

COIN

COMMISSION OF INQUIRY NOW

Justice for victims of Catholic Clergy Sexual Assault in Victoria

COIN Submission No 4

20 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 4: Corporation Sole.**

We write concerning the legal doctrine of Corporation Sole in Victoria, and its application to instances of sexual abuse within the Catholic Church.

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 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

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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.

Corporation Sole COIN submits that Victorian law should be reformed such that *current* Church office-holders may be held vicariously liable for civil damages¹ or prosecuted for the criminal conduct (eg "aiding and abetting")² in relation to the sexual abuse of victims *occurring during the period of their predecessors in office*, be such predecessors a priest, Monsignor, Bishop, etc. Such unlawful acts are herein called "officials' liability".

One way of achieving this result, such that officials' liability does not expire with the retirement from office, or death, of the "offending" official, is to declare the relevant office, or offices, to be an entity with continuing legal existence (like a company under the corporations law), burdened by continuing rights and liabilities that do not terminate by reason of changes in that office's occupant, i.e. a "corporation sole".

Australian Common Law Australia inherited much of the British common law, including the law in relation to what constitutes a corporation sole. The current position in Victorian law is that the Roman Catholic Church ("the RCC") does not exist as a legal entity and thus cannot, of itself, be sued; and an office-holder in the RCC hierarchy, eg, a Bishop, is not a Corporation Sole. The recent NSW case *Trustees v Ellis & Anor* [2007] contains a useful exploration of these issues.³

English Law: In summary, the ecclesiastical corporation sole developed in the Middle Ages as a response to legislation prohibiting perpetual gifts of land to the Church. It was a way of explaining how a gift to a particular priest (for example), would transfer, upon his death, to the next incumbent priest. These corporation soles were formed under canon law, not English common law, by the authority of the Pope. This power to authorise corporation soles was not questioned until the English Reformation, when the Church of England was formed. While the concept of corporation sole survived the reformation, it became a designation to be granted in England by the King, or an Act of Parliament. *Trustees v Ellis* confirms this to be the status of the law in Australia.

¹ See COIN's separate submission on "Vicarious Liability and the Catholic Church."

² See COIN's separate submission on "*Crimes Act (Vic) ss 323-326: Catholic Church Hierarchy: Aiding and Abetting the crime of sexual assault by priests.*"

³ *Trustees v Ellis and Anor* [2007] NSW 117, 158-170.

Corporation Sole and the Catholic Church in the USA: In the USA, the doctrine of corporation sole, as applied to the Catholic Church, is not recognised unless incorporated by statute – *Wright v Morgan* (1903).⁴ Thus, to ensure perpetual succession to the next bishop, priest, etc, the corporation sole of the relevant ecclesiastical office must be recognised under statute.

Sixteen states in the USA recognise corporation sole under state statutory law, usually in relation to non-profit corporations or religious societies. These include Alaska, California, Colorado, Hawaii, Michigan and Washington. Other jurisdictions have “legal” corporation soles created under special or private charters.

Australian Statutory Position To the best of our knowledge, no Australian statute recognises this common law entity of corporation sole. Further, the *Corporations Act 2001* (Cth) s 57A, explicitly excludes it from the definition of a corporation.

Proposal for Victorian Law Reform: The position in Australia (including Victoria) is similar to that expressed in *Wright v Morgan* – corporation sole can only be recognised through statute. However, as mentioned, no such statutes have been enacted in Australia. If Victoria is to address the problem of sexual abuse of children within religious organisations, - both historically and currently – civil and criminal liability for such conduct must be made legally transferable from one incumbent leader to the next, i.e. Victoria needs a Statute requiring religious leaders to become corporation soles.

In *Ellis*, (a civil case for damages) the NSW Court of Appeal pointed out that “corporation sole” originally began as a means of ensuring property succession, and therefore may not allow for the transferal of torts or liabilities from one incumbent to the next.

Thus, a provision similar to s. 10007 of the California Corporations Code should be enacted in Victoria:

10007. Every corporation sole may:

- (a) Sue and be sued, and defend, in all courts and places, in all matters and proceedings whatever.
- (b) Contract in the same manner and to the same extent as a natural person, for the purposes of the trust.
- (c) Borrow money, and give promissory notes therefor, and secure the payment thereof by mortgage or other lien upon property, real or

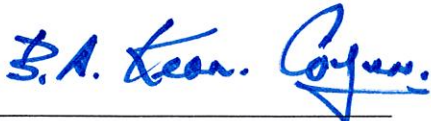
⁴ *Wright v Morgan* 191 U.S 55, 59 (1903)

personal.

- (d) Buy, sell, lease, mortgage, and in every way deal in real and personal property in the same manner that a natural person may, without the order of any court.
- (e) Receive bequests and devises for its own use or upon trusts to the same extent as natural persons may, subject, however, to the laws regulating the transfer of property by will.
- (f) Appoint attorneys in fact.⁵

COIN requests that this submission be placed on the Committee's public list of submissions.

Yours Faithfully,



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⁵ California Corporations Code, § 10007