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10 July 2019

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Committee Secretary

Submission on the Youth Justice and Other Legislation Amendment Bill 2019

Thank you for the opportunity to provide a submission to the Committee's inquiry on the Youth Justice and Other Legislation Amendment Bill.

Please find knowmore's submission attached.

We have no concerns about our submission being published.

Yours faithfully

A handwritten signature in black ink, appearing to be 'W. Strange', written in a cursive style.

WARREN STRANGE
Executive Officer

Encl. *knowmore submission on the Youth Justice and Other Legislation Amendment Bill 2019*



Youth Justice and Other Legislation Amendment Bill 2019

Submission to the Legal Affairs and
Community Safety Committee

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About knowmore

Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our mission is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

knowmore was established by and operates as a program of the National Association of Community Legal Centres (NACLC), with funding from the Australian Government, represented by the Attorney-General's Department. knowmore also receives some funding from the Financial Counselling Foundation.

From 1 July 2018, NACLC has been funded to operate knowmore to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme.

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane and Perth. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 30 June 2019, knowmore has received 18,420 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 4,509 clients. A quarter (25%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. Just over a fifth (22%) of clients are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

Our clients in Queensland

knowmore has a significant client base in Queensland — 28 per cent of our current clients reside in the state. We therefore have a strong interest in Queensland laws that may help to reduce the risk, incidence and impact of institutional child sexual abuse.

knowmore's submission

This section outlines knowmore's overall position on the Youth Justice and Other Legislation Amendment Bill 2019 (the Bill), and details knowmore's specific comments on three key aspects of the Bill relevant to child sexual abuse and the experiences of our clients.

In considering the amendments in the Bill, knowmore has reflected on both the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) and its own work with survivors of child sexual abuse, particularly survivors of child sexual abuse in youth detention.

knowmore's overall position on the Bill

knowmore is broadly supportive of the aims of the Bill. In particular, we note the Bill's key amendments are consistent with two key points made by the Royal Commission regarding contemporary youth detention, in line with the United Nations Convention on the Rights of the Child:

- Children should only be detained "as a last resort and for the shortest appropriate time".¹
- When children are detained, governments "should take all appropriate steps to ensure the care and protection of those children".²

As discussed further below, knowmore is particularly supportive of those amendments in the Bill that:

- Seek to keep young people out of detention where appropriate.
- Permit the use of body-worn cameras and CCTV audio recording technology in youth detention centres.
- Enable information sharing among government and non-government agencies to help in responding to the needs of young people in the youth justice system.

Comments on amendments that seek to keep young people out of detention

knowmore notes that a number of amendments in the Bill are focused on keeping young people out of detention wherever appropriate, specifically by:

- Removing legislative barriers to enable more young people to be granted bail (Clauses 7, 9, 10, 34, 35 and 37).
- Ensuring that bail conditions for young people are appropriate, to reduce the likelihood of breaches (Clauses 15 and 16).
- Requiring police officers to consider alternatives to arrest for certain breaches of bail conditions (Clause 18).
- Reducing the time taken to finalise proceedings in the youth justice system (Clauses 7, 13, 20 and 41).

knowmore supports the identified clauses to the extent that they will help to reduce the number of young people in detention, and the amount of time that young people spend there. We consider these positive outcomes that would in turn help to reduce the risk, incidence and impacts of institutional child sexual abuse given that:

1 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 15, Contemporary Detention Environments*, 2017, p. 9. See also Articles 37(b) and 40 of the UN Convention on the Rights of the Child.
2 Royal Commission, *Final Report: Volume 15*, p. 9. See also Article 3 of the UN Convention on the Rights of the Child.

- Youth detention has been, and continues to be, a high-risk setting for child sexual abuse.
- The experience of child sexual abuse in youth detention can have significant, life-long impacts for survivors, particularly in contributing to later criminal behaviour and leading to patterns of recurrent imprisonment.

These points are discussed in more detail below.

Youth detention has been, and continues to be, a high-risk setting for child sexual abuse

The Royal Commission identified youth detention as a relatively common setting for institutional child sexual abuse. Of the 6,875 survivors the Royal Commission heard from in private sessions, 551 (8%) had been sexually abused in youth detention, including in 14 youth detention institutions in Queensland.³ Experiencing child sexual abuse in youth detention was particularly common among Aboriginal and Torres Strait Islander survivors (15%), and survivors who were in prison at the time of their private sessions (33%).⁴

Although the Royal Commission heard from relatively fewer survivors who had had been abused in contemporary youth detention institutions since 1990 (91 in total),⁵ it emphasised that youth detention remains a high-risk setting for institutional child sexual abuse. Key reasons for this include that:

- Youth detention institutions are “closed” environments, isolated from society and public scrutiny.
- Key features of youth detention environments — including the significant power imbalance between staff and detained young people, the lack of privacy, and the separation of young people from their family, friends and community — tend to increase the risk of child sexual abuse.
- Children in youth detention frequently have complex needs and histories of abuse, neglect and other trauma that increase their vulnerability to sexual and other abuse while in detention (see further discussion on page 6).
- Compared to other institutions, there is a heightened risk of young people in youth detention being sexually abused by other children. This reflects the fact that, as the Royal Commission noted, “children who have harmful sexual behaviours or have engaged in criminal or antisocial behaviour are disproportionately clustered in youth detention institutions”.⁶

In light of the ongoing risk of child sexual abuse in youth detention, knowmore is supportive of measures that will help to keep young people out of detention wherever possible.

The experience of child sexual abuse in youth detention can have significant, life-long impacts for survivors, particularly in contributing to later criminal behaviour and leading to patterns of recurrent imprisonment

A further reason for knowmore’s interest in reducing young people’s exposure to youth detention is that, when a young person does experience child sexual abuse in detention, the impacts can be significant and life-long. This is particularly so in terms of the experience of abuse contributing to a young person’s further and continued involvement in the criminal justice system.

The Royal Commission found that for many survivors, the experience of child sexual abuse in youth detention contributed to “a cycle of reoffending and incarceration they have struggled to break, often driven by anger, substance use and mental health problems”.⁷ For example, some survivors reported feeling “enormous anger” about their abuse, leading them to engage in anti-social behaviour or commit

3 Royal Commission, *Final Report: Volume 2, Nature and Cause*, 2017, Tables 2.12 and A.7.

4 Royal Commission, *Final Report: Volume 5, Private Sessions*, 2017, Tables P.13 and S.14.

5 The Royal Commission stated that this was “unsurprising”, given that survivors take 23.9 years on average to disclose childhood sexual abuse (*Final Report: Volume 15*, p. 26; see also p. 77).

6 Royal Commission, *Final Report: Volume 15*, p. 82.

7 Royal Commission, *Final Report: Volume 15*, p. 101.

violent offences. Others spoke about using drugs or alcohol to cope, leading them to commit offences either while under the influence or to finance their substance use. Overall, 90 per cent of survivors who had experienced sexual abuse in contemporary youth detention identified their further involvement in the criminal justice system as an impact of the abuse.⁸

These experiences are also reflected in knowmore’s client group. During the Royal Commission, knowmore assisted 936 clients who were detained in Queensland prisons. Of these clients, almost half (445 clients) reported having been sexually abused in youth detention.

We often heard a story of life-long institutionalisation from these clients. Typically, they were males aged between 30 and 45 years. They had had contact with the out-of-home care or child protection system as a child, and experienced early childhood sexual abuse. This led to dysfunctional behaviours such as alcohol and drug misuse, and early offending that saw them spend time in youth detention. Here, they experienced sexual abuse again. Patterns of reoffending and recurrent incarceration in youth detention centres and adult prisons then followed. As a result, many of these clients had spent a significant part of their lives in detention, often living in the community for less than a year before being re-imprisoned for breaches of parole orders or new offences. One such client, who was 49 years old at the time, had been incarcerated in youth detention centres and adult prisons for a cumulative 27 years.

These impacts highlight that keeping young people out of detention is not just in their interests in terms of reducing the risk of child sexual abuse in these settings and the experience of further harm. It is also very much in the public interest given the enormous costs of crime, including government expenditure on the criminal justice system.⁹

Comments on amendments to permit the use of body-worn cameras and CCTV audio recording technology in youth detention centres

knowmore notes Clause 5 of the Bill, which will authorise the use of body-worn cameras and CCTV audio recording technology in youth detention centres.

knowmore supports these amendments given their focus on increasing transparency and accountability in youth detention centres. The amendments are consistent with the findings of the Royal Commission, which identified the use of CCTV and other surveillance technology as a key mechanism for reducing the risk of child sexual abuse in youth detention, and improving responses to abuse when it does occur. The Royal Commission highlighted both the deterrent effect of surveillance technology and its utility in corroborating young people’s allegations of abuse, “giving children a voice where they may have previously been disbelieved”.¹⁰ This is particularly important given the closed nature of youth detention and the key features of youth detention environments, as noted on page 4, that increase the risk of child sexual abuse.

The amendments in Clause 5 are also consistent with Recommendation 15.3 in the Royal Commission’s Final Report. This requires the Queensland Government to consider “how to most effectively use technology, such as CCTV cameras and body-worn cameras, to capture interactions between children and between staff and children without unduly infringing children’s privacy”.¹¹ Consistent with this, knowmore is supportive of the limitations and safeguards contained in the Bill, including the prohibition against the

⁸ Royal Commission, *Final Report: Volume 15*, p. 100.

⁹ A 2014 report estimated that crime cost Australia almost \$48 billion in 2011 (R Smith et al., *Counting the Costs of Crime in Australia: A 2011 Estimate*, Australian Institute of Criminology, Canberra, 2014, p. 1). In 2017–18, Australian governments spent about \$16.5 billion on the criminal justice system (Productivity Commission, *Report on Government Services 2019: Justice Sector Overview – Attachment*, Australian Government, Canberra, 2019, Table CA.1).

¹⁰ Royal Commission, *Final Report: Volume 15*, p. 117.

¹¹ Royal Commission, *Final Report: Volume 15*, p. 120.

deliberate recording of communications between a child and their lawyer, a community visitor, a child advocacy officer and others.

Comments on amendments to enable information sharing among government and non-government organisations

knowmore notes Clause 30 of the Bill, which introduces a contemporary framework to enable information sharing among certain government and non-government organisations.

knowmore generally supports these amendments given their focus on improving how the needs of young people in the youth justice system are identified and addressed. As noted previously, many children in youth detention centres, and in the youth justice system more generally, have a prior history of abuse, neglect and trauma. This was often illustrated in the stories of prisoners who knowmore assisted during the Royal Commission (see page 5). It has also been illustrated in research showing that over two-thirds of children in youth detention in New South Wales (68%) were victims of abuse or neglect, and nearly half (48%) had been exposed to a traumatic event.^{12, 13, 14} It continues to be illustrated in the fact that more than 50 per cent of children in the Queensland youth justice system have also been involved with the child protection system.¹⁵ Often related to these experiences, many children in the youth justice system also have other complex needs reflecting factors such as socio-economic disadvantage, disrupted education, housing stress, cognitive impairment, disability, substance use problems and mental health issues.¹⁶ All of these characteristics add to the complexity of dealing with young offenders, and increase a child's vulnerability to sexual abuse in detention.

In this context, the Royal Commission highlighted the importance of information sharing to enabling child sexual abuse to be effectively prevented, identified and responded to. It recommended the development of a national "information exchange scheme" to enable a range of bodies who have a responsibility for protecting children — including service providers, government and non-government organisations, law enforcement agencies and regulatory bodies — to share information related to children's safety and wellbeing (see Recommendations 8.6 and 8.7).¹⁷ The Royal Commission acknowledged that information sharing alone is not enough to protect children from sexual abuse, but advocated it as "one tool... to facilitate better collaboration between disparate institutions in promoting the wellbeing and safety of children".¹⁸ The Royal Commission indicated that this is particularly important where, as in Queensland, youth justice and child protection services are delivered by different departments.¹⁹

Consistent with the findings and recommendations of the Royal Commission, knowmore supports the proposed information sharing framework to the extent that it will help to provide a coordinated response

12 Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, Sydney, 2017, Tables 133 and 138.

13 The most commonly experienced traumatic events were witnessing someone being badly injured or killed (54% of survey participants), being seriously physically attacked or assaulted (22%), or being involved in a life-threatening accident (20%).

14 Directly comparable data for Queensland is not publicly available, but the Atkinson Report on Youth Justice (see footnote 16) noted that a review of 25 children in Queensland youth detention centres in September 2017 found that all of the children had experienced "chronic trauma including exposure to domestic violence, sexual abuse and neglect" (p. 39).

15 Australian Institute of Health and Welfare, *Young People in Child Protection and Under Youth Justice Supervision: 1 July 2013 to 30 June 2017*, AIHW, Canberra, 2018, Figure 2.5.

16 B Atkinson AO APM, *Report on Youth Justice*, Queensland Government, Brisbane, 2018; Justice Health & Forensic Mental Health Network and Juvenile Justice NSW; Royal Commission, *Final Report: Volume 15*.

17 Royal Commission, *Final Report: Volume 8, Recordkeeping and Information Sharing*, 2017, p. 239.

18 Royal Commission, *Final Report: Volume 8*, p. 140.

19 Royal Commission, *Final Report: Volume 15*.

to the needs of children in the youth justice system, including in dealing with the risk of institutional child sexual abuse. We particularly support the underlying principle that, wherever possible, a young person's consent should be obtained before confidential information about them is disclosed. However, knowmore also notes the broader intent of Recommendations 8.6 and 8.7 — especially in establishing an information sharing scheme that applies across multiple contexts and comprises nationally consistent legislative and administrative arrangements — and ongoing work across jurisdictions to implement these.²⁰ The Committee may wish to give further consideration to the proposed amendments in the context of Queensland's implementation of the Royal Commission's abovementioned recommendations for nationally consistent legislative and administrative arrangements.

²⁰ For example, the Fourth Action Plan of the National Framework for Protecting Australia's Children notes work being undertaken by the Inter-Jurisdictional Child Protection Information Sharing Project to improve information sharing protocols and procedures (Department of Social Services, *National Framework for Protecting Australia's Children 2009–2020: Fourth Action Plan 2018–2020*, DSS, Canberra, 2018). The Queensland Government has also noted its continued involvement in work by the Children and Families Secretaries group on issues related to information sharing and child protection data (*Queensland Government Annual Progress Report: Royal Commission into Institutional Responses to Child Sexual Abuse*, Queensland Government, Brisbane, December 2018).

Conclusion

As outlined above, knowmore is broadly supportive of the aims of the Bill. The specific amendments we have highlighted are largely consistent with the findings and recommendations of the Royal Commission, and have a role to play in reducing the risk, incidence and impacts of child sexual abuse in youth detention institutions. This is important given the experiences of many of our clients and other survivors of child sexual abuse.

Of course, legislative amendments will not make any meaningful difference unless they are effectively operationalised. To achieve the outcomes ultimately intended by the Bill, particular consideration needs to be given to:

- Implementing measures to help decision-makers to apply the new bail provisions in practice, noting in particular the multiple, complex needs of many children in the youth justice system.
- Ensuring there are adequate numbers of body-worn cameras available for staff in youth detention centres, and that there are rigorous policies and procedures in place to ensure the cameras are used effectively and appropriately.
- Ensuring information sharing arrangements established under the new framework are clear and robust, and that people are provided with support and guidance to help them make decisions under it. This should include the development of relevant training, policies, procedures and guidelines, as well as work to promote a culture of information sharing within and across agencies.²¹

knowmore would encourage the Queensland Government to address these matters as a priority if the Bill is passed.

We have no concerns about this submission being published.

²¹ See the Royal Commission's discussion of these issues (*Final Report: Volume 8*, pp. 240–252).

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knowmore is a program of National Association of Community Legal Centres. ABN 67 757 001 303 ACN 163 101 737.

NACLC acknowledges the traditional owners of the lands across Australia upon which we live and work. We pay deep respect to Elders past and present.