



Geraldton Community Legal Centre

Lotteries House
114 Sanford street Geraldton WA 6530
Postal Address: PO Box 159, Geraldton 6531

Tel: (08) 9938 0600
Fax: (08) 9964 3439

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Karen Bevan
Team Leader Policy and Research
Child Abuse Royal Commission

By email: Karen.Bevan@childabuseroyalcommission.gov.au

Dear Madam

RE: ISSUES PAPER 5 – CIVIL LITIGATION

BACKGROUND

Geraldton Resource Centre Inc. ("GRC"), which incorporates Geraldton Community Legal Centre and Gascoyne Community Legal Service, along with a number of other tenancy, financial and community support programs, delivers a range of legal and social and community support services into a vast area of regional, rural and remote Western Australia throughout the Midwest, Murchison and Gascoyne regions. We regularly conduct outreach trips to the remoter communities within these regions from our two bases in Geraldton and Carnarvon. Our community legal service has specific programs to provide outreach legal services to rural and indigenous women. A significant number of

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our clients, particularly those accessing our legal services and prisoner support and re-entry programs, have experienced child sexual abuse and the flow on effects of dysfunction and disadvantage as a result of that trauma.

Our legal services were heavily involved in assisting clients to access the West Australian Redress and Country High School Hostels Reparation Schemes and lobbying the WA Government in relation to the limitations inherent in those schemes. Through this work we are well aware of the difficulties our clients experience in trying to bring civil litigation in relation to the harm done to them as children.

ISSUE

As an organisation we have had limited involvement in the civil litigation process in relation to child sexual abuse in institutional contexts. This is because our client group generally faces multiple areas of disadvantage and the process of civil litigation is far too inaccessible and overwhelming for them. Therefore, our experience and that of our clients, is that the civil litigation system is ineffective in how it currently operates as an avenue for “redress” for our clients who have experienced child sexual abuse in an institutional context.

SUBMISSIONS

1. *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? For example:*
 - a. *some institutions cannot be sued because they are not incorporated bodies or they no longer exist or because decisions were made personally by an individual officeholder;*

In many instances our clients are unable to recall the names and sometimes even the locations of the institutions in which they were abused. As children, they were given limited information and often had limited understanding of where they were going, where they were being held, how long for and who by. Their recollections of the abuse might be quite vivid but they have very patchy information about where and when the abuse took place.

Even if the name of the location can be identified then we have had situations where the institution in which the abuse took place is not an entity capable of being sued, no longer exists as an entity or the precise entity responsible for the institution cannot be adequately identified.

- b. some institutions do not hold assets from which damages could be paid, or they are not insured or their insurance status is unknown;*

We are not able to comment on this point, as we have not ever progressed civil litigation to the point where this would become an issue.

- c. the circumstances in which institutions are liable for the criminal conduct of their employees or other people;*

We are not able to comment on this point.

- d. the circumstances in which regulators are liable for failures of oversight or regulation;*

We are not able to comment on this point.

- e. limitation periods which restrict the time within which a victim may sue and the circumstances in which limitation periods may be extended;*

In the vast majority of cases of child sexual abuse we have encountered our clients have been far outside of any relevant time limits, including extension periods, within which to commence civil litigation.

The nature of child sexual abuse in institutional contexts is such that our clients were often not able to disclose what was happening to them at the time or were not believed or were further victimised when they did disclose and so they have kept their experiences to themselves for many years and not taken any further action. It is only in the current climate of openness and recognition of these issues that they are now following up on their experiences, way outside of statutory time limits for civil litigation.

In most instances, if our clients wish to pursue monetary compensation, they have chosen to apply for criminal injuries compensation, rather than civil litigation, because it is a simpler and more cost effective process, they do not have to worry about the issues raised at points (a) to (d) inclusive above, and while there is a 3 year time limit in WA, the Assessor of Criminal Injuries Compensation will regularly extend that time limit in instances of child sexual abuse, particularly where it has occurred in an institutional context.

- f. the requirements for bringing a class action, if victims from the same institution wish to sue as a group;*

Due to the issues of multiple disadvantage among our client group and some of our clients being quite transient, we have never been able to co-ordinate a combined approach sufficiently to even consider a class action.

g. the existence of relevant records, locating them and retrieval costs;

This has been an issue for us as advisors and for our client group. We have had instances where records were not kept at all or have not been retained over time or, if still available, it has been a massive task to locate and retrieve them.

For example, we had one case where our client was living at a particular institution with her siblings. There are records to show that all of her siblings resided at this particular institution but there is no record that she ever resided there.

We had another case where our client was abused while in foster care and, while the relevant State Government Department still held her records, there were boxes and boxes of records that had to be sent from archives in Perth to Geraldton. It was not obvious where the particular records of the abuse were to be found in amongst the enormous volume of documents available and so we had to arrange to view these documents at their Geraldton office, which took many hours, and note which particular records we wanted to obtain copies of. This was a daunting and time consuming task.

h. the process of giving evidence and being subject to examination and cross-examination;

Many of our clients are still traumatised by the abuse they experienced as children and may not have ever accessed any support for recovery. Sometimes our legal workers are the first people they have told about their experiences. They are often fragile and move in and out of being able to speak about their experiences. Our workers strive to provide a safe and supportive environment where clients can provide details at their own pace but, even so, they still find it difficult to give comprehensive details of what happened, when and how and so creating a detailed “proof of evidence” is problematic.

For some of our clients there are cultural sensitivities around speaking about their experiences, sometimes related to the specific gender of the client and questioner. There is a lot of shame attached to these matters. The thought of maybe having to repeat their story over and over again and in a possibly hostile environment where they might be subject to cross-examination is unbearable for them.

Our experience with many of our clients is that they have been able to maintain a level of functioning by keeping their experiences “buried”. Once they start to talk about what happened to them this can trigger overwhelming emotional responses and even physical symptoms that they feel unable to deal with other than by “putting the lid back on”. They will then withdraw from progressing their case so that they don’t have to continue to talk about their experiences. We find that many clients who commence a case with a view to compensation are not able to follow it through for the time that it takes to finalise.

i. proving that the victim’s injuries and losses were caused by the abuse;

Many of our client group have endured multiple traumatic experiences in their lives. Even if the sexual abuse was the first of such

experiences that then commenced a spiral of ongoing traumatic consequences, proving which particular event “caused” their injuries and losses is highly problematic. Often it involves an expert psychological or psychiatric report that will then delve into all of these events in a way that might open the proverbial can of worms, as discussed in paragraph (h) above, and actually worsen their emotional state in the short to medium term. Unless they are able to maintain access to ongoing psychological support this can actually be dangerous for them and possibly also their families.

In any event, access to psychological or psychiatric support and counselling in our regional, rural and remote towns and communities can be quite limited if available at all. Access is even more challenging for those of our clients who are transient.

j. the way in which damages are assessed; and

Please see our comments in response to paragraph (i) above.

Feedback from some of our clients is that they find it highly offensive and degrading to effectively put a price on their suffering. They feel humiliated by having to establish exactly how damaged they are by the abuse.

k. the cost of litigation and access to funding and legal services.

We are the only general free legal service in our vast region. As a consequence we have significant capacity issues that make it impossible for us to conduct civil litigation on behalf of our clients. The nature of our client group means that they are unable to personally afford the costs of litigation and so, unless they can access pro bono

legal services, the civil litigation process is financially inaccessible to them.

The nature of child sexual abuse is such that it often leads to dysfunction and disadvantage in adult life and so the people who have endured such experiences are also more likely to be in a position as a result of those experiences to be unable to access and pay for civil litigation.

2. *Are there other 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? If so, what are they and what issues do they raise?*

Civil litigation is a complex and time consuming process. As mentioned above, the people who have experienced child sexual abuse are often dealing with dysfunction and disadvantage as a result of their experiences. For many of our clients it is a struggle just to manage their day to day lives and they do not have the time or energy to devote to a complex and lengthy civil litigation process. Even if they start the process off they often find themselves unable to maintain the commitment that civil litigation requires.

The adversarial nature of the civil litigation process is counter-productive for our clients who have experienced child sexual abuse. They have a need to be believed and for an acknowledgement of wrong doing and an apology. These are outcomes that are rarely, if ever, available through a process that is predicated on a denial of liability and responsibility.

3. *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?*

Our only experience of such early dispute resolution processes is recently with the Catholic Church's Towards Healing process. We have found that even this process demands much from our clients in terms of time, commitment and a requirement to disclose large amounts of detail about their experiences that they are not able to provide either due to difficulties with recollection or the impact of reliving the trauma when disclosing details.

4. *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?*

We believe that the civil litigation system is not the appropriate avenue for dealing with people who suffer child sexual abuse in institutional contexts because of all of the flaws referred to above.

A non-adversarial, non-time limited, sensitive and centralised scheme that will provide redress to all people who have endured these experiences is the best and only way forward.

5. *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?*

Yes to the first question and No to the second. For some people the other forms of redress are their priority but most want these in addition to rather

than instead of monetary compensation. People who suffered child sexual abuse have frequently experienced disadvantage in life since that time and so some form of monetary compensation can help to make their future a little more comfortable and bearable and also provide them access to support services and counselling if that is what they wish to receive.

As outlined above, people who suffer child sexual abuse in institutional contexts want an acknowledgement and an apology. They want to be believed and to have someone say that they weren't responsible for what happened to them. They want the perpetrators and the institutions themselves to own up to what they did and to take responsibility for their actions. Sometimes they want the perpetrators of the abuse to be punished or at least named and shamed. Civil litigation operates on the basis of a denial of accountability on the part of those who perpetrated the abuse and the institutions they worked for.

Access to counselling and other support services to deal with the consequences of the trauma is currently very limited, at least in our regions, and so making these types of services more readily accessible both in terms of cost and location would also be helpful for our client group.

Feedback from some of our clients is that a focus on monetary compensation can be quite unhelpful, as it not only fails to meet the intangible needs mentioned above, but no matter how much money is provided to people it will never make up for what they have suffered and how they were treated. Some of our clients have felt insulted and devalued by the amount of monetary compensation even when it has been a reasonable amount by comparison to awards in similar cases.

Please feel free to contact us for any further clarification of any matters raised in this submission.

Yours faithfully

Alison Muller

Principal Solicitor

Geraldton Community Legal Centre