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

Issues Paper 5: Civil Litigation

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About the Authors

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In 2005, Hetty was announced as a finalist for the 2006 Australian of the Year Awards – she is the recipient of two Australian Lawyers Alliance Civil Justice Awards (2003, 2004) and was named a finalist in the 2008 Suncorp Queenslander of the Year Awards. She was awarded a Paul Harris Fellowship in 2010 and is a Fellow of the Australian Institute of Community Practice and Governance (March 2010). In early 2009, Hetty was recognised as one of approximately 70 outstanding leaders throughout the world, receiving the prestigious annual Toastmasters International Communication and Leadership award. In 2013 Hetty was awarded Northern Australia's Ernst & Young Social Entrepreneur of the year. Hetty is a member of the International Society for the Prevention of Child Abuse and Neglect and sits on the Federal Government's Cybersafety Working Party.

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About Bravehearts Inc.

Our **Mission** is to stop child sexual assault in our society.

Our **Vision** is to make Australia the safest place in the world to raise a child.

Our **Guiding Principles** are to at all times, do all things to serve our Mission without fear or favour and without compromise and to continually ensure that the best interests and protection of the child are placed before all other considerations.

Bravehearts has been actively contributing to the provision of child sexual assault services throughout the nation since 1997. As the first and largest registered charity specifically and holistically dedicated to addressing this issue in Australia, Bravehearts exists to protect Australian children against sexual harm. All activities fall under 'The 3 Piers' to Prevention; Educate, Empower, Protect – Solid Foundations to Make Australia the safest place in the world to raise a child. Our activities include but are not limited to:

EDUCATE

- Early childhood (aged 3-8) 'Ditto's Keep Safe Adventure' primary and pre-school based personal safety programs including cyber-safety.
- Personal Safety Programs for older children & young people and specific programs aimed at Indigenous children.

EMPOWER

- Community awareness raising campaigns (Online and Offline) including general media comment and specific campaigns such as our annual national White Balloon Day.
- Tiered Child sexual assault awareness, support and response training and risk management policy and procedure training and services for all sectors in the community.

PROTECT

- Specialist advocacy support services for survivors and victims of child sexual assault and their families including a specialist supported child sexual assault 1800 crisis line.
- Specialist child sexual assault counselling is available to all children, adults and their non-offending family support.
- Policy and Legislative Reform (Online and Offline) - collaboration with State Government departments and agencies.

Bravehearts Inc. is a National organisation, it is a registered Public Benevolent Institution, registered as a Deductible Gift Recipient, operates under a Board of Management and is assisted by State based Community Regional Committees, Executive Advisory Committees and a Professional Finance Committee.

Introduction

As an agency that works with, and advocates for, survivors of child sexual assault we regularly and continue to provide support and referral for clients who have sought financial compensation and redress via the civil litigation process. This experience and anecdotal accounts from our clients allow Bravehearts to identify the common themes and limitations that are regularly raised by our clients when they interface with the civil litigation process.

Bravehearts believes that civil litigation processes are important mechanisms to assist survivors of child sexual assault achieve appropriate levels of monetary redress. It is particularly important for these individuals to receive appropriate compensation, given the lifelong, wide-ranging effects of child sexual assault often on their adult lives.

Impact of Child Sexual Assault on Survivors

Any discussion on financial compensation and redress for survivors of child sexual assault must include an understanding of the complex effects of the sexual exploitation of children.

Childhood trauma can impact on children's development across a range of domains including physical, emotional, social and cognitive (Lamont, 2010). Child sexual assault has also been linked with long term poor mental health outcomes, with those who experienced child sexual assault at greater risk of mental health issues (Tarczon, 2012). Diagnoses of anxiety, depression and personality disorders are common in adults with a history of child sexual assault.

There are a number of well researched and documented long term impacts of child sexual assault affecting adult survivors. These have particular relevance for later discussions on limitation periods in relation to civil actions. Individuals with a history of child sexual assault are at an increased risk for:

- mental illness
- substance abuse
- homelessness
- suicidality
- revictimisation, including domestic violence and sexual assault
- parenting difficulties, and
- health issues.

Child sexual assault has been found to be a risk factor for the development of psychopathology later in life (Hillberg, Hamilton-Giachritsis & Dixon, 2011; Manglio, 2010; Spila, Makara, Kozak & Urbanka, 2008). Long term psychopathology of 2,759 Australian children who were sexually assaulted between the years of 1964 and 1995, were evaluated 12 to 43 years after the assault occurred (Cutajar et al. 2010). Findings revealed that 22% of individuals who had experienced child sexual assault later accessed

public mental health services, in comparison to only 7% of those in the control group. The authors identified that child sexual assault increased the likelihood of experiencing psychosis, mood and anxiety disorders, substance abuse and personality disorders.

Civil Litigation: Bravehearts Position

In summary Bravehearts recommends that:

- Limitation periods in relation to claims arising from criminal child abuse should be abolished, in line with the recommendations in the recent *Betrayal of Trust* Inquiry in Victoria,;
- Uniform statutory provisions should be introduced in each State & Territory;
- Institutions should be prevented from avoiding their obligations to compensate individuals for civil wrongs, for example, by arranging their corporate structures so they are not an entity capable of being sued; and,

Additionally Bravehearts believes with amendments to the current system

- Civil litigation processes can operate in a manner that achieves appropriate outcomes for survivors. A relevant case study is provided on page 6.
- Furthermore, specifically where historical abuse has occurred Bravehearts would recommend a review into whether civil litigation processes should be supplemented with an alternate option such as a national redress scheme which doesn't require the same standard of proof and cost incurred in bringing an individual civil claim. Bravehearts believes this is an important consideration as it recognises in historical abuse cases, particularly where records haven't been kept, and assailants have since deceased the burden of proof in a civil claim is often particularly onerous for victims who dearly need financial compensation for their ongoing care.
- In addition to our recommendations for amendments to the Civil litigation system, Bravehearts would advocate for a national redress scheme akin to the Irish Redress scheme where victims who attended the relevant institution during the particular period would be eligible to submit relevant psychiatric and medical information to a board for assessment.
- Bravehearts would advocate that this redress scheme would be better managed independently of the relevant institution involved and that damage not be limited or capped rather individually assessed and dependant upon the harm suffered.

Abolition of limitation periods in relation to civil actions arising from criminal child abuse

Adult survivors of child sexual assault that are potential plaintiffs are frequently statute-barred as they are bringing the claim "out of time". The general position is that an individual has three years from the date the cause of action accrued by which to commence an action in relation to personal injuries.[1] Where the individual was a child on the date of accrual, time commences to run once they reach majority.[2]

[1] For example, in Queensland see *Limitation of Actions Act 1974* (Qld) s 11

[2] For example, in Queensland see *Limitation of Actions Act 1974* (Qld) ss 29, 5(2), 29(2)(c)

The legal position must be altered to recognise the nature of sexual offending against children and its ongoing effect on adult survivors.

Mathews (2003) notes survey results that found 12% of survivors took 5-9 years to disclose, 16% took 10-19 years, and just under a quarter (24%) took 20 years or more to disclose childhood sexual assault.

Such a significant delay in disclosing the childhood sexual assault, as an adult, is not an anomaly but is a reflection of key characteristics of the offending itself, namely: silence; secrecy; and, shame.

Survivors of child sexual assault face enormous barriers in disclosing. The impacts of child sexual assault typically mean that the victim does not disclose until they feel safe to do so, and this frequently does not occur until some time has passed.

Having been, in many cases, completely disempowered by an offender, the psychological consequences of child sexual assault have far reaching consequences: shame and guilt can often mean that survivors are unable to disclose until parents have passed away; many survivors are simply not ready to disclose as they may still be processing the psychological trauma and impacts of the sexual assault; and victims may experience post-traumatic stress disorder (essentially this means that a victim is aware of the harm they experienced but disassociate themselves from any reminders of the traumatic event, including litigation). Even if a survivor is aware of the possibility of legal action they may decide that to take such action would revive traumatic memories and may even be destructive and therefore delay proceeding with the matter.

Bravehearts recognises that limitation periods serve a valid purpose in relation to other civil matters. The general primary justification for imposing statutory time limits is twofold: (1) to avoid injustice by allowing potential respondents to be able to arrange their affairs with certainty after a set time period; and, (2) to recognise that it is preferable for proceedings to be instituted early, due to the risk of evidence going stale. However, these purposes should not be granted such prominence that the system so heavily favours the respondent that potential-plaintiffs are – in the majority of cases where an adult has disclosed in the average period of 20 years following the cause of action – unable to pursue a civil claim.

Given the key characteristics of childhood sexual assault (silence, secrecy, shame and delayed disclosure) it is not appropriate for limitation periods to apply to proceedings related to criminal child abuse matters, such as child sexual assault and associated damages. It is equally inappropriate for limitation periods to apply where the respondent(s) is an institution, an employee of the institution, or Government and the claim is one of negligence in relation to child sexual assault, as where the respondent is themselves the alleged perpetrator.

Presently, applications for extensions of time are complex and rarely successful.

Extension of limitation periods in relation to civil actions

Bravehearts supports recommendations in the *Betrayal of Trust* Inquiry in Victoria that civil limitation periods be abolished in relation to criminal child abuse matters, and specifically child sexual assault. However, if this is not adopted, at the very least the limitation periods should be extended to reflect the average time at which adults disclose their childhood sexual assault. For example, the relevant statutes could be modified to legislate for a limitation period of 25 years from date the cause of action accrued.

Uniform provisions for extension of application for time and general discretion

Bravehearts advocates that civil limitation periods be abolished in relation to child sexual assault. However, if this is not adopted, at the very least the circumstances in which an extension of time will be granted – and the relevant tests for these extensions – should be uniform across all states and territories.

Presently, the regimes in Victoria and New South Wales are more plaintiff-friendly than in other jurisdictions. For example, the provision in the *Limitation of Actions Act 1958* (Vic)[3] that specifically extends the limitation period in circumstances where the injury was caused by a child's parent, guardian or close associate of the parent or guardian is commendable; however, this is not mirrored in other jurisdictions.

Inability to sue particular institutions

As illustrated in the "Ellis" case,[4] this is particularly relevant for adult survivors of childhood sexual assault in relation to or connected with the Catholic Church. The Catholic Church should be treated as a "corporation sole" as it is in both the United States and Canada. This position is not presently adopted in Australia. This means that the only place in the common law world where the Catholic Church is able to deny liability on the basis that the Church does not exist as a legal person that can sue and be sued, is Australia. Australia is also the only place in the common law world where the relationship between priests and bishops does not give rise to vicarious liability. This must be rectified.

Case study: An example of civil litigation processes working effectively

Civil litigation processes can operate effectively and for the benefit of survivors where: (1) they are appropriately run; and, (2) the respondent institution does not have access to the defence that the claim is time-barred. In this circumstance, the amount of compensation received by survivors far outweighs that which would be received through reliance on "ex gratia" payments from the institution – for example through the *Towards Healing* process.

An example of the process operating effectively is in the Toowoomba Catholic Primary School, matter that was recently the subject of a Public Hearing of the Commission.

[3] *Limitation of Actions Act 1958* (Vic) s 27I

[4] Ellis v Pell [2006] NSWSC 109

The families of several victims who experienced child sexual assault by teacher Mr Gerard Byrnes, commenced proceedings against the Corporation of the Roman Catholic Diocese of Toowoomba. The civil claim was brought against the Church as a consequence of their failure to adequately monitor and supervise teacher Mr Gerard Byrnes, following complaints about the same teacher in 2007. A confidential settlement was reached with the diocese in early December 2010, following a two-day mediation conducted by former High Court Justice Ian Callinan QC.

This settlement involved the award of more than $3million in damages, costs and administration fees in relation to the offences committed against nine girls. Of that, over $2.88 million was paid by the insurers of the Catholic Church, with the remainder coming from the diocese.

This figure of which individual amounts have been published in the transcripts from the recent Public Hearing, illustrate the potential level of compensation available to survivors in circumstances where they are not barred by statutory time limits. A review of the compensation awarded in these settlements also demonstrates the inadequacy of the capped amounts of redress available under the various church run reparation schemes.

Other noteable points to mention were the process of the mediation itself providing an avenue for the parents involved to tell the Catholic church officers and insurers how the abuse had impacted their daughters and their family and to be heard via personal letters and statements. An opportunity was also provided to the Church officials to apologise to the families for what had occurred. Furthermore, the settlements ensured the costs of bringing the litigation were borne by the defendants and not payable by the victims. Additionally, given the victims were still minors it was also negotiated that the ongoing financial management and trustee fees to manage the money received should also borne by the defendants.

1. Are there elements of the civil litigation systems, as they currently operate, which raise issues for the conduct of litigation brought by people who suffer child sexual abuse in institutional contexts?

For example:

a. some institutions cannot be sued because they are not incorporated bodies or they no longer exist or because decisions were made personally by an individual officeholder;

This is a significant impediment for survivors. See discussion at 2.

b. some institutions do not hold assets from which damages could be paid, or they are not insured or their insurance status is unknown;

This is a significant impediment for survivors. See discussion at 2.

c. the circumstances in which institutions are liable for the criminal conduct of their employees or other people;

In Australia, institutions such as the Catholic Church are able to avoid their obligations in relation to liability for the criminal conduct of their employees. This is not the case in other jurisdictions, and the Australian position should be modified to align it with the approach in the United States, Canada, Ireland and England. In these jurisdictions it has been clearly established that the Catholic Church is responsible for the criminal conduct of priests that sexually assault children in the course of their duties. The "close connection" test is applied which gives rise to a species of vicarious liability (Morrison, 2013)

The close connection test, taken from *Lister v Hesley Hall Limited [2002] 1 AC 215*, laid out in *Maga v The Trustees of the Birmingham Archdiocese of the Roman Catholic Church [2010] EWCA Civ 256*, stipulates that the wrongful conduct must be so closely connected with acts the employee was authorised to do, that for the purpose of the liability of the employer to third parties, the wrongful conduct may fairly and properly be regarded as having been done in the ordinary course of the employee's employment. The test was applied in *JGE v The English Province of Our lady of Charity and The Trustees of the Portsmouth Roman Catholic Church Diocesan Trust [2011] EWHC 2871 (QB) (MacDuff J)* after the court found that vicarious liability does not depend upon whether an employment relationship is technically founded. What is important is that the priest to bishop relationship was found to be akin to employment and that was enough to give rise to a vicarious liability based on the application of the close connection test. In Australia, these principles do not apply.

If the Courts do not wish to recognise or establish the overseas experience of vicarious liability then legislation should be enacted to establish the vicarious liability of priests and other persons not in a traditional employment relationship with their respective churches or organisations federally and in each State or Territory.

d. the circumstances in which regulators are liable for failures of oversight or regulation;

There should be some form of independent regulation (in addition to Working with Children Checks) in relation to any institution at all that is involved with children and not just schools. It is apparent that those who hold themselves out as moral authorities are sorely in need of independent supervision on a systemic and local level.

This might be a committee of people with no religious or organisational affiliation to the particular institution able to provide oversight and determine penalties for lack of compliance to its recommendations.

The various boards that oversee the provision of funding and insurances to non-government schools should be able to conduct six monthly or yearly audits to see that the funded agency can prove it is compliant with regard to:

- Child protection practices – policy and procedure;
- Appropriate and regularly refreshed training and evaluation in relation to child protection;
- Mandatory reporting; and,
- Parent and community feedback with regard to child protection.

If the school or institution is non-compliant, funding should be impacted in a meaningful way.

A related issue is that the current mandatory reporting regime in Queensland in particular is deficient. Failure to make a mandatory report in respect of child sexual assault should be either an indictable offence and / or attract a far greater penalty that it does currently.

A summary offence with a mere financial penalty is not sufficient personal or general deterrence. Persons convicted of a failure to make a mandatory report should be penalised by way of a probation–like penalty where they must undergo education.

Further, institutions employing persons who do not comply with mandatory regimes should be the subject of an investigation triggered by the failure to report and if warranted, should be subjected to heavy financial penalties if it shown that they:

- Failed to provide an appropriate mandatory reporting system;
- Failed to educate staff with regard to their duties;
- Failed to allow staff to implement the mandatory reporting system either through culture, lack of resources or for other reasons.

e. limitation periods which restrict the time within which a victim may sue and the circumstances in which limitation periods may be extended;

This is a crucial matter. See discussion in previous section (page 4)

f. the requirements for bringing a class action, if victims from the same institution wish to sue as a group;

Bravhehearts has consulted with the Law Council of Australia Class Actions Committee on this point. It was advised that the collective experience of this group is that this is not an area that is particularly suited to class actions because of a large range of legal and practical complications.

Class actions are intended to provide a vehicle for recovery for numerous individuals who have been harmed by the same person or entity at the same time. Typically, this is in circumstances whereby for an individual or small group of victims, the ultimate remedy would otherwise be significantly outweighed by the cost of obtaining that remedy. A topical example is the Wivenhoe flood class action: an individual householder with a loss of say, $150,000 could not practically or rationally justify risking perhaps $15,000,000 to pursue recovery of that loss.

On the other hand, to distinguish with a class action where a common set of facts are requisite with sexual abuse it is the result of individual grooming, betrayal and eventually, assault. It may occur under the one institutional roof, but it is in Bravehearts' experience, individually targeted, secretive and seriatim, often over the course of many years and numerous locations across borders.

A claim by a survivor of sexual abuse is a common law claim for damages for personal injuries. Each state of the Commonwealth has passed legislation with the intention of limiting access to the court house for people who have suffered a personal injury. Every state has a different means of achieving this end. Each is inimical to the objects of any sensible class actions' regime.

In QLD for instance, there would be fundamental problems with bringing a class action in circumstances of abuse within an institution, because in the absence of a breach of a Commonwealth statute (and none presently exists), claims for common law damages for personal injuries must be conducted through the mechanisms prescribed by the Personal Injuries Proceedings Act (PIPA). If in QLD one filed a class action on behalf of a group of survivors from an Institution, the immediate legal response would be that that there has been non-compliance with the mandatory PIPA pre-litigation steps. And that would be correct as the law stands. PIPA prohibits filing of any action in court on behalf of someone who has suffered a personal injury until and unless those prelitigation steps have been complied with. Consequently, the purported 'class action' would be dismissed, no doubt with costs awarded against the claimants.

Further, in Queensland, the representative proceedings rule stipulates that the action must be run on behalf of **all** people with the same claim. As is notorious, sexual abuse lurks in the shadows. How could the survivors or their lawyers possibly hope to represent all of the other unknown survivors across the expanse of time and distance?

Different requirements apply in each state in Australia under the various personal injuries regimes, but each poses similar difficulties that in varying degrees, militate against class actions as viable routes to recovery and justice.

A satisfactory national, uniform redress scheme would likely see more compensation, achieved more efficiently for more victims than would a series of class actions. The commission should note, however, that there may be constitutional issues to work through, around s.51 and acquisition of choices in action. If a redress scheme simply purports to legislate the substitution of an outcome less than common law damages for affected persons whose claims are not statute barred, it would possibly be open to constitutional challenge as being an acquisition of property on other than just terms.

Bravehearts would be well placed and content to have input into the scoping of such a redress scheme.

g. the existence of relevant records, locating them and retrieval costs;

There is quite often a substantial gap between the childhood sexual assault and the time the plaintiff first raises their experience with others. It has been noted that within that time period, it is not uncommon for documents to be lost, witnesses to have passed away or to have forgotten relevant events. This presents a significant hurdle for the survivor in seeking redress.

h. the process of giving evidence and being subject to examination and cross-examination;

Our court and legal systems are incredibly intimidating process for victims of crime. Any adult who has been required to give evidence can recount the degree of personal stress experienced when called upon, and subsequently defend that testimony under cross-examination. In the area of child sexual assault, the level of personal stress is intensified due to the relationship and power differentiation between the survivor and the perpetrator, or indeed the institution where the harm occurred.

The daunting prospect of providing evidence and being questioned on sexual assault and the impact of that on a person is a significant discouragement for many in pursuing a claim.

For survivors of child sexual assault in particular, it is crucial that the adversarial nature of the process be minimised and that the survivor is provided with independent support throughout the process.

i. proving that the victim's injuries and losses were caused by the abuse;

An artificial and contrived process of assessing the personal harm and loss to a survivor should be avoided.

Often in these matters the effects of the initial sexual assault are compounded by a cycle of subsequent events and circumstances such as substance abuse and relationship breakdown, poor mental and physical health.

These matters should not be dissected in any attempt to make an 'apportionment'. The person should be regarded holistically and the only assessment made should be to see if the person as a whole has been significantly affected by the child sexual assault, similar to the previous regime in the workers compensation legislation – it should simply be

determined that the child sexual assault was "a" significant contributing factor, not "the" significant contributing factor.

j. the way in which damages are assessed; and

Generally, personal injuries are a State matter, each state to varying degrees has limited compensation available to victims especially in relation to claims for pain and suffering and mental harm. In NSW for instance, in order to recover damages for pain and suffering a victim must have an injury that is at least 15% of the "worst imaginable" suffering to proceed with a claim for pain and suffering.

All contrived and artificial processes should be minimised – it should be enough to have a medical report and proof that the person was in the institution.

Account should also be taken of the ongoing pain and suffering and career damage that is caused by the harm.

Further review should be made of the lost earnings quantum for these claims as for example currently in QLD it is a capped figure. Proving and establishing lost earnings also has an evidentiary burden as often child abuse victims do not complete further education or have interrupted careers due to substance abuse or other psychological harm.

Bravehearts would advocate that a National scheme to assess damages would be more appropriate for these cases as the amount you receive should not be dependant upon the state the abuse occurred in.

k. the cost of litigation and access to funding and legal services.

Access to justice is an issue insofar as the ability of survivors to access legal services. In larger cities and in situations where there is a stronger case, it may possibly be easier for a survivor to access legal services from a private solicitor.

However, there is a distinct justice gap for survivors who are:

- Disabled;
- Homeless;
- Dependent on drugs or alcohol;
- Financially disadvantaged;
- Indigenous and/or living in remote indigenous communities;
- Living in rural communities; and
- Illiterate.

For these groups of people, their options in accessing legal services are limited. Those who are financially disadvantaged will seek advice from a legal aid office or a community legal centre only to be referred elsewhere due to the fact the above organisations often do not provide advice on compensation/personal injury matters.

The predominant reason why legal advice is not offered in this area of law relates to liability concerns around limitation periods for personal injury matters which are enlivened once a client seeks advice from a legal practitioner.

In this vacuum, survivors may be denied the opportunity to obtain justice. Alternatively, those who are vulnerable and disadvantaged may be exploited by unscrupulous legal practitioners.

Perhaps consideration could be given to specialised legal advice units who would be able to provide initial advice and representation for disadvantaged clients who fall in between the justice gap. Such units may be set up through funds contributed to by institutions the subject of civil litigation proceedings. Legal advice from these units may be offered by either a legal aid office, a community legal centre.

A National redress scheme which provides access and funding to receive independent legal advice would also go some way to addressing this gap.

2. Are there other elements of the civil litigation systems that raise issues for the conduct of litigation brought by people who suffer child sexual abuse in institutional contexts? If so, what are they and what issues do they raise?

State entities are bound by the Model Litigant principles which preclude State run bodies from relying on spurious or highly technical arguments in the face of apparent culpability.

A model litigant must:

- Act honestly and fairly;
- Deal with claims properly
- Pay legitimate claims without litigation;
- Act consistently; and
- Consider alternate dispute resolution processes.

Relevant institutions should be required to act as Model Litigants in relation to cases of childhood sexual assault. If this approach were taken, the process would foster the early and legitimate resolution of claims while in no way requiring a defendant to mount a less than vigorous defence.

3. How well do early dispute resolution or mediation processes work as part of the civil litigation systems for people who suffer child sexual abuse in institutional contexts?

Programs such as *Towards Healing* and similar models have not been reported to have worked very well for Bravehearts clients. Complaints included not being allowed to have access to legal representation, time taken, lack of investigation, small sums involved, and bullying and harassing of clients.

In the *Towards Healing* process, survivors signed deeds of release as one of the possible outcomes of the process; however, there was no specific provision for survivors to access independent legal advice. This led to a situation where survivors who had signed deeds were prevented from pursuing further civil action against the Church. Such a situation is an impediment to survivors accessing important information about the strongest legal course of action available.

However, early dispute resolution processes or mediation processes can work effectively. See case study example on page 6.

4. What changes should be made to address the elements of the civil litigation systems that raise issues for the conduct of litigation brought by people who suffer child sexual abuse in institutional contexts?

Legislation should be introduced in Australian jurisdictions which establish the Catholic Church as a legal person or a corporation sole in order that they might be sued. Further legislation is required to alter the position at common law in relation to vicarious liability as outlined above.

An option to consider may include enacting legislation which enshrines the uniqueness of civil litigation brought by survivors of child sexual abuse.

The legislation may in effect construct a separate jurisdiction for addressing the need for:

- Set practice directions for proceedings brought by survivors of child sexual assault;
- Removal of limitation periods for civil litigation proceedings in line with criminal prosecutions where there is no time limit for the state to commence prosecution for an indictable offence. Dr Ben Matthews (2003, p.17) notes "It has been argued that the appropriate conceptual approach in this context is with this criminal model, rather than a tortious one";
- Among other things, formal recognition at law of the corporate nature of the Catholic Church in a manner which will allow the entity to be named as an 'authorising agent' and an entity capable of being sued in civil litigation;
- The legislation to formally recognise a relationship between a church/religious order and clergy/religious members as a relationship of employment or authorised agency. In this way, liability for acts of employees are capable of attaching to churches/religious orders for acts occurring in the course of that relationship.
- Mandating that all institutions adhere to a Model Litigant policy during civil litigation;
- A National Compensation Scheme, which would provide a standardised, simple and transparent non-litigated compensation system may alleviate concerns of financially disadvantaged survivors as far as litigation costs are concerned.

Alternatively the legislation may establish a nominal defendant for whom survivors would have access. The nominal defendant would be liable to pay damages where there is:

- Vicarious liability for criminal wrongdoing of institution's employees or members;
- Direct liability for an institution's leaders in negligently failing to screen, scrutinise and sack offenders; and,
- Strict liability of an institution conducting an enterprise where the risk to vulnerable children is so self-evident as to warrant strict liability (for example, placing a known offending employee in a position of threat to children) .

5. Do people who suffer child sexual abuse in institutional contexts want forms of redress in addition to, or instead of, damages or financial compensation? Can these other forms of redress be obtained through civil litigation?

Most of Bravehearts' clients have expressed that the most important aspects of redress for them is the recognition of the harm done to them, sufficient financial compensation and access to therapeutic services, of the survivor's choice.

Financial compensation is more often than not the best form of redress. It empowers the survivor and provides them with a means to improve their life and wellbeing at a pace and through avenues that are relevant to their needs.

An idea raised at a recent Public Hearing was a "Gold Card" program similar to the Department of Veterans Affairs process, whereby once over the threshold, a survivor would be given a life-long entitlement to services which could be accessed by using the card. This would work well for a redress scheme but not for civil litigation as there would need to be finality in terms of the settlement amount.

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