

The National Redress Scheme – Essentials for CLCs

Trina Williams & Warren Strange, knowmore legal service – 21 August 2019



Acknowledgment of Country



Today - overview

- The first year of operation of the NRS
- What knowmore has seen in its work
- Emerging issues to be aware of when assisting clients
- The future of the Scheme, and the report of the Joint Select Committee
- Redress or a common law/civil claim? The decision in *TRG v The Board of Trustees of the Brisbane Grammar School* [2019] QSC 157

The future of the NRS



Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse

Getting the National Redress Scheme right:
An overdue step towards justice

April 2019

Report of the Joint Select Committee

- Findings include:
 - The Scheme is the *“opportunity for our words to be translated into measurable outcomes”*
 - It is *“too important to not get right”*
 - *“As it currently operates, the Scheme is at serious risk of not delivering on its objective of providing justice for survivors”*
- 29 recommendations for reform – relating to the design and implementation of the Scheme. We will discuss some today. Legislative change required for some – not a straightforward process (Intergovernmental Agreement and Ministers’ Board)

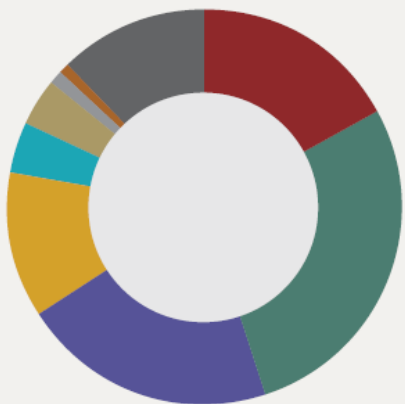
key objectives for knowmore

- Help survivors navigate the legal system
- Advocate for survivors and for systemic change
- Educate survivors about their rights and raise community awareness of child abuse
- Work collaboratively with key partners
- Provide trauma-informed and culturally safe services to survivors

knowmore clients – 2018_19

knowmore
free legal help for survivors

Calls came from



NSW	19%
QLD	28%
VIC	20%
WA	12%
SA	5%
TAS	4%
ACT	1%
NT	1%
International/Other	9%

Total calls and clients



18,420

Total 1800 calls
nationally



4,509

clients (intake
completed)

60%

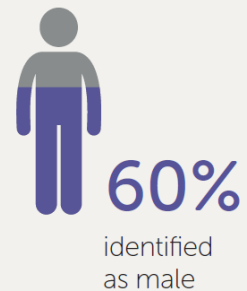
new clients

knowmore clients – 2018_19

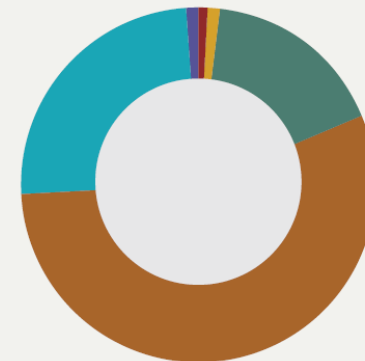
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Our clients



Age



0-18	<1%
19-25	1%
26-45	17%
46-65	57%
66-85	25%
86+	<1%

National Redress Scheme overview

What does the scheme offer?

- A payment up to \$150,00
- Access to counselling
- A direct personal response, if the person wants that

Who can apply?

- Experienced sexual abuse within an institutional when under 18
- The abuse occurred before 1 July 2018
- Australian citizen or permanent resident
- No court-ordered payment from the institution
- Only one application can be made
- Open for 10 years

Assessment framework – assessing penetrative abuse

5 Amount of redress payment

(1) The amount of a redress payment for a person is worked out using the following table as described in subsection (2):

Amount of redress payment					
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Kind of sexual abuse of the person	Recognition of sexual abuse	Recognition of impact of sexual abuse	Recognition of related non-sexual abuse	Recognition person was institutionally vulnerable	Recognition of extreme circumstances of sexual abuse
1 Penetrative abuse	\$70,000	\$20,000	\$5,000	\$5,000	\$50,000
2 Contact abuse	\$30,000	\$10,000	\$5,000	\$5,000	Nil
3 Exposure abuse	\$5,000	\$5,000	\$5,000	\$5,000	Nil

Note 1: Only one item of the table can be relevant to a person. This is because an item covers all relevant sexual abuse of the person.

Note 2: The amount of the redress payment is also affected by section 30 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* and the rules made for the purposes of that section.

knowmore's experiences during the first year of the NRS

Application form

- Part 1: name and date of birth shared
- Part 2: shared with institution
- Part 3: shared with institution only by consent

Prior payments

- How are they being treated

Statutory declaration

- To be completed correctly

knowmore's experiences during the first year of the NRS

Applications being put on hold

Participating institutions

- Opt in date by 30 June 2020

**Determination of extreme
circumstances**

Importance of Part 2

- what needs to be included

knowmore's experiences during the first year of the NRS

- **Treating people in prison/people with serious criminal convictions differently**
- **Offers: Six month period to act**
- **Review: reasons? No worse position?**
- **Redress payments: protections from debt, subject to assets tests**

knowmore's experiences during the first year of the NRS

- Issues with lack of information, processing times: JSC recommendations
- NRS prioritising clients
- Outcomes: some case studies

Options to the NRS: Civil claims processes in 2019

A civil claim in 2019 – what does it look like?

- Limitation periods across Australia have been removed
- Other reforms taking place across Australia – removal of the Ellis defence, the duty of care owed by institutions, setting aside deeds, recent Brisbane Grammar case
- Award of damages which includes damages for pain and suffering and economic loss
- Can include an apology
- If goes to court the standard of proof to be achieved is ‘on balance of probabilities’

TRG v Brisbane Grammar

- *TRG v The Board of Trustees of the Brisbane Grammar School* [2019] QSC 157
- Decision of Davies J, 21 June 2019 (Note: **now under appeal**)
- Application to set aside a previous settlement
- Sections 11A & 48 of the *Limitation of Actions Act 1974* (Qld) – 2016 amendments:
 - No limitation period for actions for child sexual abuse
 - an action may be brought on a previously settled right of action if a Court sets aside the agreement effecting the settlement on the grounds it is “**just and reasonable to do so**”

TRG v Brisbane Grammar

- Applicant suffered abuse in 1986-87, sued in 2001. Settlement deed executed in 2002 for \$47,000 plus costs
- Some principles can be drawn from the decision:
 - i. In deciding what is 'just and reasonable', the interests of, and fairness to, both parties must be considered
 - ii. The amendments do not create a general presumption that deeds will be set aside
 - iii. There are some relevant general considerations for determining what is 'just and reasonable'

TRG v Brisbane Grammar: relevant considerations include

- Prospects of success of the proposed further claim
- Likely quantum of the proposed further claim
- What effect the previous limitation defence had upon the first settlement
- The reasonableness of the first settlement process and the conduct of the defendant (was there unequal bargaining power)?
- The reasonableness of the settlement figure
- What impact delay would have upon the defendant in the proposed further claim
- What impact the change of the law (vicarious liability) has had upon the reasonableness of the settlement at the time
- What costs have been thrown away

Setting aside past settlements

- Similar laws exist in Western Australia.
- One reported decision: *JAS -v- THE TRUSTEES OF THE CHRISTIAN BROTHERS [2018] WADC 169* (11 December 2018, decision of Sleight CJDC)
- Note: application was not opposed by the respondent (Christian Brothers)

Christian Brothers agree to pay WA child sex abuse victim Paul Bradshaw \$1 million settlement

Tim Clarke | AAP | PerthNow
August 16, 2018 3:46PM

TOPICS

Crime

A 60-YEAR fight against the brutal Christian Brothers has finally ended for a WA child sex abuse victim who was awarded \$1 million in a landmark legal case. Paul Bradshaw was physically and sexually abused at the hands of the brothers, as was hundreds orphans throughout the state.

Mr Bradshaw, 74, on Thursday became the first under WA's new laws to go to court to claim damages for alleged historic child sexual abuse.

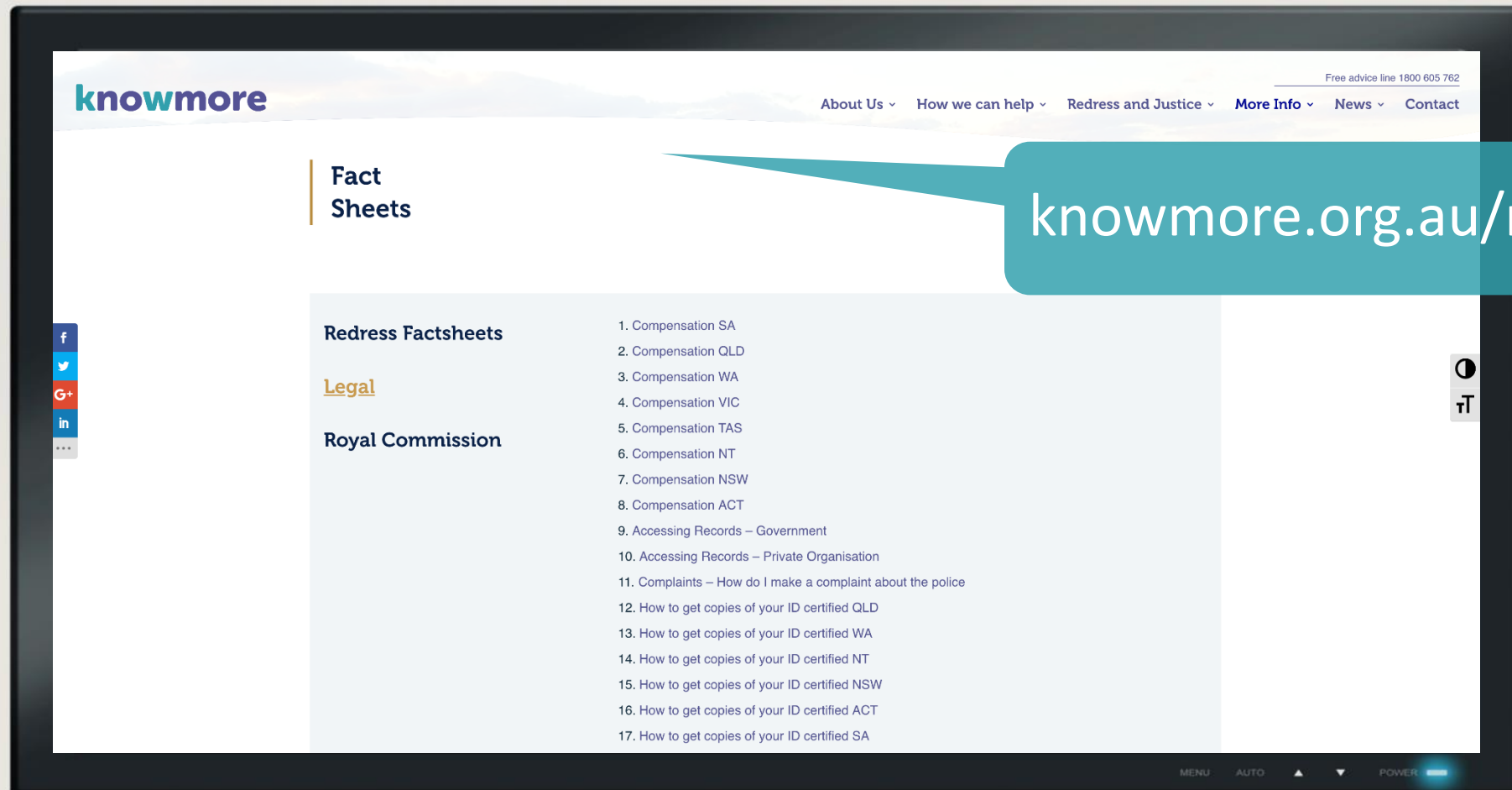
His case was fast-tracked before a judge because Mr Bradshaw has weeks to live from prostate cancer – and he had been due to finally detail the horrific ordeal he suffered as a small boy at the Castledare Junior Orphanage and Clontarf Orphanage in the 1950s and 60s.

But after a last-minute offer from lawyers for the Trustees of the Christian Brothers, Mr Bradshaw was spared that ordeal – and won the case he had been fighting since he was old enough to understand exactly the horrors inflicted him by several of the brothers – chief amongst them the notorious Brother Lawrence Murphy. The \$1 million is by far the largest the Christian Brothers have ever offered or had to pay in WA – in a case that was the first heard since WA lifted the time limit on child abuse claims.

And it sets the benchmark for likely hundreds of others to follow.

Brochures and information

knowmore
free legal help for survivors



Where to find knowmore

knowmore
free legal help for survivors



1800 605 762 | knowmore.org.au

Sydney NSW

Level 7, 26 College St
Sydney NSW 2000
PO BOX 267,
Darlinghurst NSW 1300

Melbourne VIC

Level 15, 607 Bourke St
Melbourne VIC 3000
PO Box 504, Collins Street
West VIC 8007

Brisbane QLD

Level 20, 144 Edward St
Brisbane 4000
PO Box 2151,
Brisbane QLD 4001

Perth WA

PO BOX 7072,
Cloisters Square PO
WA 6850

A photograph of three hikers walking away from the camera on a wide, light-colored dirt path. The hiker on the left is wearing a pink cap, a backpack, and dark clothing. The hiker in the middle is wearing a pink shirt and dark pants. The hiker on the right is wearing a black tank top, a red skirt, and dark pants. The path is flanked by dense green trees and shrubs. In the background, there are rolling hills and a clear blue sky. Two blue text boxes are overlaid on the image: one at the top with the word 'Questions?' and one at the bottom with the words 'Thank you!'.

Questions?

Thank you!