

Submission to the Royal Commission into Institutional
Responses to Child Sexual Abuse

Issues Paper 9: Addressing the risk of child sexual abuse in
primary and secondary schools

Submission of knowmore legal service

knowmore

Free legal help to navigate
the Royal Commission

Introduction

knowmore is a free legal service established to assist people engaging with the Royal Commission. Advice is provided through a national telephone service and at face to face meetings, including at outreach locations. **knowmore** has been established by the National Association of Community Legal Centres, with funding from the Australian Government, represented by the Attorney-General's Department, and has offices in Sydney, Brisbane, Melbourne and Perth.

Our service was launched in July 2013 and since that time we have assisted over 3,400 clients with legal advice or information relating to childhood sexual abuse within an institutional context. Many of the clients that we have assisted have experienced child sexual abuse in school environments.

It is noted that Issues Paper 9 was released on 31 July 2015, with submissions due by 31 August 2015. Also noted is the Commission's suggestion that in light of the number of questions set out in the Issues Paper, respondents are encouraged to target their submissions to questions within their particular areas of experience, interest or expertise; and it is not expected that all submissions will address all questions. Accordingly, and given the time available, this submission will only address a small number of the questions contained in the Issues Paper.

knowmore's submission

Topic A: General questions

- 1. How effective are the policies, procedures and/or practices schools have adopted to minimise or prevent, report and respond to risks and instances of child sexual abuse?*
- 2. How can compliance with legislative obligations and child protection policy requirements by schools and their staff be encouraged? Should there be penalties for non-compliance, and if so, in what form?*

As a starting point in addressing the risk of child sexual abuse in primary and secondary schools, it must be accepted that schools are inherently 'high-risk' environments. As noted, a significant number of the clients who have approached **knowmore** for assistance have suffered sexual abuse as children in a school environment. Many have suffered such abuse in comparatively recent times. The experience of abuse reported by our clients extends across all school environments (over 200 schools in total) – public and private; day and boarding; regional and metropolitan; single sex and co-educational; specific purpose schools (e.g. 'special' schools and 'training' schools); and primary (including infants schools) and secondary. The unfortunate reality which must be accepted is that there will always and inevitably be persons who are attracted to working or otherwise being involved with school environments, because they allow access to children and to opportunities to commit sexual offences against them.

It will always therefore be the case that conducting a school provides opportunities for teachers, and other persons in positions of authority (by virtue of their association or involvement with the school) to sexually abuse students. As such, while it is important to have in place a thorough and strong regulatory framework, practices, policies and procedures in themselves will not ensure that students are adequately protected, unless they are supported by high levels of compliance. Compliance in turn is influenced by a number of factors; including leadership, culture, training and education, and an effective system of identifying and taking action upon breaches of the regulatory framework, imposing liability for proven breaches at both the levels of any individuals responsible and, in appropriate circumstances, upon the institution itself. Such liability should not be limited, and should include criminal, administrative (disciplinary and regulatory) and civil outcomes.

The collective experiences of **knowmore's** clients demonstrate that the imposition of liability, whether civil¹ or criminal, on institutions for the sexual abuse of children within their care plays a critical role in encouraging institutions and their staff to comply with the law. The consequences of liability have the potential to cause institutions to exercise a greater degree of care over, and invest resources in, ensuring their staff, and the organisation itself, are proactively complying with legislative and policy-based obligations that are ultimately aimed at reducing risks to the children in their care.

However, we draw attention to the following issues related to liability that will need to be considered in the educational context:

- **There are difficulties in enforcing civil and criminal liability on schools that are unincorporated bodies.**

In 2014, 34.9% of Australian schools were non-government schools.² We submit that a large proportion of these non-government schools, especially those that are faith-based, are likely to be unincorporated bodies that are not amenable to legal proceedings.

knowmore has previously submitted that this issue has significant implications for an institution's capacity (and willingness) to ensure their obligations are carried out diligently and effectively by staff and their capacity to foster a culture of compliance within their institution.³

Currently, only a school's *proprietor* is required to be incorporated for the school to become registered as a provider of education to children.⁴ We submit the *governing body* of schools, such as a school's board or council or its central office, such as a Catholic Education Office, should be required to be incorporated. We submit that in practice it is the governing body, and not the school's proprietor, that will ultimately

¹ In this context, this includes liability under any redress schemes, in addition to liability arising in the civil courts

² ABS, 2014, *Schools*, Australia (Series 4221.0).

³ See **knowmore**, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Redress and Civil Litigation*, 24, 27-28 (<http://www.childabuseroyalcommission.gov.au/getattachment/75166470-ad4f-47af-b6a1-0c9e305064bd/Knowmore>).

⁴ See, for example, ss 47(a) (individual schools) and 40 (system of schools) of the *Education Act 1990* (NSW).

be responsible for implementing, and ensuring a school's compliance with, legislative obligations.⁵

- **A clear duty of care holding institutions liable for child sexual abuse committed by their employees or agents must be created by legislation.**

As the Royal Commission is aware, the decision in *Lepore*⁶ specifically examined, and presents problems for, the civil liability of a government school for the sexual abuse of a child by a teacher.

To address these issues, so as to ensure that institutions can be held liable civilly (or, in future, criminally)⁷ for breaches of the law, we refer to the recommendations for reform of the civil litigation system set out in our submission responding to Issues Paper 5.⁸

Topic C: Protection and support services for children and specific student populations

2. What support services should schools provide for victims and others affected by child sexual abuse, either directly or through referral to external providers? Are schools able to ensure these services are provided and, if not, why not?

Our client work gives rise to one observation we wish to make about the context of providing support services to survivors of school-related child sexual abuse. Many of the clients we have assisted, who suffered sexual abuse as children in school environments, are relatively isolated in terms of their contact with support services. There is no over-arching support body, such as may exist for some other groups of survivors, such as 'care-leavers' (through CLAN), or 'child migrants' (through the Child Migrants' Trust), or some clergy abuse survivors (through groups such as Broken Rites). Often the existence and profile of these support groups provide opportunities for survivors, particularly those who have not previously disclosed abuse, to understand that many others endured similar experiences; to understand that support is available; and to investigate opportunities to seek that support.

In comparison, many school related survivors are unaware of or have not remained in contact with other survivors from the time they were at school, and it is only in notorious instances, such as those exposed in the Royal Commission's recent Case Study No.28 concerning certain institutions run by the Catholic Church in Ballarat,⁹ that the magnitude of offending has resulted in survivors being able to identify and engage with other victims for the purposes of mutual support and to collectively pursue outcomes such as redress.

⁵ In *PAO v Trustees of the Roman Catholic Church for the Archdiocese of Sydney* [2011] NSWSC 1216, for example, the Court noted from the evidence at [21]-[23] that: '*...Catholic primary and second schools in Sydney were situate on land owned by the Archdiocese Trustees and the Archbishop would ask or invite a religious order to run a secondary school...Teachers and principals at Catholic primary and second schools who were members of a religious order were appointed to their position by the Provincial of the religious order. The Provincial also determined whether the appointment of such a teacher or principal should cease to exist....Upon a religious order being invited to run a particular school, there was, and continued to be, little and usually no direct communication between the Archbishop and the school.*'

⁶ *New South Wales v Lepore; Samin v Queensland; Rich v Queensland* (2003) 195 ALR 412.

⁷ We refer here particularly to research the Royal Commission has commissioned: Ariel Freiberg, Hugh Donnelly and Karen Gelb, *Sentencing for Child Sexual Abuse in Institutional Contexts* (July 2015), 219.

⁸ **knowmore**, *op.cit.*

⁹ And other instances where a police investigation may have identified multiple complainants from a school environment

This isolation may adversely impact upon the capacity of some survivors of school based abuse to access support services.

Topic F: Reporting, information sharing, complaints and investigations

4. How should investigations into allegations of child sexual abuse be undertaken within schools, and by whom? What measures should be taken to ensure that the sensitivities and vulnerabilities of children involved are considered?

There is one area relating to investigations which we wish to comment upon, concerning allegations of child sexual abuse which give rise to possible criminal offences.

Clearly a report of alleged sexual abuse coming to the attention of those responsible for the administration of a school can generate a number of important but potentially conflicting priorities; including, but not limited to:

- the need to safeguard the welfare of any child victim and possibly of other children to whom the alleged offender may have access;
- the importance of reporting the allegations to the appropriate investigative agency (i.e. the police) and allowing any consequent criminal investigation to proceed without compromise;
- the interests of the school community, and particularly other students and parents, in knowing about (and possibly assisting through the provision of information) any investigation; and
- the rights of the accused employee, including their employment-related rights, in circumstances where it may not be possible to pursue the investigation to a point where criminal charges are initiated expeditiously.

As the Royal Commission's public hearings have demonstrated, another factor that unfortunately is often present during considerations of how a report should be responded to is obviously concern, on the part of those responsible for the administration of an institution, about the damage that the publication of such allegations may inflict upon the reputation of the institution.

There is a strong likelihood of police investigations being compromised where (a) school administrators do not liaise closely and effectively with investigating police, once a criminal investigation has been commenced, or (b) where a school is attempting to also comply with their obligations under reportable conduct schemes. In particular, precipitous action such as immediately suspending a staff member upon receipt of an allegation, whether motivated by a desire to protect the student population or the school's reputation, may irretrievably compromise a police investigation through alerting the suspect at an inappropriately early stage. This in turn can obviously allow opportunities to remove or destroy inculpatory

evidence (such as computer based evidence e.g. child exploitation material that may be obtained under a search warrant, from either the suspect's work or home addresses); to improperly influence witnesses; or to void the opportunity for some covert investigative strategies that depend, in terms of 'successful' outcomes, upon the suspect being unaware of any police interest.

Accordingly, we would stress the importance of timely and effective liaison between school authorities and investigating police when criminal investigations are initiated. Failure by a school to follow reasonable instructions issued by police on matters such as disseminating information to the suspect staff member, should result in regulatory consequences for the school and for the individuals involved.