



ISSUES PAPER 5

RELEASED 6 DECEMBER 2013

CIVIL LITIGATION

ISSUE

The Terms of Reference require the Royal Commission to inquire into what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse in institutional contexts, including in ensuring justice for victims through the provision of redress by institutions. To provide 'redress' is to remedy or rectify a wrong. The 'redress' provided will be a remedy or compensation, and it can include financial compensation, provision of services, recognition and apologies and the like.

One of the ways in which a person who suffered child sexual abuse in an institutional context may seek redress is by bringing a claim for damages against the institution (and potentially against the perpetrator(s) of the abuse) in the civil courts.

All states and territories, and the Commonwealth where relevant, have civil litigation systems that allow a person who claims to have been wrongfully harmed to seek damages from the individual or institution that they allege caused the harm. While there are some differences in systems, they are broadly similar throughout Australia.

The Royal Commission is concerned to know how effective the civil litigation systems are, as they currently operate, in resolving claims for damages for child sexual abuse in institutional contexts. The Royal Commission seeks submissions on possible reforms to improve the effectiveness of the civil litigation systems.

Submissions from those who have been involved in civil litigation in relation to child sexual abuse in institutional contexts, whether as a plaintiff/claimant, defendant, representative of a party or stakeholder or professional organisation, are particularly welcomed.

The Royal Commission is considering the effectiveness of civil litigation as one mechanism for providing redress or compensation to those who suffer child sexual abuse in institutional contexts. Other means of redress, such as statutory victims' compensation schemes and schemes or processes established by governments or institutions to offer compensation and/or services, will be considered in separate Issues Papers.

SUBMISSIONS

Submissions are sought from interested individuals and government and non-government organisations on this issue. Of particular interest to the Royal Commission is:

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;
 - b. some institutions do not hold assets from which damages could be paid, or they are not insured or their insurance status is unknown;
 - c. the circumstances in which institutions are liable for the criminal conduct of their employees or other people;
 - d. the circumstances in which regulators are liable for failures of oversight or regulation;
 - e. limitation periods which restrict the time within which a victim may sue and the circumstances in which limitation periods may be extended;
 - f. the requirements for bringing a class action, if victims from the same institution wish to sue as a group;
 - g. the existence of relevant records, locating them and retrieval costs;
 - h. the process of giving evidence and being subject to examination and cross-examination;
 - i. proving that the victim's injuries and losses were caused by the abuse;
 - j. the way in which damages are assessed; and
 - k. the cost of litigation and access to funding and legal services.
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?
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?
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?
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?

Submissions are welcomed on any aspects of the civil litigation systems as they affect claims for compensation by people who suffer child sexual abuse in institutional contexts.

Submissions will be made public unless the person making the submission requests that it not be made public or the Royal Commission considers it should not be made public. That will usually only occur for reasons associated with fairness.

Submissions should be made by **Monday 17 March 2014**, preferably electronically, to solicitor@childabuseroyalcommission.gov.au, otherwise in writing to GPO Box 5283, Sydney NSW 2001