

This submission relates to elements of civil litigation with regard to the Roman Catholic Church and other similarly constituted religious organisations.

A. 'Some institutions cannot be sued because they are not incorporated ...'

INCORPORATE: Legislate so that all entities which receive public monies or public subsidies of any kind MUST be incorporated. If public monies are transferred from one church entity to another, the first entity will be legally responsible from the point of view of compensation, should the second entity be successfully sued.

B. 'Some institutions do not hold assets from which damages could be paid ...'

1) AMEND EXISTING LEGISLATION: Amend the Roman Catholic Church Communities Lands Act of 1942 Section 23 'Distribution of surplus property' to state that 'the liquidator *may* transfer the property to another body corporate created by this Act .....*unless* there is a pending claim by a victim of clerical sexual abuse against a member of that entity/Trust/body corporate.'

1a) 'In that event, a separate Trust for the benefit of victims will be established with all assets from the order/Trust/body corporate wound up.'

The Society of St Gerard Majella, Carlingford, was a criminal paedophile snakepit. When its body corporate was wound up, the property owned by the order was quietly transferred to the Bishop of Parramatta. Thus the many victims of the Society of St Gerard Majella could not sue as there was no longer an entity to sue. The money had gone to the Bishop of Parramatta, who could not be sued as he had nothing to do with the crime. For this we must thank the NSW government, which amended the legislation for this purpose in 2004. (Although the then Attorney General, Bob Debus, said in his speech in the Parliament that there would be a schedule listing those bodies corporate that had been wound up, it was only after many requests by me that Mr Debus finally published the name of St Gerard Majella in Schedule 2. I note that as of today's date, there are only two other Trustee groups mentioned as having had their body corporate wound up, but neither were published in the Gazette as Debus promised. Thus no one knows what happened to their assets.)

2) BE TRANSPARENT: The Royal Commission should recommend that any legislative change regarding the churches and property be available for review by victims groups and that these groups be notified promptly and publicly.

2a. The Roman Catholic Church Property Act of 1936 should be similarly reviewed and amended to take account of victims' compensation needs.

3) QUERY ROLE OF LEGISLATORS: The Royal Commission should enquire of the NSW Parliament just why it colludes with the churches to maintain the protection of its wealth by legislation when the Parliament knows full well that the church has committed crimes. Why is it that the Church and the State have so organised themselves that the assets are all separate from the institutions? Isn't that what Hardies did, to great public/judicial dismay and disapproval?

4) CANON LAW VS CIVIL LAW: When Cardinal Pell appropriated the land upon which the parish church of the Sacred Heart, Darlinghurst, stands for the benefit of Notre Dame University, he argued that under civil law the Roman Catholic Church Trust owned all church land and was legally able to dispose of it.

When it comes to abuse victims and compensation, Pell argues that the Church is constituted by canon law as manifold small and separate entities, and indeed as a corporate structure literally does

not exist.

The Royal Commission should recommend that either canon law applies, or civil law applies to church property. It cannot be both.

### C. 'the circumstances in which institutions are liable for their employees ...'

GIVE UP THE FICTION THAT GOD IS AN EMPLOYER: The Royal Commission should recommend that priests and others ARE employees. For this to occur the Church and all agencies which bear its name must be legally incorporated. If not, why not?

### D. 'Regulators ....'

Legislation regarding church property is counterproductive to the best interests of the people in this State. Although it is generally accepted that donations should be used for the purposes for which they are donated, NSW legislation allows one entity to acquire another's assets but does not require it to use the asset for the purpose it was donated. I became aware of monies given to support the ACBC pregnancy counselling services which ended up in the pockets of a private organisation promoting the rhythm method. That is not legal. (I alerted the ATO. They did not care.) Legislators help the church to slip assets from one unincorporated entity to another to escape claims (apart from Opus Dei, the only Catholic entity I know of that is actually incorporated and (theoretically) regulated by ASIC.)

A further instance is the National Catholic Education Commission. It receives substantial public money, which is then distributed according to its own private formulas, to the State Education Commissions. Could the States then claim they had no assets in the event of a future allegation of abuse in a Catholic school? All the money is officially vested in the NCEC – which has no access to school children – and therefore could not be responsible.

All the churches property wealth derives from grants by the Crown, and bequests from the people. There ought to be at the very least a **public register** of land assets and perhaps all assets owned by all church entities, including Catholic Church Insurances and their investments. Then at least there could be some clarity as to which assets are used for charitable purposes, and which are used for profit making purposes. I am aware of religious orders which own supermarkets and skyscrapers. There is no way of knowing to what purposes the profit/surplus is used, because churches do not have to declare income or assets in Australia.

This is contrary to practice overseas. The Archdiocese of Boston, along with other diocesan authorities, must **submit tax returns**. These returns are publicly available for scrutiny. Submission of a tax return does not mean they have to pay tax; they simply have to declare what they received and what they spent and on what they spent it. This was one US response to the scandal of clerical abuse in the United States of which our regulators must be aware; yet there has never been any suggestion that Australian governments follow suit. One begins to wonder why that is.

### Other matters:

1. All human institutions which are permitted to be opaque and secret become corrupt. In 2005 I became aware of a paedophile ring which was operating out of the [REDACTED]. The then director of the Centre who told me this story (not part of the criminal activity) came to work unexpectedly on a weekend and found a group with \$30,000 worth of valuable stamps on his desk. I gather paedophiles use high value stamps to gain ready access to cash. The director mentioned this to his superior, [REDACTED]. The following day [REDACTED] arrived at the [REDACTED], having

already impounded the director's belongings, and ordered the director out of the building. This priest was never defrocked, but he was also never paid again. He simply ended up in limbo, no longer a working priest yet not having any other status from which he could begin a new life. In the strange upside down world of Catholic morality, █████ found the priest-whistleblower guilty and the criminal paedophile clerics deserving of protection. As an ironic conclusion to this story, the then Chairman of the █████ was called in to hose the thing down and cover it up. That person was █████, the very person who had engaged me to edit an online journal of █████, █████, █████, and the reason I found out about the scandal. I did not publish it; I was dismissed anyway.

The point of the story is that power tends to support power. To this I argue that churches must be subject to civil law, and they must be subject to the same expectations that the community has of any legally constituted organisation. They should be subject to Human Rights law, for example. They should be obligated to disclose assets and income. Churches should have to publicly disclose all the same information that any other corporate entity must disclose, to the public where appropriate and to government authorities otherwise.

2. What the Royal Commission must realise is that for bishops, (and indeed all strictly observant Catholics) where there is a conflict between civil law and canon law, *it is canon law which prevails*: 'Can. 22 Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.' **The Bishop in his diocese IS the law.** If he doesn't want to inform the police of a crime, according to his law, he does not have to. Further, he can order others to cover up: **Can. 1320 The local ordinary can coerce religious with penalties in all those matters in which they are subject to him.** (that's everything). Civil legislation must, therefore, be very precise. (Perhaps governments internationally need to negotiate en masse with the Vatican's canon lawyers, to request that clerical sexual abuse is defined as a hanging offence in canon law?)

3. What this all means, finally, is that *governments* must legislate to mandate transparency and accountability by churches to the community they claim they serve. Governments must also be trusted to regularly audit churches' accounts and activities, as a safeguard for the millions of dollars of public money we give them.

Unless the Royal Commission concludes with recommendations including a **strong legislative reform agenda** with regard to the churches, public confidence with regard to the whole enquiry will be greatly undermined.

Without such legislative reform there will be no protection for the vulnerable young and the vulnerable elderly, the jobless, the pregnant, the sick and the dying, and all those to whom all governments hand over to the church for 'care'.

If governments fail to legislate after all that has come out, one would have to consider whether governments ought accept legal responsibility for crimes committed by church employees in the future.

Because now, as Leonard Cohen says, 'Everybody knows'.

Yours sincerely,

Kate Mannix

