

Redress schemes

Issues Paper 6

Submission to the Royal Commission on Institutional Responses to Child
Sexual Abuse: *Issues Paper 6, Redress Schemes*

29 June 2014



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WHO WE ARE

The Australian Lawyers Alliance ('ALA') is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

We are represented in every state and territory in Australia. More information about us is available on our website.¹



INTRODUCTION

The Australian Lawyers Alliance ('ALA') welcomes the opportunity to provide a submission to the Royal Commission on Institutional Responses to Child Sexual Abuse regarding *Issues Paper 6: Redress Schemes*.

We provide a short submission in this instance, noting that we have provided previous submissions to the Royal Commission that address the vast inadequacy of current redress schemes.

There is an overarching need to ensure that survivors of abuse have adequate access to the common law to ensure justice and adequate compensation.

This would include:

- Legislative reform requiring all appropriate organisations to be registered as legal entities, that are capable of being sued;
- Appropriate directives to be put in place regarding vicarious liability for criminal acts;
- Adequate insurance; and
- Limitation periods to be lifted, waived or suspended in light of the needs of survivors.

We have raised these issues in our submissions on the following Issues Papers:

- *Issues Paper 5: Civil Litigation*
- *Issues Paper 4: Preventing Sexual Abuse of Children in Out-of-Home-Care*
- *Issues Paper 2: Towards Healing*
- *Key issues for feedback*

Copies of these submissions are also available on our website:

<http://www.lawyersalliance.com.au/ourwork/institutional-responses-to-sexual-abuse>

REDRESS SCHEMES

It is manifest from the evidence before the Royal Commission into Institutional Responses to Child Sexual Abuse that both the schemes of the Salvation Army and the Roman Catholic Church (whether towards healing or the Melbourne protocol) were grossly inadequate, inconsistent and unjust in their responses and utterly

failed to provide anything remotely approaching reasonable compensation in a fair, prompt and just way.

The Australian Lawyers Alliance notes that governments, particularly at a State level, are themselves potentially the target of compensation claims, particularly in respect of wards of the State, and any scheme designed by government is likely to institutionalise gross under-compensation of victims. The call from some Church authorities for such a scheme no doubt is an attempt to ensure that by participating in a government-designed scheme, the Church gets full advantage of the under-compensation which will inevitably be a part of such a scheme.

There is an existing system of compensation conducted in open court before independent judges. It is known as the common law. In our previous submissions we have drawn attention to the advantages and disadvantages of use of the court system of compensation and whilst we accept that it can be stressful and expensive in particular cases, in the overwhelming majority of cases alternate dispute resolution (whether formal or informal) produces a resolution satisfactory to all parties without a need to go before the courts. It may well be that in the minority (and it is a small minority) of cases which need to be heard in open court, it is in the public interest that such cases be aired and dealt with impartially and independently and, if successful, proper common law compensation be awarded.

The evidence before the Royal Commission was that the assets of the Roman Catholic Church in the Archdiocese of Sydney were more than adequate to meet common law claims for damages without the sale of assets and notwithstanding that those assets were clearly undervalued, since the valuations were at purchase price and not current valuations.

Whilst the position might not be the same for all churches, those most likely to be sued are also those most likely to have assets capable of meeting claims. The threat of being sued is just as likely as any adverse findings from the Royal Commission to assist in encouraging behaviour likely to prevent, or at least reduce the sort of abuses which have occurred in the past.

As previously submitted, the Australian Lawyers Alliance argues that in respect of significant institutions with a role in child welfare, there should be:

- (a) vicarious liability for those they employ and those that act in their name, such as clergy and teachers;
- (b) adequate insurance cover held;
- (c) a legal entity capable of being sued and which holds the assets of

that institution; and

(d) a lifting of the limitation restrictions making historic claims challenging and expensive to bring.

The submission we make closely reflects the recommendations of the Victorian Legislative Council Committee inquiry and the legislation which has received its second reading in the NSW Legislative Council.

We would be happy to elaborate further on any of the issues that we have raised.

REFERENCES

¹ Australian Lawyers Alliance (2012) <www.lawyersalliance.com.au>