



Introduction

We, Survivors of Child Abuse (SOCA), represent approximately 30 male survivors of institutional child sexual abuse. This submission reflects the views and experiences of these survivors, following extensive consultation and interaction.

Some survivors have requested that their specific details are not entered here due to their fear of institutional retribution and concern that providing evidence to this inquiry could be prejudicial to their current civil cases.

It is important to note that many survivors suffer mental health disorders as a result of their childhood trauma including Complex Post Traumatic Stress Disorder (PTSD). These disorders plague survivors and impact their daily lives in a variety of ways.

Many survivors have deficits in their cognitive abilities, making positive decisions or simple emotional management can be extremely challenging. Typically, survivors are naïve about court processes and the legal system. They often become confused about options available and require significant assistance in accessing services and advocacy. Very few survivors manage to live fulfilling lives because of their Complex PTSD and the lack of sufficient and practical evidence-based support. Making a submission to this Parliamentary Inquiry be it written or verbal, is beyond their capacity.

The changes in legislation for victims of institutional abuse following the Royal Commission were initially welcomed as it was believed it would empower survivors to finally seek justice, have their traumatic stories told and be listened to and believed. The reality is the actual process has proven to re-traumatise survivors as institutions seek to draw out legal proceedings. This has been detrimental to survivors' mental and physical health and given the tactics used, most survivors at SOCA regret pursuing civil proceedings.

Many survivors have had their hopes of justice quashed with defendant's threatening to apply for or being successful with 'Permanent Stay of Proceedings'. Others have been waiting almost five years to have their day in court. Those who have managed to settle out of court have had most of their payouts go to legal fees and were often coerced into settling for heavily reduced settlements.

Almost all SOCA survivors are victims of a religious institution. These institutions claim to be “model litigants”. They put significant resources in to projecting a public image of wanting to right the wrongs of the past. The reality couldn’t be further from the truth. They have proven to be adversarial and hostile defendants. In 2023 there is a community expectation that religious institutions act in a manner that is consistent with their own teachings and to practice what they preach. This has not been the experience of an overwhelming majority of our survivors. Decades after being sexually abused, survivors feel like they are again being abused by the same institutions. This only adds to their sense of confusion, betrayal and frustration.

It is pertinent to address the statement by the then Prime Minister, Scott Morrison to the victims of institutional abuse on 22nd October 2018. He stated that for too many years government and institutions refused to acknowledge the abuse that occurred, he apologised that survivors were not believed and that accountability was avoided. Mr Morrison said “We believe you. Perpetrators must and will be held to account.” This promise by has not come to fruition. The Prime Minister's countless "Sorrrys" and his acknowledgement to survivors is worth nothing without true, pragmatic action, justice and the making of institutions accountable for their heinous crimes. The reality is that the institutions have once again abused the system and abused their vulnerable victims to protect their own financial interests and reputation. The government has also let survivors down by allowing the institutions to once again use underhanded tactics and not admit liability.

Challenges with the Civil Court Process in Cases of Childhood Abuse

Permanent Stay of Proceedings: The use of "Permanent Stay of Proceedings" as a defence tactic provides institutions with immunity from prosecution, hindering survivors' pursuit of justice. This tactic is increasingly employed, particularly when the offender is deceased, effectively denying survivors the opportunity to have their cases heard and seek appropriate compensation. The removal of the Statute of Limitations was based on the Royal Commission's finding that it took victims, on average, 23.9 years to disclose their abuse due to the complex psychological harm it inflicts on children and the tactics used by perpetrators. This average is even longer for men (25.6 years).

Many victims attempted to disclose their abuse earlier but were not believed, leading to delayed justice. Survivors who reach out for support services often disclose their abuse for the first time and in many cases most of their perpetrators have already died. The Royal Commission's intention in recommending the removal of the Statute of Limitations was to provide survivors with an opportunity to seek justice for the heinous crimes committed against them while in the care of these institutions through the civil and criminal courts. The legal system failed the victims of childhood abuse in the past by not recognising the need for the removal of the Statute of Limitations soon enough, thus depriving victims of justice for many years.

The overuse of Permanent Stay applications is a significant concern. This process should only be applicable in exceptional circumstances, but it is often granted when perpetrators have died, and/or institutions had not previously investigated the allegations. In such cases,

the victim pays the ultimate price by never having their case heard. The perception of survivors is that the justice system favours perpetrators over victims.

Further, defendants may use the threat of a Permanent Stay to coerce plaintiffs into settling at a fraction of what they rightfully deserve, sometimes years into their court proceedings. The threat of Permanent Stay, coupled with the possibility of requesting "Costs," creates immense pressure on survivors, who have already been re-traumatised by the legal process.

Lengthy Delays in Legal Process: The prolonged legal process takes a toll on survivors' psychological and physical well-being, exacerbating their trauma. Survivors often require additional psychological and psychiatric assistance during their court proceedings. The civil court timeline, which can take up to five years to reach trial, further adds to the distress. Efforts to address these delays with the Attorney General have not yielded satisfactory results (see attached). The court process can be unnecessarily drawn-out and inefficient, from setting aside prior deeds of release to various interlocutory steps. Every stage of the court process appears drawn out and inefficient. Including the delays in setting aside prior deeds of release.

Gary R Dean, Barrister, elaborates on these matters in his paper, CIVIL CLAIMS FOR INSTITUTIONAL ABUSE: EMERGING ISSUES AND IMPACTS ON SURVIVORS (attached). Points 44-59 are particularly pertinent.

Model Litigant Policies:

The Royal Commission recommended Institutions to implement Model Litigant principles to deal with Civil proceedings.

The majority of SOCA survivors are of Catholic background hence the focus on the Roman Catholic Church (RCC).

SOCA has attempted to work positively and constructively with the RCC in an attempt to address the issues associated with the civil litigation process.

The RCC created and published a Model Litigant Policy (Attached). It does not however, abide by its own policy.

SOCA challenged the Archbishop of Perth, Timothy Costelloe, on his church's inadequate approach to ensuring that their model litigant policy is adhered to (attached). In his response he made the astounding claim that he, Archbishop of Perth and President of the Australian Catholic Bishops Conference does not have the power to influence many aspects of the Catholic Church's operations. To reinforce his point, he sent us a 68 page document (attached) with hundreds of separate Catholic organisations that operate in WA with the suggestion we should separately contact each of them.

It is one thing for the Royal Commission to recommend institutions apply Model Litigant Guidelines but it is pointless if they are not regulated to abide by them. It is noteworthy that the RCC states the guidelines are not intended to prevent Church authorities from acting properly to defend claims that they consider should be defended, also described as,

'reasonable prospect of success'. These statements appear to trump the rest of the policy and gives rise to the church acting without consideration for their own guidelines.

It is apparent that institutions employ tactics to abuse the court process and prolong proceedings to undermine survivors' access to justice.

Many issues relating to civil proceedings could be avoided if institutions were to abide by their own Model Litigant Guidelines.

Single Expert Evidence:

As per the RCC's Model Litigant Guidelines. "if there is a need for expert evidence, co-operating with claimants about choice of expert, to facilitate agreement on the use of a single expert if practicable".

Several of our survivors have been required to obtain more than one expert psychiatric assessment as evidence.

The requirement for plaintiffs to provide numerous psychiatric assessments has a profound negative effect on their mental state which has serious bio-psycho-social consequences. The experience of having to relive the traumatising events over and over again, gives rise to the fact that the system is not trauma informed and does not provide a duty of care to these vulnerable victims.

It is difficult enough to be interviewed and have to relive the traumatising events of sexual abuse a single time, but to have it done three times is irresponsible and cruel.

These psychiatric interviews are often three to four hours long. Some survivors have then been advised that the Defence does not believe the Medico Legal report and they want to have their own psychiatric assessor to further interview them. Again, this is another exhaustive interview. One survivor had a four-hour interview with no break (he was unaware and was not informed that he could ask for a break). The Defendant's psychiatrists' angle of questioning clearly indicated their bias for their client (Defendant) and their job to reduce their client's liability. The conflict between the two psychiatrists was so great that one has again requested to have another interview with the original psychiatrist to clarify the Defendant's psychiatrist position. Each of these assessments can cost several thousand dollars. These costs are out of pocket expenses known at disbursements for which the Plaintiff is liable. One survivor had psychiatric assessment bills totalling \$20,000. He was then threatened with a Permanent Stay and consequently, out of fear, settled at a heavily reduced amount. He had to bear these costs.

It is common knowledge that insurance companies use specific psychiatrists and other medical professionals that provide court reports favourable to the insurance company.

Survivors report severe mental issues associated with these psychiatric interviews. These include severe sleep disturbances, heightened anxiety, depression, substance abuse, relationship issues and cognitive deficits.

Incentive for Early Settlements:

The RCC's Model Litigant Guidelines state that they will deal with claims promptly and not cause unnecessary delay in the handling of claims and litigation. This is not the experience of any of our survivors.

It appears the institution's tactics of delaying proceedings is a way of wearing down plaintiffs in the hope they will accept low compensation payments, withdraw completely or die. It is not unlike the way the asbestos industry treated their victims.

A greater incentive (monetary) should the matter reach trial and the Defendant fails to negotiate appropriately during mediation or behaving contrary to their model litigant guidelines, would encourage timely resolutions.

Navigating the Legal System:

Typically, survivors have no experience in navigating the legal system. They find themselves at the mercy of sometimes unscrupulous lawyers who pressure them into accepting settlements that do not adequately address and quantify their trauma. Often, Plaintiffs need legal advice for their legal advice. Plaintiffs often feel confused, overwhelmed and powerless. This further exacerbates their mental illness.

“Knowmore Legal” has been a resource that many of our survivors have engaged with. However, their services are limited and perhaps their referrals to legal representation have not always been properly vetted.

There is a lack of trauma-informed legal representation and advocacy for Plaintiffs. Simple advocacy such as support during psychiatric assessments or attending mediation could alleviate the powerlessness and confusion plaintiffs feel when navigating the legal system.

Expanding the scope of advocacy beyond legal matters through organisations like “Knowmore Legal” can better support survivors as they pursue justice.

The legal system must be sensitive to survivors' complex trauma and strive to ameliorate the impact of the legal process on their mental well-being.

Regulation of Legal Fees:

A common grievance amongst survivors are the fees some law firms are charging in a ‘no win - no fee’ agreement. No periodic statements are provided to the Plaintiffs over the course of proceedings. The final fees appear surprisingly excessive at the time of settlement with very little left over for the Plaintiff. Further, what constitutes a win? Does a \$40,000 settlement when your lawyers believed it was a \$1,500,000 claim constitute a win? And then be advised that your legal fees are \$90,000. The opinion of some lawyers is that, yes, that is a win.

Even in a ‘no win no fee’ agreement, if the plaintiff doesn’t win, they are still liable for Disbursements also described as incidentals or out of pocket expenses. Such as photocopying, court fees, medical assessments, forensic accountants and barrister’s fee. One Survivor was charged \$23,000 (discounted from \$25,000) for a Barrister for a half day

mediation. He simply assumed that was part of his lawyer's fees but was in fact a disbursement.

There is often no communication about these ongoing fees.

One survivor was advised by a supreme court judge that his lawyers' fees were fraudulent. He is still waiting for the results of his claim from the legal practice board.

Queensland personal injury lawyers in 'no win no fee' arrangements have a legislative requirement known as the 50/50 rule. This, in theory, means that the Plaintiff will not be worse off financially. The maximum a law firm can charge is 50% of the settlement amount after refunds. Some Queensland legal firms however, took this ruling that they could and did charge 50% of the settlement amount regardless of what their fees would have been. Western Australia has no such legislative requirement.

Greater transparency of legal fees in 'no win no fee' agreements is required. Many survivors struggle to understand the legal jargon used in such agreements. Mandatory monthly statements should also be provided to Plaintiffs including ongoing realistic quotes.

A similar but improved model of Queensland's 50/50 rule would also be beneficial, including the scale of chargeable fees, limiting lawyers' percentage of the payout and regulating specialised trauma-informed legal practices.

These are necessary steps to mitigate the financial burden on survivors and to stop law firms taking advantage of vulnerable child abuse victims.

Conduct of Lawyers:

Lawyers often function with no apparent regard to survivors' vulnerable mental state during and after various stages of court proceedings.

Some lawyers also do not have the ability to effectively represent their clients in this specialised area of law.

There are instances of 'victim harvesting' where support groups or other services are funded by law firms in exchange for victim referrals. Survivors put their trust in these services to provide impartial and objective information and are terribly let down.

Another concern highlighted, is the practice of law firms "loading up" their lawyers with too many cases. These lawyers do not give the required time to their clients' nor provide courts with the best possible evidence. They are also unable to provide empathetic, open and constructive communication to their clients. This leads to further confusion and anxiety for survivors.

Judy Courtin Legal was the only firm, that we are aware of, that had someone contact their clients to check up on them and debrief with them at regular intervals and challenging stages of the court process.

Engagement with the Roman Catholic Church

SOCA has attempted to engage with the RCC as previously noted

The following are five key points we requested from the Perth Archbishop.

We asked Archbishop Costelloe to release the names of people that the Perth Church accepts are abusers. (This has been done in almost all of the dioceses in the USA). By opening its files, it would show that the Church is finally putting victims first and not trying to hide the truth.

While the Catholic Church claims to be a “model litigant” the reality for survivors is that its tactics are on a par with the asbestos and tobacco industries making the legal process long, adversarial, and traumatic. We asked Archbishop Costelloe to arrange for his lawyers to meet with SOCA to workshop improved processes and outcomes.

Penrhos College has run an outreach program contacting past students encouraging them to come forward with information about perpetrators of sexual abuse. This process was successful and recently led to a high-profile conviction. We asked Archbishop Costelloe to run a similar process in all WA schools and parishes.

We asked Archbishop Costelloe to run an annual “Loud Fence” ribbon event in every Catholic school and parish as a reminder of the Catholic Church’s history of child sexual abuse so that it can never be forgotten or repeated.

We asked Archbishop Costelloe to accept our offer to be an advisory body in relation to matters pertaining to child sexual abuse. To ensure that the Church is acting in the best interests of survivors, all work relating to survivors should involve them.

Despite acknowledging that the church has a “dismal and shocking record in relation to child sexual abuse” and there has been a “shameful lack of action the part of church leaders”, Archbishop Costelloe rejected all five of our requests.

Database of credibly accused perpetrators

There are a variety of reasons why many survivors are reluctant to disclose their perpetrator. One of those reasons is that they believed they are the only one to be abused or fear that they will not be believed. It can be very empowering for survivors to know their abuser has been declared a perpetrator and they are more likely to come forward.

The website <http://www.brokenrites.org.au> lists accused catholic clergy and religious brothers. This list is limited, not complete, not up to date and specific to RCC. Moody Law <https://www.moodylaw.com.au/list-of-priests> has recently also published a list of accused clergy and religious brothers. These privately obtained lists have been a helpful resource for survivors to be empowered to disclose their abuse, obtain clinical support or seek justice. North America has been very proactive in this area with almost all archdiocese listing credibly accused clergy.

An audited, credible and central database of credibly accused institutional perpetrators would assist victims and the courts. The Government Community Protection WA list would not be suitable for the purposes listed as it is targeted towards prevention. The Government can now assist survivors by publishing a list detailing when and where these perpetrators were offending.

National Redress Scheme (NRS)

SOCA has had limited response from survivors who have gone through the NRS. The little feedback was mostly positive. They filled out the application with assistance from Knowmore Legal, waited a substantial period of time and received minor monetary compensation. The level of severity of abuse on these survivors was of a lower scale in comparison to other survivors but their abuse still had a profound impact on their lives.

The payment scale of the NRS does not adequately compensate survivors. The profound biological, psychological and social impacts are difficult to quantify, but even the maximum payment of \$150,000 is not adequate compensation for the damage that has been inflicted.

The positive feedback relates to the ease of obtaining redress and although the time it takes to process the claim appears lengthy, it is a short period in comparison to civil court proceedings.

The negative feedback about the NRS is that it does not give survivors an opportunity for future civil claim. The NRS should be used as an interim payment method. That redress amount could then be deducted from any civil claim.

Medicare refunds

After a compensation payment is settled, Medicare / Social Security must then process the claim from the Plaintiff. It is acceptable that the Plaintiff should not claim for medical expenses paid for by Medicare, benefit from that and retain that money. The point of contention is in circumstances when the Plaintiff only receives a portion of their claim or a settlement that does not truly quantify their level of abuse but Medicare still wants their claim in its entirety. Medicare has not had to endure the brutal legal processes or mental anguish, they have not engaged on the Plaintiffs behalf to secure their payment or had to burden any of the risk.

Compensation either needs to specify its purpose such as percentage of pain and suffering, percentage of loss of income, percentage of medical expenses. Or, Medicare refunds should be scalable in comparison to the Plaintiffs schedule of damages. If Medicare demands their portion in return, then it needs to claim that from the Defendant and those medical expenses should not be included in the schedule of damages.

Services to support Survivors

Understanding Complex PTSD

To understand how to support survivors of institutional abuse, it is important to fully understand the issues facing them and more importantly Complex PTSD.

The Royal Commission acknowledged the profound impact child sexual abuse has on its victims. There have also been a great many studies that highlight its effects. Below is a list of likely symptoms of Complex PTSD. Everyone that experiences complex trauma will be affected differently due to a myriad of variables.

- Intrusive memories and thoughts

- Flashbacks of the event
- Nightmares
- Upsetting memories or feeling distressed when something reminds you of the event.
- Avoidance behaviours
- Avoid thinking or talking about the event or avoiding people, places or activities that remind you of the event.
- Negative thoughts and mood.
- Feelings of hopelessness, anger, guilt, shame.
- Difficulty sleeping,
- Easily startled,
- Poor concentration,
- Irritable or aggressive.
- Engage in reckless or self-destructive behaviour.
- Suicidal or suicidal thoughts
- Depression
- Anxiety
- Relationship difficulties
- Sexual difficulties
- Other mental health problems

With the introduction of sophisticated imaging technology, there has been recent advances in understanding the impacts of PTSD on the brain and body. It has become apparent that trauma is not simply psychological in the form of distorted thoughts but trauma can alter the body biologically, neurologically and psychologically which then goes on to impact all facets of a person's life including their family, friends, colleagues and the greater community. Many of these impacts can be life long and finding the right diagnosis and treatment can be like finding a needle in a haystack. There is a plethora of treatments now for PTSD and each one can extract enough data to show they can provide enough evidence to indicate benefits. To date, there is not one therapy that can provide a 100% cure for Complex PTSD.

Some PTSD therapies include Cognitive Behavioural Therapy (CBT), Eye movement Desensitisation Reprocessing (EMDR), Transcranial Magnetic stimulation (TMS), Stellate Ganglion Blocks (SGB), Exposure Therapy (ET), Neurofeedback, Mindfulness, Somatic therapies, Psychotropic medications and the most recent available trials of MDMA and psilocybin assisted therapies. This is only a handful of therapies recommended for PTSD. Many have proven effective for a single traumatic event in adults. In fact, one study reported EMDR had a 99+% efficacy for PTSD for an adult with a single traumatic event. However, this reduces to less than 30% for children with Complex Trauma. Further research found that EMDR in combination with other therapies such as Neurofeedback and or somatic therapy, can have significant improvements.

It is, therefore, best practice to treat Complex PTSD with a combination treatment. This can be challenging as it requires the collaboration between practitioners and extremely costly to the patient.

Mental health services often only treat the symptoms of Complex PTSD in adults such as substance abuse, depression, sleep disturbances etc rather than treating the underlying cause which is the trauma itself.

A report by Blue Knot (formerly Adults Surviving Child Abuse (ASCA)) in 2015 "The cost of unresolved childhood trauma and abuse in adults in Australia" estimated there are 3.7 million adult survivors of child abuse in Australia. If those survivors had their abuse addressed, there would be a combined gain to Federal, State and Territory budgets of \$6.8 billion.

There is a need for a comprehensive, coordinated approach to complex PTSD that is affordable to survivors. This requires a greater input from government and collaboration with a variety of mental health professionals.

Most survivors at SOCA have tried various therapies and most have given up on them. They struggle through each day without help. It is concerning the level of mental anguish survivors have to endure especially those going through the civil process. Many find the process just as traumatising as the abuse itself. They feel alone and helpless. This level of trauma is unnecessary and avoidable.

Survivors who are going through the NRS have access to counselling, albeit inadequate. There is no provision for survivors going through the Civil process to obtain such support. It is clear that the level of stress and re-traumatisation is far greater with the civil process.

Department of Communities funded support service, Phoenix, provides a specialised counselling service for survivors of historical sexual abuse. Unfortunately, this service is terribly underfunded. They only offer female counsellors with limited forms of therapy (although they have started trauma focussed yoga sessions which is shown to have positive impact on survivors). There is great opportunity for this service to provide a more comprehensive service for survivors of child abuse if they had adequate funding.

The calibre of psychologist/counsellor needed to work in a service such as "Phoenix" would earn \$200 - \$300 per hour privately as opposed to the \$50 per hour funded to "Phoenix" by the Department of Communities.

For many survivors, a private, competent well-trained psychologist is simply not affordable. It is necessary that quality, regulated not-for-profit services are available for survivors of child abuse.

Sexual assault referral centre (SARC) funded by Department of Health is another underfunded support service. Their wait list for survivors to receive counselling is over 6 months with a limited number of sessions available.

Support groups

SOCA is the only known support group for survivors of institutional abuse in WA and is specific to men only. Although we have had requests from female survivors, we do not have the resources to offer specific female support groups.

SOCA offers peer to peer support group meetings, one on one support both face to face and online and advocates on behalf of survivors. It has no ongoing funding and is run entirely by volunteers. We recently launched a website www.socasupport.org.

Many survivors find the support SOCA provides extremely beneficial. They not only have a place they can safely discuss their complex issues but they also feel that they are supported by people that finally understand their journey and what they are going through. There is so much more SOCA could offer had it the funding to do so.

SAMSN, a NSW based not-for-profit charity organisation that supports male survivors of child sexual abuse, has been serving their community since 2011.

SAMSN runs trauma-informed evidence-based programs that have a proven track record. They operate under a board of directors and clinical advisory committee.

SAMSN does not have the funding to operate in WA. SOCA has been in communication with SAMSN in the hope they can secure state funding and start a branch in WA.

With reference to the Royal Commissions recommendations: Recommendation 9.1
The Australian Government and state and territory governments should fund dedicated community support services for victims and survivors in each jurisdiction to provide an integrated model of advocacy and support and counselling to children and adults who experienced childhood sexual abuse in institutional contexts.

Funding and related agreements should require and enable these services to:

- a. be trauma-informed and have an understanding of institutional child sexual abuse
- b. be collaborative, available, accessible, acceptable and high quality
- c. use case management and brokerage to coordinate and meet service needs
- d. support and supervise peer-led support models.

It is apparent that the above recommendation has not been enacted in Western Australia.

The support services available to survivors of institutional abuse is dismal. Increased funding and enhanced capacity of specialist sexual assault services is desperately needed to better support these vulnerable members of our community.

Conclusion

The current legal options available to survivors of institutional child sexual abuse in Western Australia are riddled with challenges that re-traumatise and hinder access to justice. Urgent reforms are necessary to address these issues and provide survivors with the justice, compensation and support they deserve. Our hope is that this submission will assist the WA Parliament in formulating effective measures to protect and support survivors. Addressing these challenges requires a collective effort from the legal system, government and institutions. Trauma-informed approaches, transparency and accountability must be central to this process. By addressing the needs of survivors with empathy and compassion, Western Australia can take significant strides towards healing and justice.

