.

26. Under the Knowmore System, Knowmore Legal Service directed group members away from making a common law claim and towards accepting a National Redress Scheme payment, ~~including~~ by advising as to the disadvantages of bringing a common law claim in terms of cost, difficulty, delay, limitation of actions problems, complexity and the fact a previous settlement may impact the case ~~cost, inconvenience, risk and delay~~, but not advising as to the comparative advantages of a common law claim, in particular that survivors were more likely to receive more money from civil claims against Institutions when compared to a redress payment under the National Redress Scheme because of the Legislative Reform and Improved Outcomes ~~of the Improved Outcomes or that that the quantum of common law recoveries was likely to be higher than the redress payment.~~

~~26A. Under the Knowmore System, Knowmore Legal Service operated on the premise that it was not funded to provide common law advice to its clients about institutional child sex abuse claims.~~

~~26B. Under the Knowmore System, Knowmore Legal Service did not disclose to group members that its funding arrangements created a financial imperative for Knowmore Legal Service to provide clients with assistance with their claims to the National Redress Scheme in that Knowmore Legal Service’s funding rewarded it for assisting clients to access the National Redress Scheme and not common law advice even where advice on the quantum of alternative common law claims was necessary in order to understand the choice about whether to accept an offer from the National Redress Scheme operator.~~

### Particulars

The ‘financial imperative’ is and was that Knowmore Legal Service’s funding depended and depends, in part, on the number of clients it assists with National Redress Scheme claims.

Knowmore Legal Service's funding agreement with the Commonwealth Government includes performance indicator measures based on the number of client contacts, the number and nature of advices provided and the stage of application under the National Redress Scheme.

26C. The template used for the Initial Letter of Advice (**Initial Letter of Advice Template**) had the following features:

- (a) it was headed "LEGAL ADVICE";
- (b) it outlined in three sections what it described as "compensation options";
- (c) it contained a section B headed "Civil claims", which identified numerous adverse features of common law claims including:
  - (i) that civil claims can be costly and difficult to run;
  - (ii) that civil claims can take a long time, sometimes several years, before they are completed;
  - (iii) that despite the removal of limitation periods, a Court may still refuse to hear a claim on the basis that a fair trial could not be received;
  - (iv) that civil claims are governed by fairly complex legal rules, particularly about the issue of whether institutions are legally responsible for criminal acts committed by their employees; and
  - (v) that receipt of a previous payment may impact a person's ability to make a civil claim.
- (d) recommended that clients obtain legal advice about certain issues relating to civil law claims from one of three law firms which comprised their civil law panel;
- (e) save for reference to the abolition of limitation periods, it did not contain an explanation to, or otherwise notify, clients of recent changes in the law which may benefit them, including the Improved Outcomes;

- (f) it did not state that Knowmore Legal Services would not have regard to possible common law results a client may achieve when advising clients on an offer of Redress; and
- (g) it required return of the enclosed Client Agreement Letter before work was undertaken for the client.

### Particulars

The features of the letter have been derived from the commonalities between the Initial Letters of Advice that are in the client files provided by various group members.

Further particulars may be provided after receipt of the First Defendant's critical documents and/or after discovery and interrogatories.

As to paragraph 26C(e), Holmes refers to and repeats the particulars to paragraph 12 and 13 above, including the particulars to those paragraphs.

26D. The template used for the Client Agreement Letter (**Client Agreement Letter Template**) had the following features:

- (a) it contained a bold heading stating that Knowmore Legal Services could not continue to assist the client if they did not return a signed copy of the Client Agreement Letter;
- (b) it included a passage thanking the client for their instructions so that Knowmore Legal Service could provide the client "with legal advice and, if appropriate, representation";
- (c) it contained a statement acknowledging that a client may need help reading the letter and in the written document inviting that client to request assistance for translation or reading of it;
- (d) it contained a section titled "your instructions" with default or replaceable text regarding a clients' instructions;
- (e) the "your instructions" section of the Client Agreement Letter contained default text including passages:

- (i) to the effect that it was intended to be read in conjunction with the Initial Letter of Advice;
  - (ii) asserting that the client had given instructions to assist them to prepare and lodge an application to the National Redress Scheme;
  - (iii) asserting that the client had given instructions that they understood that if they chose 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 they may receive from the National Redress Scheme;
  - (iv) asserting that the client had given instructions that they did not wish to obtain independent advice from specialist personal injury lawyers, or that they had already obtained such advice.
- (h) it contained a section 2 titled “what we will do for you” which included default text to the effect that Knowmore Legal Services would provide the client with:
- (i) advice concerning any monetary payment they may receive under the National Redress Scheme under a heading “Advice about Redress Payment”; and
  - (ii) advice on their options if and when they received a Notice of Determination from the Redress Scheme, under a heading “preparing your application”;
- (f) it contained a section 8 titled “Communication” which included default text to the effect that as soon as it reasonably could, Knowmore Legal Services would tell the client about anything that happened which may have affected their position or require them to give us further instructions;
- (g) it did not state that Knowmore Legal Services would not have regard to possible common law results a client may achieve when advising clients on an offer of [Redress](#).

### Particulars

The features of the letter have been derived from the commonalities between the Initial Letters of Advice that are in the client files provided by various group members.

Further particulars may be provided after discovery and interrogatories.

26E. Under the Knowmore System, Knowmore Legal Service did not advise clients of the Improved Outcomes.

26F. Under the Knowmore System, Knowmore Legal Service did not advise clients of the Legislative Reform.

26G. Under the Knowmore System, Knowmore Legal Service did not exclude from the scope of its retainer 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.

## **HOLMES' CLAIMS**

### **Holmes' Injuries**

- 27. Holmes was born on 5 June 1962.
- 28. On or about 20 August 1974, Holmes was placed under the wardship of the State of Victoria by Order of the Children's Court at Eltham (the **Wardship**).
- 29. At all material times throughout the Wardship, the Director of the Department of Community Welfare Services (**Director**) owed Holmes a common law duty of care to take reasonable care for his welfare, safety and supervision during the Wardship.

30. Reasonable care in the circumstances required that the Director ensure that:
- (a) the placement of Holmes in a residence was conducted in a manner whereby his welfare was the first and paramount consideration;
  - (b) the provision of his physical, intellectual and spiritual development was as that which a good parent would make for his or her child;
  - (c) Holmes had a means to notify the Director or the Department of Community Welfare Services (**Department**) of abuse; and
  - (d) Holmes was conferred with and his residence inspected with sufficient regularity.

#### **Particulars**

Holmes refers to the following provisions:

- (1) *Children's Welfare Act 1954* and *Children's Welfare Act 1958*: sections 6; 7; 9; 21(1) and (3); 22 and 25.
- (2) *Social Welfare Act 1970*: sections 13(1)(c), (d) and (e); 36; 37; 40 and 41.

31. Holmes was admitted to Bayswater Boys Home at The Basin in Victoria on 27 September 1974 until 2 February 1976 (the **period**).
32. During the period, the Salvation Army operated the Bayswater Boys Home.
33. At all material times John Beyer and Ray McKenzie were:
- (a) employed by the Salvation Army; or
  - (b) in a relationship with the Salvation Army capable of giving rise to a finding of vicarious liability ~~in~~of the Salvation Army for their conduct.
34. During the period, Holmes alleged that he was sexually abused by Mr Beyer on at least 20 occasions, by way of the following conduct:
- (a) Mr Beyer was permitted by the Salvation Army to take Holmes away from the Bayswater Boys Home on repeated occasions;
  - (b) Mr Beyer sexually abused Holmes in his car and also at his home;

- (c) the sexual abuse involved Mr Beyer:
- (i) masturbating Holmes;
  - (ii) trying to have Holmes perform oral sex on him;
  - (iii) performing oral sex on Holmes and having Holmes perform oral sex on him; and
  - (iv) attempting to anally penetrate Holmes.
35. During the period, Holmes was sexually and physically abused by Mr Mckenzie on at least two occasions, by way of the following conduct:
- (a) Mr McKenzie masturbated Holmes on a camp and at Mr Mckenzie's home; and
  - (b) Mr McKenzie punched Holmes in the head.
36. Mr Beyer was convicted of criminal offences arising from his offending against Holmes.
37. As a result of the abuse, Holmes suffered injury, loss and damage.

#### **Particulars**

- (1) Dysthymic disorder.
  - (2) Sexual disorder.
  - (3) Alcohol Use Disorder.
  - (4) Features of Anti-social Personality Disorder.
  - (5) Pain and suffering.
  - (6) Loss of capacity to work.
38. At all material times between November 2018 and December 2020 until Holmes accepted the redress offer from the National Redress Scheme, Holmes had a valuable potential civil claim against the Salvation Army that the Salvation Army owed a duty of care to Holmes to exercise reasonable care of Holmes to prevent foreseeable risk of injury, including injury caused by abuse.

39. At all material times between November 2018 and December 2020 until Holmes accepted the redress offer from the National Redress Scheme, Holmes had a valuable potential civil claim against the Salvation Army that the Salvation Army breached its duty of care to Holmes by:
- (a) permitting Holmes to leave the premises of the Bayswater Boys Home without supervision and for no good reason;
  - (b) permitting Holmes to spend time with Mr Beyer and Mr McKenzie without supervision;
  - (c) failing to provide Holmes with a means to report abuse;
  - (d) failing to ensure that abuse was reported by Holmes;
  - (e) failing to inspect the Bayswater Boys Home regularly or at all; and
  - (f) permitting Mr Beyer to attend the Bayswater Boys Home when he was not formally employed to work there.
40. At all material times between November 2018 and December 2020 until Holmes accepted the redress offer from the National Redress Scheme, Holmes had a valuable potential civil claim against the Salvation Army that the Director breached its duty of care to Holmes, for which the State of Victoria would be found vicariously liable if the claim had not been released, by:
- (a) failing to inspect the Bayswater Boys Home;
  - (b) failing to confer with Holmes sufficiently or at all;
  - (c) failing to provide Holmes with a means to report abuse to the Department; and
  - (d) delegating its duties to the Salvation Army without ensuring that it was equipped to take on the role of caring for Holmes.

#### Particulars

As to paragraph 40(b), the Director (or their delegate) ought to have conferred with Holmes about matters including:

- (1) his physical, intellectual and spiritual developmental needs, and whether those needs were being met;
- (2) his physical and psychological safety; and
- (3) whether he had been subject to any sexual, other physical or psychological abuse, and if so by whom.

As to paragraph 40(d), the Director purported to delegate their duties in respect of Holmes to the Salvation Army by placing him at the Bayswater Boys Home at The Basin in Victoria, which was operated by the Salvation Army, on 27 September 1974, thereby leaving Holmes in the care and control of the Salvation Army without the Director ensuring his safety.

41. At all material times between November 2018 and December 2020 until Holmes accepted the redress offer from the National Redress Scheme, Holmes had a valuable potential civil claim against the Salvation Army that, Further or in the alternative, because the abuse occurred in the course of their employment or engagement by the Salvation Army the Salvation Army would be vicariously liable for the abuse by Mr Beyer and Mr McKenzie if the claims had not been released.

#### **Holmes' prior claims and deeds**

42. On 18 December 2008, Holmes entered into a deed with the Salvation Army which included the following terms:
  - (a) the Salvation Army would pay Holmes \$48,000 inclusive of costs and Medicare repayment; and
  - (b) Holmes would release the Salvation Army from any claims arising out of his time in care with the Salvation Army.
43. After deduction of costs and disbursements, Holmes received \$28,735 as a result of the deed with the Salvation Army.
44. On 11 January 2013, Holmes entered into a deed with the State of Victoria (finalised on 14 February 2014) which included the following terms:
  - (a) the State of Victoria would pay Holmes \$19,200 inclusive of costs minus any deductions required to be paid to the Commonwealth; and

- (b) Holmes would release the State of Victoria from any claim he might have against the State of Victoria arising out of or in connection with his time in care.

45. After deduction of costs and disbursements, Holmes received \$11,480 as a result of the deed with the State of Victoria.

### **Knowmore's provision of legal services to Holmes**

46. On 22 November 2018, in an intake call, Holmes instructed a solicitor working for Knowmore Legal Service named Lisa Nicholas as to the historical abuse he had suffered at Bayswater Boys Home in the Basin whilst a ward of the State of Victoria.

#### **Particulars**

The intake call was conducted by a phone call from Knowmore Legal Service's lawyer to Holmes on his mobile phone between approximately 10 and 11 am on 22 November 2018.

47. On or about 10 December 2018, Knowmore Legal Service sent Holmes correspondence, being the Initial Letter of Advice (**Holmes' Initial Letter of Advice**) and the Client Agreement Letter (**Holmes' Client Agreement Letter**), dated 10 December 2018 and thereby entered into the retainer with Holmes (**Holmes Retainer**).

#### **Particulars**

The Initial Letter of Advice was constituted by a letter with the subject line "LEGAL ADVICE". The Holmes Retainer was formalised by a letter with the subject line "CLIENT AGREEMENT FOR LEGAL ASSISTANCE – KNOWMORE LEGAL SERVICE".

Both letters were signed by Sophia Blackhirst, managing lawyer.

47A. In the Holmes Initial Letter of Advice, Knowmore Legal Services:

- (a) purported to record instructions that Holmes had given during the phone conversation held on 22 November 2018 including that Holmes had already sought advice about making a civil claim and that he had instructed Knowmore Legal Services to assist him to make an application for redress;
- (b) included each of the features from the Initial Letter of Advice Template at paragraph 26C above;
- (c) provided Holmes advice about the National Redress Scheme;

- (d) provided Holmes with contact details of law firms he could see with respect to a civil claim; and
- (e) set out numerous adverse features of common law claims as set out at paragraph 26C(c) above.

47B. In the Holmes Client Agreement Letter, Knowmore Legal Services:

- (a) included each of the features from the Client Agreement Letter Template at paragraph 26D above;
- (b) did not say that it would not provide advice necessary for Holmes to understand whether to accept any redress offer in light of the alternative quantum of a common law claim he would be releasing if he accepted the redress; and
- (c) did not exclude from the scope of its retainer any obligation to consider, and where necessary advise on, risks which arose for Holmes in Knowmore Legal Service's provision of advice that Holmes may forego valuable common law legal claims without understanding the value of those claims compared to the amount he could obtain under the National Redress Scheme.

47C. At the time of the Initial letter of Advice, Knowmore Legal Services:

- (a) did not know, and did not enquire about:
  - (i) the substance of the advice which Holmes had received relating to any common law claims; or
  - (ii) the currency of any advice which Holmes had received; and
- (b) knew, or ought to have known that there was a real risk that the advice that Holmes had received about making a common law claim was outdated and failed accurately to reflect the prospects and risk of those claims (or their compromise) because it:
  - (i) was not relevant to assessing his common law claim as at the date of the Initial Letter of Advice;
  - (ii) preceded the Legislative Reforms; and

(iii) preceded the Improved Outcomes.

### Particulars

In relation to his common law claims against both the Salvation Army and the State of Victoria, Holmes had received advice from Ryan Carlisle Thomas Lawyers prior to entering into settlements with the Salvation Army and the State of Victoria at a time well prior to the Legislative Reform. The advice was rendered obsolete by the subsequent Legislative Reform and by the time he approached Knowmore Legal Service the advice was obsolete.

(1) The substance of the written advice that Holmes had received was:

- i) in relation to his common law claims against both the Salvation Army and the State of Victoria, Holmes was advised on 11 October 2007 that:
  - A) if proceedings were issued, there would be real legal and practical difficulties;
  - B) common law or civil claims for damages in claims where the injury occurred to a child must generally be brought by age 25, or by the age of 37 if the person was unaware they had suffered an injury as a result of the abuse, so in Holmes' case an extension of time would be necessary;
  - C) the State of Victoria was likely to deny liability on the basis they did not know about the events;
  - D) prima facie, an organisation should not be held liable for illegal conduct of its staff or members;
  - E) Holmes would need to show that he suffered injury as a result of the negligent conduct;
  - F) there were other factors in Holmes' life that might have resulted in psychological injury, such as his difficulties at home, so it may be difficult to prove the part of his psychological injuries that related to the abuse; and
  - G) given the cost of litigation, the delays and the risks involved, it was strongly recommended that the settlement process be explored before any decisions are made about litigating;

- ii) in relation to his common law claim against the State of Victoria Holmes was advised on 16 June 2010:
  - A) despite his earlier settlement with the Salvation Army, the State may be willing to negotiate a settlement;
  - B) the State will take into account the extent of the damage Holmes suffered before he went into care, the time he spent in care, evidence of abuse from employees of the State, evidence of systemic abuse at the institution where he was placed, and evidence that the State knew or should have known of the abuse;
  - C) the State will be entitled to argue that the claim is statute-barred and if settlement is unsuccessful and an extension of time would be required to proceed;
  - D) the State had previously defended claims such as Holmes' very vigorously; and
  - E) the reason the claim against the State could now proceed was because of the evidence that had been gathered of the State's lack of supervision at the Bayswater Boys' Home;
- iii) in relation to his common law claim against the State of Victoria Holmes was advised on 17 December 2012 that:
  - A) Holmes would need to prove that the State had been negligent;
  - B) the limitation period was a "main issue" and the grant of an extension of time was discretionary and "hit and miss";
  - C) Holmes had made a claim against the Salvation Army a number of years ago and the State would argue that he should have joined the State to that claim, this was also a "main issue";
  - D) Holmes had already received compensation for psychiatric injury from the Salvation Army and he could not get compensation for the same injury from the State; the State would say that he had been fully compensated and therefore a court would not order compensation;
  - E) the State had technical defences it would rely on and there was some weight to those;
  - F) it was not possible to know what a court would say; if the State's defences were successful the claim would not succeed in court;

- G) any settlement would be a compromise;
  - H) the State's offer was far short of compensation for what Holmes went through;
  - I) if he accepted an offer to settle, Holmes would likely not be eligible for any redress scheme arising from the proposed Royal Commission; and
  - J) recommended accepting an offer (or making a counter-offer) given the risks of litigation, cost and likely delay;
- (2) Holmes received the abovementioned advice from Ryan Carlisle Thomas Lawyers.
- (3) The advice Holmes had received failed accurately to reflect the prospects and risk of his potential common law claims because it was outdated for the reasons identified in paragraphs 47C(b)(ii)-(iii) above, and in particular because:
- i) Holmes' settlement with the Salvation Army had been reached on 18 December 2008, a point in time i) when the availability of the *Ellis* defence to that organisation was a matter well known to lawyers practising in claims relating to historic abuse, but which since at least 1 July 2018 was no longer a relevant consideration ii) limitation periods had been a crucial feature in assessing the prospects of a claim, but which had ceased to be a consideration from at least 1 June 2015 for Holmes iii) before the Improved Outcomes has occurred and become known to practitioners advising in relation to historical abuse claims;
  - ii) Holmes' settlement with the State of Victoria had been reached on 14 February 2013, a point in time i) where limitation periods had been a crucial feature in assessing the prospects of a claim, but which had ceased to be a consideration from at least 1 June 2015 for Holmes ii) before the Improved Outcomes has occurred and become known to practitioners advising in relation to historical abuse claims; and
  - iii) it could not and did not account for the Legislative Reform or Improved Outcomes in the intervening years that impacted on Holmes' prospects of success and likely quantum of any compensation.

- ~~(a) provide legal advice to Holmes about whether to apply for redress from the National Redress Scheme;~~
- ~~(b) assist Holmes to complete any application for redress under the National Redress Scheme;~~
- ~~(c) provide legal advice on Holmes' options if and when Holmes received a notice of determination from the National Redress Scheme; and~~
- ~~(d) provide legal advice to Holmes at all material times with reasonable care, skill and diligence and in accordance with what could reasonably be expected of a lawyer specialising in assisting historical child abuse survivors.~~

### **Particulars**

~~The terms of the Retainer were partly in writing and partly to be implied. To the extent they were in writing they were in the Client Agreement Letter, which was to be read in conjunction with the Initial Letter of Advice. To the extent they were implied they were implied from the fact Knowmore agreed to provide legal services to Holmes in relation to his claims for redress for the historical sexual and physical abuse he had suffered.~~

- 49. On 21 November 2019, Knowmore sent Holmes' application for redress to the National Redress Scheme.
- 50. On 7 September 2020:
  - (a) the National Redress Scheme provided an offer of redress to Holmes in which the Salvation Army ~~is~~ was responsible and liable for \$8,750.91 and DHHS ~~is~~ was responsible and liable for \$34,712.93;
  - (b) Knowmore Legal Service sent Holmes a letter informing him of the offer and his options of accepting one or all parts of offer, asking for a review or declining the offer; and
  - (c) Holmes conferred with a solicitor from Knowmore Legal Service named Andrea Pearson and a representative named 'Sean' from the National Redress Scheme; and Holmes expressed his anger and disgust with the offer.

**Particulars**

The conferral occurred by telephone. In the conferral, Holmes stated that the offer felt like “a kick in the guts”.

51. On 8 September 2020, Holmes attended a further conference with Ms Pearson during which:
- (a) Holmes stated that he had not slept well because he was thinking about the offer;
  - (b) Holmes stated that the offer was a “kick in the face after all the crap” he had been through;
  - (c) Holmes stated that he wanted to tell the National Redress Scheme that it was not good enough;
  - (d) Ms Pearson provided legal advice to the effect that:
    - (i) this was not a negotiation process;
    - (ii) if Holmes wished to see if he could obtain a better offer he could ask for a review of the offer;
    - (iii) if Holmes asked for a review, there was a low risk that the offer could be decreased but Holmes should be prepared for it to remain the same; and
    - (iv) Holmes had the option of obtaining advice from a civil lawyer in relation to a common law claim;
  - (e) Holmes stated that he was “absolutely disgusted” by the offer and “found it very insulting”; and
  - (f) Holmes instructed Knowmore Legal Service to ask for a review of the offer.

**Particulars**

The conference occurred by telephone.

52. On 29 September 2020, Knowmore Legal Service wrote to the National Redress Scheme on Holmes’ behalf seeking a review of their offer.

53. On 24 November 2020, the National Redress Scheme affirmed its offer and Knowmore Legal Service sent Holmes a letter *inter alia* confirming that Knowmore Legal Service had already received his instructions to accept the offer.
54. On 3 December 2020, Holmes:
- (a) formally accepted the National Redress Scheme offer;
  - (b) provided his bank details to Knowmore Legal Service; and
  - (c) released the Salvation Army and the State of Victoria (in relation to claims against DHSS) from all liability in relation to the abuse he suffered while in Bayswater Boys Home.
- 54A Between November 2018 and 3 December 2020, Holmes could have applied to a court to have the deeds of settlement with the Salvation Army and the State set aside.

#### Particulars

##### Limitation of Actions Act 1958 (Vic) ss 27QD, 27QA(2).

55. On 18 February 2021, Knowmore Legal Service closed its file in relation to Holmes.
56. At all times between 7 November 2018 and 3 December 2020, Knowmore:
- (a) did not provide Holmes with the Common Law Claims Advice;
  - (b) did not advise ~~him~~ Holmes of the Improved Outcomes;
  - (c) did not advise ~~him~~ Holmes of the Legislative Reform ~~Improvements~~;
  - (d) did not encourage Holmes to obtain the Common Law Claims Advice by telling Holmes he would be likely to get significantly more money if he brought a civil action against the Institutions than if he made a redress claim and explaining to him that the Common Law Claims Advice was important so that he could understand how much more money he could receive.
  - ~~(e) did not otherwise ensure that Holmes obtained the Common Law Claims Advice from another lawyer;~~

- (f) did not disclose to Mr Holmes that its funding arrangements created a financial imperative to provide clients with advice on the National Redress Scheme but not common law advice;
- (g) did not tell Mr Holmes that it would not have regard to possible common law results he may achieve in advising him on his offer of redress;
- (h) did not ~~advise~~ warn Holmes not to accept the offer until he obtained the Common Law Claims Advice because there was a real risk that he was giving up a common law damages claim worth more than what the National Redress Scheme would give him; and
- (i) directed Holmes towards accepting the offer under the National Redress Scheme and away from pursuing his common law claims against the State of Victoria and the Salvation Army, ~~including~~ by advising him as to disadvantages of a common law claim in terms of cost, difficulty, delay, limitation of actions problems, complexity and the fact a previous settlement may impact the case, but not as to the comparative advantages of a common law claim, ~~including~~ being the likely higher quantum of the claim when compared to the redress payment.

### **Particulars**

~~To properly advise Holmes of the comparative advantages of a common law claim, Knowmore Legal Service would have had to have given Holmes the Common Law Claims Advice or ensured that he obtained it from another lawyer.~~

### Particulars

In relation to sub-paragraph (d), Knowmore Legal Service should have encouraged Holmes to obtain the Common Law Claims Advice by taking steps such as:

- (1) explaining to him the possible impacts on the value of his claims (or their compromise) resulting from the Legislative Reform and Improved Outcomes;
- (2) strongly advising during the Intake Call with Holmes on 22 November 2018 that Holmes obtain the Common Law Claims Advice before deciding whether to accept a National Redress Scheme offer or signing any release of

the Salvation Army or the State of Victoria because it was likely that Holmes was giving up the right to bring a substantially greater claim at common law;

- (3) repeating its advice, whether orally or in writing, on at least the following occasions:
- i) on 10 December 2018 in one or both of:
    - A) its Initial Letter of Advice to Holmes; or
    - B) its Client Agreement Letter to Holmes;
  - ii) on 17 October 2019 during Holmes' appointment with Knowmore Legal Service to go through his National Redress Scheme Application documentation;
  - iii) on 7 September 2020:
    - A) following the telephone conversation with Sean from the National Redress Scheme;
    - B) in its Offer Letter of Advice to Holmes;
  - iv) on 8 September 2020, during Holmes' conference with Ms Pearson of Knowmore Legal Service;
  - v) between 26 November 2020, being the date of the National Redress Scheme's review outcome in respect of Holmes' application, and 3 December 2020, being the date on which Holmes signed the acceptance documents accepting the National Redress Scheme's offer;
- (4) once Knowmore Legal Service was aware of the Legislative Reform allowing Holmes's deeds of settlement with the State of Victoria and the Salvation Army to be set aside, advising Holmes of the change in circumstances and strongly recommending that he obtain Common Law Claims Advice in light of this change; and
- (5) when describing the negative implications of pursuing a civil claim, ensuring that the benefits of such a claim were also explained including how much that option could be worth.

In relation to sub-paragraph (f), Holmes refers to and repeats the particulars in relation to paragraphs 26B above and 68A below.

In relation to sub-paragraph (h):

- (1) the Plaintiff does not rely on a particular form of words that Knowmore Legal Service ought to have used to give the warning pleaded in sub- paragraph (h) however, it was imperative that Holmes was advised that he was likely

giving up his right to make a substantially greater claim at common law;

- (2) there was a real risk that Holmes was giving up a common law damages claim worth more than the National Redress Scheme would give him because:
- i) as a result of the sexual abuse he endured, he has suffered injury, loss and damage as particularised at paragraph 37 above;
  - ii) the Legislative Reform in Victoria, as particularised at paragraph 12 above, meant that significant barriers to his potential civil claims against the Salvation Army and the State of Victoria had been removed, in particular:
    - A) there was no longer any limitation period applicable to his claims;
    - B) there was no longer any ability for the Salvation Army to rely on the *Ellis* defence;
    - C) the State of Victoria and Salvation Army may not rely on the prior deeds of settlement; and
    - D) Holmes had the right to apply to set aside the deeds of settlement if the deeds were relied upon.
  - iii) in light of the Improved Outcomes since Holmes' original settlements with the Salvation Army and the State of Victoria (as pleaded at paragraphs 42 and 44 above), the quantum of any compensation payment for a claim commenced by Holmes in or after 2018 would likely be higher than it had been at the time of his original settlements with the Salvation Army and the State of Victoria; and
  - iv) the \$150,000 cap on National Redress Scheme payments (as pleaded at paragraph 5(a) above) meant that any payment Holmes might receive from the National Redress Scheme would necessarily be less than any of the compensation amounts awarded in the cases particularised at (1)-(5) of paragraph 13 above, each of which was decided before he accepted the National Redress Scheme offer on 3 December 2020.

57. Holmes accepted the offer for redress under the National Redress Scheme in circumstances where he was unaware:

- (a) of the Improved Outcomes;

- (b) of his prospects of succeeding if he brought a common law claim for his personal injury;
- (c) of the quantum of compensation he could receive through such a common law claim, including:
  - (i) that the quantum of a common law claim would be likely to significantly exceed the value of his offer for redress; and
  - (ii) that quantum significantly exceeding the value of his offer for redress had recently been obtained in other cases;
- (d) that, by reason of the Legislative Reform, since he had previously entered into deeds of settlement with the Salvation Army and the State of Victoria:
  - (i) there was no longer any limitation period applicable to his claims;
  - (ii) there was no longer any ability for the Salvation Army to rely on the *Ellis Defence*;
  - (iii) the State of Victoria and Salvation Army may not rely on the prior deeds of settlement; and
  - (iv) he had the right to apply to set aside the deeds of settlement if the deeds were relied upon.

### **Knowmore and Holmes Retainer**

57A. ~~In the circumstances alleged at paragraphs 46, 47 and 47B above, Knowmore Legal Services entered into a retainer with Holmes for the provision of legal services, pursuant to which Knowmore Legal Service was to provide free legal advice to Holmes in relation to the application for and acceptance of redress under the National Redress Scheme (Holmes Retainer).~~

57B. There were terms of the Holmes Retainer, including that Knowmore Legal Service was required to provide him with legal advice at all material times with reasonable care, skill and diligence including in relation to whether he should accept a redress payment offer relative to what he could recover in a common law claim.

### Particulars

Insofar as the terms were was express, they were contained in the Holmes' Initial Letter of Advice and Holmes' Client Agreement Letter and Holmes refers specifically to and relies upon paragraphs 26D(h) and 47B(a) above.

Insofar as the term to exercise care, skill and diligence was implied, it was implied by law and by fact. Insofar as the term was implied by fact it was implied by reason that Knowmore Legal Services agreed to provide legal services to Holmes in relation to his claims for redress for the historical child abuse he claimed to have suffered.

#### **Knowmore's duty of care to Holmes**

58. ~~At all material times, Knowmore Legal Service was acting as Holmes' lawyer in relation to the serious matter of obtaining payments for historical child sexual abuse suffered by Holmes in circumstances where:~~

At all material times:

- (a) from 1 July 2018 to 3 December 2020, Knowmore Legal Service held itself out as a legal service specialised in, or ~~purported~~purporting to specialised in, providing legal advice to survivors of historic child abuse;
- (b) from 1 July 2018 to 3 December 2020, Knowmore Legal Service provided legal services under the auspices of a government funded community legal service;
- (c) from 22 November 2018 to 3 December 2020, Knowmore Legal Service knew, or ought reasonably to have known, as was the case, that Holmes was traumatised by having suffered child sexual and physical abuse;
- (d) from 22 November 2018 to 3 December 2020, Knowmore Legal Service was aware of or ought to have been aware of, evidence that Holmes had suffered dysthymic disorder, alcohol use disorder and features of anti-social personality disorder in connection with the abuse;
- (e) from 22 November 2018 to 3 December 2020, Knowmore Legal Service knew that Holmes was not himself legally qualified or highly educated;

- (f) from 22 November 2018 to 3 December 2020, Knowmore Legal Service knew or ought to have realised that Holmes trusted and relied on Knowmore Legal Service to provide him with, ~~or ensure that he obtained, comprehensive~~ advice about the consequences of accepting an offer from the National Redress Scheme including what he was giving up if he released a potential common law defendant ~~the likely value of the chance to bring a common law claim against the Salvation Army and/or the State of Victoria;~~
- (g) in the period 22 November 2018 to 3 December 2020, Knowmore Legal Service realised or ought to have realised that Holmes was vulnerable to giving up valuable legal claims without due regard to his options if they were not clearly explained to him, including by reference to the prospects of success and likely quantum he could recover by pursuing common law claims against the Salvation Army and the State of Victoria;
- (h) ~~Holmes was vulnerable to losing valuable common law rights if he was not advised about the prospects of success and likely quantum of the claims, before he released one or more of the Institutions from those common law claims;~~
- (i) ~~Holmes was vulnerable to the risk of not seeking the Common Law Claims Advice from any lawyer unless Knowmore Legal Service:~~
- ~~(i) encouraged him to do so; and~~
  - ~~(ii) ensured that its lawyers advised clients such as Holmes against accepting any offer of redress until after receiving Common Law Claims Advice.~~
- (j) ~~Knowmore Legal Service was able to take precautions by:~~
- ~~(i) ensuring that its lawyers were able to assess, quantify and advise upon common law claims in relation to loss and damage caused by child sex abuse;~~
  - ~~(ii) ensuring that its lawyers provided the Common Law Claim Advice;~~

~~(iii)encouraging its clients to obtain the Common Law Claims Advice;  
and~~

~~(iv)ensuring that its lawyers advised all clients against accepting any  
offer of redress until the clients had obtained the Common Law  
Claims Advice.~~

### Particulars

In relation to sub-paragraph (a), the Plaintiff refers to and repeats  
the particulars subjoined to paragraph 25 above.

In relation to sub-paragraph (d), evidence that Holmes had  
suffered dysthymic disorder, alcohol use disorder and features of  
anti-social personality disorder in connection with the abuse was  
provided by a report dated 1 August 2008 from psychologist  
Joan Callahan which had been obtained by Holmes' former  
solicitors, Ryan Carlisle Thomas Lawyers.

58A. On 21 May 2019, Knowmore Legal Service requested by letter certain records from  
Ryan Carlisle Thomas Lawyers including medicolegal reports, attaching a signed  
authority they had received from Holmes authorising them to obtain information from,  
inter alia, his "previous civil litigation lawyer or other lawyer who ha[d] assisted [him]  
in relation to the abuse [he] experienced as a child".

59. In the circumstances, Knowmore Legal Service owed Holmes a duty of care to act with  
reasonable care, skill and diligence in the:

- (a) provision of legal services, including to:
  - (i) advise him on appurtenant legal risks which arose in the course of the  
Holmes Retainer; and
  - (ii) take reasonable steps to ensure that he would understand fully the legal  
and practical consequences of the instructions he was giving and advice  
he was provided;
- (b) design and maintenance of its practices, procedures, template documents; and
- (c) training of the Staff through whom it provided the legal services referred to in  
the sub-paragraph above.

- 59B. The minimum standard of care skill and diligence to be exercised by Knowmore Legal Services in discharging its duty of care to Holmes was that which ~~and in accordance with what~~ could reasonably be expected of a lawyer specialising in assisting historical child abuse survivors.
- 59C. Further, and in the alternative, at all material times Holmes faced a risk of suffering harm by foregoing valuable common law legal claims without understanding the value of those claims compared to the amount of any redress offered under the National Redress Scheme (**Risk of Harm**).
- 59D. Knowmore Legal Services knew, ~~or ought to have known~~, of the Risk of Harm given that:
- (a) it delivered legal advice through its Staff (as alleged at paragraph 17 above) so that the adequacy of any advice provided to Holmes depended on the policies and procedures which Staff applied and on Staff training remaining current;
  - (b) it adopted the Knowmore System, including the use of the Initial Letter of Advice Template and Client Agreement Letter Template (as alleged at paragraphs 26C and 26D above);
  - (c) it knew Holmes had characteristics of the kind alleged in sub-paragraph 58(c) to 58(g) above;
  - (d) it had a practice of recommending to clients, including Holmes, that they obtain advice from another solicitor about legal recourse by way of civil claims for alleged injuries the same as those to which its own advice related, in circumstances where ~~it ought reasonably to have known they knew~~ that the advice of ~~those~~ other ~~such~~ solicitors was relevant to the practical implications of the advice it was providing regarding acceptance of an amount offered under the National Redress Scheme;
  - (e) a reasonably competent law practice specialising in the area in which Knowmore Legal Service purported to specialise in the period from 22 November 2018 to 3 December 2020 would have known of the Improved Outcomes and Legislative ~~Reform~~ Improvements ~~and that a civil claim for~~

historic sex child abuse was likely to result in a significantly higher amount of compensation than a payment under the National Redress Scheme.

### Particulars

Wrongs Act 1958 (Vic), s 48(1)(a).

59E. The Risk of Harm was not insignificant because the probability of the risk eventuating:

- (a) arose from the characteristics of clients which Knowmore Legal Services specialised in advising, many of which characteristics Holmes shared;

### Particulars

Wrongs Act 1958 (Vic), s 48(1)(b).

In respect of:

- (1) the characteristics of clients which Knowmore Legal Service specialised in advising Holmes refers to paragraphs 69 and 70 below; and
- (2) the characteristics shared by Holmes, he refers to paragraph 69 and subparagraphs 70(a), (b), (c) and (d).
- (b) was increased by use of the Knowmore System and in particular:
- (i) the features of the Initial Letter of Advice Template alleged at paragraph 26C above; and

### Particulars

By reason that the Initial Letter of Advice Template, and the Holmes' Initial Letter of Advice, was styled "legal advice", described the three options it discussed as "compensation options", set out generic advice raising the adverse features of common law claims set out in the particulars sub-joined to paragraph 26C above, did not address ~~recent changes in the law, including~~ the Improved Outcomes or all elements of the Legislative Reforms and did not expressly state that Knowmore Legal Services in providing advice on any offer of ~~R~~redress would not take into account the value of any alternative form of compensation available to Holmes the Risk of Harm was increased by increasing the likelihood that (i) Holmes would be deterred from seeking Common Law Claims Advice ~~common law advice~~ on the basis that any increased value was unlikely to be justified given the various difficulties of which ~~he~~ they had

been advised (ii) Holmes would expect that any future advice provided by Knowmore Legal Service at the time he received an offer would be made by reference to the alternative forms of compensation which might be available.

Further, by reason of the practice adopted in paragraph 59D(d) above, the Risk of Harm was increased by increasing the likelihood that Staff would not have regard, or adequately have regard, to advice a client had received from other solicitors on common law options, when such Staff were providing their advice.

Further particulars may be provided before trial.

- (ii) the features of the Client Agreement Letter Template alleged at paragraph 26D above.

### **Particulars**

By reason that the Client Agreement Letter Template, and the Holmes' Client Agreement Letter included default text which foreshadowed the provision of advice, stated that it was to be read in conjunction with the Holmes Initial Letter of Advice, stated that Knowmore Legal Services would provide Holmes with advice concerning any monetary payment he may receive under the National Redress Scheme, and contained a section titled "Communication" recording, that as soon as it reasonably could, Knowmore Legal Services would tell Holmes about anything that happened which may have affected his position, there was an increased risk that (i) Holmes would be deterred from seeking Common Law Claims Advice common law advice due to the difficulties involved and (ii) Holmes would expect that the advice concerning monetary payment would, in due course, have regard to alternatives to which they had been advised they may be entitled.

By reason that the Client Agreement Letter Template and the Holmes Client Agreement Letter contained default text recording that Holmes had given instructions that he did not wish to obtain independent advice from specialist personal injury lawyer, or that he had already obtained such advice, there was an increased risk that the Staff who advised Holmes would incorrectly form the view that they were not required to consider the impact of advice on common law claims (including the

currency of any advice) in advising on the acceptance of any offer of redress.

Further particulars may be provided before trial.

59F. In the premises, Knowmore Legal Services, as a law practice of the kind alleged in paragraph 58-59E above, was obliged to have in place systems, processes procedures and training to reasonably ensure that:

- (a) when providing partial preliminary advice in a standard form of the kind contained in the Holmes Initial Letter of Advice, that such advice was, or would in due course be complete and balanced;
- (b) when dealing with a client such as Holmes who it knew or believed had obtained advice (as in paragraph 47A(f) above) from another solicitor about alternative legal recourse for the same injuries to which its own advice related, and that the other solicitor's advice was relevant to the practical implications of the advice it was providing regarding acceptance of an offer under the National Redress Scheme, the Staff advising Holmes:
  - (i) would attempt to enquire about:
    - (i) the substance of the advice which Holmes was recorded as having obtained;
    - (ii) whether that advice was current having regard to recent changes in the law including the Legislative Reform and the Improved Outcomes;
  - (ii) would advise Holmes:
    - (i) where no advice or no current advice had been received, about the importance of obtaining such advice and the risks of failing to do so; or
    - (ii) alternatively, where current advice had been received, the benefits and risks of any offer of redress by reference to the

comparative position which a group member may obtain noting the extent of any advice in the preceding sub-paragraph; or

(iii) alternatively, advise Holmes in a manner that met the duty alleged in paragraph 59(a)(ii) above, that the advice which Knowmore Legal Services would provide regarding redress had no regard to any alternative recourse ~~they~~he may obtain;

(c) clients such as Holmes were warned prior to accepting any offer of redress of the possible value of the release which they were giving in accepting a redress sum having regard to the current state of the law, including the Improved Outcomes;

(d) that any interest which Knowmore Legal Services may have in group members pursuing one option over other such options was clearly disclosed and that fully informed consent was obtained from Holmes.

60. A legal practice specialising in assisting historical child abuse survivors and acting with reasonable care, skill and diligence when advising its clients in relation to an offer of redress under the National Redress Scheme:

(aa) would have had in place systems, processes procedures and training to reasonably ensure that advice provided by Staff was provided with due care, skill and diligence, including having systems of the kind in paragraph 59F above;

(a) would provide, or attempt to provide as far as possible, the Common Law Claims Advice to its clients, or enquire whether Mr Holmes had obtained the Common Law Claims Advice from another lawyer for its clients and if so, the currency of that advice;

(b) would encourage its clients to obtain the Common Law Claims Advice by explaining to them that they should not by accepting a redress offer give up their civil claim, which was probably worth more than a redress payment from the National Redress Scheme unless and until they had received Common Law Claims Advice; ~~would advise encourage its clients of the importance of to~~

~~obtaining Common Law Claims Advice in coming to any fully informed view regarding accepting an offer from the National Redress Scheme;~~

- (c) ~~would warn clients that by accepting a redress offer and releasing the Institutions they were giving up a civil claim that was probably worth more than they could get from the National Redress Scheme—would warn clients of the legal and practice risks of accepting any offer of redress unless and until the client had obtained the Common Law Claims Advice having regard to the current state of the law, including Legislative Reforms and the Improved Outcomes, in circumstances where the legal practice was advising the client in relation to an offer of redress made under the National Redress Scheme; and~~
- (d) ~~would have in place systems, processes procedures and training to address the increased risk which it had created that would not direct clients would not obtain advice on away from or making pursue a common law claim—and towards accepting a National Redress Scheme payment including by advising as to the disadvantages of bringing a common law claims in terms of cost, inconvenience, risk and delay, but not advising as to the advantages of a common law claim in terms of the higher quantum that could be recovered compared to a redress payment.~~
- (e) ~~would not regard advice received about civil claims prior to the Legislative Reforms and Improved Outcomes as being adequate to enable Holmes to assess whether he should accept a redress offer; and~~
- (f) ~~would know the Improved Outcomes and the Legislative Reforms.~~

### **Breach of duty of care to Holmes**

61. Knowmore Legal Service breached its duty of care to Holmes by failing to act with reasonable care, skill and diligence and in accordance with what could reasonably be

expected of a lawyer specialising in assisting historical child abuse survivors, including by:

- (aa) failing to have in place systems, processes procedures and training to reasonably ensure that advice provided by Staff was provided with due care, skill and diligence, including having systems of the kind in paragraph 59F above;
- (a) failing to encourage Holmes to obtain the Common Law Claims Advice by explaining to him that he would probably get more from a common law claim because of the Legislative Reform and Improved Outcomes than he could get from the National Redress Scheme; failing to provide, or attempting to provide as far as possible, the Common Law Claims Advice to Holmes or enquire whether Mr Homes had obtained the Common Law Claims Advice from another lawyer for Holmes, and if so, the currency of that advice in circumstances where Knowmore Legal Service advised Holmes in relation to an offer for redress made under the National Redress Scheme;
- (b) failing to advise ~~encourage~~ Holmes of the importance of ~~to~~ obtaining the Common Law Claims Advice in coming to any fully informed view before he accepted an offer of redress made under the National Redress Scheme;
- (c) failing to advise warn Holmes that by ~~of the legal and practical risks of~~ against accepting the offer for redress made under the National Redress Scheme he was giving up a civil claim that was probably worth more than the offer for redress he had received under the National Redress Scheme unless and until he had obtained the Common Law Claims Advice having regard to the current state of the law, including Legislative Reforms and the Improved Outcomes; ~~and~~
- (d) have in place systems, processes procedures and training to address the increased risk which it had created that Holmes would not obtain advice on or pursue common law claims ~~him away from common law claims and towards a redress payment including by advising as to the disadvantages of taking a common law claims in terms of cost, inconvenience, risk and delay, but not advising as to the advantages of a common law claim in terms of the higher quantum that could be recovered;~~

- (e) regarding Holmes' receipt of common law advice about a common law claim prior to the Legislative Reforms and Improved Outcomes as being sufficient to assume that the Plaintiff could make an informed choice about whether to accept a redress offer instead of pursuing a common law claim; and
- (f) not telling Holmes that the amount he would be able to obtain in a common law claim was likely to be higher than under the Redress Scheme.

### **Holmes' loss and damage**

62. ~~If Holmes had obtained the Common Law Claims Advice either from Knowmore Legal Service or another lawyer and/or been advised of the Improved Outcomes, then Holmes~~ If Knowmore Legal Service had had in place systems of the kind in paragraph 59F above, informed Holmes of the Improved Outcomes or Legislative Reform, advised him that he would be likely to receive more under a common law claim than under the Redress Scheme or warned him that he should receive advice on his common law claims before accepting the redress payment and releasing the Salvation Army and State of Victoria, then Holmes:

- (a) would not have accepted the offer for redress and released the Salvation Army and the State of Victoria;
- (b) would have applied to the Court to have his deeds with the State of Victoria and the Salvation Army set aside or would have found that the State of Victoria and Salvation Army did not rely on the prior deeds of settlement; and
- (c) would have issued common law proceedings against one or both of the State of Victoria and the Salvation Army seeking damages for common law claims; and
- (d) would have either:
  - (i) obtained an award of damages for such claim; or
  - (ii) compromised that claim.

63. Because Holmes accepted the offer for redress and released the State of Victoria and the Salvation Army, Holmes cannot now seek damages against the State of Victoria or the Salvation Army.

### Particulars

#### Limitation of Actions Act 1958 (Vic) s27QA(3)

64. In the premises, Holmes has lost the chance to:
- (a) set aside his deeds against the State of Victoria and/or the Salvation Army or have the deeds not relied on by those institutions; and
  - (b) obtain damages at common law from the State of Victoria and/or the Salvation Army that exceeded the redress he obtained through the National Redress Scheme.
65. It was reasonably foreseeable that if Knowmore Legal Service breached its duty of care Holmes would lose the chance to:
- (a) set aside his deeds against the State of Victoria and/or the Salvation Army or have those institutions not rely on the deeds; and
  - (b) obtain damages at common law from the State of Victoria and/or the Salvation Army that exceeded the redress he obtained through the National Redress Scheme.

#### **Breach of Holmes Retainer**

66. Knowmore Legal Service breached the Holmes Retainer by failing to act with reasonable care, skill and diligence and in accordance with what could reasonably be expected of a lawyer specialising in assisting historical child abuse survivors, including by:
- (a) failing to provide the Common Law Claims Advice to Holmes, or obtain the Common Law Claims Advice from another lawyer for Holmes, in circumstances where Knowmore Legal Service advised Holmes in relation to an offer for redress made under the National Redress Scheme;
  - (b) failing to encourage Holmes to obtain the Common Law Claims Advice by explaining to him that he would probably get more money from a common law claim resulting from the Legislative Reform and Improved Outcomes;

- (c) failing to ~~advise~~ warn Holmes against accepting the offer for redress made under the National Redress Scheme unless and until he had obtained the Common Law Claims Advice; and
- (d) directing him away from common law claims and towards a redress payment including by advising as to the disadvantages of taking a common law claims in terms of cost, difficulty, delay, limitation of actions problems, complexity and the fact a previous settlement may impact the case ~~inconvenience, risk and delay~~, but not advising as to the advantages of a common law claim in terms of the higher quantum that could be recovered compared with a redress payment; and
- (e) not telling him he would be likely to receive more money via a common law claim than by making a redress claim.

67. If Knowmore Legal Service had not breached the Holmes Retainer, Holmes:

- (a) would have learned of the Improved Outcomes and Legislative Reform before accepting the redress payment;
- (b) would have obtained the Common Law Claims Advice;
- (c) would have rejected the redress offer and would not have released the State of Victoria and/or the Salvation Army;
- (d) would have had his deeds against the State of Victoria and/or the Salvation Army set aside or not relied on by those institutions; and
- (e) would have brought action against the State of Victoria and Salvation Army and received damages at common law or a compromised sum, from the State of Victoria and/or the Salvation Army that exceeded the redress he obtained through the National Redress Scheme.

68. By reason of Knowmore Legal Service's breach of the Holmes Retainer, Holmes has suffered loss and damage, being the loss of the opportunity to obtain damages at common law from the State of Victoria and/or the Salvation Army that exceeded the redress he obtained through the National Redress Scheme.

## **Breach of Knowmore Legal Service's fiduciary obligations to Mr Holmes**

68A. Knowmore Legal Service's funding arrangements created a financial imperative for Knowmore Legal Service to provide clients with assistance with their claims to the National Redress Scheme rather than to provide clients with [Common Law Claims Advice common law advice](#).

### **Particulars**

- (1) Knowmore Legal Service is and was funded by the Attorney-General's Department under a closed non-competitive grant to deliver services under the *Justice Services Program – Legal support services for survivors engaging with the Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse* from 1 July 2021 to 30 June 2026 for which the Australian Government is providing up to \$36.633 million over 5 years. The purpose of the grant is for Knowmore to provide a free legal advice service to assist survivors of institutional child sexual abuse to access redress under the National Redress Scheme.
- (2) Further particulars of the funding of the defendants, including in the period before 2021, will be provided after discovery.

68B. Knowmore Legal Service operated on the premise that it was not funded to provide [Common Law Claims Advice common law advice](#) to its clients about institutional child sex abuse claims.

68C. There was a conflict between Knowmore Legal Service's business model which was to receive funding to provide clients with advice only about the National Redress Scheme, and Mr Holmes' need to obtain the advice he needed, which included advice on the comparative quantum of a common law claim when considering whether to take the redress payment and release potential common law defendants.

### **Particulars**

It was in Knowmore Legal Service's interest for its funding to be renewed by meeting its performance metrics of providing advice regarding claims to redress. It was in Holmes's interests to obtain advice regarding the comparative benefits of mutually exclusive claims such as common law claims.

68D. The relationship between Knowmore Legal Service as lawyer and Mr Holmes as client in this case gave rise to fiduciary obligations which required Knowmore Legal Service to:

- (a) provide undivided loyalty to Mr Holmes;
- (b) avoid conflicts between Knowmore Legal Service and Mr Holmes;
- (c) disclose to Mr Holmes that Knowmore Legal Service ~~operated on the premise that it was not funded to provide common law advice to its clients about institutional child sex abuse claims even where such advice was needed in order to make a well-informed decision about whether to accept a redress claim payment~~ was paid in relation to when clients made applications to the National Redress Scheme and so was disincentivised to assist clients to pursue common law claims.

68E. In breach of fiduciary obligations to Mr Holmes, Knowmore Legal Service:

- (a) did not disclose any conflict, or possible conflict, between the funding arrangements of Knowmore Legal Service and the interests of Mr Holmes in receiving common law advice;
- (b) did not disclose to Mr Holmes that Knowmore Legal Service had an implicit financial imperative to assist clients to make a National Redress Scheme application rather than pursue common law rights by reason of its funding arrangements; and
- (c) did not inform Mr Holmes that it would not advise him about common law claims even where such advice was needed in order to make a well-informed decision about whether to accept a redress claim payment.

68F. If Knowmore Legal Service had not breached its fiduciary obligations, Mr Holmes:

- (a) would have obtained the Common Law ~~Claims~~ Advice;
- (b) would not have taken the redress payment and thereby released the Salvation Army and the State of Victoria; and

- (c) would have obtained substantial common law damages from the Salvation Army and/or the State of Victoria.

68G. By reason of the breaches of fiduciary obligations, Mr Holmes has suffered loss in the form of substantial common law damages from the Salvation Army and/or the State of Victoria.

### Particulars

Substantial common law damages relevantly means damages which were materially higher than the amount which was available from the offer of redress.

68H. In the premises of 68A to 68G, Mr Holmes is entitled to equitable compensation in the amount of the quantum of the substantial common law claim he is now unable to pursue against the State of Victoria and the Salvation Army.

## **GROUP MEMBERS' CLAIMS**

### **Knowmore's clients**

69. At all material times, clients to whom Knowmore Legal Service provided legal services through the Knowmore System ~~had at least the following characteristics~~ were people who alleged that:
- (a) they had suffered child abuse in an institutional setting; and
  - (b) they had suffered a personal injury as a result of the child abuse.
70. Further to the preceding paragraph, clients to whom Knowmore Legal Service provided legal services through the Knowmore System had, or were likely to have, one or more of the following characteristics:
- (a) they had suffered complex trauma as a result of their sexual abuse;
  - (b) they were distrustful of institutions, including the legal system;
  - (c) they suffered mental health conditions and personality disorders;
  - (d) they were affected by substance abuse and addiction issues; and

- (e) they were of Aboriginal and/or Torres Strait Islander descent.

### **Knowmore's Group Member Retainers**

71. From 1 July 2018 and onwards, Knowmore Legal Service entered into a retainer with each group member for the provision of legal services, pursuant to which Knowmore Legal Service provided legal advice in relation to applications for redress under the National Redress Scheme (**Group Member Retainer**).

#### **Particulars**

The terms of each Group Member Retainer are partly in writing and partly to be implied.

Insofar as the terms of each Group Member Retainer were in writing they are contained in:

- (1) the Client Agreement Letter provided to each group member; and
- (2) the Initial Letter of Advice provided to each group member.

Insofar as the terms were implied, the Plaintiff refers to and repeats the second paragraph of the particulars at paragraph 72 below.

While the Group Member retainers may have varied from time to time, the terms of the Group Member Retainer were substantially the same as those of the Holmes Retainer.

Further particulars may be provided following discovery and interrogatories.

72. Under the terms of each Group Member Retainer, Knowmore Legal Service was required to provide legal advice to the group member at all material times with reasonable care, skill and diligence including in relation to whether they should accept a redress payment offer relative to what they could recover in a common law claim.

#### **Particulars**

Insofar as the term was express, ~~the~~ Holmes refers to and relies upon paragraphs 26D(h) above.

Insofar as the term was implied, it was implied by law and by fact. Insofar as the term was implied by fact, it was implied by reason that Knowmore Legal Services agreed to provide legal

services to group members in relation to their claims for redress for the historical child abuse they claimed to have suffered.

### **Knowmore's duty of care to group members**

73. ~~At all material times, Knowmore Legal Service acted as group members' lawyer in relation to the serious matter of obtaining payments for historical child abuse suffered by group members in circumstances where~~

At all material times:

- (a) Knowmore Legal Service held itself out as a legal service specialised in, or purporting to specialise in, providing legal advice to survivors of historic child abuse;

### **Particulars**

Holmes refers to and repeats the particulars subjoined to paragraph 25 above.

- (b) Knowmore Legal Service provided legal services under the auspices of a government funded community legal service;
- (c) Knowmore Legal Service knew, or ought reasonably to have known, as was the case, that clients it advised, including group members, were or were likely to:
- (i) have one or more of the characteristics alleged at paragraph 70 above;
  - (ii) be traumatised by having suffered child sexual and physical abuse;
  - (iii) suffer from psychiatric illnesses as a result of trauma of the kind alleged in the paragraph above;
  - (iv) ~~to the extent that it was disclosed to Knowmore Legal Service that group members had~~ have suffered injuries, ~~Knowmore Legal Service was aware of that fact;~~
  - (v) ~~Knowmore Legal Service knew that group members were not, or were unlikely to not be,~~ legally qualified or and to be from a wide variety of educational backgrounds and have varying degrees of English literacy highly educated;

- (vi) ~~Knowmore Legal Service knew that group members were, or were at be~~  
at heightened risk of being socially isolated;
- (vii) have impaired ability to make complex decisions about their legal interests, by reason of the matters in (i) to (vi) above;
- (viii) ~~Knowmore Legal Service knew or ought to have realised that group members trusted and rely\_ied on Knowmore Legal Service to provide them with comprehensive advice about the monetary amounts to which they may be entitled as a result of any alleged sexual abuse and to evaluate those options in relation to one another consequences of accepting an offer from the National Redress Scheme including whether the likely value of a common law claim against the Institutions was higher than what they could obtain from the National Redress Scheme;~~
- (ix) ~~Knowmore Legal Service realised or ought to have realised that group members were be vulnerable to giving up valuable legal claims without due regard to their options if those options were not clearly explained to them, including by reference to the prospects of success and likely quantum they could recover by pursuing common law claims against the Institutions;~~

### Particulars

That Knowmore Legal Service had or ought to have had knowledge of each of the matters above is to be inferred from the nature of the work in which it held itself out as specialising.

- (d) [Not used]
- (e) [Not used]
- (f) [Not used]
- (g) [Not used]
- (h) [Not used]
- (i) ~~Knowmore Legal Service was able to take precautions by:~~

- ~~(i) — ensuring that its lawyers were able to assess, quantify and advise upon common law claims in relation to loss and damage caused by child sex abuse;~~
- ~~(ii) — ensuring that its lawyers provided the Common Law Claims Advice;~~
- ~~(iii) — encouraging its clients to obtain the Common Law Claims Advice; and~~
- ~~(iv) — ensuring that its lawyers advised all clients against accepting any offer of redress until the clients had obtained the Common Law Claims Advice.~~

74. At all material times from 1 July 2018, Knowmore Legal Service owed each group member a duty of care to act with reasonable care, skill and diligence in the:

- (a) provision of legal services to group members, including to:
  - (i) advise clients on appurtenant legal risks which arose in the course of the retainer between Knowmore Legal Service and the client; and
  - (ii) take reasonable steps to ensure that group members would understand fully the legal and practical consequences of the instructions they were giving and advice provided;
- (b) design and maintenance of Knowmore Legal Service’s practices, procedures, template documents; and
- (c) in the training of Staff through whom Knowmore Legal Services provided the legal services referred to in the sub-paragraph 74(a) above.

74A. The minimum standard of care skill and diligence to be exercised by Knowmore Legal Services in discharging its duty of care to group members was that which and in accordance with what could reasonably be expected of a lawyer law practice which:

- (a) held itself out in the manner at sub-paragraph 73(a) above, namely one specialising in assisting historical child abuse survivors to obtain legal advice compensation; and

- (b) provided specialised services to clients which had, or were likely to have, characteristics of the kind alleged in sub-paragraph 73(c) above.

### **Particulars**

~~Holmes refers to paragraph 60 above.~~

74B. Further, and in the alternative, at all material times there was a risk that prospective clients of the kind Knowmore Legal Services advised (including the group members) would suffer the Risk of Harm defined in paragraph 59C above.

74C. Knowmore Legal Services knew of the Risk of Harm given that:

- (a) it delivered legal advice through its Staff so that the adequacy of any advice provided depended on the policies and procedures which Knowmore Legal Services applied and on Staff training remaining current;
- (b) it adopted the Knowmore System, including the use of the Initial Letter of Advice Template and Client Agreement Letter template (as alleged at paragraphs 26C and 26D above);
- (c) it knew or ought to have known that its clients had, or were likely to be vulnerable by having, characteristics of the kind alleged in sub-paragraph 73(c) above;
- (d) it had a practice of recommending to clients, including group members, that they obtain advice from another solicitor about legal recourse by way of civil claims for alleged injuries the same as those to which its own advice related, in circumstances where it ought reasonably to have known ~~they knew~~ that the advice of ~~those~~ other ~~such~~ solicitors was relevant to the practical implications of the advice it was providing regarding acceptance of an amount offered under the National Redress Scheme;
- (e) a reasonably competent law practice specialising in the area in which Knowmore Legal Service purported to specialise in the period from 1 July 2018 to the present would have known that victims of historic child sex abuse seeking money for their injury and loss were likely to receive significantly more money from a common law claim than from the National Redress Scheme because of

the Improved Outcomes and Legislative Reform Improvements compared with the capped amount of redress.

### Particulars

As to paragraph 74C(a), ‘current’ means up to date with the state of the law at any given point in time.

74D. The Risk of Harm was not insignificant because the probability of the risk eventuating:

- (a) arose from the characteristics of clients and likely clients which Knowmore Legal Services specialised in advising;
- (b) was increased by use of the Knowmore System and in particular:
  - (i) the features of the Initial Letter of Advice Template alleged at paragraph 26C above; and

### Particulars

By reason that the Initial Letter of Advice Template was (or was likely to) be styled “legal advice”, described the three options it discussed as “compensation options”, set out generic advice raising the adverse features of common law claims set out in the particulars sub-joined to paragraph 26C above, did not address recent changes in the law, including the Improved Outcomes and Legislative Reforms and did not state or otherwise imply that Knowmore Legal Services in providing advice on any offer of Redress would not take into account the value of any alternative form of compensation available to group members’ the Risk of Harm was increased by increasing the likelihood that (i) group members would be deterred from seeking Common Law Claims Advice ~~common law advice~~ on the basis that any increased value was unlikely to be justified given the various difficulties of which they had been advised (ii) members would expect that any future advice provided at the time they received an offer would be made by reference to the alternative forms of compensation they had been advised were or might be available

Further, by reason of the practice adopted in paragraph 73C(d) above, the Risk of Harm was increased by increasing the likelihood that Staff would not have regard, or adequately have regard, to advice a client had received from other solicitors

regarding common law options, when such Staff were providing their advice.

Further particulars may be provided before trial.

- (ii) the features of the Client Agreement Letter Template.

### **Particulars**

By reason that the Client Agreement Letter Template included default text which foreshadowed the provision of advice, stated that it was to be read in conjunction with the Initial Letter of Advice, stated that Knowmore Legal Services would provide the client with advice concerning any monetary payment they may receive under the National Redress Scheme, and contained a section titled “Communication” recording, or to the effect, that as soon as it reasonably could, Knowmore Legal Services would tell the client about anything that happened which may have affected their position, there was an increased risk that group members would expect that the advice concerning monetary payment would, in due course, have regard to alternatives to which they had been advised they may be entitled.

By reason that the Client Agreement Letter Template contained, default text recording that the client had given instructions that they did not wish to obtain independent advice from specialist personal injury lawyers, or that they had already obtained such advice, there was an increased risk that Staff would incorrectly form the view that they were not required to consider the alternatives to which a group member may be entitled in advising on the acceptance of an offer of redress, including the completeness and currency of any advice previously obtained.

Further particulars may be provided before trial.

74E. In the premises, Knowmore Legal Services was obliged to have in place systems, processes, procedures and training of Staff to reasonably ensure that:

- (a) where through the Knowmore System, it provided partial preliminary advice in a standard form of the kind contained in the Initial Letter of Advice, that such advice was, or would in due course be complete and balanced, including by provision of advice about;
- (i) Legislative Reform; and

- (ii) Improved Outcomes; and
  - (iii) the fact that by accepting a redress payment the client would be giving up a civil claim that was probably worth significantly more money than the redress payment;
- (b) where it knew that group members had obtained or may be obtaining advice from another solicitor about alternative legal recourse for alleged injuries the same as those to which its own advice related, and that the advice of those other solicitors was relevant to the practical implications of the advice it was providing regarding acceptance of an amount offered under the National Redress Scheme, the Staff by which it delivered its advice:
- (iii) would attempt to enquire about:
    - (i) whether clients had in fact obtained legal advice on common law claims;
    - (ii) the substance of that advice;
    - (iii) whether that advice was current having regard to recent changes in the law including the Legislative Reform and the Improved Outcomes;
  - (iv) would advise group members about:
    - (i) where no advice or no current advice had been received, the importance of obtaining such advice and the risks of failing to do so; or
    - (ii) alternatively, where current advice had been received, the benefits and risks of any offer of redress by reference to the comparative position which a group member may obtain noting the extent of any advice in the preceding sub-paragraph; or
  - (v) alternatively, advised clients in a manner that met the duty alleged in paragraph 74(a)(ii) above, that the advice which Knowmore Legal

Services would provide regarding redress had no regard to any alternative recourse they may obtain;

- (c) clients were warned prior to accepting any offer of redress, in a manner that met the duty alleged in paragraph 74(a)(ii) above of the possible value of the release which they were giving in accepting a redress sum having regard to the current state of the law, including the Improved Outcomes that victims of historic child sex abuse were likely to receive more money from a common law claim than from a redress payment;
- (d) that any interest which Knowmore Legal Services may have in group members pursuing one option over other such options was clearly disclosed and that fully informed consent was obtained from that group member.

### Particulars

As to paragraph 74E(d), ‘fully informed consent’ would involve group members voluntarily agreeing to engage, or to continue to engage, Knowmore Legal Service after having been clearly informed in writing of Knowmore Legal Service’s interest as pleaded.

### **Breach of duty of care to Group Members**

75. In its provision of legal services through the Knowmore System, Knowmore Legal Service breached its duty of care to group members by:

- (aa) failing to have in place systems, processes procedures and training to reasonably ensure that advice provided by Staff was provided with due care, skill and diligence, including having systems of the kind in paragraph 74E above;
- (a) failing to provide, or attempting to provide as far as possible, the Common Law Claims Advice to group members, or enquire whether group members had obtained the Common Law Claims Advice from another lawyer for group members, in circumstances where Knowmore Legal Service advised group when advising members in relation to offers for redress made under the National Redress Scheme;

- (b) failing to ~~encourage~~ advise group members of the importance of ~~to~~ obtaining the Common Law Claims Advice in coming to any fully informed view regarding accepting an offer from the National Redress Scheme;
- (c) failing to ~~warn~~ advise group members of the legal and practical risks of ~~against accepting an offer for redress made under the National Redress Scheme unless and until they had obtained the Common Law Claims Advice having regard to the current state of the law, including Legislative Reforms and the Improved Outcomes that by accepting a redress offer and releasing the Institution they were giving up civil claims that were probably worth significantly more money than the redress payment;~~ and / or
- (d) failing to have in place systems, processes procedures and training to address the increased risk Knowmore Legal Service had created that ~~directing~~ group members would not obtain advice on common law claims before releasing defendants from valuable common law claims; and / or  
~~and towards a redress payment including by advising as to the disadvantages of taking a common law claim in terms of cost, inconvenience, risk and delay but not advising as to the advantages of a common law claim in terms of the higher quantum that could be recovered.~~
- (e) advising in standard form documents that a common law claim “may or may not” result in a higher award rather than advising that it probably would result in a higher award.

76. By reason of the matters in the preceding paragraph, pursuant to the Knowmore System, group members accepted offers for redress made by the National Redress Scheme and relinquished common law claims they had or may have had:

- (aa) without obtaining balanced and complete advice on the risks and benefits of common law claims, having received standardised partial advice of the kind alleged in paragraph 74E(a) above without obtaining advice about the Legislative Reform, the Improved Outcomes and the fact that by accepting a redress payment the group member would be giving up a common law claim that would probably result in a higher award than the redress payment;

- (ab) without obtaining advice of the kind alleged in paragraph 74E(b)(iv)-(v) above;
- (a) without knowing of the Improved Outcomes;
- (b) without having obtained the Common Law Claims Advice;
- (c) without being told that most victims of child sex abuse would be likely to obtain more money by pursuing a common law claim than under the National Redress Scheme;
- (d) without being warned they should obtain Common Law Claims Advice common law advice before releasing Institutions defendants from common law claims;
- (e) without being told Knowmore Legal Service had not assessed how much they were likely to receive in a common law claim in advising on whether to accept the offer under the National Redress Scheme; and
- (f) having been directed towards accepting offers under the National Redress Scheme and away from pursuing common law rights in the course of receiving legal advice under the Knowmore System.
77. If Knowmore Legal Service had taken any or all of the steps in paragraph 75 above, group members had been informed of the Improved Outcomes or provided with the Common Law Advice prior to accepting an offer for redress made by the National Redress Scheme; then a proportion of group members would have rejected the offer for redress and would have issued common law proceedings against the Institutions liable for the child sexual abuse.
78. Such proportion of ~~G~~group members who accepted the offer for redress cannot now seek damages against the Institutions responsible for the sexual abuse they suffered as children.
79. In the premises, such proportion of group members have lost the chance to obtain damages at common law that exceeded the redress they obtained through the National Redress Scheme.

80. By reason of the matters in the preceding paragraph, such proportion of group members suffered loss or damage, being the loss of opportunity to bring common law proceedings against the institutions liable for the child abuse.

### **Breach of Group Members' Retainers**

81. Knowmore Legal Service breached the Group Members' Retainers by failing to act with reasonable care, skill and diligence and in accordance with what could reasonably be expected of a lawyer specialising in assisting historical child abuse survivors to obtain compensation by:
- (a) failing to provide the Common Law Claims Advice to group members, or obtain the Common Law Claims Advice from another lawyer for group members;
  - (b) failing to encourage group members to obtain the Common Law Claims Advice by telling them they were more likely to get more money if they brought civil action against the Institutions than from the National Redress Scheme and explaining to them that Common Law Claims Advice was important so that they could understand how significantly more money they could receive;
  - (c) failing to ~~advise~~ warn group members against accepting an offer for redress made under the National Redress Scheme unless and until they had obtained the Common Law Claims Advice; and
  - (d) directing group members away from common law claims and towards a redress payment by advising as to the disadvantages of taking a common law claim in terms of cost, difficulty, delay, limitation of actions problems, complexity and the fact a previous settlement may impact the case ~~inconvenience, risk and delay~~ including by but not advising as to the advantages of a common law claim in terms of the higher quantum that could be recovered compared with a redress payment; and
  - (e) by not telling them that people with common law claims for historical institutional child abuse would be more likely to receive more money under a common law claim than under the National Redress Scheme.

### Particulars

Knowmore Legal Service should have encouraged group members to obtain the Common Law Claims Advice by taking steps such as:

- (1) explaining to them the possible impacts on the value of their claims (or their compromise) resulting from the Legislative Reform and Improved Outcomes;
- (2) stating during the Intake Call with each group member that it was Knowmore Legal Service's strong recommendation that the group member obtain the Common Law Claims Advice before accepting a National Redress Scheme offer or signing any release of an Institution because they were likely giving up their right to make a substantially greater claim at common law;
- (3) repeating its recommendation, whether orally or in writing, as appropriate and at least at the following junctures, as applicable:
  - i) in the Initial Letter of Advice provided to each group member;
  - ii) in the Client Agreement Letter provided to each group member;
  - iii) during any appointment between a group member and Knowmore Legal Service involving the preparation of the group member's National Redress Scheme Application;
  - iv) once Knowmore Legal Service was aware of the legislative reform allowing a group member's prior deed of settlement with an institution to be set aside, advising the group member of the change in circumstances and strongly recommending that they obtain Common Law claims advice in light of this change;
  - v) in the Offer Letter of Advice sent to each group member after they received an offer from the National Redress Scheme;
  - vi) after any group member received a review outcome from the National Redress Scheme (if any);
- (4) when discussing the possibility of a civil claim, avoiding describing the negative implications of pursuing a civil claim in the absence of comprehensive advice about the benefits of such a claim including how much that option could be worth.

82. If Knowmore Legal Service had not breached the Group Members' Retainers, a proportion of group members:
- (a) would have rejected an offer for redress made under the National Redress Scheme;
  - (b) if those group members had entered into deeds of settlement, the deeds of settlement would have been set aside against or not relied upon by the Institutions responsible for their child sexual abuse; and
  - (c) would have obtained damages at common law from the Institutions responsible for their child sexual abuse that exceeded the redress they obtained through the National Redress Scheme.
83. By reason of Knowmore Legal Service's breach of the Group Members' Retainers, such proportion of group members have suffered loss and damage, being the loss of the opportunity to obtain damages at common law from the State of Victoria and/or the Salvation Army that exceeded the redress he obtained through the National Redress Scheme.

#### **~~Breach of Fiduciary obligations owed to Group Members~~**

83A. Paragraphs 68A and 68B are repeated here.

83B. The relationship between Knowmore Legal Service as lawyer and group members as clients gave rise to fiduciary obligations which required Knowmore Legal Service to:

- (a) provide undivided loyalty to group members;
- (b) avoid conflicts between Knowmore Legal Service and group members; and
- (c) inform group members that it would not advise them about common law claims even where such advice was needed in order to make a well informed decision about whether to accept a redress claim payment disclose that Knowmore Legal Service was funded by reference to clients making applications to the National Redress Scheme which was a disincentive to assisting clients to pursue an alternative civil claim against an Institution.

## COMMON QUESTIONS

84. The claims of the Plaintiff and the group members give rise to substantial common issues of law or fact including:

\*The original common questions have been deleted and replaced in this amended statement of claim without showing the deleted questions.

- (a) Did the First Defendant and Second Defendant (**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 involving some or all of the features of the Knowmore System? ~~in providing legal services, use the Knowmore System as defined at paragraph 17 above which had the characteristics alleged at paragraphs 16 17 to 26G above?~~
- (aa) If yes, what were the relevant features of the Knowmore system?
- (ab) Was there a risk of harm that Knowmore Legal Service's 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?
- (b) Did the use of the Knowmore System give rise to or increase that risk? ~~the risk of a person foregoing valuable common law legal claims without understanding the value of those claims compared to the amount of redress under the National Redress Scheme?~~
- (ba) Did the content of the duty owed by the Defendants pursuant to their retainer or their relationship with clients extend to taking precautions against the risk of harm?
- (c) Was it an express and/or implied term of Knowmore Legal Service's Group Member Retainer that it would advise on the offer of redress including whether the client should accept a redress payment offer relative to what they could recover in a common law claim?

- (d) Did the Defendants owe a duty of care to the plaintiff and the group members to act with reasonable care, skill and diligence in the provision of legal services to group members, including:
- (i) to advise clients on risks and/or appurtenant legal risks which arose in the course of the retainer such as the relative value of common law claims;
  - (ii) to take reasonable steps to ensure that group members would understand fully the legal and practical consequences of the instructions they were giving and advice provided;
  - (iii) to design and maintain Knowmore Legal Service's practices, procedures, template documents and train its Staff to provide the legal services to reduce the heightened risk that Knowmore Legal Service created of clients foregoing valuable common law legal claims without understanding the value of those claims compared to the amount of redress under the National Redress Scheme?
- (e) In the period ~~2018~~ 2015 to the present, how did the quantum of recoveries for common law claims in relation to historical child abuse against Institutions compare with the amount recoverable under the National Redress Scheme?
- (f) Did the Defendants know of, or should they have known of, the Improved Outcomes?
- (g) Did the Defendants know of, or should they have known of, the Legislative Reform?
- (h) Did the Defendants know, or should they have known, that the quantum of recoveries for common law claims in relation to historical child abuse against an Institution was likely to be higher than the amount recoverable under the National Redress Scheme?
- (i) If the Defendants did hold the alleged knowledge, did the state of the Defendants' knowledge of the Improved Outcomes, the Legislative Reform and the comparison of the likely quantum of recoveries for common law claims

compared with redress scheme payments change during the period 2018 to the present?

- (j) Did Knowmore Legal Service owe fiduciary obligations to group members to:
- (i) provide undivided loyalty to group members?
  - (ii) avoid conflicts between Knowmore Legal Service and group members?
  - (iii) disclose that Knowmore Legal Service was funded in relation to applications to the National Redress Scheme and was therefore disincentivised to assist a client to pursue a common law claim? ~~would not provide advice about whether they should accept a redress payment offer relative to what they could recover in a common law claim?~~
- (k) Is the assessment of equitable compensation different to the measure of damages in relation to a lost opportunity to pursue a legal claim?

**AND THE PLAINTIFF CLAIMS** on his own behalf and on behalf of the group members:

- A. Damages.
- B. Costs.
- C. Interest.
- D. Equitable Compensation.

~~G A Costello KC~~  
~~D Seeman~~  
~~D Murphy~~

Amended:  
G A Costello KC  
D Seeman  
A D James Martin

Further Amended:  
G A Costello KC  
D Seeman  
A D James Martin

*Arnold Thomas & Becker*

**Solicitors for the Plaintiffs**

### Schedule A – Particulars to Paragraph 12

1. The Legislative Reforms referred to in paragraph 12 above were:
  - (a) In New South Wales, the Legislative Reform was comprised of the following Acts:
    - (i) Limitation Amendment (Child Abuse) Act 2016 (NSW), which from 17 March 2016:
      - (i) removed any time limit for a person to bring an action for damages for death or personal injury to a person arising from sexual or serious physical abuse, or related psychological abuse, when they were under 18 years of age;
      - (ii) allowed a child abuse action to be brought on a previously barred right of action, including an action in respect of which judgment (including an agreement entered into before and in connection with a judgment) had previously been given on the ground that a limitation period previously applying to the cause of action had expired;
    - (ii) Civil Liability Amendment (Organisational Child Abuse Liability) Act 2018 (NSW), which from 1 January 2019 operated to overcome the *Ellis* defence.
  - (b) In Queensland, the Legislative Reform was comprised of the following Acts:
    - (i) Limitation of Actions (Child Sexual Abuse) and Other Legislation Amendment Act 2016 (Qld), which from 1 March 2017:
      - (i) removed any time limit for survivors of child sexual abuse to bring an action relating to personal injury resulting from sexual abuse when they were a child;
      - (ii) allowed a child abuse action to be brought on a previously barred right of action, including an action had previously been discontinued or judgment had been given or the action dismissed on the ground that the limitation period had previously expired; and

- (iii) provided that previous settlements may be set aside if the court finds it just and reasonable to do so.
    - (ii) Civil Liability and Other Legislation Amendment Act 2019 (Qld), which from 2 March 2020:
      - (i) extended the limitation removal for child sexual abuse claims to include serious physical abuse and psychological abuse; and
      - (ii) operated to overcome the *Ellis* defence.
  - (c) In South Australia, the Legislative Reform was comprised of the following Acts:
    - (i) Limitation of Actions (Child Abuse) Amendment Act 2018 (SA), which from 1 February 2019 removed any time limit for survivors of child abuse to bring an action relating to personal injury resulting from sexual or serious physical abuse, or related psychological abuse, when they were a child.
    - (ii) Civil Liability (Institutional Child Abuse Liability) Amendment Act 2021 (SA), which from 1 August 2022:
      - (i) allowed settlements of child abuse claims entered into before the limitation period changes and at a time when the limitation period had expired to be set aside upon application to the court, if the court finds it just and reasonable to do so; and
      - (ii) operated to overcome the *Ellis* defence.
  - (d) In Tasmania, the Legislative Reform was comprised of the following Acts:
    - (i) Limitation Amendment Act 2017 (Tas), which from 1 July 2018 removed any time limit for survivors of child sexual or physical abuse to bring an action relating to personal injury resulting from sexual abuse when they were a minor.
    - (ii) Justice Legislation Amendment (Organisational Liability for Child Abuse) Bill 2019 (Tas), which from 1 May 2020:

- (i) provided that previous settlements may be set aside if the court finds it just and reasonable to do so; and
  - (ii) operated to overcome the *Ellis* defence.
- (e) In Western Australia, the Legislative Reform was comprised of the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018 (WA)*, which from 1 July 2018:

  - (i) removed any time limit for a person to bring a child sexual abuse action;
  - (ii) allowed a child sexual abuse action to be brought on a previously barred right of action, including an action had previously been discontinued or judgment had been given or the action dismissed on the ground that the action was statute barred;
  - (iii) allowed a court to grant leave to commence an action in relation to a previously settled claim and to set aside the settlement agreement, if just and reasonable to do so; and
  - (iv) operated to overcome the *Ellis* defence.

- (f) In the Australian Capital Territory, the Legislative Reform was comprised of the following Acts:
  - (i) *Justice and Community Safety Legislation Amendment Act 2016 (No 2) (ACT)*, which from 26 August 2016 removed any time limit for a person to bring an action for damages for personal injury resulting from institutional sexual abuse of a child.
  - (ii) *Civil Law (Wrongs) (Child Abuse Claims Against Unincorporated Bodies) Amendment Act 2018 (ACT)*, which from 28 September 2018 operated to overcome the *Ellis* defence.
  - (iii) *Justice and Community Safety Legislation Amendment Act 2022 (ACT)*, which from 10 December 2022:

- (i) extended the limitation removal for institutional sexual abuse of a child claims to include all physical abuse and sexual abuse of a child; and
  - (ii) allowed courts to set aside settlement agreements for child abuse claims where the agreement was entered before the removal of the limitation period on child abuse claims and the relevant limitation period had ended, or where the settlement was entered before the commencement of this Act and the agreement is not just and reasonable.
- (g) In the Northern Territory, the Legislative Reform was comprised of the following Acts:
  - (i) *Limitation Amendment (Child Abuse) Act 2017* (NT), which from 15 June 2017:
    - (i) removed any time limit for a person to bring an action for damages for personal injury to a person arising from sexual or serious physical abuse, or related psychological abuse, when they were under 18 years of age; and
    - (ii) allowed an action relating to child abuse to be brought where judgment (including a settlement) had previously been given on the basis that a limitation period had expired, but not where judgment was given on another basis.
  - (ii) *Personal Injuries (Liabilities and Damages) Amendment Act 2022* (NT), which from 1 January 2023 operated to overcome the *Ellis* defence.