The Hon Georgie Crozier MLC,
Chairman, Family and Community Development
Committee, Parliament of Victoria, Spring Street
MELBOURNE VIC 3000

6 September 2012

Dear Ms Crozier,

Inquiry into Handling of Child Abuse by Religious and other Organisations -
COIN Submission No 14 (Addendum to Submission No 5)
Vicarious Liability: UK Decision: JGE v Trustees Portsmouth

This addendum submission draws the Committee’s attention to the recent decision of the England and Wales Court of Appeal JGE v Trustees of the Portsmouth Roman Catholic Diocesan\(^1\). The decision’s first page is attached.

This case was discussed in COIN’s submission No 5 regarding vicarious liability. In this appeal, the UK Court of Appeal dismissed the Church’s appeal and endorsed the decision of the High Court in full that found for the victim.

Ward LJ supported the High Court’s use of the “close connection”\(^2\) test, saying:

> The test I set myself is whether the relationship of the bishop and Father Baldwin is so close in character to one of employer/employee that it is just and fair to hold the employer vicariously liable.

The Court of Appeal affirmed the High Court’s view that vicarious liability extends to persons who are employed through other means than that of a traditional employment contract. This effectively strikes down the previously established defence that priests are not employees of the Church and thus the Church cannot be held vicariously liable for the priest’s actions.

This decision is even stronger evidence that Victoria’s laws are lagging behind that of other similar common law jurisdictions such as Canada and the United Kingdom. COIN

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\(^1\) [2012] EWCA Civ 938.

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repeats its submissions in Submission No 5 and requests urgent law reform overcome the current artificial restraints of Victorian rules concerning vicarious liability.

Yours faithfully,

Dr Bryan Keon-Cohen AM QC
President, COIN

Mr Chiry Chen, Law Student, Faculty of Law,
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Enc: JGE v Trustees Portsmouth Roman Catholic Diocesan (p 1)