

Submission to the Community Development and Justice Standing Committee of the
Legislative Assembly of Western Australia

Inquiry into options available to survivors of institutional child sexual abuse in WA who are
seeking justice.

Prepared by

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Background to Survivors & Mates Support Network (SAMSN)

SAMSN is a not-for-profit charity co-founded twelve years ago by male survivors of child sexual abuse, for male survivors, their supporters, family and friends.

SAMSN believes male survivors can heal from child sexual abuse, support others to thrive and be leaders for change. SAMSN offers a range of professional and peer support services and resources to assist adult male survivors, their supporters, families and friends. Combining a lived experience and professional service model, SAMSN has established itself as an essential service that is in high demand. Details of SAMSN's services and programs can be found [here](#).

SAMSN provides tailored training to health professionals, community organisations and government departments that are supporting men impacted by childhood trauma. The training delivered in NSW, South Australia and Tasmania, has been funded by State Governments, the Commonwealth Government and by institutions.

SAMSN is one of the Redress Support Services, funded by the Department of Social Services to support survivors in New South Wales and to capacity build support services in South Australia and Tasmania.

Terms of Reference

- 1. The impact of the *Civil Liability Legislation Amendment Act (Child Sexual Abuse Actions) Act 2018* (the Act) including:**
 - a. the experience of survivors who have used the civil litigation process;**
 - b. the response of government and non-government institutions to civil claims brought by survivors;**
 - c. the efficiency with which courts deal with civil claims;**
 - d. State monitoring and reporting on the progress and impact of the Act.**

SAMSN being primarily a NSW based service is not in a position to comment on this state specific issue. However, we have responded to Question 4.

- 2. The effectiveness of WA's support of the National Redress Scheme, including:**
 - a. the experience of survivors who have accessed the Scheme;**
 - b. the response of Government and non-government institutions to the Scheme.**

SAMSN being primarily a NSW based Redress Support Service, is not in a position to comment on the effectiveness of WA's support of the National Redress Scheme.



3. The resourcing and provision of services to support survivors in whichever path they take.

Survivors engaging either with the National Redress Scheme or with the civil litigation process need support. Both processes require the survivor to recount their history of abuse and both processes by their very nature of evidence gathering, re-traumatise survivors.

SAMSN is the only specialist service supporting men who were sexually abused as children

SAMSN receives calls for assistance from survivors, their families and loved ones from around Australia. Unfortunately the funding provided to SAMSN means that the support SAMSN can offer, is limited to NSW, with small amounts of funding being available to capacity build services in South Australia and Tasmania and to take referrals from Redress Support Services in those two states, when those services are not able to assist a survivor.

When SAMSN receives calls from outside NSW, rather than turn callers away, the callers are helped to identify support services in their state or territory; they are also referred to the resources on our website, in particular to the eight episode podcast STRONGER. Our data has shown that over the twelve month period from July 2022 to June 2023, 2638 people from around Australia have listened to the podcast. The state with the most listeners was New South Wales, followed by Melbourne, Brisbane, Adelaide and Perth. The analytics of website use has shown that people in Sydney, followed by people in Melbourne, Brisbane, Adelaide and Perth have visited our website. This data clearly shows the extent of SAMSN's reach across Australia.

Quite apart from the support needed to engage in either of these pathways, the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) acknowledged the need for ongoing specialist support for victims and survivors of institutional child sexual abuse.

Recommendation 9.6 of the Final Report stated

The Australian Government and state and territory governments should address existing specialist sexual assault service gaps by increasing funding for adult and child sexual assault services in each jurisdiction, to provide advocacy and support and specialist therapeutic treatment for victims and survivors, particularly victims and survivors of institutional child sexual abuse. Funding agreements should require and enable services to:

- a. *be trauma-informed and have an understanding of institutional child sexual abuse*
- b. *be collaborative, available, accessible, acceptable and high quality*
- c. *use collaborative community development approaches*
- d. *provide staff with supervision and professional development.*¹

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report – Preface and Executive Summary p.133



4. Other options to provide justice, resolution and/or compensation to survivors and their families, including lessons from other jurisdictions.

i. Information about legal options

All survivors need clear and accessible information of the pathways available to them to seek justice, resolution and/or compensation for the harm caused to them by institutional child sexual abuse. However, the reality is that many survivors are not given this choice. Many are not aware of the option of pursuing redress through the National Redress Scheme. It is the unfortunate reality that many private legal practitioners are choosing not to advise their clients of this option. Where information about the National Redress Scheme is provided, clients are telling us they were actively discouraged by private legal practitioners from pursuing redress.

SAMSN would recommend that Law Societies across Australia make it mandatory for lawyers practising in the area of historical child sexual abuse, provide information not only about the civil litigation option but also about the option of pursuing redress through the National Redress Scheme.

ii. Current barriers for access to justice in civil litigation

a. Use of permanent stays

The Royal Commission in its Redress and Civil Litigation Report, recommended the establishment of a National Redress Scheme and reforms to the civil litigation process. The key recommendation for civil litigation reform was the abolition of Statutes of Limitations as they applied to historical child abuse claims. This reform was implemented in each state and territory.

Many of the survivors being supported by SAMSN, have potential claims for historical child sexual abuse.

Many when presented with legal advice from knowmore as to their legal options, have chosen the less traumatic path of seeking acknowledgement of the harm done and redress, by making an application for redress through the National Redress Scheme.

However, SAMSN has supported 10 clients who have decided that the civil litigation pathway seeking compensation for the harm done, is the right pathway for them. Of recent times, taking this pathway has become incredibly difficult with institutions and/or their insurers applying for permanent stays.

The basis of the Royal Commission's recommendation that the Statute of Limitations be removed for claims of historical child sexual abuse, was an acknowledgment of the decades taken by survivors to disclose the abuse.

"There is now clear evidence that it is likely to take many survivors years, even decades, to disclose their experience of sexual abuse as a child. There is also an increasing understanding of the devastating impacts of



*child sexual abuse and how these may work against a survivor even being able to disclose the abuse to a family member or friend, let alone seek legal advice and commence proceedings. There is little evidence that survivors of child sexual abuse are 'sleeping on their rights'."*²

It certainly was not the intention of the Royal Commission that institutions would then as a matter of course, request permanent stays to stop survivors making a claim. This is in fact what is now happening. Institutions are making these applications based in the main on the loss of evidence by the institution or the death or incapacity of the perpetrator. These applications for permanent stays generally are being successful.

SAMSN endorses the submission of Karp O'Neill Lawyers. This submission details the instances where permanent stays have been granted by the Western Australian courts and details the legislative changes which if implemented would re-instate the rights of survivors seeking compensation for the harm done.

b. Provision of inflated settlement figures

Many SAMSN clients phone us extremely distressed when their matter settles for a very small amount. Their distress stems from the initial inflated settlement figures quoted by their lawyers, often ten times greater than what they are offered at the settlement conference. The distress also stems from the conversations with their lawyer at the settlement conference that the figure on the table will be the best they can expect to recover. This process of using inflated settlement figures to capture clients, causes significant harm to survivors and reinforces the feelings of abuse and powerlessness.

Many of our clients are reluctant to go against the advice of their lawyer at the settlement conference to accept a lower figure. They know they run the very real risk of increased costs (both financial and emotional) if they reject the settlement offer and proceed to a hearing in court.

While many of our clients would be eligible to claim a 'top up' from the National Redress Scheme, the majority are choosing not to. They simply cannot face another process.

SAMSN would recommend that lawyers working with survivors of historical child sexual abuse be required to provide written advice as to likely outcomes of the litigation and that costs penalties should apply when the outcomes achieved at settlement are considerably less than initially advised.

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1 August 2023



² Royal Commission into Institutional Responses to Child Sexual Abuse, Redress and Civil Litigation Report p.457