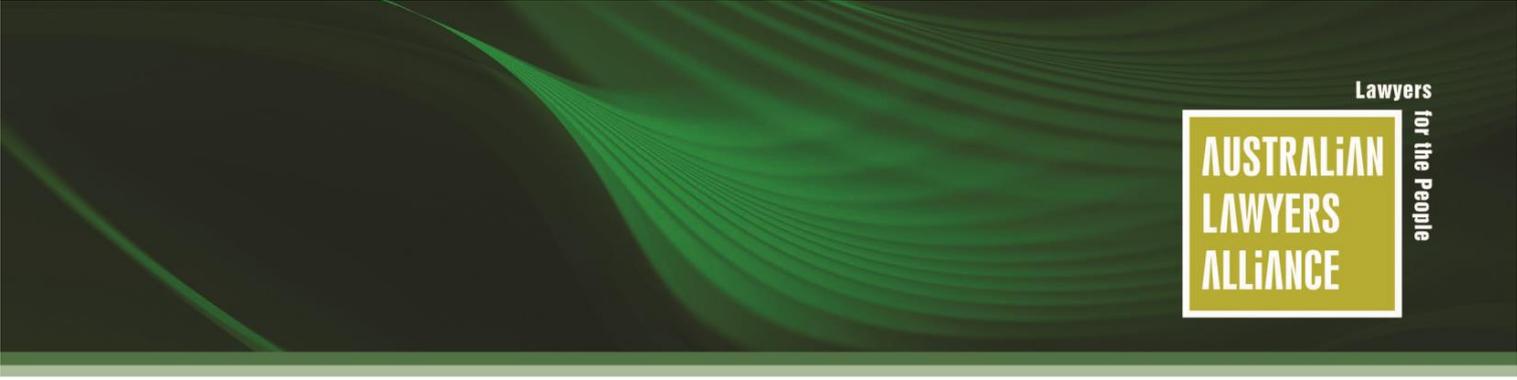


Issues Paper 11: Catholic Church Final Hearing

Submission to the Royal Commission into
Institutional Responses to Child Sexual Abuse

1 July 2016



Lawyers
for the People

**AUSTRALIAN
LAWYERS
ALLIANCE**



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Who we are

The Australian Lawyers Alliance ('the 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.

The ALA is represented in every state and territory in Australia. More information about us is available on our website: www.lawyersalliance.com.au.



Introduction

1. The Australian Lawyers Alliance ('ALA') welcomes the opportunity to have input into the issues raised by Issues Paper 11 released by the Royal Commission into Institutional Responses to Child Sexual Abuse (the 'Royal Commission') in advance of the Final Hearing into the Catholic Church.
2. This submission seeks to draw your attention to statements made by various members of the Roman Catholic Church ('Church' or 'Catholic Church') that give rise to serious concerns about the ongoing commitment of that Church to ensure justice for survivors of childhood sexual abuse.
3. It also makes recommendations regarding legislative changes that would enhance the ability of survivors of child sex abuse to secure compensation.
4. Our concerns centre on legislation creating Catholic Church trusts, past responses of the Church to historical sexual abuse claims including in the *Ellis* case, and statements made by individuals high up in the Church's hierarchy that indicate a lack of clarity regarding future responses. This is contrasted with international case examples, and legislative reforms in some jurisdictions in Australia demonstrating other possible approaches.
5. Issues 1.b, 3, 4, 6 and 7 are relevant to the below.

Liability of the Catholic Church when faced with claims of child sexual abuse

6. Historically, the Catholic Church had its trustees incorporated by the *Roman Catholic Church Trust Property Act 1936* (NSW), with similar legislation in other states and territories.¹ In each diocese or archdiocese throughout Australia, the trustees hold all the property of the Church, including diocesan schools and other institutions.
7. There are other parts of the Church in respect of which there is other specific legislation.



8. Traditionally, the Church in Australia accepted that in an action for child sex abuse, the appropriate action was against the trustees, who had both property and potentially insurance under Catholic Church Insurance.
9. The Royal Commission found that the average time from last abuse to first complaint was 22 years² (coinciding with an Anglican Queensland survey producing similar results).³ As such, the likelihood is that by the time a complaint of abuse was made against a church official, that official or, indeed, the bishop of the time would be dead and in any event, impecunious or their estate distributed. This means that for survivors of child sex abuse to be able to make successful compensation claims, actions against the Church itself are usually necessary.
10. In England, the Church accepted and continues to accept that the trustees are the appropriate body to sue. See *JGE v The English Province of Our Lady of Charity and The Trustees of the Portsmouth Roman Catholic Diocesan Trust* [2011] EWHC 2871 (QB). That also was the Church's position in Australia until Cardinal Pell took a new approach in *Ellis*.

The *Ellis* defence

11. In Case Study 8, the Royal Commission inquired into the experience of John Ellis in making a claim for historical sexual abuse against the Archdiocese of Sydney, first as a part of the Towards Healing Process and subsequently in litigation. The litigation was unsuccessful, ultimately giving rise to what became known as the '*Ellis* defence', whereby the Church relied on its legal structure to avoid paying compensation to Ellis, even though it never doubted that he had been abused by a priest as a child.
12. Ellis brought an action against, *inter alia*, the Trustees of the Roman Catholic Church as the body in which the assets of the Church were vested.
13. In *Trustees of the Roman Catholic Church v Ellis* [2007] NSWCA 117, the Church argued that the trustees did not employ priests and the current bishop or archbishop was not responsible for them. It further argued that, in any event, the

unincorporated association known as the Catholic Church was too amorphous to be capable of being sued by the traditional actions against unincorporated associations. This argument was accepted by the Court, which found that the trustees were not appropriate defendants as they only held property on behalf of the Church and thus were only liable in respect of property matters. This left Mr Ellis with no remedy for the abuse that had been perpetrated against him. The priest who had abused him was dead and the archbishop at the time (even assuming he knew or ought to have known of the abuse) was also dead.⁴

14. In the Royal Commission's Case Study 8 on the *Ellis* defence, Cardinal Pell acknowledged that the Church failed in many ways in their response to Mr Ellis's claim for compensation. Pell acknowledged 'the impact of this terrible affair on [Ellis's] life' by responding in the way that they did both during the Towards Healing Process and litigation. He apologised publicly 'for the hurt caused [Ellis] by the mistakes made and admitted by me and some of my archdiocesan personnel during the course of the Towards Healing process and litigation'.⁵
15. In *PAO, BJH, SBM, IDF and TMA v Trustees of the Roman Catholic Church for the Archdiocese of Sydney & Ors* [2011] NSWSC 1216 (Hoeben J), the *Ellis* defence was upheld in respect of sexual abuse claims against the staff at Patrician Brothers Primary School Granville. It was not suggested there was any legal entity which might be sued.
16. Australia diverges from other common law countries in this respect. In the United States, Canada and Ireland, the courts have treated the Catholic Church as a Corporation Sole, making it liable to suit in abuse or negligence cases. That argument was rejected in *Ellis*.

Church undertakings to provide an entity to sue

17. In a speech of 15 July 2015 to the Triennial Assembly of the Uniting Church in Australia, the Hon. Justice Peter McClellan AM said:



'In his evidence to the Royal Commission in the case study concerning the Melbourne Response Denis Hart, the Archbishop of Melbourne, stated that the Melbourne Archdiocese has recommended that the Church, throughout Australia, provide an entity for survivors to sue. The Truth, Justice and Healing Council, in submissions to the Commission, has recommended that legislation be enacted requiring unincorporated associations to establish or nominate an entity to be the proper defendant to any claims of child sexual abuse brought against the institution. The Archbishop of Sydney, Anthony Fisher, has stated publicly that it is the "agreed position of every Bishop and every leader of a religious congregation in Australia that we will not be seeking to protect our assets by avoiding responsibility in these matters" and that "anyone suing should be told who is the appropriate person to sue and ensure that they are indemnified or insured so that people will get their damages and get their settlements".'

18. In a press release by the Truth, Justice and Healing Council, quoting Francis Sullivan and dated 22 May 2015, it was said that:

'If a survivor wants to take a claim to court, then at the very least they must have an entity to sue.'

'... The Church position in relation to the identification of a proper defendant in civil claims calls for:

The enactment of legislation in the states and territories imposing a requirement on an unincorporated association which appoints or supervises people working with children to establish or to nominate a body corporate to be the proper defendant to any claims of child sexual abuse brought against the association.



The identity and corporate structure of the body corporate should be left to the institutions to determine in accordance with their internal structures, provided that the body corporate has sufficient assets or is appropriately insured or indemnified.'

The press release quoted Archbishop Fisher as saying, '... the *Ellis* defence is no longer a legal tactic used within his archdiocese.'

19. Unfortunately, it appears that the Church has recanted on these undertakings.

Inconsistent statements indicating the Catholic Church may continue to use the *Ellis* defence

20. Several bishops have refused requests from media organisations to undertake that they will not rely upon the *Ellis* defence, according to Fairfax articles published on 18 May 2015.⁶
21. Further, the Archdiocese of Sydney issued in late 2015 a document entitled 'The *Ellis* Decision - a Restatement of the Law' and saying 'There is no such thing as the "*Ellis* defence". The *Ellis* decision did not create new law.'⁷
22. This document is currently on the website of the Archdiocese of Sydney. It goes on to assert:

'While the court found that the body corporate was not responsible for the assistant priest, it did not set up a so-called "*Ellis* defence" or any new law. This decision is consistent with the longstanding rule of law that you cannot be liable for the criminal actions of others unless you are directly or indirectly responsible for supervising their conduct, and there has been negligence or other actionable conduct.'⁸



23. In the press release from Francis Sullivan of the Truth, Healing and Reconciliation Council, referred to above, it was said that the Church should assist victims to find someone to sue.
24. The point of the *Ellis* defence is that in many of these cases, there will be no-one to sue. Refusing to acknowledge that the *Ellis* defence exists indicates that Church officials will continue to protect Church assets from survivors of childhood sexual abuse seeking to sue it if they so choose.
25. The ALA acknowledges the limitations that might exist as a result of the organisational structure of the Catholic Church in Australia. We believe, however, that it is not sufficient that the rights of survivors of child sexual abuse to sue the institution that facilitated that abuse will depend on the attitude of the diocese or archdiocese in question. Given the statements outlined above, it is clear that legislative change is required.

Vicarious liability in cases of child sexual abuse

26. It seems perfectly clear that the Church does not intend to accept responsibility for its priests on the basis that there is no vicarious liability either because they are not technically employed or because, if the action is criminal, vicarious liability does not arise.
27. In England, in *JGE v The English Province of Our Lady of Charity and The Trustees of the Portsmouth Roman Catholic Diocesan Trust* [2011] EWHC 2871 (QB), it was held that the trustees were vicariously liable for the sexual abuse and rape by a Catholic priest of a girl in a children's home in Hampshire. This decision was upheld by the English Court of Appeal. In *The Catholic Child Welfare Society & Ors (Appellants) v Various Claimants (FC) and The Institute of the Brothers of the Christian Schools & Ors (Respondents)* [2012] UKSC 56, the highest court in England held that:
 - (i) it is possible for an unincorporated association to be vicariously liable for the tortious acts of its members,



- (ii) one defendant may be vicariously liable for the tortious act of another defendant even though the act in question constitutes a violation of the duty owed and even if the act in question is a criminal offence,
 - (iii) vicarious liability can even extend to liability for a criminal act of sexual assault,
 - (iv) it is possible for two different defendants to be each vicariously liable for the single tortious act of another defendant.
28. In that case, the De La Salle Institute was held vicariously liable for the sexual misconduct of brothers teaching in a school, even though they were not employed by the De La Salle Institute.
29. The decision on vicarious liability in respect of employment-like relationships was unanimously followed recently in holding the Ministry of Justice liable in the English Supreme Court for negligence by a prisoner working but not technically employed in the prison kitchen, who caused injury to an employed staff member. See *Cox [Respondent] v Ministry of Justice [Appellant]* [2016] UKSC 10.
30. In Australia, in *NSW v Lepore* (2003) 212 CLR 511, the majority left open vicarious liability in respect of criminal conduct in an action against the State of NSW for a teacher who sexually abused a child in a storeroom under the guise of discipline. The further step of clarifying the issue fully has not yet come before a superior court in Australia. It has, however, been well-established since the House of Lords decision in 1912 in *Lloyd v Grace, Smith & Co* [1912] AC 716 at 717, that criminality does not preclude vicarious liability. In that case (which seems to remain the law in Australia), a firm of solicitors was found liable for a clerk who had authority to sell property on behalf of a client but who wrongly took the funds. That was on the basis of ostensible authority and criminality did not preclude recovery. See also *Morris v CW Martin & Sons Ltd* [1966] 1 QB 716 (CA), approved in the Privy Council in *Port Swettenham Authority v TW Wu & Co* [1979] A.C. 580 (P.C.).
31. Denying the existence of the *Ellis* defence ultimately indicates that the Church is not willing to use its assets to compensate survivors of childhood sexual abuse. Cardinal



Pell accepted in evidence to the Royal Commission that the Sydney Archdiocese had ample ready funds to meet any potential claims.

Recommendations for reform made to date compared with international developments

32. The Victorian Legislative Council Inquiry into the Handling of Child Abuse by Religious and Other Organisations recommended retrospective legislative amendment in respect of unincorporated associations to provide incorporation and a defendant and adequate insurance to meet claims.⁹
33. The Royal Commission *Final Report on Redress and Civil Litigation* of 14 September 2015 has made various recommendations to make institutions such as the Catholic Church liable. Specifically, Recommendation 89 recommended the imposition of a non-delegable duty on institutions, even where it is the deliberate criminal act of a person associated with the institution. Recommendation 91 was for legislation to make institutions liable for institutional child sexual abuse by persons associated with the institution with, under Recommendation 92, a reverse onus of proof. This, under Recommendation 93, would apply prospectively but not retrospectively, meaning that existing victims who may not come forward for many years would have no remedy.
34. These recommendations are vastly inferior to the law as laid down in Canada in *Bazley v Curry* (1999) 174 DLR (4th) 45 and *Jacobi v Griffiths* 174 DLR (4th) 71 (Canadian Supreme Court) and *Lister & Ors v Hesley Hall Ltd* [2001] 2 All ER 769, where the House of Lords held an institution responsible for the criminal conduct of its servant. In *Maga v The Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256, the trustees of the Catholic Church were held liable for the criminal conduct of a priest and similar decisions followed in *JGE v The English Province of Our Lady of Charity and The Trustees of the Portsmouth Roman Catholic Diocesan Trust* [2011] EWHC 2871 (QB) and in particular, the Supreme Court

(replacing the House of Lords) in *The Catholic Child Welfare Society & Ors (Appellants) v Various Claimants (FC) and The Institute of the Brothers of the Christian Schools & Ors (Respondents)* [2012] UKSC 56. An employment-like relationship, such as the relationship between bishop and priest, gives rise to the same vicarious liability as exists between employer and employee and criminality does not prevent vicarious liability.

35. Moreover, those decisions are retrospective in their operation.
36. It follows that Australia appears to be the only western common law country in the world where a Church can evade its responsibilities for its clergy. Despite earlier undertakings to provide indemnity and insurance and accept responsibility, the Catholic Church appears to have gone back upon those undertakings.

Recommendation 94: legislative reform for property trusts

37. In Recommendation 94 in its *Final Report on Redress and Civil Litigation*, the Royal Commission recommended that state and territory governments introduce legislation to provide that any property trust associated with an institution against which a claim of institutional child sexual abuse has been made, should be made the proper defendant to litigation. Any liability of the institution arising from the proceedings should be met from the assets of the trust.
38. While the recommendations for broader reform are important and should be implemented, it is that recommendation which needs urgently to be implemented in all states and territories.
39. Given that other churches employ their staff and that the problem lies in the legislative structure of the Catholic Church, the only remedy for the Church's intransigence is legislative reform. It was, after all, the Church that requested incorporation in NSW in 1936 by Act of Parliament and amendment to add to its authority legislatively in 1986. It should now, by amendment, be made to accept

- responsibility and to meet the undertakings given by Archbishop Hart and Archbishop Fisher before the Church later recanted.
40. It cannot be acceptable that the right of nearly 20 per cent of Australian school children attending Catholic parochial schools to sue for injury or abuse is wholly dependent on the whim of the local bishop. It is not acceptable that they have no rights in law.
41. Legislation would need to be by way of amendment to the *Roman Catholic Church Trust Property Act 1936 (NSW)* or the equivalent legislation in other states and territories in claims of childhood sexual abuse:
- (i) To allow the trustees in each diocese/archdiocese to be sued in respect of claims against clergy, officials, teachers or other associated persons and to recover as a debt against the trustees (as holders of property) any judgment given.
 - (ii) The legislation would need to be retrospective in its effect.
42. In effect, such legislation would be simply doing that which Archbishop Fisher requested publicly and which he and Archbishop Hart, on behalf of all bishops in Australia, undertook to provide for victims.
43. Whilst the principle should have general application, only one church does not accept responsibility for the criminal conduct of its clergy and others, such as youth workers, given positions of authority on an unpaid basis. That is why specific legislation to amend the *Roman Catholic Church Trust Property Act (1936) (NSW)* or its equivalent in other states and territories¹⁰ is required.
44. The approach to liability in general could be ameliorated by taking the approach seen in *Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2014 (NSW)*, introduced by David Shoebridge into the NSW Parliament in 2014.¹¹ While the issue of limitations periods have already been resolved in NSW, the other elements of that Bill could usefully be adopted to implement Recommendation 94 in NSW. Similar legislation should also be adopted in all other jurisdictions. A copy of the Shoebridge draft Bill is attached.

Conclusions

45. Inconsistencies in statements made by representatives of the Catholic Church indicate that the Church may continue to use the *Ellis* defence to avoid liability for child sexual abuse claims.
46. In most common law countries, liability in claims of this nature is ensured by treating the Church as a Corporation Sole and recognising vicarious liability for sexual abuse and rape. The *Ellis* defence means that these avenues are not available to ensure justice for abuse survivors in Australia.
47. In its *Final Report on Redress and Civil Litigation*, the Royal Commission made recommendations that were inferior to the law as laid down in a variety of common law countries, including Canada, England and Wales.
48. The ALA supports recommendations 89, 91, 92 and 94 of the *Final Report on Redress and Civil Litigation* as minimum benchmarks. The approach taken by the Canadian courts and the courts of England and Wales provide stronger protection and should be implemented throughout Australia. This approach recognises vicarious liability for criminal conduct.
49. In NSW and Victoria, recommendation 93 is now superfluous. In other jurisdiction, this recommendation is inadequate: all changes should apply retrospectively. In jurisdictions where limitations periods survive for historical child sexual abuse claims, reforms such as those seen in NSW¹² and Victoria¹³ are preferable. Otherwise, the average victim who, on the Royal Commission's own statistics, will probably not come forward for more than another 20 years, will not receive the benefit of any changes in limitation law. Both the NSW and Victorian Governments found this argument demanded retrospective change. The Royal Commission should amend its recommendations in this regard.
50. The legislation recommended in 94 should be modelled on the *Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2014* (NSW). This Bill is included as an appendix to this submission. While the limitations provisions in that

Bill are now superfluous in NSW and Victoria, other provisions constitute a fair basis for ensuring liability for historical sexual abuse claims.

¹ *Roman Catholic Property Trust Act 1937 (ACT); Catholic Church in the Northern Territory Act (NT); Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Land Vesting Act 1945 (Qld); Roman Catholic Church (Incorporation of Church Entities Act 1994 (Qld); Roman Catholic Church (Northern Land) Vesting Act 1941 (Qld), Roman Catholic Church Lands Act 1985 (Qld); Roman Catholic Archdiocese of Adelaide Charitable Trust Act 1981 (SA); Roman Catholic Church Property Act 1932 (Tas); Roman Catholic Trusts Act 1907 (Vic); Roman Catholic Church Lands Act 1895 (WA); Roman Catholic Church Property Act 1911.* Please note that while this legislation has not been tested in courts it is possible that a similar interpretation as that taken in New South Wales could be applied.

² Royal Commission Interim Report on Redress and Civil Litigation Vol 1 at 5.1 on p 158.

³ Patrick Parkinson, Kim Oates, Amanda Jayakody "Study of Reported Child Sexual Abuse in the Anglican Church" (May 2009) at 5 - average of 23 years.

⁴ See also in respect of Western Australia, *Archbishop of Perth v "AA" to "JC" inclusive; DJ & Ors v Trustees of the Christian Brothers & Ors* (1995) 18 ACSR 333 (NSW CA) and in respect of Queensland, *Clark v Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane* [1998] 1 Qd R 26.

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse Case Study 8, Transcript day 63 Cardinal Pell testimony, 27 March 2014, 6705.

⁶ Chris Vedelago, Cameron Houston, "Church to block victims' court bids despite promise to abandon practice by Pell", *The Age*, 18 May 2015, available at <http://www.theage.com.au/victoria/church-to-block-victims-court-bids-despite-promise-to-abandon-practice-by-pell-20150517-gh3jkr.html>.

⁷ Sydney Catholic Archdiocese "The Ellis Decision – a Re-statement of the Law", [undated], available at <https://www.sydneycatholic.org/justice/royalcommission/ellis.asp>.

⁸ Sydney Catholic Archdiocese "The Ellis Decision – a Re-statement of the Law", [undated], available at <https://www.sydneycatholic.org/justice/royalcommission/ellis.asp>.

⁹ Final Report of the Inquiry into the Handling of Child Abuse by Religious and Other Organisations, Recommendation 26.1, available at http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Report/Part_H.pdf.

¹⁰ *Roman Catholic Property Trust Act 1937 (ACT); Catholic Church in the Northern Territory Act (NT); Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Land Vesting Act 1945 (Qld); Roman Catholic Church (Incorporation of Church Entities Act 1994 (Qld); Roman Catholic Church (Northern Land) Vesting Act 1941 (Qld), Roman Catholic Church Lands Act 1985 (Qld); Roman Catholic Archdiocese of Adelaide Charitable Trust Act 1981 (SA); Roman Catholic Church Property Act 1932 (Tas); Roman Catholic Trusts Act 1907 (Vic); Roman Catholic Church Lands Act 1895 (WA); Roman Catholic Church Property Act 1911.*

¹¹ Available online at <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=2902>.

¹² *Limitation Act 1969 (NSW), as amended by Limitation Amendment (Child Abuse) Bill 2015 (NSW).*

¹³ *Limitation of Action Amendment (Child Abuse) Act 2015 (Vic).*

Introduced by Mr David Shoebridge, MLC

First print



New South Wales

Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The NSW Court of Appeal has held that property held on trust under the *Roman Catholic Church Trust Property Act 1936* for the use, benefit or purposes of the Roman Catholic Church in New South Wales cannot be used to satisfy legal claims associated with sexual abuse by Roman Catholic clergy, officials or teachers. The object of this Bill is to amend that Act:

- (a) to allow a person suing a member of the Church's clergy, a Church official or a Church teacher in relation to sexual abuse to join the following as defendants in those proceedings (and to make them liable for any damages awarded):
 - (i) the body corporate established by the Act to hold property on trust for the dioceses in which the relevant abuse allegedly occurred,
 - (ii) the trustees that make up that body corporate,
 - (iii) if the regulations so provide, any body corporate established under the *Roman Catholic Church Communities' Lands Act 1942* by which the relevant member of the clergy, official or teacher was employed or that was established as trustee of community land of any community of which the relevant member of the clergy, official or teacher was a part, and
- (b) to allow a person who is owed a judgment debt in respect of civil liability arising as a result of sexual abuse by a member of the Church's clergy, a Church official or a Church teacher to recover the debt from any of the following (as an alternative to pursuing the clergy member, official or teacher concerned):
 - (i) the body corporate established by the Act to hold property on trust for the dioceses in which the relevant abuse allegedly occurred,

- (ii) the trustees that make up that body corporate,
 - (iii) if the regulations so provide, any body corporate established under the *Roman Catholic Church Communities' Lands Act 1942* by which the relevant member of the clergy, official or teacher was employed or that was established as trustee of community land of any community of which the relevant member of the clergy, official or teacher was a part, and
- (c) to suspend the operation of the *Limitation Act 1969* for 2 years in relation to such causes of action that would otherwise be out of time.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

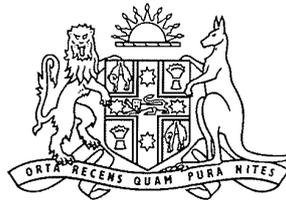
Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Roman Catholic Church Trust Property Act 1936 No 24

Schedule 1 makes the amendments described in the above Overview.

Introduced by Mr David Shoebridge, MLC

First print

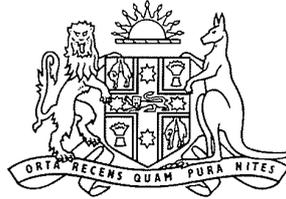


New South Wales

Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2014

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New South Wales

Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Roman Catholic Church Trust Property Act 1936* to provide for the ability of victims of sexual abuse where the abuser is found to be a member of the Catholic clergy and or another official and or officer in the Church to satisfy judgments awarded against such abusers as a judgment debt payable from the assets of the Trust and for other related purposes.

Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2014 [NSW]

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Roman Catholic Church Trust Property Amendment (Justice for Victims) Act 2014</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Roman Catholic Church Trust Property Act 1936 No 24	1
		2
[1]	Part 1, heading	3
	Insert before section 1:	4
	Part 1 Preliminary	5
[2]	Part 2, heading	6
	Insert after section 2:	7
	Part 2 Church property	8
[3]	Part 3	9
	Insert after section 16:	10
	Part 3 Sexual abuse claims paid from Trust funds	11
	17 Definitions	12
	(1) In this Part:	13
	<i>Church official</i> means any person who acts as a representative of the Church and includes, but is not limited to, any of the following:	14
		15
	(a) an official, officer or member of staff of the Church or of a diocese of the Church,	16
		17
	(b) a lay assistant for the Church or for a diocese of the Church,	18
	(c) a volunteer for the Church or for a diocese of the Church,	19
	(d) a Provincial-General for New South Wales of a community,	20
	(e) a Provincial, Superior, Leader or President of a community.	21
	<i>Church teacher</i> means a teacher or member of staff of a theological college, school, orphanage or children's home operated under the auspices of the Church or of a diocese of the Church.	22
		23
		24
	<i>community</i> means a community within the meaning of the <i>Roman Catholic Church Communities' Lands Act 1942</i> .	25
		26
	<i>member of the Church's clergy</i> includes the following:	27
	(a) an Archbishop or Coadjutor Archbishop of the Church,	28
	(b) a Bishop or Coadjutor Bishop of the Church,	29
	(c) a Vicar Capitular of the Church,	30
	(d) an Administrator of the Church,	31
	(e) a Vicar-General of the Church,	32
	(f) a priest or assistant priest of the Church,	33
	(g) a sister, nun, brother, monk or seminarian of the Church,	34
	(h) any other member of a religious order of the Church.	35
	<i>sexual abuse</i> means sexual conduct, or conduct that includes sexual conduct (whether or not there was apparent consent to that conduct and whether or not that conduct would, at the time of the relevant conduct, have constituted a sexual offence) perpetrated by a person who was, at the time of the relevant	36
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- conduct, a member of the Church's clergy, a Church official or a Church teacher, while acting in his or her capacity as such a member, official or teacher. 1
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3
- (2) For the purposes of this Part, a person was *under the care of the Church* if the person was owed a duty of care or fiduciary duty by the Church, a member of the Church's clergy, a Church official or a Church teacher and includes, but is not limited to, having been owed such a duty in the following capacities: 4
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- (a) as a member or parishioner of the Church, 8
- (b) as a nun, monk or seminarian of the Church, 9
- (c) as an altar server or other assistant in a church or diocese of the Church, 10
- (d) as a student of a theological college, school, orphanage or children's home operated under the auspices of the Church or of a diocese of the Church. 11
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- 18 Conduct of proceedings relating to sexual abuse by Church clergy, officials or teachers** 14
15
- (1) The plaintiff in civil proceedings relating to sexual abuse by a member of the Church's clergy, a Church official or a Church teacher of the plaintiff who was, at the time of the sexual abuse, under the care of the Church, may join as a defendant in those proceedings: 16
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- (a) the body corporate established under this Act for the diocese of the Church in which the abuse, or the majority of the abuse, is alleged to have occurred, and 20
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- (b) the Bishop, and the Diocesan Consultors, of the diocese of the Church in which the abuse, or the majority of the abuse, is alleged to have occurred, in their capacity as trustees of Church trust property in that diocese, and 23
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25
26
- (c) if the regulations so provide, a body corporate established under the *Roman Catholic Church Communities' Lands Act 1942*: 27
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- (i) by which the relevant member of the clergy, official or teacher was employed, or 29
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- (ii) that was established as trustee of community land of any community of which the relevant member of the clergy, official or teacher was a part. 31
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- (2) In respect of any such proceedings, the relevant body corporate and its trustees are jointly and severally liable as if they were the member of the Church's clergy, the Church official or the Church teacher against whom the proceedings were also brought. 34
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- (3) The court hearing such proceedings may extend the application of subsections (1) and (2) to a person who alleges sexual abuse by a member of the Church's clergy, a Church official or a Church teacher and who was not at the time of the abuse under the care of the Church, but was so closely connected with the Church that the court believes it would be just to render the Church liable for the abuse, if proven. 38
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- (4) A plaintiff who intends to join any body corporate, Bishop or Diocesan Consultor as defendant in proceedings in reliance on subsection (1) must give notice of that intention to the body corporate, Bishop and Diocesan Consultor concerned within 28 days after the filing of the statement of claim in relation to the relevant proceedings. 44
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(5)	This section extends to a cause of action arising before the commencement of this section.	1 2
19	Judgments relating to sexual abuse by Church clergy, officials or teachers may be required to be paid from Trust funds	3 4
(1)	A person who is owed an unpaid judgment debt in respect of civil liability arising as a result of sexual abuse by a member of the Church's clergy, a Church official or a Church teacher against a person who was, at the time of the abuse, under the care of the Church, may bring an action for the recovery of the debt against:	5 6 7 8 9
(a)	the body corporate established under this Act for the diocese of the Church in which the abuse, or the majority of the abuse, is alleged to have occurred, and	10 11 12
(b)	the Bishop, and the Diocesan Consultors, of the diocese of the Church in which the abuse, or the majority of the abuse, is alleged to have occurred, in their capacity as trustees of Church trust property in that diocese, and	13 14 15 16
(c)	if the regulations so provide, a body corporate established under the <i>Roman Catholic Church Communities' Lands Act 1942</i> :	17 18
(i)	by which the relevant member of the clergy, official or teacher was employed, or	19 20
(ii)	that was established as trustee of community land of any community of which the relevant member of the clergy, official or teacher was a part.	21 22 23
(2)	In respect of any such action, those bodies corporate and those trustees are jointly and severally liable as if they were the member of the Church's clergy, the Church official or the Church teacher against whom the judgment was given.	24 25 26 27
(3)	The court hearing such proceedings may extend the application of subsections (1) and (2) to a person found to have been sexually abused by a member of the Church's clergy, a Church official or a Church teacher and who was not at the time of the abuse under the care of the Church, but was so closely connected with the Church that the court believes it would be just to render the Church liable for the abuse.	28 29 30 31 32 33
(4)	This section extends to a cause of action arising before the commencement of this section.	34 35
20	Suspension of bar to actions on basis of limitation period having elapsed	36
(1)	Despite any provision of the <i>Limitation Act 1969</i> , an action on a cause of action for Church sexual abuse is maintainable if it commences during the suspension period, regardless of the date on which the cause of action first accrued.	37 38 39 40
(2)	In this section:	41
	<i>Church sexual abuse</i> means sexual abuse by a member of the Church's clergy, a Church official or a Church teacher in relation to a person who was, at the time of the sexual abuse, under the care of the Church.	42 43 44
	<i>suspension period</i> means the period commencing on the date of assent to the <i>Roman Catholic Church Trust Property Amendment (Justice for Victims) Act 2014</i> and ending on the second anniversary of that date.	45 46 47

21 Regulations

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The Governor may make regulations, not inconsistent with this Act, for or
with respect to any matter that is permitted to be prescribed by this Part.

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