

SUBMISSION TO ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

REDRESS AND CIVIL LITIGATION

RESPONSE TO CONSULTATION PAPER OF JANUARY 2015

INTRODUCTION

1. On 30th August 2013 the authors, with a group of concerned Queensland Catholics, lodged a submission with the Royal Commission about the content and operation of the Catholic Church's Towards Healing process.
2. On 30 June 2014 a submission was prepared by the author, Mr Terry Hamilton, in response to the Commission's Issues Paper 7 concerning Statutory Victims of Crime Compensation Schemes. That submission dealt primarily with the question as to whether Church entities have complied with Australia's tax laws.
3. Whilst dealing specifically with the consultation paper on redress and civil litigation, the submission that follows complements both the above submissions. The authors have prepared the submission with the assistance of a number of concerned Queensland Catholics.

EXECUTIVE SUMMARY

NATIONAL SCHEME

4. **The authors support the creation of a single national redress scheme led by the Australian Government** and with the participation of State and Territory Governments and non-Government institutions. However, it is considered that the ideal position would be reached if such a scheme incorporated the following features.

Judicial and Administrative Sanctions

5. For the reasons that follow in this submission, it is considered that the 3 elements of appropriate redress for survivors, listed in the paper at page 9, will not provide real justice for the victims because they do not include the vital aspect of satisfaction described as:

“Judicial and Administrative Sanctions against both the persons liable for the abuse and the institution itself.”

Pastoral Care and Support at a Local Level

6. We believe that, if a national scheme is going to provide real Justice to victims, it will be necessary to include, in cases of faith-based institutions where appropriate, links to the victim’s immediate faith community so that the Church can provide ongoing pastoral care and support at the local level.

Past and Future Abuse

7. Whilst civil litigation will always be an available option, we believe redress processes are likely to be the preferred option for many future sexual abuse victims. **We therefore consider that the national redress scheme should cover both past and future institutional abuse.** This view would be strengthened if the final scheme can deliver genuine pastoral care and support at the local level.

Direct Personal Response

8. We agree that a direct personal response is an important element of the scheme but only where the victim wants to do this and is properly represented in any dealings with the institution. The consultation paper states that a personal response can only come from the institution. This may be a simplistic view. An alternative approach to this would be to acknowledge that, whilst it may be critical for leaders or senior officials of the institution, to apologise to the victims, it is **equally important that the leaders**

ensure that all members of the institution have the opportunity to take a direct active role in not only the apology but also the ongoing pastoral care of the victims.

REDRESS SCHEME PROCESSES

9. We agree that the national redress scheme should follow the process of similar compensation for victims of crime processes.

10. We propose, in addition, that where a victim has been awarded redress through the scheme, further support is required in certain cases.

11. As stated elsewhere, it is our submission that redress through the national redress scheme should not preclude civil litigation where additional compensation would be payable in law. In order to reduce court costs and provide victims with an easier first step alternative prior to making a civil claim, **it is proposed that an alternative dispute resolution forum is established specifically for claims from victims of sexual abuse in institutions.**

12. The alternative dispute resolution process would be triggered by an offer of further compensation to the victim by the institution (motivated by a desire to avoid additional legal costs and lengthy litigation processes) and the process would be voluntary on the part of the victim, or a civil claim made in a competent court by the victim.

13. It is proposed that the national redress scheme provide extended legal and psychological support to victims electing to pursue their claims for additional redress and compensation through the alternative dispute resolution process.

14. The process would provide a forum for financial compensation as well as the essential component of healing: acknowledgment of harm by the institution, apology where requested and pastoral care where desired by the victim.

INSTITUTIONAL INVOLVEMENT

15. We agree that a body must make decisions about redress independent of the institution. The national scheme body must be able to compel institutions to produce all relevant records and information.

REVIEW AND APPEALS

16. We believe it is reasonable to leave review and appeals' rights for the decision of those establishing the scheme. We note that a truly independent redress scheme and a more effective civil litigation program may obviate the need for review and appeal processes.

DEEDS OF RELEASE

17. We accept that the value of any redress should be offset against any common law damages and it is important that no confidentiality obligations be imposed. If it is at all possible we do not believe a deed of release should be required following redress provided by the scheme, however, deeds of release may be appropriate following an alternative dispute resolution process where the victim accepts an offer made by the institution whether for additional financial compensation or other means of redress.

FUNDING REDRESS

18. Governments will be the main players here and should have a major say in determining how to fund a national redress scheme. **However, with regard non-government institutions, we strongly believe that the institutions responsible for the abuse must contribute to funding the redress scheme, including the administrative cost in setting up such a scheme.** We also consider that where institutions no longer exist, but were under a larger group, or directly associated with a larger group, that group must

contribute the offending institutions share. Furthermore, the Federal Government must, through legislative means, safeguard against situations where institutions will still exist but have no assets from which to fund redress. **Refusal to contribute to the Scheme as directed by the government should attract a penalty in the form of the institution losing its tax-exempt status.**

CIVIL LITIGATION

REFORMS TO ENHANCE JUSTICE

19. We agree with the notion expressed at page 32 of the discussion paper that the focus here should be to improve the capacity of civil litigation systems to provide justice to victims and in a manner at least comparable to other injured persons. However, it is not clear whether the options discussed in the paper actually canvass all the possible remedies available to provide justice to victims. (See action against individuals below). The alternative dispute resolution process proposed in this submission will go a long way to providing victims with the 'justice' they may seek on a case by case basis and would meet their emotional and legal needs. If this process fails, the civil litigation system remains an option and the improvement of this system is essential to justice being served.

LIMITATION PERIODS

20. We strongly support the approach taken by the Victorian Department of Justice to remove limitation periods altogether, including retrospectively.

ACTION AGAINST INDIVIDUALS

21. Under the heading of duty of institutions there is a simple statement that " *A survivor will have a clear cause of action against the individual perpetrator or perpetrators of the abuse----*"(Page 33). However, the paper does not cover situations where the perpetrator

has died or cannot otherwise be prosecuted but there is evidence that other individuals in the institution knew of and facilitated the continued abuse by the perpetrator within that institution or in other institutions.

22. The scenario described above has frequently been highlighted by Royal Commission case studies over the past couple of years and there is widespread disgust in the community that no action can, apparently, be taken against such individuals. **Whilst it is accepted there may be evidentiary difficulties in bringing actions under current laws it is felt that the Royal Commission could consider reform measures which may assist in bringing these people to account.**

DUTY OF INSTITUTIONS

23. It is clear that, under existing laws in Australia, it is very difficult to bring a successful cause of action against an institution for the deliberate criminal conduct of another person. Accepting this, and noting Courts in Canada and the United Kingdom have adopted considerably broader approaches to finding institutions liable for institutional sexual abuse, **we believe the Government in Australia must introduce legislative reform to correct this inequitable legal outcome.**

24. For the reasons that follow this Executive summary, **we consider the Government should impose an absolute liability on institutions so that an institution would be liable for the abuse regardless of any steps it had taken to prevent the abuse. We would also advocate both prospective and retrospective changes.**

IDENTIFYING A PROPER DEFENDANT

25. Following the Court case involving Mr John Ellis (Pages 221-222), and other Court cases in Australia, **it is absolutely clear that legislative reform is required to recover funds from an identified defendant.** In those situations where faith-based

institutions control their assets within statutory property trusts, it seems clear that legislative change is necessary to provide that any liability of the religious body that a statutory property trust is associated with, for institutional child sexual abuse, can be met from the assets of the trust and that the trust is a proper defendant to any litigation involving claims of child sexual abuse, for which the religious body is liable.

DEVELOPMENT OF SUBMISSION

26. We recognise and accept the complexities and difficulties involved for the Royal Commission in its approach to redress and civil litigation. The myriad of submissions from victims and interested parties on the relevant Issues Papers, together with the volume and diversity of material presented in the consultation paper, present an enormous challenge for the Commission, to design a redress scheme and reform civil litigation systems, in a manner which will provide real justice to victims of child sexual abuse.

27. In our executive summary above we have highlighted the key elements in respect of both an optimum redress scheme and civil litigation reform. We have also expressed our views on the appropriate action to be taken in respect of those key elements. However, we concede that other interested parties will be better placed than ourselves to assist the Commission and comment on many of the specific issues raised in the discussion paper. Accordingly, for the remainder of this submission, we intend to focus on those aspects, in relation to both redress and civil litigation, which, whilst absolutely vital to providing justice to victims, may not have been given prominence in the consultation paper.

JUSTICE AND RESPONSIBILITY FOR ABUSE

28. A very significant statement is made in page 184 of the consultation paper. This provides "*Although the primary responsibility for the sexual abuse of an individual lies with the abuser and the institution of which they were a part, we cannot avoid the conclusion that the problems faced by many people who have been abused are the responsibility of our entire society.*" Never has this been

truer than in the cases of faith-based communities such as the Catholic Church and its Parishes.

29. The consultation paper, in raising the first key element of redress, states that a personal response can only come from the institution and that an apology, an acknowledgment from the institution, or a meeting with senior representatives of the institution, must involve the institution itself (Page 12). Furthermore, in the narrative at chapter 4.3 dealing with the interaction between a redress scheme and direct personal response (pages 103-104), there appear to be genuine concerns such that the Commission advocates limited interaction between an independent redress scheme and the provision of a direct personal response. We consider these concerns are reflected in the following sentence found at page 104—*“It was also indicated that it would be important that the redress scheme, in referring a survivor to the institution, could rely on information that the institution provides about what direct personal response it was able to offer “.*

30. We believe there are two crucial questions here that must be identified and addressed before this matter can be resolved. These are:

A) When we refer to a faith-based institution what are we referring to, or perhaps, what does it represent?

B) What can a faith-based institution do to assist in the healing of a victim who was sexually abused by a person within that institution?

31. If we do not understand what a faith-based institution really represents, and how the members of that institution interact and support each other, we would suggest it would be very difficult for that institution to participate in the healing of a person who was sexually abused within that institution. Being concerned Queensland Catholics we will, naturally, rely on our experiences in the Catholic Church to deal with these questions and their significance in contributing fair and equal justice to victims.

32. Expressed in simple terms, from the moment of Baptism (usually as babies or young children), the Catholic Church teaches that Catholics are members of the body of Christ (that is, the church). The same members of the Church are also members of the various faith-

based communities usually referred to as Parishes. In this context the notion of “ Pastoral Care” would normally be understood to include Parishes reaching out to their fellow members to demonstrate compassion and support in a whole range of circumstances. It is not unusual for some Parishes to have more than 20 different organisations or committees, providing a whole range of support services, including prayers and liturgies to provide comfort and healing for people in need.

33. Turning now to question B above it is not hard to describe what a faith-based institution can do to assist in the healing of a victim who was sexually abused within that institution. We agree that, for many survivors, it will be most important for the leaders or senior officials of the institution to make a genuine apology to them and acknowledge the abuse and impacts on them. However, for the reasons outlined above we consider that it is essential that the senior leaders of the church exercise that leadership role to ensure that all members of the institution, through their respective parish, have the opportunity to take a direct active role not only in the apology but also the ongoing pastoral care of the victims. We have heard victims express their grief at having lost their connection with their faith-based communities as one of the many losses they suffer as a result of their childhood experience of abuse at the hands of the institution.

34. We believe that Catholic parishes have both the desire and responsibility to acknowledge the harm caused to victims and their families and, under the leadership of the Catholic hierarchy, wish to encourage victims and their families to join the parish in prayer and to provide them with support as valued members of the Church community. We propose that this is done only if and when the victim has expressed the desire to join in faith with his or her community. In the event that the alternative dispute resolution process proposed in this submission is commenced, this would provide the vehicle for such desires to be expressed and appropriately responded to by the hierarchy and by the local parish community.

35. If the hierarchy of the Catholic Church were successful in leading the parishes throughout Australia to reach out and embrace the victims of child sexual abuse in the manner described above, we suggest this would produce two important outcomes. Firstly, we believe the national redress scheme, augmented by the alternative dispute resolution process proposed following a decision for redress,

would, if the victim wishes, enable the institution to provide an enhanced direct personal response. Secondly, this would go a long way in meeting the church's stated objective of providing a pastoral response to the victims of child sexual abuse within the church.

36. For the approach we are recommending in this submission to be built into a national redress healing scheme, the leadership of the Catholic Church in Australia would have to embrace it and adopt it as a “ **whole of church** ” approach. This would require leadership and direction, involving clear statements and actions by the senior leaders of the church working with parish priests and institutional leaders to provide the pastoral support in the manner described in this submission.

37. The Truth, Justice and Healing Council (THJC) was created to coordinate the Catholic Church's response to the Royal Commission. The qualifications of the CEO of the TJHC, Mr Francis Sullivan, have been enhanced since the beginning of the Royal Commission in so far as he must now be seen as probably the most experienced person in the Church with regard to the hearing and listening to victims stories and subsequently being made aware of their immediate and future needs. This experience has been gained during the hearings of the Royal Commission and also in his personal meetings with victims. Mr Sullivan continues to promote the parish involvement suggested and outlined in this submission and he has persistently advocated the continuing necessity of public prayers and liturgies for victims. Unfortunately, this does not appear to have been sanctioned by the hierarchy as a current “ **whole of church** ” approach and it has only happened piecemeal at the instigation of individual priests or parishioners.

38. We believe it is imperative that Mr Sullivan receives the complete and immediate support of the hierarchy in implementing his suggested valued response.

PROCESSES FOR REDRESS

39. While the processes are not explicit in the consultation paper it would appear that a process similar to the schemes currently providing compensation for victims of crime would be used. We submit this would be adequate to provide the type of redress as

proposed by the consultation paper, but not sufficient in itself to meet the needs of victims.

40. There is a necessity for a process that can provide the victim with additional compensation from the institution where damages exceed the capped redress amount. The presumption is that if the victim has been granted redress to a capped amount, certain cases would warrant greater compensation in law and accepting redress through the scheme should not preclude the victim from seeking full compensation. It is understood that further compensation, if negotiated or ordered by a court of law, would be reduced by the amount received through the scheme. Furthermore, victims may require an apology, acknowledgement of harm and some non-financial redress from the institution to facilitate their healing.

41. It is proposed that in addition to the national redress scheme an alternative dispute resolution forum staffed by specially trained professionals is established to process claims and offers of further compensation which may follow a successful claim for redress through the scheme.

42. This process must be sensitive to victims and requires that victims continue to be supported legally and psychologically through the scheme until such time as the process is completed.

43. The alternative dispute resolution process would be triggered if the victim made further civil claims against the institution or if the institution makes an unsolicited offer of financial compensation to the victim to obviate further litigation and/or offers the victim alternative redress in the way of pastoral care and reconciliation.

44. In cases where the alternative dispute resolution process is triggered, and only with the express consent of the victim, it is proposed that the scheme should have a mechanism which will refer the institution and the victim, providing legal and psychological support to the victim, to an alternative dispute resolution process for the purpose of resolving any further claims or responding to any further non-financial aspects of redress which the victim may wish to express.

45. This would provide a forum for apologies in person, acknowledgement of harm, and explanations for failure on the part of

the institution that the victim may need to hear as a component of his or her recovery.

46. While it is not proposed that the national redress scheme directly administer this process, it is proposed that it is funded in a similar way to the scheme and that the necessary support for the victims is provided by or through the scheme to see the process through to its conclusion.

47. It is proposed that in the event of the alternative dispute resolution process not culminating in an agreement between the victim and the institution, further civil litigation is not precluded. In the event that an agreement is reached, deeds of release would be appropriate.

SANCTIONS AGAINST THOSE RESPONSIBLE FOR ABUSE

48. Without repeating submissions made by other interested parties, we draw attention to the reference at page 51 of the consultation paper to the value of international human rights law in identifying appropriate redress. Of particular relevance are the “*van Boven principles*” which outline victims’ rights to:

- Equal and effective access to justice
- Adequate, effective and prompt reparation for harm suffered
- Access to relevant information concerning violations and reparation mechanisms.

49. The van Boven principles highlight that remedies are not limited to monetary payments and can include five forms of reparation. One of these forms is **Satisfaction**, which includes the measure of “**Judicial and Administrative Sanctions against persons liable for the abuse**”

50. Since the commencement of the Royal Commission we have heard so many horror stories and, as this submission is being prepared, the horror continues with the examination by the Commission of the Knox Grammar School in Sydney. One of the clear pictures to emerge from the work of the Commission is that the complete focus is now on providing justice to, and addressing the needs of, the victims. We have all witnessed examples where the

institutional agenda of the Church still comes first and a compassionate pastoral response to victims continues to be hamstrung by caution, risk management and asset protection. Indeed, when talking about the Catholic Church to an Assembly of Catholic Professionals as recently as 11 September 2014, Francis Sullivan, CEO of the TJHC, spoke in similar terms. However, it must be reported that, in the same address on 11 September 2014, Mr Sullivan foreshadowed reform of Church processes that included a reengineering of practices, procedures and accountabilities to reflect transparently a victim's first approach.

51. Accepting then that there is now widespread agreement by all interested parties that the principal objective of redress is to provide real, transparent, justice to victims we need to consider how the proposals offered in the consultation paper meet the tests of international human rights law and, particularly, the van Boven principles outlined above. If the proposals do not meet the level of justice demanded by both the victims and the community we need to examine what different or additional actions need to be taken.

SANCTIONS AGAINST INDIVIDUALS

52. In terms of sanctions against individuals the consultation paper makes it clear that a survivor will have a clear cause of action against the individual perpetrator or perpetrators of the abuse (Page 33). Whilst we understand that the Commission, whether dealing with redress or civil litigation, is primarily looking at monetary payments, we have already established that remedies should not be limited to monetary payments.

53. Whilst there appears to be a clear picture of the actions, both civil and criminal, that can be taken against the perpetrator who was directly responsible for the sexual abuse of a child within an institution, very little has been said about other individuals who effectively aided and abetted in the abuse of children through various actions such as knowing of the abuse and doing nothing or transferring the perpetrator to another location where a reasonable expectation would be that the abuse would continue. Throughout the various case studies in the Royal Commission we have witnessed many situations where victims had the courage to speak up and tell someone in an institution of a sexual crime committed against them, only to subsequently find out nothing was done. Unfortunately,

disaster often followed with the perpetrator continuing to abuse other children.

54. We, along with the Commissioners and everyone else, can only listen to these stories with a feeling of disgust at the way these children were betrayed. However there is also a feeling of frustration that, apparently, no action can be taken and, as a result, the victims have been denied justice. We accept that the current laws of Australia may be difficult to enforce in this area due to evidentiary issues. However, we believe the community expects to, at least, see the enforcement agencies bring appropriate cases to trial. In the event that these people cannot be successfully prosecuted under our existing laws, we recommend legislative reform that will contribute to provide the victims of sexual abuse with a measure of equal and effective access to justice.

SANCTIONS AGAINST INSTITUTIONS

55. We consider this is clearly an area for urgent reform. The legal bases for institutional liability for abuse currently available in Australia are summarised at page 33 and covered in considerable detail at pages 207 to 220. We do not believe that detailed consideration of the legal difficulties, arising from the case law in Australia, will bear fruit as we agree with what we understand to be a consensus view that, under those laws in Australia, it is very difficult to bring a successful cause of action against an institution for the deliberate criminal conduct of another person.

56. Acting on this premise then, and bearing in mind that institutions are responsible for the consequences of criminal, sexual abuse, such that the lives of thousands of young children were effectively destroyed, we believe that the strongest possible measures for reform are justified. If we are really serious about putting the victims first and delivering to them fair and equal justice for the horrific crimes they have suffered we would have no difficulty in imposing an absolute liability on institutions so that institutions would be liable for the abuse regardless of any steps they had taken to prevent it. We recommend such an approach.

57. We note the consultation paper puts forward an alternative option that is to impose liability on institutions, unless the institution proves that it took reasonable precautions to prevent the abuse. In

the real world, whether we are talking currently or post the Royal Commission, every institution in Australia must take all precautions to prevent future child sexual abuse. Accordingly, it is likely that it would be even more difficult to impose a liability on an institution than it is under current laws. Furthermore, having listened to many case studies presented by the Commission, dealing with religious institutions, schools etc., it must be said that the belief by many institutions that they had introduced reasonable measures to protect children did not stop the abuse. We do not regard the “*reasonable precautions*” option as a credible measure.

TAX EXEMPT STATUS OF CHURCH ENTITIES

58. As mentioned in the introduction, the author lodged a submission on 30 June 2014 in response to the Royal Commission’s Issues Paper 7 concerning Statutory Victims of Crime Compensation Schemes. That submission dealt with structures and financial arrangements put in place by Church entities that had the effect of restricting the payment of compensation to the victims of criminal acts committed by officials, members or employees of those entities.

59. Whilst those matters are relevant to the provision of redress, the key part of that submission, for present purposes, is an examination of the legal requirements for the tax-exempt status of church entities and whether church entities have complied with Australia’s tax laws.

60. This matter was dealt with comprehensively in the 30 June 2014 submission and we offer a brief summary of the position to demonstrate why we consider the tax exempt status of church entities or faith-based institutions is a viable sanction against offending institutions.

61. Firstly, the 30 June 2014 submission conceded that most church entities would be compliant entities for purposes of justifying concessionary taxation status. On the other hand, the view was expressed that there are some church entities that, clearly, do not warrant tax-exempt status because they fall into one or more of the following categories:

[A] Church entities that, having regard to the manner of their financial structure and operation, are not created with a primary or dominant object of promoting religion but, rather, a different object

such as the protection and preservation of that entity's wealth or the wealth of another entity within the church structure;

[B] Church entities that, by deliberate and calculated steps, ensure they will not be required to pay compensation payments to sexual abuse victims. Such steps run contrary to the activities that would normally be expected of a religious institution;

[C] Church entities which knowingly accepted a canon of conduct including failure to protect children, failure to bring known perpetrators of criminal acts against children to account, transfer of perpetrators to other church entities where it could reasonably be assumed more children would suffer abuse and, finally, failure to provide real justice and healing to those children abused by personnel within the entity. Such conduct would hardly be considered a canon of conduct of a religious institution "that does not offend against the ordinary laws of Australia".

62. In addition to the three categories listed above, the Royal Commission has heard other case studies where it has been clearly demonstrated that the conduct of personnel in a particular diocese or religious institution has been manifestly criminal. We believe that the institutions that fall into these categories should lose their tax-free status and that this is a proper sanction to enforce against such institutions.

CONCLUSION

63. We support the creation of a national, independent, redress scheme for the victims of child sexual abuse. This scheme would be led by the Australian Government and would include the participation of State and Territory Governments and non-government institutions.

64. We agree that the various institutions responsible for the abuse must contribute to funding the redress scheme, including the administrative cost in setting up the scheme.

65. We understand that there will be many difficulties in setting up the national scheme but we also believe it will provide many new opportunities to heal the victims of child abuse and provide them with greater justice.

66. We believe that in addition to financial redress and legal and psychological support, as contemplated by the Scheme, there is need for an alternative dispute resolution forum to be established and provided to victims to negotiate further financial compensation where it may be due in law and other redress such as acknowledgment of harm, apology and pastoral care from the institution.

67. With faith-based institutions, in particular the Catholic church, we can not emphasise enough the importance to the healing process of parishes and church community groups being involved in embracing the victims of child sexual abuse who wish to remain attached to their faith-based communities and providing them with ongoing support as valued members of local church communities.

68. Whilst this should happen, whether or not a redress scheme is created, we believe there are real advantages in incorporating this initiative into the national scheme. Firstly, we believe the scheme would, if the victim wishes, enable the institution to provide an enhanced direct personal response (effectively a community institutional response) and secondly, this would go a long way to meeting the Church's stated objective of providing a pastoral response to the victims of child sexual abuse within the Church.

69. Whilst we stress the value and importance of linking the necessity of faith-based institutions to provide local community support with a national redress scheme, we agree this cannot be achieved without the direct and active leadership of the senior hierarchy of the Church. It must be said, however, that the Church's current record in this area is appalling.

70. To explain further our group of "*Concerned Queensland Catholics*" has been in direct personal contact with over 1000 parishes throughout Australia including senior Church leaders. It was clearly revealed that the Church leadership does not endorse regular local participation as a "**whole of church**" approach notwithstanding the published position of the Church.

71. The national redress scheme is the perfect opportunity for the senior leadership of the Church to demonstrate their commitment to provide healing and justice to the victims of abuse by ensuring that all members of the Church combine on a local level to demonstrate their solidarity in support of the victims thus creating a place of welcome and security at a community level.

72. The Truth Justice And Healing Council records the initiative of our “Concerned Queensland Catholics” group as follows - *“Motivated by the need to play an active role with the respect to the healing of survivors of sexual abuse, parishioners aimed to provide a prayerful setting in their local church so that members of the parish along with survivors and their families would experience together a sense of caring, love and concern...It encouraged survivors to feel that there is a loving place for them alongside their fellow Catholics”.*

RECOMMENDATIONS

73.1 That a national redress scheme as contemplated by the consultation paper is established. Such a scheme, covering both past and future institutional abuse, must be survivor focussed and designed so that all aspects of the scheme will improve the health of, and provide justice to, the victim.

73.2 That the acceptance of redress from the scheme will not preclude further civil litigation where damages exceed the capped redress awarded through the scheme.

73.3 That any amount received through the national redress scheme would be deducted from further compensation that may be agreed upon between the victim and the institution or awarded by a court of law.

73.4 That an alternative dispute resolution forum is established to facilitate additional claims following redress with victims being provided with continued legal and psychological support while engaging in the alternative dispute resolution process.

73.5 That deeds of release will not be required following redress but may be appropriate following alternative dispute resolution or as part of a negotiated settlement following litigation.

73.6 That the alternative dispute resolution forum will provide a platform for acknowledgement of harm, apology and continued support from the institutions in a shape and form expressed personally by the survivor.

73.7 That the opportunity will be given to the victim to receive an enhanced personal response by the institution responsible for the abuse. This will effectively be a community institutional response as it is envisaged that members of the institution will participate in providing care and support to survivors. In a faith-based institution such as the Catholic Church this would require the senior leadership of the Church to ensure all members of the Church (whole of Church) combine on a local level to provide ongoing pastoral care and support at the local, community level.

73.8 That faith-based institutions actively engage with their local communities and allow members to participate in providing appropriate liturgical and direct personal responses to survivors.

73.9 That victims who have previously entered programs such as the Catholic Church's Towards Healing program, or embarked on litigation, irrespective of whether they have received monetary payments, will be able to participate in the scheme on a without prejudice basis.

73.10 That religious institutions should lose their tax-exempt status where they fall into one or more of the following categories:

- a) where an entity has been created for an object distinct from the purpose of promoting religion such as protection or preservation of wealth,
- b) where deliberate and calculated steps have been taken by an entity to avoid payment of compensation in the face of litigation, and
- c) where an entity has engaged in conduct contrary to the ordinary laws of Australia such as failure to protect children, failure to report crimes and failure to co-operate with police.

73.11 That, in addition to taking the strongest possible stands against the perpetrators of child sexual abuse, enforcement agencies should take action in appropriate cases to prosecute other individuals who, effectively, aided and abetted in such criminal activity.

73.12 That, where current laws do not enable the successful prosecution of individuals who, by their conduct, effectively aid and abet perpetrators in such criminal activity, **legislative reform should be introduced to provide the victims of sexual abuse with a measure of equal and effective access to justice.**

73.13 That, acting on the premise that it is very difficult to bring a successful action against an institution for the deliberate criminal conduct of another person, **legislative reform should be introduced to impose an absolute liability on institutions so that the offending institutions**

would be liable for the abuse regardless of any steps they had taken to prevent the abuse.

73.14 That legislative reform is introduced to ensure recovery of funds from an identified defendant. In situations where faith-based institutions control their assets within statutory property trusts, legislative change is required to provide that any liability of a religious body that a statutory body trust is associated with, for institutional child sexual abuse, can be met from the assets of the trust and that the trust is a proper defendant to any litigation involving claims of child sexual abuse, for which the religious body is liable.

74. This submission has been prepared on behalf of a group of concerned Queensland Catholics.

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