

knowmore
free legal help for survivors

Personal Injuries Proceedings and Other Legislation Amendment Bill 2022

Submission to the
Legal Affairs and
Safety Committee

22 April 2022

Table of Contents

About knowmore	3
Our service	3
Our clients	3
knowmore's submission	5
knowmore's overall position on the Bill	5
Claim farming	6
Undesirable billing practices	11
Conclusion	12

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 purpose is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). From 1 July 2018, knowmore has been funded to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme (NRS). knowmore also receives funding to deliver financial counselling services to people participating in the NRS, and to work with other services in the NRS support network to support and build their capability. From 1 January 2022, our services were expanded to assist survivors who experienced child sexual abuse in non-institutional settings. From 1 March 2022, we have also been funded to provide legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme.

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane, Perth and Adelaide, and will be establishing an office in Darwin later this year. 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.

knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

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 31 March 2022 knowmore has received 63,238 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 11,168 clients. A third (33%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. A fifth (20%) 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 — 30 per cent of our current clients reside in the state. We therefore have a strong interest in laws that will protect victims and survivors of institutional child abuse from claim farming and undesirable billing practices in relation to personal injury claims.

knowmore's submission

This section outlines knowmore's overall position on the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 (the Bill) and details the experiences of knowmore's clients and other survivors of institutional child abuse with respect to claim farming and undesirable billing practices in personal injury claims.

knowmore's overall position on the Bill

knowmore strongly supports the Bill's objectives to stop claim farming and prevent undesirable billing practices for personal injury claims. We have been advocating for similar reforms in the context of the National Redress Scheme (NRS)¹ for the last two years, having become increasingly concerned about survivors of institutional child sexual abuse across Australia being exploited by some law firms and 'survivor advocacy' businesses (claim farmers).²

knowmore strongly supports survivors of institutional child abuse being able to pursue personal injury claims as a way to obtain justice and hold institutions to account. Since our establishment we have advocated for law reform, such as the removal of limitation periods for claims arising from child sexual abuse, to facilitate survivors being able to bring these claims and to have them determined on their merits.

We obviously also support survivors being able to decide who they turn to for legal advice and other support to do this. However, a trauma-informed approach demands that survivors are empowered to make informed decisions about their legal options and who assists them, and are not harassed, intimidated, deceived or taken advantage of when seeking assistance with their compensation and redress options.³

-
- 1 The NRS was established by the Australian Government in 2018, in response to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. The purpose of the NRS is to recognise and alleviate the impact of past institutional child sexual abuse. See <www.nationalredress.gov.au/> for more information.
 - 2 For a more detailed account of our concerns and recommendations, see knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the National Redress Scheme: Exploitative Practices of Some Law Firms and 'Survivor Advocacy' Businesses*, 29 May 2020, <knowmore.org.au/wp-content/uploads/2020/11/submission-joint-select-committee-on-implementation-of-the-national-redress-scheme-exploitative-practices-of-some-law-firms-and-survivor-advocacy-businesses-cth.pdf>; knowmore, *Submission to the Second Anniversary Review of the National Redress Scheme*, 30 September 2020, pp. 52–56, <knowmore.org.au/wp-content/uploads/2020/11/submission-second-anniversary-review-of-the-national-redress-scheme-cth.pdf>; and evidence given by knowmore to the Joint Select Committee on Implementation of the NRS on 16 August 2021 (transcript available at <www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme/NationalRedressScheme/Public_Hearings>; see pp. 17–19).
 - 3 This reflects the core trauma-informed principles of safety, trustworthiness, choice, collaboration and empowerment. See Blue Knot, *Becoming Trauma Informed — Services*, July

In our view, this Bill is essential for stamping out the exploitative practices survivors of institutional child abuse are currently being exposed to in the context of pursuing possible civil litigation. We commend the Queensland Government for taking the lead in responding to these problems, and strongly hope that this leadership and these amendments will provide a successful model for similar reforms to be enacted in other jurisdictions.

In this regard, we note how important it is for the Bill's provisions to operate effectively in practice to address claim farming, particularly in terms of the operation of the monitoring and enforcement mechanisms that will ensure compliance by legal practitioners.

The remainder of our submission focuses on detailing the claim farming and undesirable billing practices we have received information about, to highlight the need for and appropriateness of Parts 4 and 6 of the Bill with respect to personal injury claims for institutional child abuse. We also raise one minor issue with the Bill for the Legal Affairs and Safety Committee's (the Committee's) further consideration (see pages 10 and 11).

Claim farming

knowmore strongly supports the provisions in the Bill that are aimed at stopping claim farming for personal injury claims. We particularly support the provisions in:

- New section 71 of the *Personal Injuries Proceedings Act 2002* (Qld) (the PIPA), as per Clause 51, which will make it an offence for a person to give or receive (or agree to give or receive or allow or cause someone else to give or receive) consideration for a claim referral or potential claim referral.
- New section 71B of the PIPA, as per Clause 51, which will make it an offence for a person to personally approach or contact another person and solicit or induce them to make a claim.

We consider these provisions are necessary and appropriate to protect survivors of institutional child abuse who are currently being targeted by such practices throughout Queensland.

Claim farmers in Queensland

We have heard much about claim farming and related practices in the context of institutional child abuse claims from our clients and other stakeholders, including the free and independent Redress Support Services (the RSS) who also assist survivors engaging with the NRS. These practices are being engaged in by both claim farmers — which we have referred to in our previous submissions as 'survivor advocacy businesses' — and law firms associated with them.

We are aware of four main survivor advocacy businesses operating in Queensland that particularly target survivors of institutional child abuse. The first of these businesses was established in 2016/2017; two others were established in 2019, and the fourth in 2020. Two

2021, <professionals.blueknot.org.au/wp-content/uploads/2021/09/45_BK_FS_PRFBecomingTraumaInformed_Services_July21.pdf>.

of the businesses have been established by former staff of the first business. Only one is based in Queensland, but all operate in our state.

Claim farming in relation to institutional child abuse claims is occurring throughout Australia but is particularly prevalent in Queensland. We suspect a key driver of this is the large number of survivors who were abused as children in Queensland institutions — we note, for example, that the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) estimated that 8,470 survivors of abuse in Queensland institutions would be eligible for the NRS,⁴ and survivors in Queensland continue to account for the largest proportion of knowmore's clients (see page 4). We suspect the high level of claim farming activity in Queensland also reflects the high numbers of survivors of institutional child sexual abuse who are currently, or who have been, in adult Queensland prisons (as we note below) and the connections that key staff of some of the survivor advocacy businesses have in that context.

Relationships between claim farmers and law firms

Survivor advocacy businesses are clear that their main role is to act as the conduit between survivors and law firms. Their websites, public commentary from staff and communications with survivors state that these businesses:

- Gather preliminary information from survivors to pass on to law firms, who then send costs agreements to survivors.
- Provide law firms with services such as taking and writing statements and gathering documents.

Client costs agreements seen by knowmore indicate that survivor advocacy businesses are effectively paid referral fees by law firms for introducing survivor clients and passing on initial information,⁵ which is often very limited, and that their services come at a significant cost which is ultimately borne by the survivor — one costs agreement, for example, stated that the business's fees (for preparing a draft statement, coordinating with medical providers and obtaining medical reports, and undertaking "other work") were "in the vicinity of \$9,000 to \$14,000 plus GST". We discuss fees further on page 11.

The abovementioned survivor advocacy businesses appear to have relationships with a large number of law firms across Australia. Website and other materials of these businesses make statements such as:

- "Once the relevant facts are established, we put you in contact with the law firm and other service providers that we believe are the people best suited to help you."
- "[we are] engaged with Australia's largest law firms and smaller boutique firms alike."

4 Royal Commission, *Redress and Civil Litigation Report*, 2015, Table 27, p. 330, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf>.

5 See also the discussion on pages 9 and 10 about individuals being paid referral fees.

- “We are proud to partner with some of Australia’s largest and most dedicated firms, as well as smaller specialised law firms that provide targeted legal advice based on client needs.”

We have been advised of the names of eight different law firms that knowmore clients have been put into contact with by survivor advocacy businesses, six of which have offices in Queensland.

Impacts on survivors

As stated above, we strongly support survivors being able to make informed decisions about who they turn to for legal assistance and other support. In our extensive experience of working with survivors, we understand that it is also critical that each survivor be given sufficient time to make important decisions about their legal rights and redress options, and provided with appropriate support to help them navigate their options (such as counselling and/or cultural support). However, the reported experience of many of our clients (and also clients of other services)⁶ is that the current context and the relationships that exist between survivor advocacy businesses and certain law firms can result in survivors being exploited and re-traumatised. In addition to being charged significant and arguably excessive fees, often for what appears to be very limited work and/or work that the law firm would in any event be required to do with the client itself in the course of acting for them, survivors particularly report:

- Distressing experiences of being cold called (in the context of whether they want to pursue a claim because of their experience of child sexual abuse), including in person, by mail and by phone.
- Being subjected to harassment, intimidation and high-pressure tactics.
- Being asked to sign documents they do not understand and not knowing or being confused about what work is being done for them, and by whom.

This is illustrated in the examples below. These examples reflect reports made to us about the businesses noted above, and/or law firms associated with them.

- One survivor complained to knowmore about the receipt of an unsolicited phone call from a survivor advocacy business. This involved the business breaching the survivor’s confidentiality by disclosing their status as a survivor of institutional child sexual abuse to family members taking the call who, until then, were not aware of the survivor’s experience of childhood sexual abuse.
- One client was sent a costs agreement by a law firm, being unaware of ever having been in contact with that firm. It is believed that an acquaintance of our client gave their name to a survivor advocacy business, which in turn passed our client’s name

6 See, for example, evidence given to the Joint Select Committee on Implementation of the NRS by Mrs Silvia Skinner from Beyond Brave (Bravehearts Foundation) on 16 August 2021 (transcript available at www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme/NationalRedressScheme/Public_Hearings); see pp. 13–15).

onto the law firm. Our client said that they “felt used and taken advantage of” by these lawyers and felt that the lawyers “were out to make money from [their] pain”.

- One client received an unsolicited letter from a survivor advocacy business while they were in prison. The client had never previously heard of the business, and they do not know how the business obtained their details. The client expressed to knowmore how worrying it was to receive this letter, raising their experience of child sexual abuse, “out of the blue” while in prison and without any support.
- A Queensland client was approached while attending court by someone from a survivor advocacy business. Our client was subsequently called by this person multiple times, which led the survivor to feel harassed and forced them to screen their calls. Our client described this business as “overbearing and pushy.”
- A client received harassing phone calls and correspondence from a Queensland-based law firm with links to a survivor advocacy business, for more than 12 months despite not having signed a costs agreement with them. The client said the law firm had a lot of information about them that they didn’t know how they had obtained. The law firm’s actions caused our client a significant amount of distress.
- One client was aggressively pursued to sign a costs agreement by a law firm with links to a survivor advocacy business, some months after submitting an application to the NRS (with knowmore’s assistance). The client told knowmore that the law firm was contacting them and sending them paperwork, and “coming on pretty heavy about it.”

The client ultimately received an offer from the NRS. At that time, the law firm again contacted our client, pressuring them to reject the NRS offer and sign a costs agreement. The client accepted the NRS offer.

- One client came into contact with a survivor advocacy business while in prison. Someone from the business took a statement from the client about their experiences of institutional child sexual abuse, “which brought up very difficult feelings” for them. The client was then contacted by a law firm and asked to sign a large number of documents, which the client instructs they did not understand. When the client contacted knowmore about six months later, they said that they still did not understand what work the law firm was meant to be doing for them.
- One client had signed a costs agreement with a law firm who they were put into contact with by a survivor advocacy business. The client contacted knowmore because they were confused about their current legal situation and wanted to withdraw from the costs agreement, saying, “They don’t tell me anything, I don’t know what’s going on”.
- One client was referred to a law firm by a survivor advocacy business while in a Queensland prison. The client said that they found the process “highly distressing and insensitive” and felt like “it was all about the money for them”.
- One client told knowmore that they had been contacted by a law firm, but they didn’t know how the firm had obtained their number.

These and other negative experiences have left a number of clients feeling traumatised and that survivor advocacy businesses and the law firms they work with care more about money than survivors.

Targeting of the most vulnerable survivors

As a number of the above examples highlight, claim farmers are targeting survivors and also specific settings of particular circumstances of vulnerability. We are especially aware of, and deeply concerned about, the significant claim farming activity in Queensland prisons. Again, we expect this is driven by the large number of survivors in these settings — during the Royal Commission, knowmore assisted 936 clients who were detained in Queensland prisons — and the connections and networks of key staff from some survivor advocacy businesses.

Survivor advocacy businesses are known to regularly send unsolicited mail to survivors in prison. knowmore has seen letters sent to survivors in prison by three different businesses. These all follow a similar model of asking the survivor to provide some initial details to take up the business's offer of assistance and start their claim. The tone of the letters is such that many of our clients have been confused about who the letters were from and what they should do with them. The documents sent by some of these businesses are particularly forceful in:

- Asking survivors to contact the business “with the details required for your claim”.
- Stating that the business requires an attached “new client intake form to be filled out and sent back to [the business's] office [with] identification documents to start your claim”.
- Instructing survivors that “for your claim to be settled within a timely manner, you must participate in the process by providing all the information and documentation to [the business] and your nominated law firm as soon as practicable”.

One client who was approached by someone from one business while in prison highlighted the susceptibility of survivors in prison to these types of cold calling tactics, reflecting that perhaps they shouldn't have agreed to meet with the business's representative, but “it just gets so lonely in prison”.

It is also suspected that people in prison are being identified as survivors by other prisoners, who are reported to receive benefits in exchange for providing names to the survivor advocacy businesses. For example, one RSS reported that one survivor advocacy business was depositing cash into prisoners' prison accounts for every referral they received. This conduct had been reported by a number of prisoners across multiple correctional centres.

Significant claim farming activity is also believed to be occurring in Queensland's regional and remote communities, particularly Aboriginal communities. Survivor advocacy businesses (and some law firms) are known to travel to these communities, and there have been reports of survivors in these communities being targeted by aggressive marketing and ‘recruitment’ strategies.

The above discussion highlights the tendency of claim farmers to target places where large numbers of victims and survivors of institutional child abuse are likely to be present. In this regard, we note that the provisions in new section 71 of the PIPA will not prevent

advertisements or promotions to groups of people. The provisions in new section 71B relating to cold calling also require that a person is “specifically” contacted. We raise for the Committee’s consideration whether these provisions are adequate to prevent survivor advocacy businesses and/or law firms from engaging in claim farming practices targeted at groups of survivors (for example, bulk mailing of letters of the nature described above to prisoners, residents of a small community or former students of a particular school).

Possible fraudulent claims

We note that, in introducing the Bill, the Attorney-General referred to “the potential for unmeritorious claims and fraudulent behaviour in relation to personal injury... claims”.⁷ Consistent with this, concerns have been raised with us that the activities of survivor advocacy businesses and their associated law firms — particularly the payment of referral fees — may foster fraudulent claims of abuse.

Undesirable billing practices

knowmore strongly supports the provisions in amended section 347 of the *Legal Profession Act 2007* (Qld), as per Clause 16, which will ensure that “additional amounts” — including fees for the services of survivor advocacy businesses in obtaining instructions and preparing statements — will be treated in the same way as legal costs when determining the maximum amount a law firm may charge for speculative personal injury claims.

knowmore has seen evidence of the kinds of undesirable billing practices referred to in the Explanatory Notes and the Attorney-General’s introductory speech. We are particularly concerned about:

- Law firms classifying fees payable to survivor advocacy businesses as disbursements, thus increasing the total amount that may be charged to the survivor.
- Fees payable to survivor advocacy businesses and other disbursements initially being paid for by third party litigation/disbursement funders, who charge additional fees and interest at rates of up to 23 per cent for the life of the client’s matter.

As noted in the Explanatory Notes, such practices may not only disguise claim farming arrangements, but “prevent successful claimants from receiving a fair and equitable share of judgment or settlement funds”.⁸ We therefore consider that the provisions in Clause 16 of the Bill (and the supporting provisions in Clauses 35 and 51)⁹ are necessary and appropriate to help curb claim farming and stop survivors of institutional child abuse from having the compensation they are entitled to severely eroded by fees and charges.

7 Queensland Legislative Assembly (Hon. SM Fentiman), *Record of Proceedings (Hansard): First Session of the Fifty-Seventh Parliament*, Introduction of the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022, 31 March 2022, p. 841.

8 Explanatory Notes to the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022, p. 2, <documents.parliament.qld.gov.au/tp/2022/5722T477-1BE3.pdf>.

9 New section 788 of the Legal Profession Act and new section 71E of the PIPA.

Conclusion

As outlined above, knowmore strongly supports the Bill's objectives to stop claim farming and prevent undesirable billing practices for personal injury claims. We know that many survivors of institutional child abuse are being exploited, intimidated and harassed in the context of considering their compensation options, as highlighted in the experiences of our clients that we have shared here. In our view, the Bill is essential for protecting survivors from this type of conduct, and we commend the Queensland Government for its strong leadership in this area.

We have noted that the amendments in the Bill will not be successful in stamping out the predatory behaviour of some law firms and survivor advocacy businesses unless the legislation operates effectively in practice. To achieve the outcomes intended by the Bill, we recommend that particular consideration needs to be given to ensuring that the monitoring and enforcement mechanisms put in place to uphold compliance with the legislation are workable and effective. Other stakeholders with direct experience of the operation of the legislative amendments enacted in 2019 to successfully address claim farming conduct for compulsory third party claims are better placed than us to provide specific comment on these aspects. However, knowmore would encourage the Queensland Government to consider these matters as a priority in anticipation of the Bill being passed. In our view, the practical success of the legislation is also critical to ensuring that the reforms being progressed in Queensland provide a valuable model for reform across the country, ensuring all survivors of institutional child abuse are better protected from exploitation, intimidation and harassment when pursuing their legal rights compensation and redress.

Brisbane

Level 20, 144 Edward St, Brisbane QLD 4000
PO Box 2151, Brisbane QLD 4001
t 07 3218 4500

Melbourne

Level 15, 607 Bourke St, Melbourne VIC 3000
PO Box 504, Collins St West VIC 8007
t 03 8663 7400

Sydney

Level 7, 26 College St, Darlinghurst NSW 2010
PO Box 267, Darlinghurst NSW 1300
t 02 8267 7400

Perth

Level 5, 5 Mill St, Perth WA 6000
PO Box 7072, Cloisters Sq WA 6850
t 08 6117 7244

Original artwork by Dean Bell depicts knowmore's connection to the towns, cities, missions and settlements within Australia.

knowmore acknowledges the Traditional Owners of the lands and waters across Australia upon which we live and work. We pay our deep respects to Elders past and present for their ongoing leadership and advocacy.

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