



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

Case: S ECI 2024 03483

Filed on: 05/07/2024 03:50 PM

BETWEEN:

BRIAN HOLMES

Plaintiff

and

KNOWMORE LEGAL SERVICE LIMITED (ACN 639 490 912)

First Defendant

and

**NATIONAL ASSOCIATION OF COMMUNITY LEGAL CENTRES
(ABN 67 757 001 303)**

Second Defendant

WRIT

Date of document: 5.7.24

Filed on behalf of: The Plaintiffs

Prepared by:

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Ref: 322412

TO THE DEFENDANTS

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" with the Prothonotary by submitting the Notice of Appearance for filing electronically in RedCrest or in person at the Principal Registry, 450 Little Bourke Street, Melbourne. See www.supremecourt.vic.gov.au; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

***THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED *[insert date]*

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

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

No.

BETWEEN:

BRIAN HOLMES

Plaintiff

and

KNOWMORE LEGAL SERVICE LIMITED (ACN 639 490 912)

First Defendant

and

**NATIONAL ASSOCIATION OF COMMUNITY LEGAL CENTRES
 (ABN 67 757 001 303)**

Second Defendant

STATEMENT OF CLAIM

Date of document: 5.7.24

Filed on behalf of: The Plaintiffs

Prepared by:

Arnold Thomas & Becker

573-577 Lonsdale Street

Melbourne VIC 3280

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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, 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**).
5. The National Redress Scheme provides 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.
6. At all material times, the Second Defendant (**NACLC**):
 - 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**);
 - c. from around July 2018 to around 2 March 2020 owned the business name "Knowmore Legal Service".
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; and
 - c. owned the business name "Knowmore Legal Service".
8. At all material times, NACLC and Knowmore Limited (together, **Knowmore Legal Service**) carried on business under the business name "Knowmore Legal Service" 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, NACLC 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”.

9. The Plaintiff (**Holmes**) is a survivor of historical child sexual abuse caused by the acts or omissions of the Salvation Army (Victoria) Property Trust (**Salvation Army**) and the Department of Health and Human Services (**DHHS**).
10. In December 2018, Holmes retained Knowmore Legal Service under a retainer (**Retainer**) to provide him with legal services in relation to the National Redress Scheme.

Particulars

Formation of the Retainer and the terms of the Retainer are particularised at paragraphs 46 and 47 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.
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 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 have grown substantially (the **Improved Outcomes**).

Particulars

The 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.

- (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.

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. 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;
- b. in the period from 1 July 2018, retained Knowmore Legal Service as its lawyer in relation to the National Redress Scheme;
- c. to obtain redress under the National Redress Scheme, released from liability 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;
 - ii. the estimated quantum of damages he or she could obtain from one or more of the Institutions via common law action;
 - iii. the likely comparative outcomes and processes between a National Redress Scheme Claim and a common law claim;
 - iv. the fact that the Legislative Reform enabled survivors of child sexual abuse to bring common law claims they had previously released Institutions from, with better prospects of success and higher amounts of compensation 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.
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.

The Knowmore System

17. At all material times from 1 July 2018 and ongoing, Knowmore Legal Service provided legal services to its clients pursuant to a system which had the features described in paragraphs 18 to 26 below (the **Knowmore System**).
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. issuing a standard form letter of advice at or around the commencement of its retainer with its clients (**Initial Letter of Advice**);
 - c. providing a standard form letter titled “client agreement” (**Client Agreement Letter**);
 - d. using an internal template referred to as an “existing client offer received advice file note” (**Telephone Conversation Template**); and
 - e. issuing a standard form letter of advice issued when the National Redress Scheme made an offer of redress (**Offer Letter of Advice**).
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.
 23. Under the Knowmore System, Knowmore Legal Service did not encourage its clients to obtain the Common Law Claims Advice.
 24. Under the Knowmore System, Knowmore Legal Service did not advise 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.

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 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.

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, inconvenience, risk and delay, but not advising that the quantum of common law recoveries was likely to be higher than the redress payment.

HOLMES' CLAIMS

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 the Salvation Army.
34. During the period, Holmes 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) Dysthemic 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. 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. 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. 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.
41. 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 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.
47. On or about 10 December 2018, Knowmore Legal Service sent Holmes correspondence, being the Initial Letter of Advice and the Client Agreement Letter, dated 10 December 2018 and thereby entered into the Retainer with Holmes.

Particulars

The Initial Letter of Advice was constituted by a letter with the subject line “LEGAL ADVICE”. The 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.

48. There were terms of the Retainer that Knowmore Legal Service would:
- 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 responsible and liable for \$8,750.91 and DHHS is 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.
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 encourage Holmes to obtain the Common Law Claims Advice;
 - c. did not otherwise ensure that Holmes obtained the Common Law Claims Advice from another lawyer;
 - d. did not advise Holmes not to accept the offer until he obtained the Common Law Claims Advice; and
 - e. 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 but not as to the comparative advantages of a common law claim, including 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 Services would have had to have given Holmes the Common Law Claims Advice or ensured that he obtained it from another lawyer.

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'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:
- a. Knowmore Legal Service specialised in, or purported to specialise in, providing legal advice to survivors of child abuse;
 - b. Knowmore Legal Service provided legal services under the auspices of a government funded community legal service;
 - c. Knowmore Legal Service knew that Holmes was traumatised by having suffered child sexual and physical abuse;

- d. Knowmore Legal Service was aware of evidence that Holmes had suffered dysthemic disorder, alcohol use disorder and features of anti-social personality disorder in connection with the abuse;
- e. Knowmore Legal Service knew that Holmes was not himself legally qualified or highly educated;
- f. 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 the likely value of the chance to bring a common law claim against the Salvation Army and/or the State of Victoria;
- g. 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.
59. In the circumstances, Knowmore Legal Service owed Holmes a duty of care 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.
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:
- a. would provide the Common Law Claims Advice to its clients, or obtain the Common Law Claims Advice from another lawyer for its clients;
 - b. would encourage its clients to obtain Common Law Claims Advice;
 - c. would advise clients against accepting any offer of redress unless and until the client had obtained the Common Law Claims Advice, 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 not direct clients 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 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.
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:

- 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 before he accepted an offer of redress made under the National Redress Scheme;
- c. failing to advise 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, 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.

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:
 - 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.
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.

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 Retainer

66. Knowmore Legal Service breached the 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;
 - c. failing to advise 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, 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.

67. If Knowmore Legal Service had not breached the Retainer, Holmes:
- a. would have learned of the Improved Outcomes 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 received 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.
68. By reason of Knowmore Legal Service's breach of the 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.

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:
- 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.
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**).
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.

Particulars

The term was implied by reason that Knowmore 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.

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:
- a. Knowmore Legal Service specialised in providing legal advice to survivors of child abuse;
 - b. Knowmore Legal Service provided legal services under the auspices of a government funded community legal service;

- c. Knowmore Legal Service knew that group members were or were likely to be traumatised by having suffered child sexual and physical abuse;
- d. to the extent that it was disclosed to Knowmore Legal Service that group members had suffered injuries, Knowmore Legal Service was aware of that fact;
- e. Knowmore Legal Service knew that group members were not, or were unlikely to be, legally qualified or highly educated;
- f. Knowmore Legal Service knew that group members were, or were at heightened risk of being, socially isolated;
- g. Knowmore Legal Service knew or ought to have realised that group members trusted and relied on Knowmore Legal Service to provide them with comprehensive advice about the 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;
- h. Knowmore Legal Service realised or ought to have realised that group members were 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;
- 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 and in accordance with what could reasonably be expected of a lawyer specialising in assisting historical child abuse survivors to obtain compensation.

Particulars

Holmes refers to paragraph 60 above.

75. In its provision of legal services through the Knowmore System, Knowmore Legal Service breached its duty of care to group members 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, in circumstances where Knowmore Legal Service advised group members in relation to offers for redress made under the National Redress Scheme;
 - b. failing to encourage group members to obtain the Common Law Claims Advice;
 - c. failing to advise 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 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.
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:
- a. without knowing of the Improved Outcomes;
 - b. without having obtained the Common Law Claims Advice; and
 - c. having been directed towards accepting offers under the National Redress Scheme and away from pursuing common law rights.

77. If 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. 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, 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, 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;
 - c. failing to advise 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, inconvenience, risk and delay including by 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.

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, 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.

Common questions

84. The claims of the Plaintiff and the Group Members give rise to substantial common issues of law or fact including:
- a. Did the Defendants, in providing legal services, use a system that had the characteristics alleged at paragraphs 16 to 26 above?
 - b. Did the Defendants owe a duty of care to the plaintiffs and the group members 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?
 - c. Would a legal practice specialising in assisting historical child abuse survivors and acting with reasonable care, skill and diligence in advising on the National Redress Scheme:

- i. Not inform its clients of the Improved Outcomes?
 - ii. Not encourage its clients to obtain the Common Law Claims Advice?
 - iii. Not provide the Common Law Claims Advice, or obtain the Common Law Claims Advice from another lawyer, before advising a client whether to accept an offer for redress under the National Redress Scheme?
 - iv. Not advise its clients against accepting any offer of redress unless and until its clients had obtained the Common Law Claims advice?
 - v. Direct its clients 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, 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 obtained?
- d. Were the Defendants obliged by the terms of the retainers they entered into with Holmes and the group members to:
- i. Inform its clients of the Improved Outcomes?
 - ii. Encourage its clients to obtain the Common Law Claims advice?
 - iii. Provide the Common Law Claims Advice to its client, or obtain the common law claims advice from another lawyer for its client, before advising its clients in relation to offers for redress made under the National Redress Scheme?
 - iv. Advise its client against accepting an offer for redress made under the National Redress Scheme unless and until its clients had obtained the Common Law Claims Advice?

- v. Not direct its clients 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, 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 obtained?

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

A. Damages.

B. Costs.

C. Interest.

**G A Costello KC
D Seeman
D Murphy**

Arnold Thomas & Becker

Solicitors for the Plaintiffs

1. Place of trial— Melbourne
2. Mode of trial— Judge
3. This writ was filed— for the Plaintiff by Arnold Thomas & Becker Lawyers, of 573-577 Lonsdale Street, Melbourne VIC 3000
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