

# COIN

## COMMISSION OF INQUIRY NOW

Justice for victims of Catholic Clergy Sexual Assault in Victoria

21 August 2012

The Hon Georgie Crozier MLC,  
Chairman, Family and Community Development  
Committee, Parliament of Victoria, Spring Street  
MELBOURNE VIC 3000

Dear Ms Crozier,

**Inquiry into Handling of Child Abuse by Religious  
and other Organisations -  
COIN Submission No 3**

**"Achieving damages for Catholic Church sexual assault through civil action in  
Victorian Courts: Catholic Church Property Trusts legislation"**

In this submission, COIN briefly:

- (a) outlines the (in our view) immoral, but technically available, legal defences employed by the Catholic Church in the civil courts when defending actions for damages by victims of catholic priests' sexual assault, and;
- (b) proposes reforms to the law to enable victims a fair opportunity to seek justice through the courts.

**Independent Judicial Inquiry:** As previously stated, COIN considers that the Government's choice to refer the issue of the sexual assault of children by personnel associated with the Roman Catholic Church ("RCC"), let alone by personnel from thousands of additional religious and other organisations, to a Parliamentary Committee for inquiry and report is inadequate and unworkable. COIN favors the commissioning of a properly empowered, independent, judicial inquiry into this problem. This issue will be addressed in a further submission.

Accordingly, COIN considers your Committee to be a "first step" towards the instigation of such a judicial inquiry. COIN thus recommends that the Committee, in its final Report, records and acknowledges its inadequacy; and recommends to government that such a further, independent judicial inquiry be forthwith commissioned.

**Focus on the RCC** COIN considers that the Committee's Term of Reference are unworkable if thorough examination of this significant problem, and well-founded recommendations to government, are to occur. The Terms of Reference embrace thousands of

Page 1 of 4

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religious, and other, organisations and would require many years to pursue: yet the Committee is required to report by 30 April 2013. Second, COIN considers RCC clergy, and the Church's hierarchy, to be the main perpetrators of sexual assault upon children and vulnerable adults in Victoria. Thus, in this submission, COIN focuses solely on the RCC, and encourages the Committee to do likewise, both as a matter of practical reality and in an endeavour to conduct a thorough, focused inquiry as compared to a superficial treatment of many organisations.

**RCC & Existing Victorian law** The existing legal framework in Victoria regarding the Catholic Church functions as a barrier between victims of abuse and the wealth held in trust by the Church. These arrangements are often viewed as providing the Church with an opportunity to clothe itself with immunity, thus protecting its considerable wealth from according compensation to those who have suffered at its hands. The legal division between the Church and its property has led to injustice. This structure has exacerbated the situation in which countless victims find themselves in today and should be urgently corrected. The following matters are highlighted:

- (1) The "Roman Catholic Church", an unincorporated organisation, ("RCC") is not an entity that can be sued by a victim for damages;
- (2) Extensive property owned by the RCC in Victoria is held under a series of property trusts established under the *Roman Catholic Trusts Act 1907 (Vic)*<sup>1</sup> ("the 1907 Act");
- (3) The 1907 Act provides for the creation of Corporate Bodies of Trustees in which property belonging to the RCC in Victoria may be vested in and for other various purposes;<sup>2</sup>
- (4) s 3 of the 1907 Act provides powers to the governing council to pass a resolution to form a body corporate to hold church property. However, incorporation is voluntary, leading to complexity and a lack of transparency, as property matters are dealt with differently by the various Dioceses. As such, a Diocese can decide whether it has perpetual succession and whether or not it can be sued;
- (5) s 6 of the 1907 Act provides for the incorporation of trustees who shall acquire, take, hold, manage and deal with the property in trust on behalf of the Church;
- (6) There are no provisions in the 1907 Act allowing a person to sue the body corporate for harm caused by a particular individual, for example a parish priest, or teacher in a Catholic school;
- (7) It appears that victims in Victoria cannot recover compensation from Trust funds, established under the 1907 Act, since those funds have no relationship to an offending priest.

Under the 1907 Act, the property trusts of the Church cannot be sued by victims of abuse as the trust's sole role relates to property matters and can therefore not be held responsible for any sexual abuse. This is known as the *Ellis Defence*; see *Trustees of the Roman Catholic Church v Ellis & Anor*<sup>3</sup>, a decision of the NSW Court of Appeal. Special leave to appeal to the High Court was refused in that case. This enables the

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<sup>1</sup> *Roman Catholic Trusts Act 1907 (Vic)*.

<sup>2</sup> *Ibid* s 3.

<sup>3</sup> *Trustees of the Roman Catholic Church v Ellis & Anor* [2007] NSWCA 117.

Catholic Church to rely upon such legislation throughout Australia, and thus shelter its assets from any court order requiring an offending priest pay compensation to a victim.

- (8) Although the Catholic Church has investigation and negotiation procedures such as the *Melbourne Response* in place to deal with abuse, they are insufficient, objectionable in principle since, inter alia, they seek to replace due process of civil and criminal law, while not being open for public scrutiny and accountability.

**Proposals to Reform: New South Wales** In order to achieve just results in cases of clergy sexual abuse, the current relevant Victorian legislation should be amended.

COIN brings to the Committee's attention the *Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2011 (NSW)*<sup>4</sup>, attached to this submission.

The 2011 NSW *Bill* aims to place the Church in a position where it must defend claims brought against it and, in appropriate cases, provide remedies based on the merits of the particular case, not on technical defences and artificial legal structures designed to insulate its assets against orders for damages against individual priests, as has been the case in the past.

s 18 of the 2011 NSW *Bill* allows a person suing a member of the clergy, church official or teacher with regard to sexual abuse or negligence to join the body corporate holding the property in trust as a defendant. Section 19 permits a person owed a judgement debt with regard to civil liability due to abuse or negligence the right to recover debt from the body corporate.

Various submissions were made to a NSW Parliamentary Committee with regard to this 2011 NSW *Bill*. The majority were in support of victims and holding the Church hierarchy and priests accountable for their actions<sup>5</sup>.

No submission suggested that the *Bill* unfairly trespassed upon the rights of the church<sup>6</sup>. The *Bill* merely provides an avenue for victims to recover damages from the Church's assets. It does not prohibit the church from exercising any of its property rights<sup>7</sup>.

**Proposals to Reform: Victoria** In order to achieve just decisions in sexual abuse cases, the Committee should recommend the following amendments to current legislation:

1. There should be automatic incorporation of Church property;
2. There should be a provision in the legislation enabling Bishops and Trustees of the Church Property, referred to in the legislation as the 'corporation', to be sued jointly and severally with the individual priest, teacher etc personally responsible for the abuse, or to be sued in the place of the individual where that individual is no longer available e.g. is deceased<sup>8</sup>;

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<sup>4</sup> Shoebridge, David, *Roman Catholic Property Trust Property Amendment (Justice for Victims) Bill* Consultation Paper, 8 December 2011.

<sup>5</sup> Shoebridge, David, *Roman Catholic Property Trust Property Amendment (Justice for Victims) Bill* Report on Submissions Received, 28 May 2012, 20.

<sup>6</sup> Shoebridge, David, *Roman Catholic Property Trust Property Amendment (Justice for Victims) Bill* Consultation Paper, 8 December 2011.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid* 12.

COIN Submission No 3

3. The ability to sue the corporate body should not be limited to instances where the victim can show that there was negligence on the part of the corporation in allowing them to be abused. Where a person has been abused by a person operating under the authority or with the approval of the Church, the diocesan corporation should be held automatically liable without the victim having to prove fault<sup>9</sup>.
4. Victims should have the ability to recover payment directly from the body corporate or trustees<sup>10</sup>.

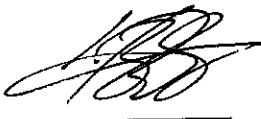
These amendments would serve as a step towards achieving justice for victims of the Catholic Church. Victims who succeed in a civil action for damages will finally have access to a valid avenue of recourse, enabling them receive appropriate compensation as ordered by a court.

**Public Submission** This submission is to be made publicly available when received by you. It will be forwarded to the Victorian Law Reform Commission, and the Attorney General.

Yours Faithfully,



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President, COIN



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Attached: PDF: *Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2011* (NSW).

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<sup>9</sup> Ibid 12-13

<sup>10</sup> Ibid 12.