

TRANSCRIPT

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

Inquiry into the handling of child abuse by religious and other organisations

Melbourne — 17 December 2012

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Ms A. Sdrinis, partner, Ryan Carlisle Thomas Lawyers.

The CHAIR — On behalf of the committee I welcome from Ryan Carlisle Thomas Lawyers Ms Angela Sdrinis, a partner with the firm. All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act 2003, attracts parliamentary privilege and is protected from judicial review. Any comments made outside the precincts of the hearings are not protected by parliamentary privilege. Witnesses may be asked to return at a later date to give further evidence. All evidence given today is being recorded. Witnesses will be given a proof version of the transcript. Please note that these proceedings are not being broadcast. Following your presentation, committee members will ask questions related to the inquiry. We thank you again for the very comprehensive submission you provided to the committee, and we look forward to hearing from you this afternoon.

Ms SDRINIS — Thank you for inviting me to give evidence before you. The issue of sex abuse within institutions and organisations is a difficult one. It appears that institutions that have strong cultural, spiritual or organisational underpinnings are most prone to attract predators or to allow predators to flourish. Ryan Carlisle Thomas has received complaints of child sex abuse involving all state governments, religious institutions, sporting organisations, scouts, public and private schools and the television and music industries. Ryan Carlisle Thomas has also received complaints of both adult and child sex abuse within the Australian Defence Force. Some of the victims of sex abuse in the ADF have only been 17. The ADF, like religious and some sporting organisations, has a strong internal culture and victims are discouraged from coming forward, because to criticise the organisation is seen as a betrayal of everything it stands for.

In relation to religious institutions, we have had complaints against the Salvation Army, the Catholic Church, the Uniting Church, the Anglican Church, the Lutheran Church and the Mormon Church. We have had one complaint against a Buddhist monk. We have had complaints involving religious sects, such as the Family. Whilst Ryan Carlisle Thomas has not had a complaint from a member of the Jewish community, we know from evidence given before this inquiry that the Jewish faith is not free of this issue. To date we are unaware of any complaints of sexual abuse within the Muslim faith, but this may well be because members of this faith are not yet prepared or able to come forward.

My written submission refers to several hundred complaints of child abuse that have occurred in children's homes run by religious institutions and non-government organisations. In fact Ryan Carlisle Thomas has received complaints from over 1000 former wards of the state, although consistent with the terms of reference of this inquiry, our submissions have concentrated on child abuse within religious and non-government organisations.

The vast majority of complaints received against non-government organisations outside of those organisations that ran orphanages or children's homes, and except for complaints regarding the ADF, have been isolated complaints where it has not been possible to obtain corroborative evidence. The nature of child sex abuse is that it happens behind closed doors, which means that it is often the word of a very damaged victim with sometimes confused childhood memories against that of an adult abuser adept at presenting a credible persona to the world. This means that for many of the victims who have come forward we have been unable to proceed with their legal claims because of difficulties of proof. Even where we are in a position to provide significant corroborative evidence — for example, where we have had numerous complaints against particular perpetrators and we are reasonably satisfied that we could prove the allegations in a court of law — technical legal defences available to religious and other organisations have meant that even these claims would face real risk if they were to proceed to trial.

For example, the predecessors of the Uniting Church ran a number of orphanages where we have evidence of systemic abuse. Whilst the Uniting Church has largely flown under the radar in terms of how it handles allegations of child sex abuse, the Uniting Church relies as vigorously on technical legal defences as does the Catholic Church. In particular it relies on the argument that there is no legal entity that can be sued in cases of historical abuse. In relying on this defence the Uniting Church ensures that claims against it are unable to be pursued in the courts. This defence is loosely known as the Ellis defence. The Salvation Army, on the other hand, at least in Victoria, has chosen in recent times to stop relying on this defence. It is open to all religious organisations to choose to abandon this defence. However, even if there was universal agreement by all churches to abandon this defence, legislative amendment should still be pursued. It is inappropriate that churches, which effectively operate as large corporations, should be able to avail themselves of a defence which means that in cases of historical abuse they are immune from suit.

On this point, there was debate in the Victorian Parliament earlier this year when Robert Clark introduced a bill to amend the Free Presbyterian Church Property Act of 1953 to provide additional powers to the body corporate. Ann Barker, who is a member of this Parliament and who has been a tireless campaigner for justice for victims of clerical abuse, spoke against the bill and urged the Victorian Parliament to review all legislation regarding church property trusts. Her proposal was not supported by government members, and the bill was passed. I urge the committee to make recommendations to ensure that all legislation involving church property trusts is amended so that religious institutions are unable to rely on the Ellis defence to escape their potential liabilities in cases of historical child sex abuse.

As referred to above, the Salvation Army has made the decision to no longer rely on the Ellis defence when claims of child sex abuse are brought against it. This is commendable. However, this commitment came after hundreds of claims against the Salvation Army by my firm and other firms had already been settled for relatively modest amounts because no matter how strong the evidence of systemic abuse, these claims could still have failed in a court of law. My written submission refers to evidence that my firm has collected from well over 100 clients who allege abuse in orphanages run by the Salvation Army. Allegations of abuse include systemic and serious physical abuse, in some cases so severe that complainants believe the boys were killed or allowed to die from their injuries.

Allegations from former residents of the Bayswater Boys' Home are not dissimilar to the allegations referred to by Wayne Chamley in relation to children allegedly being killed in orphanages run by the order of St John of God. Allegations that boys disappeared in mysterious circumstances from the Bayswater Boys' Home have been investigated by the police, who searched the property of the former orphanage. I am unaware of the outcome of these investigations, although I do not believe that any formal charges have been laid or any prosecutions commenced. However, based on the evidence of my clients and what I know to have occurred at Bayswater and other homes run by the Salvation Army and by other religious organisations, I believe that children may well have been killed in orphanages, or at least allowed to die.

I have read the ward records of hundreds of former residents of Victorian orphanages. These records show that children as young as eight would abscond — and no evidence to suggest that any steps were taken to find these children or to report their disappearance to the police. Many of these children would have had no family and no-one to take an interest in their existence. It was also the case that society regarded these children as worthless, and these attitudes were mirrored by the police, who would have regarded investigating the whereabouts of yet another abscondee from a children's home as a waste of time. The low value placed on these children by society meant that they were extremely vulnerable to exploitation and severe abuse. Death of these children caused by physical abuse or neglect may well not have been investigated by the authorities at the time.

There is also compelling evidence that there was serious sexual abuse involving rape of multiple victims by serial abusers, who were allowed to molest children, sometimes for periods of more than 10 or 20 years. There is evidence that in the 70s the Bayswater Boys' Home was staffed by a paedophile ring and that staff not only sexually abused the children in their care but also allowed other paedophiles free access to boys, who were removed from the home and sexually abused at will. I have referred in my written submission to John Beyer, who was allowed to remove boys from the Bayswater Boys' Home and sexually assault them. John Beyer has been convicted of offences against former residents of the Bayswater Boys' Home. We have been able to negotiate modest settlements for Beyer's victims and other victims of abuse at Salvation Army homes and in relation to homes run by other religious orders. These settlements were necessarily modest because of the legal barriers to achieving appropriate compensation for victims of historical sex abuse.

The compensation payouts received by victims of historical abuse are paltry when one considers what such claims would be worth if these events had occurred more recently. However, the statute of limitations means that the further you go back in time, the less likely a claimant is to be successful in the courts, and when the risk and potential legal costs are taken into account, even a modest settlement amount has to be seriously considered. The statute of limitations has been referred to in a number of submissions. It is important that recommendations are made as a result of this inquiry to address the difficulties that victims face in overcoming limitation periods.

Because of legal barriers in obtaining compensation, other Australian states, such as Queensland, Tasmania and Western Australia, have set up redress schemes to compensate children abused in care. Even though amounts available through these redress funds have also been modest, it is preferable to deal with these claims through a non-adversarial process, which also means that legal costs are reduced. These schemes also mean that people

who are unable to prove their abuse in a court of law have the opportunity of being compensated. Whilst the Victorian government and most of the institutions which were responsible for the care of children have agreed to an informal protocol which allows claims to be settled without the need to go to court, settlement by and large can only be achieved if the claimant is in a position to potentially prove their allegations, and this can be a very difficult thing to do when the events occurred 20, 30, 40 or even 50 years ago. In fact the earliest complaints we have had go back to the 30s, some 80 years ago.

I urge this committee to strongly recommend to the Victorian government that it follow the lead of other states and establish a redress fund to compensate victims of child abuse at the hands of religious and non-government organisations. Unfortunately the state's handling of child abuse does not form part of the terms of reference of this inquiry, but any redress fund that was established should include compensation for all victims of abuse in state care. Any redress scheme should be jointly funded by the state and by all relevant religious and non-government institutions.

Another area where the state has responsibility, and which is within the purview of this inquiry, is with respect to record keeping and the retention of documents relating to former wards of the state who were placed by the state in religious and non-government organisations. Documents can be a crucial factor in providing the proof required to pursue criminal prosecutions or claims for damages. The documents need not always be documents that directly refer to allegations of sexual abuse. Many children could not even name their abusers because they knew them only as 'Sir'. Many children were moved between so many homes and foster care placements that the identities of their so-called carers became a blur. This means that even seemingly innocuous documents, such as, for example, to whom a child's clothing allowance was paid, can become crucial if these records mean that a perpetrator can be identified. It is therefore important that none of the documents relating to children in care be destroyed. We know from a recent Ombudsman's report that some of the records held by the Department of Human Services are in a parlous state. There is concern that records which may include evidence of the sexual abuse of children may inadvertently be destroyed. It is vital that this committee make recommendations regarding the proper collation and retention of records relating to wards and that the government make available the funding for this huge task to be properly undertaken.

Another issue raised in my written submission relates to the importance of a special crimes unit being established by Victoria Police to investigate historical child sex crimes. I refer in my submission to the LEAP database and say that a police database needs to be established so that not just charges or prosecutions are recorded but also complaints of historical sex abuse, even if these complaints are not investigated because of lack of evidence. My information in this regard was outdated; I am given to understand that such a database does exist. I was also heartened to hear that the police have set up a task force to deal with complaints emerging as a result of this inquiry. However, the task force should also deal with all institutional sex crimes, including sex crimes committed against children in state care.

I wish to conclude my comments with a reference to the Catholic Church, which has been the focus of much of the evidence before the inquiry to date and of media reports and calls from the public which resulted in the establishment of this inquiry and a national royal commission into child sex abuse. The Archbishop of Sydney has asserted that the attacks on the Catholic Church have been driven by anti-Catholic bigotry. Evidence has been given before you that the reported incidence of child sex abuse within the Catholic Church is six times that of all other churches combined. Evidence collected by lawyers, victim support groups and the information in the public arena also reveals that the Catholic Church, more than any other religious organisation, has at times dealt with the problem of child sex abuse by transferring alleged abusers to other parishes, both interstate and overseas.

We also know that the problem of child sex abuse within the Catholic Church is an international problem. Inquiries into child abuse in Catholic institutions have been established in the Republic of Ireland and in Northern Ireland. The prevalence of child sex abuse in the Catholic Church has been such that Germany, the Netherlands, Belgium, Canada and other developed countries have established redress funds to compensate victims of Catholic clerical abuse. We know of no other religious institution throughout the world with such high levels of reported child sex abuse. Evidence before this inquiry has included allegations that some Catholic clergy who have been accused of child sex abuse have been transferred overseas, sometimes to Third World countries. There is a concern that in the coming decades we will see similar allegations of systemic Catholic child sex abuse emerging in those countries. Even more concerning, however, is that the prevalence of the abuse has the potential to be significantly greater in developing countries than what we have seen in Australia. Clearly

the usual checks and balances of developed nations, such as a strong police force and justice system, have been woefully inadequate in confronting the power and the influence of the Catholic Church. In particular in Third World countries, where the Catholic Church is dominant and where police and justice systems are much less advanced than in Western countries, there is a substantial risk that the influence of paedophile priests will be completely unchecked, and there is the potential for even greater levels of systemic abuse of children.

I therefore submit that this committee should recommend that the federal government call on the United Nations to establish an international commission of inquiry into the handling of sexual abuse allegations by the Catholic Church. In particular this inquiry should establish the movements across borders of alleged paedophile priests and ensure that all allegations against them are properly investigated and that the alleged offenders are prosecuted in whichever country they may be. This will also be a recommendation that I will be making to the royal commission. The federal government should be urged to use Australia's recently won seat on the United Nations Security Council to exert influence so that a UN inquiry is established.

Having said that, the Catholic Church is the only religious organisation whose headquarters, the Vatican, has observer status at the UN and whose leader, the Pope, calls himself a head of state and claims diplomatic immunity when attempts are made to join him in court proceedings or to compel him to give evidence in cases involving allegations of child sexual abuse. Whilst the Vatican cannot vote in the General Assembly, in most UN conferences the Vatican can participate in the debate and can vote. The Catholic Church is the only world religion which has a direct say in the affairs of the United Nations and no doubt would vigorously resist any attempt to have the UN pursue internationally the issue of child sex abuse within the Catholic Church.

In conclusion, surely the point of this and other inquiries is to provide healing and redress for those who have already been victims, to ensure that the perpetrators and those who shielded them are brought to justice, and to try to protect other children from abuse. This committee is in a position to make a very positive difference to those who have already been abused as children and to those children who are yet to be abused. Thank you.

Mr McGuire — Thank you very much for your submission. I will just pick up on a couple of points you have raised, just for the record so we understand. The cases that you have identified on criminal investigations and charges, they have all been reported directly to Victoria Police, and I take it that they are under investigation or have been in the past?

Ms SDRINIS — Yes. I believe so, yes.

Mr McGuire — In your next proposition you talk about appealing via the federal government to the United Nations. Have you taken steps to do that already? Have you written to the — —

Ms SDRINIS — Not yet, no.

Mr McGuire — So you are disclosing that today for the first time publicly, are you?

Ms SDRINIS — Yes.

Mr McGuire — Can you elaborate on why you think this is important and significant?

Ms SDRINIS — As I said in my opening remarks, the Catholic Church seems to be the only religious institution in the world which has had the prevalence of child sex abuse problems that we have seen. As I indicated I am genuinely concerned — and I am sure many others are as well — that some of those priests who were accused of child sex abuse here and the allegations were not properly investigated in this state or in this country, have been literally shipped overseas to Third World countries in some cases. I think it would be generally agreed that those Third World countries are much less likely to be in a position to proactively deal with the issue of child sex abuse, and — I don't know — one can only shudder to think what is going on in some of those countries.

Mr McGuire — Just legally, one of the issues we have to address is should we have a different concealment offence. Do you believe we should have that? Is that important to actually put on the public record and to have a strong penalty behind that, or do you think in the current system there are enough laws that can cover that?

Ms SDRINIS — I am not an expert in criminal law — my background is in civil law — so I cannot really comment on the effectiveness of the current laws, but I can say that whilst they have been in existence, they do not seem to have resulted in any successful prosecutions of people in authority who have shielded alleged perpetrators. If you mark success by runs on the board, there have not been many, so presumably we either need a more vigorous investigation approach or stronger laws, or both.

Mr McGUIRE — Just to take that a bit further, do you think it would send a message as well that there is now a specific category and a penalty behind that? What is your view on that?

Ms SDRINIS — Absolutely. Yes, I think it would absolutely send a message. I think the message is out there, I have to say. I think it would be very hard for anybody who is in a position of authority in a religious organisation now not to be aware that shielding alleged perpetrators is a crime — can be a crime — but I think specific laws directed at that problem would be very effective.

Mrs COOTE — Thank you very much indeed for your comprehensive submission. I am particularly interested in the record keeping. It is something that has come up a lot, and you have a number of recommendations dealing with the keeping of records, including building upon the report into DHS. Given that we are dealing with an enormous number of records, and you have got a very comprehensive list of your own, from a legal point of view, where would you envisage these being kept — at the public records office or, as someone mentioned today it is in the CLAN submission, the state library?

You do say in recommendation 9 that the committee require all charitable and church-run institutions and out-of-home-care facilities to open their files. But we are also hearing from other people that there is an irregularity, to say the least, and some obvious destruction of files. So in formulating these recommendations have you thought of what that body would look like, how it would be mandated to collect these records and how far back it would go? Have you got any ideas along those lines?

Ms SDRINIS — I think the Public Records Office would be the appropriate body to keep these documents, to collate them. There is legislation in relation to the retention of documents, which is already there. DHS has the capacity to keep those records and to keep them in good order if they are given sufficient funding. I think funding is an issue. But for victims of abuse who are contemplating litigation or who want to get their records, I think there is a concern if the organisation against which they have a complaint is also the holder of the records. That goes not just for DHS but obviously for the religious institutions as well. I think it is important that a body that can be seen to be independent, which has got specific legislative powers, should be the appropriate record keeper.

Mrs COOTE — What about the confidentiality aspect of it; how would you envisage that aspect — —

Ms SDRINIS — Firstly, freedom of information legislation allows for confidentiality. You cannot release information regarding third parties, and that could readily apply. There would have to be a subcategory, if you like, of documents which are kept independently in relation to which they could not be released without the permission of the person in relation to whom they were created. So I think a combination of freedom of information protections and possibly specific legislation would deal with that problem.

Mrs COOTE — Given that so many of these perpetrators, particularly, are dead, how would you envisage that? Would you go right the way back, or would you have a line in the sand? How do you think it would be best looked at?

Ms SDRINIS — Freedom of information does allow, I understand, for release of information relating to people who are dead. I think if people are dead — I have not actually thought of it from the perspective of the perpetrator because I am so focused on the victim, if you like — it does raise some thorny issues about release, but in the first instance, release to the person whose records they relate to should include the identities of perpetrators if they are dead, and with permission in other cases.

Mrs COOTE — On a totally different subject, I was really perturbed to hear in your final comments ‘children yet to be abused’. I am really troubled by that, in that you obviously believe there are no proper constraints in place at the moment to prevent the ongoing abuse of children. You obviously had reason to say this.

Ms SDRINIS — Are you talking about in this country or overseas?

Mrs COOTE — I believed it was this country, but you may have been talking about the Third World.

Ms SDRINIS — I was thinking of the Third World, but in this country as well; we have checks and balances, as I said in my submission. We have a strong justice system; we have a strong police system. That does not seem to have stopped the magnitude of the problem within the Catholic Church and within other religious institutions in particular and, even though this is not strictly relevant to this inquiry, the federal inquiry into the Australian Defence Force. People are being sexually abused in our armed forces, so much so that a special task force has had to be introduced, and most of them are adult victims, although, as I said, some are child victims. There does seem to be a problem when you have organisations which have a very strong culture; if it is a culture which encourages silence, then I think there is a concern that sexual abuse of children may continue.

Mrs COOTE — We have seen a lot of evidence from various organisations suggesting that they have put in place procedures to make certain that ongoing child abuse does not happen, particularly the Salvation Army and the Anglican Church, for example, and we have also been told about this in a submission from the Jewish community as well. Is that your understanding? Would you feel confident that those procedures have been put in place? I am not speaking about Towards Healing and the Melbourne Response, because I think they fall into a slightly different category — —

Ms SDRINIS — Different category.

Mrs COOTE — But I am particularly keen to hear whether you believe that you have confidence going forward that these other organisations have put in place rigid enough regimes?

Ms SDRINIS — I am not familiar in detail with the regimes that have been introduced by the Anglican Church or by the other organisation you mentioned. I think that processes are very important, and it is important to have protocols. But partnered with that there needs to be a strong enforcement culture. Also partnered with that there has to be punishment, if you like, if things go wrong. One of the reasons we saw decades of abuse in orphanages was because there were no consequences. If it became apparent that a child was being abused, there were no consequences, so they could just keep doing it and doing it and doing it. So I think you need both; you need to have proper protocols, but you also need to have proper enforcement, and if those two are married, then that is all we can do.

We are never going to stop sexual abuse of every child, every time. It is the nature of it, as I said, that it happens behind closed doors. Predators are very good at selecting vulnerable children, grooming them and exploiting their vulnerability so that the abuse does not come out. So an expectation that it will never happen again is unrealistic. But in terms of organisations, a partnership between good protocols and good enforcement procedures — that is the best you can do.

Ms HALFPENNY — First of all, just in terms of the property trusts, as you were saying earlier, it is a sensitive issue. Could you explain — and I guess we will hear from religious organisations later, but we have not heard from any as yet — is the only barrier to changing the system to make religious organisations accountable that they do not want to be accountable financially, or are there other things that the property trust brings with it that may need to stay, I suppose?

Ms SDRINIS — Yes. Historically these property trusts were not invented by the churches to avoid legal liability; I am absolutely sure about that. They were created so that organisations, which are essentially a group of people coming together, had some legal status sufficient to allow them to deal with the property and financial requirements of the organisation. So the property trusts of themselves were not created as a sinister attempt to avoid liability.

Of course it is important that churches have some legal entity which allows them to deal with their financial affairs and their property issues, but the problem has been that the legal status conferred on those entities was that their sole purpose was to manage the property affairs of the churches. Probably in the 90s, I think, was when we first started seeing this defence emerging, which is when people first started trying to sue churches for historical sexual abuse. The church's lawyers obviously came up with this idea, 'Well, if the only legal entity

that exists is the property trust, and the property trust had nothing to do with the supervision of priests, how can they be held liable for the misconduct of priests?'

You do not have to throw the baby out with the bathwater; you can still retain a legal entity which has power to deal with the property issues, but you can establish that the legal entity has in fact power to deal with all issues relating to a church, as any company does. If you try to sue a company, they do not say, 'Well, you can't sue us because the part of the company that dealt with your issue is actually the part of the company that owns the building that we operate in, and the building has nothing to do with what went wrong with you.'

Ms HALFPENNY — They try.

Ms SDRINIS — So it is a question of keeping those functions, but also establishing that whatever corporate entity ultimately exists or comes into existence has power to deal with all of the issues relating to the operations of that institution.

Ms HALFPENNY — In terms of the redress, and you mentioned that other countries as well as other states of Australia have redress schemes, we heard earlier from Dr Wangmann about some Canadian examples. While they were about institutions, they were also about religious organisations. Of course money is important, but there seemed to be this belief also that there were a whole lot of ingredients to a redress scheme. What do you think are the ingredients for a good one, whether it exists or not, from your experience?

Ms SDRINIS — The money is important because the money is the tangible acknowledgement of wrongdoing. People who have been abused — their experience has cost them a great deal financially, emotionally and in terms of relationships. It affects the whole of their life. In order for victims to feel some sense of justice, what they get has to cost the wrongdoer, and the only way in which our society measures cost, if you like, is money. But more than the money, there also has to be a real acknowledgement of wrongdoing and apology — restorative justice, if you like, where the organisation is able to say, 'We recognise what happened to you; we apologise for it. Here is an offer of compensation, which is a gesture which expresses our belief that you suffered at our hands'. That all has to be part of the process.

Different redress schemes have had different models, but all of them have involved an apology to the victim, and I think that is very important as well. All of them have involved the opportunity for the victim to have counselling and to get assistance in other ways to aid in recovery.

Mr WAKELING — Thank you very much for your presentation and your submission. The first question I would like to deal with is the issue of any of your clients who may have gone through the conciliation process and received a payment, particularly through the Catholic Church. I presume you have dealt with people — —

Ms SDRINIS — Yes.

Mr WAKELING — The first question I have is: in regard to people who have received compensation and were required to sign a deed of release, which has a release provision against further claims and obviously a confidentiality provision, were the clients you have dealt with under the impression that as a consequence of signing that document and receiving that money they were prevented from talking about it because of the confidentiality provision? More importantly, were they prevented from raising this issue with the police because they believed that receiving the payment and signing the document released the church from having those criminal matters raised with the police?

Ms SDRINIS — In the last decade or so I have not recommended to any client that they sign a confidentiality agreement which covers the events that led up to their claim. Confidentiality agreements that have been arrived at between my clients and institutions relate solely to the settlement sum and the terms of settlement. One of my clients have been in a position where they have felt that their silence was bought and where they have felt they were not able to go to the police. I have always encouraged my clients to go to the police where they have felt sufficiently robust emotionally to do that.

Mr WAKELING — Obviously that was very good legal advice, but for people you may have come across who had already signed a deed, who had not received legal advice — and we have received many submissions about this — the impression you get from those people is that — —

Ms SDRINIS — They felt they could not say anything to anyone.

Mr WAKELING — Despite the fact that it is a criminal action that may have occurred and technically a release may be void on that issue?

Ms SDRINIS — Yes.

Mr WAKELING — It would be fair to say in your opinion that those people felt as though they were prevented from taking that matter further.

Ms SDRINIS — Yes, I think that is a fair assessment.

Mr WAKELING — Also you raised the issue of a statute of limitations, and today we had the law institute. I do not know if you heard their submission.

Ms SDRINIS — I have read their submission.

Mr WAKELING — They raised the issue of the possibility of a reverse onus where an applicant does not have to prove but in fact the reverse applies — the entity has to argue why it should not be extended. Do you have an opinion on that? Beyond that, do you have any other thoughts on the statute of limitations?

Ms SDRINIS — In my submission I referred to the South Australian legislation, which allows claimants to bring an action which is out of time provided they do so within 12 months of becoming aware of a material fact. A material fact might be that they discover the identity of their perpetrator, a material fact might be that the police prosecute, it might be that they become aware that they have suffered an injury. That is probably the most generous extension provision we have in any state in Australia.

I do agree with the reverse onus of proof, because one of the crucial factors where most extension of time applications fail is on the basis of prejudice to the defendant. If the defendant can show that the delay has resulted in prejudice in terms of them being able to mount a defence, then these extension of time applications will fail. You would appreciate that it is not hard for a defendant to show prejudice. A witness dying, not being able to locate a witness, documents being destroyed are all things that might result in prejudice to a defendant which has been caused by the delay.

A reverse onus would mean that the defendant would have to show that the prejudice has specifically harmed their capacity to defend the allegations. That is harder than the present position where the applicant has to show why they should get an extension of time, and one of the factors is prejudice and various other factors under the legislation.

Mr WAKELING — Thank you very much.

The CHAIR — Before I go to Mr O'Brien, I would like to ask a question of you in relation to some of the comments you have made. You have talked about redress and you have talked about healing and what that means for justice for victims. Also in your submission you say that there is a desperate need for victims of past abuse to see their perpetrators dealt with, as well as those who covered their crimes. Can you inform the committee in terms of the importance, how that is weighted for victims in your view in relation to those other issues that you have raised with us this afternoon? How would you see that?

Ms SDRINIS — I think that is one of the most important, if not the most important, thing. I am a lawyer who pursues claims for people, so obviously I think the money is important, but I think the most important thing is for victims to feel that the perpetrator who did it to them has been dealt with, the people who allowed it to happen have been dealt with and there has been justice. It would not surprise you to hear that in my experience victims, who are all too well aware of what child abuse can do to a person, are very, very keen to know that other children are not being exposed to what they went through. I think that is probably the most important thing, to be honest with you.

Mr O'BRIEN — Thank you for your evidence and your extensive submission. It is very helpful to have someone with your expertise in these matters in addition to all the other witnesses, but with the practical expertise of running the cases that come before us. In that regard I am curious to pick up this vicarious liability in the Ellis defence as well as the statute of limitations. I am interested in exploring the present position — that

is, at today — of the church authorities, whatever entity they be, in relation to specific defences. I know you have mentioned on page 20 you wrote to Reverend Brian Lucas. For the benefit of the Hansard transcript I will quote the paragraph. You said:

Lucas well knows that no-one is suggesting that the church can't be sued at all, but that it is the case, particularly in relation to claims of historical abuse that the church seems to have a watertight defence as formulated in the Ellis' case. It is also the case that the church has a choice as to whether or not it will rely on the defence.

Then you have written as a firm on 21 November asking to confirm that the church would accept the service of a writ in relation to the Ridsdale defendant. You have asked to confirm that they would not be relying on such a legal entity, and you say the silence is deafening. Have you had any further response or sought to initiate any further action in relation to that?

Ms SDRINIS — No, I formed a view there was no point.

Mr O'BRIEN — Having regard to obviously the formulation of this inquiry and the position of the church, including more recent statements in relation to the spokesperson for the church et cetera, is it something you would wish to still seek? Is it something valuable to you and to victims if the church were to, of its own volition or in answers to questions from this inquiry or some other forum, categorically state that they would not seek to rely on these defences?

Ms SDRINIS — I think I mentioned that the Salvation Army has chosen to stop relying on the defence, so in terms of proceedings issued against the Salvation Army in the last year or two, they do not plead the Ellis defence, so that is one less hurdle that victims have to overcome. Certainly if the Catholic Church was to indicate it would no longer rely on the defence, that would be a very good start. But I think I also make the point that relying on the goodwill of churches and the current leaders of the church is one thing, it does not necessarily guarantee that that position will remain into the future, which is why I think it is important that the legislation is changed.

Mr O'BRIEN — Yes, and in looking at the legislation we need to look at the very specifics of allegations made in individual cases.

Ms SDRINIS — Sure.

Mr O'BRIEN — Again in relation to the appropriate defendants, your suggestion is that the property trusts effectively accept the liability that they had previously been allowed to not have found against them.

Ms SDRINIS — Effectively it is mandated that whatever legal entity is created has power to deal with all matters arising out of all functions of the church, not just the purely property matters.

Mr O'BRIEN — And again on the limitations, again the church could decide not to plead any limitations.

Ms SDRINIS — Indeed, and I have been heartened to hear that Denis Hart, I think, has said publicly — Archbishop Hart — that the statute of limitations should not apply to cases of child sex abuse. I think I am right in quoting him; I read that in the papers. That also is a very positive outcome, but at the end of the day we are still relying on the goodwill of the people who are around today when the spotlight is just so intense, I guess. If that was to change in 5, 10 or 20 years time, we might still find ourselves back in this situation.

Mr O'BRIEN — Do not take it that I am not recognising your need for legislative reform as well, and there may well be confirmatory legislation, but the specifics of any legislative reform may well have to — —

Ms SDRINIS — Take time.

Mr O'BRIEN — follow the specifics in any defence. If there are not any cases being run — I am not urging you to run a case; I am inquiring as to where your cases are up — it can be quite difficult to pin down even what legislation needs to be amended, if any, apart from general statements. So there are general statements that are being made presently — some — and you would obviously like more to be made in the public domain?

Ms SDRINIS — Yes.

Mr O'BRIEN — And then there are statements that could be made in pleadings in individual cases, and obviously if in contest adjudicated by the courts. You would like to see those general statements made into pleadings specifically?

Ms SDRINIS — Yes.

Mr O'BRIEN — Then there are of course legislative reforms that can be made to make it easier into the future.

Ms SDRINIS — Yes. The fact that there are so few cases and there are so few verdicts regarding claims against religious institutions for child abuse, despite the prevalence that we have seen, and you have heard about it, just shows how difficult it is to get the churches to court.

Mr O'BRIEN — Could I just ask you specifically on that, you have provided evidence of the Operation Arcadia — and this is in an open manner, I believe apart from the redacted material, which was an investigation against Bishop Mulkearns for some of the Ballarat evidence that we have about. You have not provided us with a full report, as I said — it starts at paragraph 14 — and maybe that is for reasons.

Ms SDRINIS — That is all I had.

Mr O'BRIEN — Thank you. That was the first question I had. Can you tell us, to the best of your knowledge, what happened with that investigation of Bishop Mulkearns effectively for the misprision offence or the crime of accountability for the actions in moving perpetrators around?

Ms SDRINIS — As far as I know, the OPP formed the view that it was unlikely that charges, if laid, would be successful.

Mr O'BRIEN — Is that to do with the difference between a felony and a misdemeanour at that time?

Ms SDRINIS — I am not sure of the rationale, but as far as I know, Mulkearns was never charged, and I think that is because the view was formed that any charges laid — existing charges at that time — would have been likely to fail.

Mr McGUIRE — I would like to ask you to elaborate a little bit more on the comparison of how the different organisations have handled these issues. You said that the Uniting Church has basically sailed under the radar on these issues, if you could elaborate particularly on how and why that has happened.

Ms SDRINIS — I do not know. Certainly we have not had the number of complaints against the Uniting Church as we have had against the Catholic Church or the Salvation Army. But when there is a complaint against the Uniting Church, they rely very vigorously on the Ellis defence. They will meet and try to negotiate settlements. For what it is worth, that is something, but if at the end of the day your client is not satisfied with any offer made by the Uniting Church, their position is, 'Sue us if you can', and of course they know you cannot.

Mr McGUIRE — As you said, they rely on a technical legal defence when it comes to that. Are you able to give us a little more detail on if you happen to be a victim, it just depends on who the church was and what their response is, and if you could expand a little bit on the range of experience you can have.

Ms SDRINIS — I think I said in my submission that we have developed a protocol with the vast majority of institutions which cared for children, and with the state, and the idea of that protocol is to try to settle claims without having to go to court. Probably in the vast majority of the cases we pursue, we know and they know that if we went to court the matters would most likely fail either because of the statute of limitations, because of the Ellis defence or because of the vicarious liability issue. Are priests employees of churches? And if they are not, then the church cannot be held to be vicariously liable for their actions. There are a whole lot of difficulties, but all organisations, including the state, have been prepared to come to the party, if you like, and with varying degrees of generosity. But at the end of the day negotiating settlement of these cases is actually negotiating with both hands tied behind your back because if you are not happy with an outcome, there is virtually nowhere to go.

In terms of the differing responses, the Salvation Army has always been very willing to negotiate, very proactive and very keen to try to do the right thing. I think victims would have varying responses about how adequate the response was, but I can say the Salvation Army has been very proactive. The state government has been very proactive as well: happy to meet, happy to talk. That started with Brumby and has been continued by the present government. In terms of getting the state to the negotiating table, that is not a problem. Again, with varying degrees on how successful any settlement might be.

They are all willing to come to the negotiating table, and that is probably a shift in what we were seeing 10 or 20 years ago, but then it is a question of how far you can negotiate before you hit that wall, which is, 'Okay, we have gone as far as we have, if you are not happy, do what you can', but doing what you can is really not going anywhere in most cases. They are in a much stronger negotiating position in that regard.

Where the victims have some strength, if you like, or where we are in a position of some strength, is that because we now have a database of so many examples or evidence of abuse, the more evidence we have of systemic abuse, the greater the potential embarrassment to a particular organisation if it does go further and if it gets into the public arena, as it would in a court of law.

Mr McGuire — That helps redress it a little bit?

Ms Sdrinis — Yes.

Mr O'Brien — Just a very practical question: in a coordinated way we would obviously be very interested in seeing what further information from your database could be of assistance to our benefit. I understand you might have proprietary or confidentiality issues to work through, but would you be able to continue those discussions with our secretariat?

Ms Sdrinis — Yes, for sure. I mean, there is the confidential submission that I have provided to the committee which does have specific examples where we have provided statements from our clients, with their authorisation. There are others who were not willing for us to provide that material. One of the other difficulties we have — and I honestly do not know the way around this — is that through some of the cases we have pursued we have obtained documents through subpoena which provide evidence of systemic abuse, but we give an undertaking to the court when those documents are obtained that those documents will be used for the sole purpose of the litigation. I am not allowed to provide that sort of evidence to this committee or in any other place, because it has been obtained through the litigation.

Mr O'Brien — Again, in a careful process that would be an undertaking that you could be released from, potentially, if the church would be willing to do so for whoever the defendant is.

Ms Sdrinis — It is really the court that would have to release me from the undertaking.

Mr O'Brien — Yes but the court — —

Ms Sdrinis — Presumably the court would if the defendant agreed to that.

Mr O'Brien — Precisely, yes, and last question: if you are aware of any cases before the courts, or coming before the courts, that are raising the Ellis defence, particularly in light of the UK decision — the JGE Portsmouth case — and also the Canadian one that seemed to extend the operation of control, could you let us know as soon as you can?

Ms Sdrinis — Yes. Both of those decisions are about the vicarious liability aspect where churches argue that they cannot be held liable for the actions of priests because priests are not employees, even though they pay them, even though, as the JGE decision says, they have control over them. But yes, I can certainly let the committee know.

Mr O'Brien — Just so you know, the church rely on that vicarious aspect in their defence of the Ellis position in their submission to this inquiry, and I can direct you to page 81 of their submission 'Facing the Truth', so there is a link there that we need to explore. Thank you.

The Chair — Thank you. Thank you very much, Ms Sdrinis. Are there any other final comments or remarks you would like to make to the committee?

Ms SDRINIS — No, just that I hope all of you are looking after yourselves, because I know that listening to these stories can make you — well, it is very distressing.

The CHAIR — Thank you for that. I will take the opportunity to inform members of the public gallery that we will be taking a break over the festive season, and we will be resuming hearings on 23 January. I would like to extend my best wishes for a very safe and happy festive season to you all. On behalf of the committee, thank you again for being before us. The hearing now stands adjourned.

Committee adjourned.