Submission of Micah Projects Inc. To Issues Paper 5

Civil Litigation

supporting people with the Royal Commission into Institutional Responses to Child Sexual Abuse
17 March 2014

Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283
Sydney NSW 2001

By email: solicitor@childabuseroyalcommission.gov.au

Dear Colleague

Issues Paper 5 – Civil Litigation

Thank you for the opportunity to provide this submission to the Royal Commission into Institutional Responses to Child Sexual Abuse.

Key points

- It is difficult for survivors of child sexual abuse to access justice through the civil litigation system.
- Legal action does not usually result in the outcomes that survivors are seeking.
- Survivors of child sexual abuse are a diverse group, as are their motivations for taking legal action.
- The law in Australia does not adequately recognise the damage caused by the breach of trust that is involved in child sexual abuse that occurs in institutional settings.
- The application of limitation periods to civil claims involving child sexual abuse is inappropriate because the damage caused by the abuse is not usually fully realised until later in life, often changes over time and because survivors often need time to feel ready to take legal action.
- Because many claims are resolved through out-of-court settlements many survivors do not experience the therapeutic potential of litigation.
- There is potential for alternative dispute resolution to result in good outcomes for survivors.
- All states should adopt legislation that deals with child sexual abuse and is designed to overcome the current barriers that survivors face when seeking access to justice.
• A national independent redress scheme that aims to be a legitimate alternative to the civil justice system should be established.

• Any measures that are adopted to improve the ability of survivors to access justice should be guided by the human rights principles set out in the United Nations Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power.¹

About Micah Projects

Micah Projects is a Queensland based not-for-profit organisation with a vision to create justice and respond to injustice at the personal, social, and structural levels in church, government, business and society. We provide a range of support and advocacy services to individuals and families.

Services delivered by Micah Projects are underpinned by the principles contained in the United Nations Universal Declaration of Human Rights.

Our experience working with survivors of child sexual abuse in institutional settings

Since its inception Micah Projects has worked in partnership with Forgotten Australians to seek justice for the abuse that many experienced as children. Micah Projects’ Lotus Place is a dedicated support service and resource centre for Forgotten Australians and Former Child Migrants.

Micah Projects has supported many survivors of child sexual abuse as they have navigated the civil justice system. Our support has included the provision of advocacy, counselling, support management, access to housing and parenting assistance.

Our submission is informed by the observations that we have made when supporting survivors to seek justice. We have also spoken to a number of survivors about this submission and have included their views and comments.

The human rights of survivors of child sexual assault

The response to child sexual abuse should be framed using the human rights principles that are articulated in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The application

¹ GA Res 40/34, UN GA 96th plen mtg, UN Doc A/RES/40/34 (29 November 1985).
of this human rights framework transforms people who have been abused in institutional settings from victims to survivors who are entitled to access to justice, restitution, compensation and the assistance that is required to access those rights.

When protecting human rights more than recognition of the substantive rights is required. Mechanisms, programs and services that enable survivors to access their rights are also essential.

**Elements of the civil litigation system in Queensland**

“Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.”

- Article 4 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

**Are there elements of the civil litigation systems, as they currently operate, which raise issues for the conduct of litigation brought by people who suffer child sexual abuse in institutional contexts?**

Queensland’s civil litigation system does not appropriately respond to child sexual abuse. Survivors find it difficult to access justice and redress.

Limitation periods and the court’s lack of understanding about the nature and impact of child sexual abuse lock many survivors out of the justice system. Good independent legal advice and support is often not available for survivors while institutions often provide perpetrators with support and legal representation.

Civil litigation is generally slow and expensive. It can also be a harsh, clinical process that has the potential to re-traumatise victims. The outcomes of litigation are generally limited to a compensation payment. Survivors often do not feel that they have accessed justice when their claim is finalised.

*Child sexual abuse that occurs in connection with an institution involves taking advantage of a position of power and a fundamental breach of trust.*

The common law in Australia recognises that there are certain relationships that are fiduciary in nature. Because a fiduciary relationship involves one party
placing trust and confidence in another party, the relationship gives rise to an opportunity to exercise power to the detriment of another, more vulnerable, person. Examples of this type of relationship include parent and child, teacher and pupil and priest and parishioner.

While the law recognises that fiduciary relationships exist, the court has rejected the proposition that damage caused from a breach of this type of relationship can be non-economic.²

It has been suggested that cases involving child sexual abuse that are argued on the basis of the breach of a fiduciary relationship are framed in this way to overcome limitation periods. Others argue that civil claims that involve sexual abuse are more appropriately argued as a breach of a fiduciary duty rather than as a negligence claim because this properly reflects the existence of trust and power in the relevant relationship and that the breach of trust is a fundamental component of the damage suffered.³

It is our view that in order to properly reflect the nature and impact of child sexual abuse the law needs to clearly and unequivocally recognise that the injuries sustained as a result of the abuse happened in the context of a breach of a relationship of trust.

The damage caused by child sexual abuse within the context of a fiduciary relationship is not the same as the damage that is caused by sexual abuse that does not involve a fiduciary relationship or other breaches of a fiduciary relationship that do not involve sexual abuse.

The impact of the trauma suffered by survivors has been compared to the symptoms experienced by war veterans. Some researchers have described war veterans as experiencing “moral injury”.⁴ Moral injury is said to result from making moral choices under extreme conditions, experiencing morally difficult events or duties, witnessing immoral acts, or behaving in a way that challenges the conscience, identity and values that support a person.⁵ Moral injury manifests itself in feelings of survivor guilt, grief, shame, remorse, anger, despair, mistrust and betrayal by authorities.⁶ It can be seen that an abuse of a relationship that involves a position of power and trust, and can involve the person’s spiritual beliefs, has the potential to injure the person’s moral framework.

² Breen v Williams (1996) 186 CLR 71.
⁵ Ibid.
⁶ Ibid.
Without recognising the damage caused by the breach of an important relationship of trust we believe that the survivor can neither be fully understood nor compensated appropriately.  

_Institutions that provide opportunities for sexual abuse to occur should be liable for the criminal acts of their employees and agents._

“The opportunity for intimate private control and the parental relationship and power required by the terms of employment created the special environment that nurtured and brought to fruition Curry’s sexual abuse. The employer’s enterprise created and fostered the risk that led to the ultimate harm. The abuse was not a mere accident of time and place, but the product of the special relationship of intimacy and respect the employer fostered, as well as the special opportunities for exploitation of that relationship it furnished.”

The above exert from a Canadian decision demonstrates an understanding of the power dynamics involved in child sexual abuse and the close relationship between the enabling environment that relevant institutions provide and sexual abuse of children. Australian courts have not developed this understanding.

The common law in Australia has made it clear that it is very unlikely that a survivor will be successful in bringing a claim against an institution for the unlawful actions of its employee or agent. The only way that a survivor is likely to be able to convince the court that an institution is vicariously liable for a sexual crime is by showing that the employer generated the opportunity for the wrongful act as well as providing some type of ostensible authority for the crime to occur.

Our view is that legislation is required to correct the High Court’s position in relation to the liability of institutions when their agents or employees sexually abuse children.

Limitation periods lock survivors out of the justice system.

Actions for personal injuries in Queensland must generally be commenced within three years of the events that caused the injuries. Where the events happened when the injured person was a child the limitation period

---

commences when the person turns 18. This means that the claim must be made by the time the injured person is 21.

It is possible for survivors to seek an extension of time to bring a claim after the limitation period has expired. However, case law in Queensland has demonstrated that it is very difficult to successfully make this type of application.9

When asked about whether they experienced difficulties because of the amount of time that had lapsed between when the abuse occurred and when legal action was taken, survivors responded in the following ways:

“Yes…we didn’t know about any of the legal issues that affected us because of our background and lack of education.”

“I didn’t know I could do anything about it because I had no idea of the law.”

Significant research and other inquiries have found that much of the damage caused to survivors is not appreciated until many years after the abuse occurred. These findings are consistent with the observations that we have made when working with survivors.

The Forgotten Australians Report found that child sexual abuse occurring in an institutional setting had a complex, serious and negative impact on the lives of survivors and that some “have lived a half life tainted by alienation, isolation and degradation”.10 Recent literature has argued that clergy-perpetrated sexual abuse “can catastrophically” change the survivor’s psychosocial, sexual and spiritual development.11 Sexual abuse by clergy can undermine the survivor’s trust, sense of self, sexual identity and social and cognitive development.12 This disruption can affect how survivors understand the behaviours of others and how they handle stressful life events.13

---


12 Ibid.

13 Ibid.
Our observation is that life events such as parenting, relationships and loss can often trigger the impact of child sexual abuse. Often a person has not experienced these things by the time they are 21 years old. Given that much of the damage caused by child sexual abuse is realised in the context of adult relationships or during stressful life events survivors often do not properly understand the damage that was caused by the abuse until they are well into their adult lives. We have also observed that often survivors do not find the strength to take legal action in relation to the abuse until they have accessed adequate support, counselling and healing.

We provided support to a group of survivors when they took legal action against the Sisters of Mercy in relation to abuse that they had suffered as children at St Joseph’s Orphanage Neerkol. This action was commenced well outside the limitation date and at a time when this defence was routinely used to defeat claims. This meant that settlement of the claim depended completely on negotiating in good faith with the church. Accordingly, the resulting compensation payments were small.

In our experience survivors feel pressured to agree to an out-of-court settlement because they are advised that their claim will be unsuccessful in court because of the limitation period.

Rather than rely on the good faith of institutions not to defend claims of child sexual abuse on the basis of limitation periods our view is that limitation periods should not be applied to civil claims that involve child sexual abuse.\(^{14}\)

It should not be forgotten that child sexual abuse is an abhorrent crime. Perpetrators of child sexual abuse and institutions that are complicit in the abuse should not be shielded by limitation periods.

Other jurisdictions, including certain states in Canada, have already abolished time limits for civil actions related to child sexual assault so that survivors have unlimited time in which to institute proceedings.\(^{15}\) We would support the same action being taken in all states of Australia.

---

\(^{14}\) We also believe that limitation periods should be removed where a person is making a claim in relation to injuries sustained as a child as a result of physical and psychological abuse.

\(^{15}\) See British Columbia’s Limitation Act, RSBC 1996, c 266, s 3(4)(k)(i); Saskatchewan’s Limitation of Actions Act, RSS 1978, c L-15, s 3(1)(3.1)(a); Ontario’s Limitations Act, RSO 2002, c 24, ss 10(1)-(3), 16; Manitoba’s Limitation of Actions Act, CCSM 2002, c L150, s 2.1(2)(a); Newfoundland’s Limitations Act, RSNL 1995, c L-16.1, s 8(2); Nunavut and the Northwest Territories’ Limitation of Actions Act, RSNWT 1998, c L-8, s2.1.
Survivors should be able to take legal action against the Catholic Church.

The Catholic Church does not have the same legal status in Australia as it does in other jurisdictions. This makes it very difficult to take legal action against the church. We understand that the Royal Commission will consider this issue in greater detail when it hears evidence about the civil action commenced by John Ellis.

Our view is that the Catholic Church should be required to adopt a legal status in Australia that ensures that survivors are able to take legal action against it.

Lawyers rather than survivors often drive class actions.

We have supported numerous survivors who have been part of class actions. In our experience participants in class actions do not receive adequate independent legal advice. They are often asked to participate in a class action and to sign an agreement to be involved in the action in a solicitor’s office without being provided with independent advice. Many of the survivors who we have supported have not understood the agreement that they were asked to sign.

Agreements to participate in class actions often do not contain adequate cooling off periods and include penalties that apply if a survivor decides not to pursue the matter after the cooling off period has expired. In our experience survivors have sometimes remained involved in class actions simply to pay the legal costs associated with their claim.

We are also aware of circumstances where survivors have been threatened or pressured by other participants to join a class action.

When participating in class actions individual survivors do not receive their own advice. Consequently many survivors do not understand the legal process or the arguments that are being made. When we asked some survivors whether they understood the legal arguments being made in their case their responses included “no”, “no, I had no idea and no control” and “no we knew nothing about the legal system”.

When survivors have decided to participate in a class action they have done so for a number of reasons. This type of action allows survivors to stand together and speak out as a group, may be more likely to attract media attention and may result in a larger settlement. Many survivors also believe that participating in a class action will culminate in their day in court and that there will be a public and proper examination of those involved in perpetrating the abuse and that there will be a finding of liability and damage.
Many survivors do not understand that when civil legal action is taken in relation to abuse it is usually settled out of court. In our experience this is not explained to survivors when they are deciding what action to take when seeking redress and healing. This means that survivors do not always achieve the result that they were seeking and many are disappointed by the outcome of taking legal action.

*Survivors of child sexual abuse are disadvantaged by the retrospective application of the requirement to provide a notice of claim in Queensland.*

Personal injuries legislation introduced in Queensland in 2002 stipulates pre-court procedures that must be complied with prior to filing a claim in the court. Among other things, this legislation provides that the injured person must give a written notice of claim to the person who they say is responsible for the injury. Where the claim relates to an incident that occurred while the person was a child the notice of claim must be given within nine months of turning 18 or within one month after first instructing a solicitor to act on their behalf, whichever is earlier. Because these provisions apply retrospectively it is almost certain that survivors are unable to comply with them. This means that they are required to make a complex and costly application to court for leave to proceed.

It is our view that the pre-court procedure that relates to personal injuries that was introduced in Queensland in 2002 should not be applied to proceedings involving child sexual abuse.

*The media plays an integral role in the resolution of claims that relate to child sexual abuse.*

The media and public opinion often play an integral role in achieving a successful outcome for survivors. Most claims are settled out-of-court and many are resolved because of public pressure that is informed by the media.

Media coverage can also lead survivors to have unrealistic expectations of the settlement that they are likely to achieve. This is because the media usually ignores the legal impediments that make these types of claims difficult and instead focuses on the gross injustice and damage that has been caused.
Variation between civil litigation systems across states can lead to confusion. Many survivors experienced care in a number of states in the same institution. Any proceedings must be instituted in the state where the injury was sustained. The variation between the legal systems in each state can lead to confusion and may result in different outcomes. Establishing a consistent national legal framework could obviate this confusion.

Pre-court resolution

“Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.”

- Article 7 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

How well do early dispute resolution or mediation processes work as part of the civil litigation systems for people who suffer child sexual abuse in institutional contexts?

Alternative dispute resolution processes can complement litigation and in some instances can be a legitimate alternative.

There are a number of reasons why alternative dispute resolution processes often do not result in good outcomes for survivors. For example, the compulsory conference that is a prescribed part of personal injuries proceedings in Queensland often happens too late in the process. Also, the interplay of the interests of the institution and the insurer frustrates the potential of mediation to resolve claims. In some instances it may be that the relevant institution’s primary motivation is to resolve the claim quickly while the insurer is motivated to defend the claim successfully or to achieve the lowest possible settlement figure.

There is, however, potential for alternative dispute resolution processes to complement or provide an alternative to litigation. Alternative dispute resolution processes can lead to survivors achieving outcomes that could not have been achieved through litigation. For example, survivors may receive an apology and access to interim assistance such as counselling and training. This potential can be realised when these processes are developed in
partnership with survivors. We are aware of a number of examples where this has occurred.

In Canada a group of survivors known as the Grandview Survivors’ Support Group (GSSG) used an alternative dispute resolution process to negotiate with the Ontario Government. The GSSG had all been injured as children while living in a state-run institution. During negotiations the state agreed to an interim arrangement to provide survivors with access to counselling. Negotiations resulted in the development of an agreement that established a redress scheme that enabled individuals to make applications for compensation outside the civil litigation system.

In Queensland a group of 75 boys took action against Brisbane Boys Grammar School in relation to abuse that had been perpetrated by a school counsellor. Through an agreement that was negotiated with the school the group sought redress through civil litigation as well as through an alternative dispute resolution process where the boys and their parents were given the opportunity to talk to the school privately about what had happened to them and the school was able to respond appropriately – including through acknowledging and apologising for the harm.

We urge the Royal Commission to consider the potential of alternative dispute resolution to deliver justice to survivors of child sexual abuse.

**Recommendations for changes**

“Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.”

– Article 5 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

What changes should be made to address the elements of the civil litigation systems that raise issues for the conduct of litigation brought by people who suffer child sexual abuse in institutional contexts?
Changes to the civil litigation systems across Australia and the development of an independent redress scheme that is a legitimate alternative to litigation are required to address the problematic characteristics of the civil litigation system that we have identified.

*Changes to the civil litigation system*

We believe that legislative change is required to address the elements of the civil litigation systems that raise issues for the conduct of litigation brought by people who suffer child sexual abuse in institutional contexts. We would support the development and adoption of model or uniform legislation across all jurisdictions in Australia. This legislation should include the following:

1. Exemption from the application of limitation periods to any civil claim that involves child sexual abuse;

2. Provisions that ensure that institutions can be vicariously liable for crimes committed by employees and agents in connection with the institution;

3. A provision that allows institutions to make a statement of regret or to apologise without being concerned that it may be construed or used as an admission of liability;\(^{16}\)

4. A preamble that refers specifically to the Australian government’s human rights obligations to take all appropriate measures to protect children from abuse, including sexual abuse, and also acknowledges that child sexual abuse is a gross violation of a child’s right to protection and a crime under Australian law. The preamble should also recognise the power dynamics that are involved in child sexual abuse that occurs in institutional settings, the gross violation of trust that is involved and the corresponding damage that is often the result.

Measures should be taken to ensure that lawyers properly advise their clients about the likely outcome of commencing legal action. Lawyers should discuss the likelihood of the matter being resolved through an out-of-court settlement and ensure that the action taken by the survivor corresponds with the outcome that they are seeking. A list of advisor’s responsibilities could be contained in the model legislation.

When making recommendations about how the State should deal with child sexual abuse that occurs in an institutional setting the Law Commission of

---

\(^{16}\) This provision could be similar to that contained in section 72 of the *Civil Liability Act 2003* (QLD).
Canada stated that in any redress mechanism survivors should have access to all information necessary to make informed choices about which redress option to pursue, they should have access to counselling and support, people involved in managing redress processes (including judges, lawyers and police) should have the training necessary to enable them to understand the circumstances of survivors, continual efforts should be made to improve redress programs and the redress process should not cause further harm to survivors.¹ We believe that Australian civil litigation systems should have these characteristics.

**A national redress scheme**

While we believe that survivors should always have the option of pursuing perpetrators and institutions that were complicit in the abuse that they suffered in court, our view is that the establishment of a national redress scheme would enable many survivors to access justice outside of the overly complex and expensive legal system.

As an alternative to civil litigation a redress scheme should not simply overcome the costs, delay and stress involved with commencing legal proceedings. It should enable the survivor to achieve the things that they would have achieved through legal proceedings and also offer a process that demonstrates more understanding of the harm that has been caused and acknowledges the multiple ways that the person may have been impacted.¹⁷ For example the scheme could allow survivors to receive an apology while also including a mechanism to assess damages according to individual circumstances rather providing pre-determined fixed payments.

The scheme should be independent of the institutions that have been involved in the abuse. An example of an independent tribunal that has been established to determine cases of compensation that involve similar injuries is the Asbestos Compensation Tribunal. This tribunal allows for the quick determination of disputes about asbestos related disease. A similar tribunal could be established to deal with matters involving child sexual abuse that occurred in institutional settings.

Detailed analysis of redress schemes from other jurisdictions and consideration of the needs of and outcomes sought by survivors should be considered by the Royal Commission.

We note that the Royal Commission is considering releasing an issues paper about compensation and redress schemes. We look forward to providing further comments in relation to this issue at that time.

Outcomes sought by survivors of child sexual abuse

“The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose…”

- Article 13 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

“Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.”

- Article 14 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Do people who suffer child sexual abuse in institutional contexts want forms of redress in addition to, or instead of, damages or financial compensation? Can these other forms of redress be obtained through civil litigation?

When we asked some survivors about whether they were satisfied with the outcomes that they achieved through taking legal action they responded in the following ways:

“No, I had a psychologist’s letter saying don’t take the money. But because of the expiry date I felt compelled to take it, I had 3 children to support. I was so angry about the whole process.”

“No, I should’ve been given the actual payout figure rather than less than half.”
“No, you can’t make up for a lost childhood.”

As mentioned above, we believe that access to the civil litigation system is one important option for redress that should be available to people who suffer child sexual abuse in institutional contexts. As noted above, survivors who seek redress through the civil litigation system are often seeking outcomes that are in addition to damages or financial compensation. Some survivors intentionally initiate legal action expecting that it will have a critical role in their healing process.

When we asked some survivors about what they had hoped to achieve by taking legal action they told us they wanted:

“Justice, accountability, reconciliation…but that went out the window in the end too much damage had been done to my life.”

“I wanted my day in court and for people to see what had happened to my life, I wanted to see some justice, knowing we harmed these children.”

“Equity, equality and justice.”

We have developed a practice guide to assist non-legal advocates to assist individual survivors of childhood sexual abuse within institutions, faith based or community settings and out of home care. In our guide we have emphasised the need to ensure that the mechanism the survivor pursues to obtain redress has the potential to achieve the outcome that they are seeking. We have identified some goals that survivors may be hoping to achieve when taking action against the perpetrator of the abuse. These goals include ensuring that the perpetrator and the institution involved understand the consequences of their actions, to have the perpetrator removed from their position, to protect and warn others, to stop blaming themselves, to receive an apology, to be compensated, to have counselling costs paid for, to ensure that the perpetrator is punished, to learn more about sexual abuse, to tell their story, to change the system and to heal. We have included the relevant part of our guide as an annexure to this submission.

It is important that survivors have good advice and support when initially deciding to take legal action so that they are able to actually identify what they are hoping to achieve before making a decision about how to proceed. Our experience is that often survivors do not identify what they were hoping to achieve until after legal proceedings have been finalised and the desired outcome is not obtained.
Not all of the forms of redress that survivors are seeking can be achieved through litigation. To ensure that survivors have access to all of the forms of redress that they may reasonably be seeking it is essential that improvements are made to the civil justice and criminal law systems and that a national redress scheme is established which includes providing monetary compensation as well as giving survivors the ability to receive an apology and to have access to counselling, support and education.

Thank you again for the opportunity to provide you with this submission.

Yours faithfully

Karyn Walsh
Coordinator

Annexure

Pages 28 – 31 of Micah Projects ‘A guide for advocates assisting individual survivors of childhood sexual abuse within institutions, faith based or community settings and out of home care.’
Chapter 5

Options for survivors taking action in relation to sexual abuse occurring in an institutional setting

When a survivor approaches an advocate for assistance he/she may have already thought about, and determined, what they would like assistance with. For example, the survivor may have already sought counselling and other related support and is seeking the assistance of the advocate specifically in relation to how they will engage with the Royal Commission. The survivor may be seeking information to inform their decision about whether to engage with the Royal Commission, to understand what information they need to organise and what information the Commission is interested in.

Conversely, the Royal Commission may have prompted the survivor to disclose their experience for the first time. In both cases the advocate will need to have some knowledge of all of the options that are available to the survivor to enable them to assert their rights and work towards accessing justice and healing.

In order to assist the survivor to determine which option they will take it is important that the survivor is able to articulate what outcome they are hoping for. Accordingly, one of the first roles that the advocate may play is to help the survivor to determine what it is that they are hoping to achieve. Once the survivor is able to identify what they are hoping to achieve they will be able to look at the options that are available to them and determine which one is most likely to produce the outcome they are seeking.

It is possible that after undertaking this process the survivor may choose not to take action against the institution. While this choice should be respected, it is prudent for the advocate to suggest that the survivor obtain some legal advice. Strict time limits can apply to civil law claims that can arise from being sexually abused in an institutional setting. If the survivor decides to take no action this decision should be informed by legal advice about the options that are available to the survivor. The legal options, as well as other options that are available to the survivor, are explained later in this chapter.

Assisting a survivor to achieve their goals

Heather Block has developed a step-by-step process for assisting advocates to identify their goals and selecting the option that is most likely to achieve the outcome that they are seeking,87 this has been used as the basis for the process that is outlined below.

87 Above n 51, 33–36.
1. Name the abuse

The survivor should be assisted to identify the abuse, name the perpetrator and explain the consequences of the abuse. It may take the survivor some time to disclose this process. With the survivor’s permission the details of the abuse should be documented in writing so that it can be used when assisting the survivor to engage with other service providers – to avoid the survivor being continually required to re-count the abuse.

2. Identify goals

One way to being this process may be to ask, “What do you need to order to experience some healing from the abuse?” It may be that the goals sought by the survivor are closely aligned to the consequences of the abuse. Examples of the types of things that survivors may identify as goals are making sure that the perpetrator is told about the consequences of their behaviour, to have the perpetrator removed from their position, to protect or warn others, to stop blaming themselves, to receive an apology, to be compensated, to have counselling costs paid for, to make sure that perpetrator is punished, to learn more about sexual abuse, to tell their story, to change the system and to heal.

3. Prioritise goals

It may not be possible to develop an action plan to realise all of the survivor’s goals. Goals may need to be pursued one at a time. Some goals may not be realistic. It is important to discuss which goals are realistic and which goals are the most important. Naturally, the order in which the survivor prioritises their goals will be different for different people. Only the survivor is able to determine the importance of their goals. However, the advocate can play a role in helping the survivor to evaluate the attainability of the goals and to help the survivor to see the benefit of placing an easily attainable goal first. Pursuing an easy goal to begin with will increase the chances of success in meeting the goal and help to produce the energy, strength and purpose needed to pursue the next goal.

4. Look at the options

The survivor has numerous options to choose from. Sometimes they will not have considered all of the options. The following pages of this chapter provide some guidance in relation to these options. These options have been divided into legal options, internal institutional mechanisms, using the media and therapeutic action. Naturally there is overlap between the options. For example, some survivors may describe the experience of providing their story to an inquiry as therapeutic. It may be useful to show the survivor the diagram on the next page to illustrate the options that are available. The options are all valid choices – many can also be pursued together when working towards and identified goal.
5. Align goals with options

Considering the options that are available to the survivor, the advocate can assist the survivor to identify which options are the most appropriate. It may be that there is three options that will all produce the same outcome. Other factors will come into play when determining which option to choose. For example, the survivor's goal may be to tell their story. The available options might be to give evidence to the Royal Commission, use the media or to join a support group. The survivor may choose to give evidence to the Royal Commission because they do not feel comfortable speaking to the media and they want their story to be public rather than shared in a closed group.

6. Make a plan

The advocate can assist the survivor to identify the steps that are involved in pursuing the option/s that they have selected. One step that the advocate should suggest to the survivor is to obtain legal advice. It may be that the option selected is not legal however legal implications could arise from the choice. For example, the survivor should be advised about defamation laws if they chose to speak to the media.

A clearly defined plan should make the task of taking action in relation to the abuse less daunting. It should also clearly identify who is responsible for the tasks that are outlined ensuring that the process does not disempower the survivor and that the advocate’s role is clearly defined.

7. Evaluate

As the plan progresses, or when it is completed, it may be that the option that has been pursued is not achieving the outcome sought. For example, the survivor's goal may have been to tell their story. This goal may have been motivated by the expectation that telling their story would lead to closure. This may not be the result of the action taken. Similarly, prior to giving evidence the survivor may decide that they would prefer to tell their story in a different way. Re-visited steps 3 and 5 may assist the survivor to evaluate and revise their plan.

Once a goal has been achieved the advocate can assist the survivor to work towards the next goal in their list by repeating steps 3 to 7.
The following diagram illustrates the non-exhaustive options that are available to the survivor. Prior to showing the survivor the diagram it is important that the advocate read the explanation of each option, as outlined below. This understanding will not overcome the need for the survivor to obtain legal advice. However it will enable the advocate to assist the survivor in identifying which option they would like to pursue.

**Legal options**
There are numerous legal mechanisms available to a survivor who is seeking justice in relation to the harm they may have suffered. The legal option chosen should align to the survivor’s goals. Some legal options may result in the punishment of the perpetrator while others may result in compensation or ex gratia payments. Other options may result in changing the system, changing the law or raising public awareness of child sexual abuse.