



## **Submission to the Community Development and Justice Standing Committee Inquiry into options available to survivors of institutional child abuse in Western Australia who are seeking justice.**

### **Background**

1. The Anglican Diocese of Perth (**Diocese**) and its corporate legal entity, the Perth Diocesan Trustees (**PDT**), is responsible for a number of parishes (current and historic), associated activities and former institutions in Western Australia. The various schools and agencies which bear the Anglican name or maintain close governance connections are all independent entities with their own constitutions and governance arrangements.
2. This submission is made on behalf of the Diocese in response to the Inquiry into the options available to survivors of institutional child sexual abuse in Western Australia. This submission does not represent the independent agencies and schools which are connected to the Diocese and PDT.

### **Options available to survivors**

3. The Anglican Diocese of Perth acknowledges the harm and impact of child sexual abuse. We recognise the courage it takes for survivors of abuse to make their disclosure. The Diocese apologises to all survivors of abuse experienced by people they trusted and relied on within the Church, both lay and ordained.
4. The Diocese has always been committed to supporting the needs of survivors of institutional child sexual abuse and resolving claims sensitively and compassionately. A survivor focus provides flexibility for avenues of monetary compensation and redress, while acknowledging that not all survivors are the same and do not have the same requirements.
5. Survivors currently have a range of options available to them when deciding how to engage with the Diocese and its institutions, including:
  - a. civil claims (whether informal or litigated) brought pursuant to the *Civil Liability Act 2002* (WA) (**Civil Claims**);
  - b. the National Redress Scheme (**NRS**); and
  - c. the Diocese's Pastoral Care and Assistance Scheme.
6. Regardless of the mechanism of compensation, the Diocese aims to provide timely and consistent responses through financial support as well as pastoral care and assistance.
7. In addition to the choice of process, it is important to the Diocese that survivors are provided with a personal response through opportunities for pastoral meetings, the ability to meet with representatives of institutions, counselling, and an apology from the Archbishop, if this is something they desire.



## Civil Claims

8. Since the introduction of the 2018 Act, the Diocese has received 25 Civil Claims as of 31 July 2023. 17 of these claims have been settled, at a gross cost of \$7.75m. Eight Civil Claims are yet to be finalised.
9. Some of these claims are covered (or partially covered) by insurers under public liability policies, but the majority are not and have been funded by the Diocese directly.
10. The Diocese is always open to mediation and settlement prior to litigation if appropriate. The Diocese, dependent on the circumstances, attempts to resolve Civil Claims informally once notification is received and prior to formal legal proceedings being commenced.
11. As a result, Civil Claims may be resolved quickly, but the timeframe naturally varies given the broad range of issues that require consideration. The advice of the Diocese's solicitors is that the time it takes to resolve Civil Claims involving institutional child sexual abuse is consistent with other personal injury matters in Western Australia. It is rare for non-abuse related personal injury claims to be resolved within 12 months and these often last a number of years before a settlement is reached.
12. While there are several factors that can cause delays in Civil Claims, the Diocese's observations are that these delays are largely attributable to:
  - a. survivors taking time to consider whether to pursue or progress a Civil Claim once they notify an institution about a potential claim, or issue proceedings;
  - b. difficulties faced by survivors in providing details about claim, locating supportive material and gaining access to specialists to obtain medical and financial opinions;
  - c. difficulties for the Diocese in locating material and records which would assist survivors in progressing claims, due to the passage of time and loss of records;
  - d. difficulties the Diocese faces in tracing records of relevance, when a connection between the Diocese and an individual institution cannot be verified;
  - e. limited court availability for dedicated mediation conferences and (if necessary) prompt trial dates; and
  - f. ongoing challenges working with the State and/or Commonwealth on Civil Claims, where there is shared liability or was shared operational oversight of an institution.
13. The Diocese often initially receives notification of a potential Civil Claim, or an informal request for documents. The Diocese is committed to providing timely responses to these requests, but after doing so, are often met by long periods without a response from survivors. This is not uncommon in civil matters, but especially the case in institutional child sexual abuse matters, when survivors can be hesitant to progress claims or require time to decide whether to proceed.
14. A source of frustration for survivors is no doubt that the Diocese may request further information and particulars of abuse, specialist medical reports supporting claimed injuries, and financial assessments, once a claim is received. These requests are necessary when survivors do not initially provide sufficient details about their claim, the abuse, perpetrators, injuries and loss. To ensure



consistency of outcomes for survivors, procedures need to be followed and relevant information needs to be sought before a Civil Claim can attempt to be finalised. The availability of medical specialist (in particular psychiatrists) to see survivors and then provide reports can cause delays.

15. On average, the monetary compensation sought, and the quantum involved in Civil Claims is significantly higher than the average non-abuse related personal injury action, as evidenced by recent judgments. More detailed analysis is therefore warranted when evaluating Civil Claims, and it is important that this is done consistently and with all relevant information. Naturally this process takes time.
16. Likewise, survivors often request material from the Diocese and individual institutions, which cannot be located (or may never have existed). This is unsurprising given claims may arise from abuse up to sixty years in the past, but is especially common when:
  - a. survivors were wards of the State and some or all records were transferred to or acquired by the State Government when the management of institutions ceased with the Diocese. Often there is limited information about what records were held and returned during those periods;
  - b. records prior to the 1990's are requested, before the shift to electronic document and record management. Unless material was meticulously filled, limited data generally exists from this time;
  - c. records from the late 1980's and early 1990's are requested, as documents management and retention during this period is lacking. During the shift to electronic records at this time, documents were often lost, not saved correctly, saved in incompatible formats, or stored without proper concern for longevity; and
  - d. records often do not detail individuals (specific children) who were involved in a parish or a parish group. While alleged offenders are often able to be confirmed as being located at a parish or with a parish group, records for participants were often either not created or not kept.
17. There can also be difficulties verifying the real connection between the Diocese and an individual institution. Often, there is nothing more than a letter from the Episcopal Office of the time to a department head, discussing various matters of relevance. It is difficult to ascertain the practical relationship between the Diocese and the Government with respect to how an institution was being operated on a day to day basis.
18. Western Australian Courts are committed to administering claims efficiently and will make orders to progress matters where requested. However, there remains limited availability for dedicated mediation conferences. While it is not an issue listing a matter for a pre-trial conference (where one Registrar is responsible for say, 10 to 20 conferences), the wait for a mediation conference (with a dedicated Registrar) is often several months. Further, trials in Civil Claims are generally lengthy (usually requiring several weeks) and are currently being listed 12 – 18 months in advance.
19. The Diocese also often experiences challenges when involved in Civil Cases as a co-respondent or co-defendant with the State and/or Commonwealth. Where there is shared liability or there was a shared operational oversight of an institution, there is often resistance from the State and/or Commonwealth to engage, share records, or contribute more than a residual percentage to



monetary settlements. This can be the case even when evidence would suggest a substantial responsibility on the part of the State and/or Commonwealth.

20. While the Diocese has not observed this as a specific cause of delay, it should also be noted that when a Civil Claim is covered by a policy of insurance, the Diocese no longer has primary control of the claim, and the timing of responses are largely at the discretion of private insurers.
21. Finally, total reported Civil Claim lifespans can be influenced not only by the time taken for a matter to reach a resolution between the Diocese and survivors, but also the resolution of the survivors' legal costs which can take many further months. In these cases, a deed of settlement and release, or consent judgments can be finalised prior to costs being agreed, so these negotiations do not necessary delay a survivor receiving settlement funds.
22. Overall, there can be delays and issues for survivors navigating Civil Claims, but the Diocese believes these are not unique to matters involving institutional child sexual abuse and the existing framework operates satisfactorily and fairly.

### **Permanent Stay Applications**

23. The use of permanent stay applications has received a lot of criticism lately and recent media publications have suggested that stays are being used as a tool by institutions to intentionally prolong claims and discourage survivors.
24. This is not a phenomenon that the Diocese has observed and is certainly not an approach adopted by the Diocese. The Diocese has not yet received a Civil Claim to which a permanent stay application has been filed, and the Diocese would only consider doing so in rare and specific situations where the circumstances overwhelmingly call for it.
25. That being said, permanent stays have a legitimate purpose and are a part of the regular Court processes used in many types of matters – not just in the institutional abuse arena. They are a judicial mechanism and have a legitimate place in Civil Claims where a defendant would not be able to receive a fair trial on the available evidence. Naturally, this may be appropriate in institutional abuse claims given the length of time that has often passed since the alleged abuse. Western Australian Courts have demonstrated a willingness to entertain these applications when:
  - a. the alleged perpetrator(s) is/are deceased and allegations were never put to them;
  - b. no relevant witnesses are available; and
  - c. contemporaneous records are lost or do not exist.
26. A small number of permanent stay applications have been decided in Western Australia (less than five) and in the majority of these, a permanent stay has been granted. This suggests that institutions are not bringing unnecessary or unjustified applications or using these applications as a delay tactic. Rather, they are considered when there is no way that the institution could be entitled to a fair trial.
27. The permanent stays that have been granted in Western Australia have also involved circumstances where the alleged perpetrator had died before allegations were put to them and



there are no relevant witnesses. This is arguably a stricter interpretation of the thresholds than some other Australian jurisdictions.

28. The Diocese has supported the reforms to limitation periods and recognises that these were required given the time taken for survivors to come to terms with their abuse. However, institutions also face significant difficulties responding to Civil Claims in some circumstances. Ultimately the Courts (rather than institutions) decide whether a permanent stay is warranted and should be granted.

### **National Redress Scheme**

29. The National Redress Scheme provides survivors with a more streamlined “hands off” option than issuing a Civil Claim and this often suits survivors who wish to not deal directly with the Diocese.
30. Since the 2018 Act, the Diocese has received 91 National Redress applications, of which 73 have been resolved, including 17 rejected and 3 withdrawn, at a gross cost of \$2.2m. As of 31 July 2023, 18 redress claims currently remain unresolved.
31. At times, it can be difficult to provide clear and detailed information in response to NRS Requests for Information, when the Diocese is provided with limited material itself regarding the circumstances, dates and locations of the alleged abuse, and the individuals and institutions involved.
32. Shared liability also cannot be verified or reviewed, and the determination does not provide details of the other institutions. This is particularly common in claims involving State Wards or Child Migrants, when liability is “equally shared” between Diocese and State and/or Commonwealth, but this is not reflected in the information or evidence provided. Further, a determination may find equal responsibility between two or more institutions, but contributions are then not equal, with one entity paying a larger proportion of the final amount.
33. Other than providing information in a timely manner, the Diocese has limited control over the timing and efficiency of Redress. The Diocese has responded to all NRS requests within the prescribed four or eight week timeframe and only sought extensions in exceptional circumstances. Once information is provided, it can take up to, and in some cases, over 12 months for a determination to be made. Despite these potential delays, in the majority of applications, the NRS does still resolve matters far quicker than an average personal injury claim.
34. While seeking redress through the NRS generally results in a timelier outcome, it can still lead to a lack of consistency in determinations. Whilst applicants have an opportunity to request a review of the determination, there are limited avenues for review by responding institutions.
35. The lack of involvement of insurers in the NRS is also unsatisfactory given it is an alternative to Civil Claims which are often covered by a policy of insurance. Insurers maintain the position that Redress does not satisfy the definition of a ‘claim’ required to trigger the insuring clause with policies of insurance.

### **Diocesan Pastoral Care and Assistance Scheme**

36. The Diocesan Pastoral Care and Assistance Scheme provides survivors with the opportunity to apply for a monetary payment under the Redress and Pastoral Care Policy of the Diocese. It



provides a one-on-one approach to support survivors to decide how they would like to progress and is an alternative to issuing a Civil Claims or engaging in the National Redress Scheme.

37. The Pastoral Care Process provides the following options for applicants:
- a. counselling to the value of \$5,000;
  - b. Pastoral Care and Support by a Member of Clergy or other nominated support person;
  - c. an apology by the Archbishop; and
  - d. monetary payment which is determined by the Independent Assessment Panel.
38. The Independent Assessment Panel is appointed by Diocesan Council however it operates independently to the Diocese to assess claims based on criteria outlined in the Monetary Schedule for redress payments. The maximum amount payable is \$150,000, which aligns with the NRS.
39. Prior to the introduction of the 2018 Act, 35 claims were received under the Diocesan Pastoral Care and Assistance Scheme, with payments totalling \$2.6m.
40. Since the introduction of the 2018 Act, 6 claims have been assessed through the Diocesan Pastoral Care and Assistance Scheme (plus one that was received prior to the 2018 Act) and 3 claims have been settled, including 1 withdrawn and 1 rejected, at a gross cost of \$81,788. Three claims remain open.

### **Conclusions and Recommendations**

41. While not perfect, from the Diocese's perspective both the NRS and the Civil Claims system are currently assisting survivors, who are able to largely dictate the pace at which their claims progress.
42. The issues outlined above which contribute to delays are unlikely to be improved by implementing widespread changes to the system and are simply a product of claims being received many years after the subject event(s).
43. The Diocese continues to dedicate significant resources to supporting survivors and is doing what it can to expedite claims. It remains flexible and open to expedited informal negotiations and settlements whenever and however appropriate.
44. The Diocese otherwise considers that the current options available to survivors and the reach of monetary compensation is adequate. Broadening the ability for say, a survivor's family to claim damages on the basis that an injury to an individual has had an impact on their family's quality of life would create an unreasonable burden on the Diocese and individual institutions. As with other personal injury claims, this is already captured by a survivor's ability to claim for general damages and economic loss.
45. Likewise, the current operation of the *Limitation Act 2005* and the *Law Reform (Miscellaneous Provisions) Act 1941*, in restricting the family / estate of any deceased survivor from pursuing damages on their behalf in these matters is sensible.



46. One change that could be considered to improve the efficiency of Civil Claims, is through the implementation of a specialist institutional child sexual abuse list within the District Court of Western Australia.
47. Much like the *Commercial and Managed Cases (CMC) List* in Western Australia, and specialist lists in other jurisdictions, a dedicated list to hear claims brought by survivors of institutional child sexual abuse, may:
  - a. More easily allow for an expedited process if required;
  - b. see all matters being considered by court officers with the most experience in these matters and who may be more familiar with recent precedent and developments in the area;
  - c. reduce the number of interlocutory applications;
  - d. bring cases to the point where they can be resolved by mediation in the quickest, most cost-effective way; and
  - e. further encourage parties and their solicitor to co-operate with the Court, and among themselves, to assist in achieving the overarching purpose.

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**Anglican Diocese of Perth and the Perth Diocesan Trustees**  
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