

STATEMENT

Royal Commission

Case Study 25 – Redress and Civil Litigation



Wednesday 26 March 2015

Francis Sullivan, CEO, Truth Justice and Healing Council

Providing redress to survivors of child sexual abuse no matter where or when it occurred, no matter who was responsible, no matter the nature of the abuse, is a crucial social issue we as a nation need to settle during the course of this Royal Commission.

Bearing witness to the tragedy of institutional child sexual abuse requires both recognition of the history, and practical steps by institutions and governments to take responsibility for their failure to protect children and bring perpetrators to justice.

That such abuse has occurred at all and the extent to which it has occurred in the Catholic Church are facts of which the whole Church in Australia is ashamed.

In taking responsibility for this history our redress and civil litigation submission is a plank of the reform agenda being undertaken by the church.

Like the Commission's consultation paper nothing in our submission is set in stone.

We, like so many others, are here to be part of the conversation – to do what we can to achieve the end result of a workable, practical scheme that upholds individual dignity and helps rebuild broken lives.

Our submission aims to achieve two fundamental objectives:

One, that all survivors of child sexual abuse across Australia can receive redress based on the same criteria and conditions, determined independently and easily accessible, regardless of the circumstances of the abuse.

Two, that the survivors of child sexual abuse who decide to take a claim to court are treated with compassion and dignity, that their claim is not blocked by limitation periods and that there will always be an entity backed by insurance or assets against which the claim may be brought.

If these objectives can be met, then an approach to redress built on fairness, independence and compassion should be able to achieve what many survivors and their advocates have been calling for. It should be able to address the concerns identified during the Commission process about the Church's current redress processes, Towards Healing and the Melbourne Response, and deliver redress and ongoing help for survivors regardless of the circumstances of the abuse.

In brief our proposal, largely supporting what is set out in the Royal Commission's Consultation Paper, calls for:

- a single national redress scheme led by the Australian Government and with the participation of state and territory governments and non-government institutions;
- direct financial redress capped at around \$150,000;
- financial redress that takes account of the severity of the abuse and the impact of the abuse;
- additional funding for counselling and psychological care;
- for those survivors who wish it, a meaningful and genuine apology delivered as a direct personal response from the relevant church leader;
- an application process for accessing the scheme that is as clear and simple as possible, and
- claims determined on the balance of probabilities.

Regarding civil litigation we have consistently maintained that a fair, independent and generous redress scheme is a better option for survivors of child sexual abuse than the adversarial litigation process.

We also understand, however, that despite the difficulties, some individuals will wish to pursue a claim through the courts.

For these individuals, there are two particular impediments that should be addressed: limitation periods and identifying an entity to sue.

We agree with the Royal Commission's suggestion of reform to the limitation period and suggest it be extended to 25 years after the claimant turns 18 with a further extension available at the discretion of the Courts.

Secondly regarding the significant issue of identifying the proper party against which to bring proceedings, we suggest legislation should be introduced imposing a requirement on all unincorporated associations which appoint or supervise people working with children to establish an incorporated entity able to be sued on behalf of the institution.

It would be an entity against whom any victim of alleged abuse who wished to sue could proceed.

In addition to these changes, the Council supports the Royal Commission's proposal for the introduction of a statutory duty to make institutions liable for child sexual abuse unless the institution can prove it took reasonable precautions to prevent the abuse.

We need laws in our country which hold all institutions, large or small, accountable for the protection and safety of children.

Thank you.

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