

SUBMISSION FOR ROYAL COMMISSION

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I am a law student at the University of Southern Queensland. I have drafted a "Lawsuits Against Churches Bill" shown below that could be enacted by every Australian jurisdiction. Part of the healing process for victims of child abuse is that victims are able to sue the responsible church in the church's usual name. For this reason it is better if a church cannot appoint a nominal defendant.

Under my proposed Act, it will not be possible to sue child molesters for actions they have committed outside the limitation period, but it will be possible to sue the church. Section 11 of my Bill removes the limitation period for churches until 2025. There is no need to permanently change the limitation period. Child molesters will still be referred to in court proceedings and so will be suitably disgraced.

If I was involved in the administration of a church which was being sued by a victim of child abuse, I would try to settle with the victim for a million dollars worth of favours from the church rather than a million dollars in cash. Churches are well-placed to do favours for people, such as arranging jobs or arranging meetings with famous people. Some victims have complained about being ostracized, so restoring their social status could be one of the favours.

The Commission seems to envisage a solution where the victims will end up getting less cash than they would if they could sue the church in the courts. With my proposal for churches to try to settle for favours rather than for cash, the victims will be fully compensated, but the churches will not be too much out of pocket.

LAWSUITS AGAINST CHURCHES ACT 2015

An Act to make churches legally liable for the actions of their clergy, employees and volunteers and for related purposes.

Short Title

1. This Act may be cited as the Lawsuits Against Churches Act 2015.

Commencement

2. This Act commences on receiving the Royal Assent.

Definition of Church

3. (1) A church for the purposes of this Act includes the following associations:

(a) the Roman Catholic Church;

(b) the Orthodox Church of Constantinople, otherwise known as the Greek Orthodox Church;

(c) the Anglican Church;

(d) the Uniting Church;

(e) the Presbyterian Church;

(f) the Baptist Church;

(g) the Seventh Day Adventist Church;

(g) the Plymouth Brethren Church;

(h) the Lutheran Church;

(i) the Coptic Church;

(j) the Salvation Army; and

(k) the Church of Jesus Christ of Latter Day Saints.

(2) A church also includes any association or organisation formed for the purposes of worshipping the Deity or of celebrating rites in connection with a mythological belief.

(3) A church also includes any monastic order, school or hospital formed for the purposes of promoting the aims of the church.

Definition of Associated Organisations

4. (1) An organisation is an “associated organisation” of a church if:

(a) the organisation’s constituent documents represent the organisation as being formed for the purposes of the church;

(b) the organisation’s officers have represented the organization as pursuing the purposes of the church;

(c) the organisation has routinely allowed its assets to be used for the purposes of the church; or

(d) being a member of the church is or has been a prerequisite to being a member of the organisation.

(2) An “associated organization” may be a corporation or trust.

Liability of Churches

5. (1) A church is legally liable for the unlawful actions of its clergy, its employees and its volunteers.

(2) A church is legally liable for the unlawful actions of its members on its premises or in connection with its activities unless it has taken reasonable steps to prevent such unlawful actions.

(3) A church is legally liable for the unlawful actions of its associated organisations.

Liability of Associated Organisation

6. An associated organisation of a church is legally liable for the unlawful actions of the church.

Ability of Churches to be Sued

7. A church named in Section 3 may be sued in that name, and any other church may be sued in the name by which it is usually known to its members.

Service on Churches

8. Process of courts may be served on a church by:

(a) personal service in this jurisdiction on any member of the clergy; or

(b) sending the process by registered post to any building in this jurisdiction that is usually used by the church.

Execution Against Churches

9. (1) If a church fails to satisfy a judgment against it, an interested party may claim the amount of the judgment against any one or more of the church’s associated organisations.

(2) Such a claim must allege:

(a) that a judgment against the church has not been satisfied; and

(b) that a defendant is an associated organisation of the church.

(3) The church must be made a defendant to such a claim.

Foreign Judgments

10. A church in this jurisdiction is liable for judgments awarded against it in the past or in future in another Australian jurisdiction, in the United Kingdom of Great Britain and Northern Ireland, in New Zealand, in Canada, in the United States of America, or in the European Union, or in any possessions of these countries.

Transition Provisions

11. (1) A claim may be commenced before 2025 and judgment awarded against a church for a wrongful action committed prior to 2015, notwithstanding the limitation period.

(2) Judgment may be executed against a church or its associated organisations before 2025 notwithstanding that the judgment was given prior to 2015 and notwithstanding the limitation period.

(3) Churches and their associated organisations are not to be awarded costs in claims commenced prior to 2025.
