

Victorian Government Inquiry into Handling of Child Abuse by Religious and Other Non-Government Organisations Submission

This joint submission is made on behalf of members of the Victorian Jewish community who are victims of child sexual abuse perpetrated within the Melbourne Jewish community, including but not limited to within the ultra-Orthodox Yeshivah Centre, located in Hotham Street, East St Kilda.

1.0 Background

- 1.1. The majority of those making this submission are victims of child sexual abuse by various perpetrators associated with or operating within the grounds of the Yeshivah Centre between 1983-1994. Some of the incidents are currently the subject of Court proceedings. Others are victims of child sexual abuse perpetrated within other sections of the Jewish community.
- 1.2. We commend the Victorian Government on establishing this important Inquiry. We are of the view that this Inquiry is a step in the right direction towards addressing the issue of child sexual abuse within religious organisations of whatever denomination.
- 1.3. By way of background, the Yeshivah Centre is the roof body of a number of religious organisations responsible for the education and mentoring of Jewish children, including:
 - i. Yeshivah College – a kindergarten to VCE single sex boy's school;
 - ii. Beth Rivkah – a kindergarten to VCE single sex girl's school;
 - iii. Chabad Youth – an organisation which is responsible for extra-curricular youth activities including summer and winter overnights camps for both boys and girls but with segregated activities only;
 - iv. Ohel Chana – a post High School institution for girls to advance their religious studies; and
 - v. Kollel Menachem – a religious learning institute for newly married men.
- 1.4. The Yeshivah Centre campus also includes:
 - i. a Synagogue which accommodates daily and weekend services and other communal activities;
 - ii. an institute for tertiary Jewish studies; and
 - iii. a male ritual bathhouse.
- 1.5. The Yeshivah Centre is comprised of a number of incorporated associations. Membership of each of these organisations is limited to a select few persons (often with overlapping membership). These associations own and are responsible for the Yeshivah Centre campus in East St Kilda. The Yeshivah Centre and the entities under its umbrella are all administered by a voluntary and unelected Committee of Management (the Committee) as well as a salaried management team. There is also

a Board of Trustees (BoT), whose task is predominantly to oversight the Committee. The BoT has the ultimate discretion in relation to any appointments to or changes within the Committee and the Yeshivah Centre. Members of the BoT are apparently enshrined in the founding documentation, and it would appear, cannot be altered or removed without a dissolution of the entity or death of individuals.

- 1.6. The Chairman of the Committee is currently Mr Don Wolf. A number of the members of the various entities are also members of the Committee, BoT and/or the Centre's spiritual leadership known as the *Vaad Ruchni*. The Centre's management team is currently headed by Ms Nechama Bendett, who is also the current co-Chair of the Australian Council of Jewish Schools.
- 1.7. Until his passing in July 2008, the head of the Yeshivah Centre was the late Rabbi Isaac David (Yitzchok Dovid) Groner. A strong, dynamic and charismatic personality with an imposing stature who had both many supporters and detractors, Rabbi Groner was the driving force in the development of the Yeshivah Centre. He was the central authority figure and key decision-maker in all aspects of management of the Centre.
- 1.8. On his passing, leadership was transferred to the *Vaad Ruchni* ('Spiritual Committee', which is responsible for spiritual matters) and the Committee (which is responsible for all other matters). The *Vaad Ruchni* includes Rabbi Groner's son, Rabbi Chaim Tzvi Groner, and two of his sons-in-law, Rabbis Tzvi Telsner and Shimshon Yurkowicz. The majority of the current Committee remains from the period the main subject of this submission, 1983-1994, and which is currently the subject of criminal proceedings before the Courts.

2.0 Allegations

2.1 It is inappropriate in this submission to detail matters which are currently before the Courts.

2.2 However, as a matter of public record, the following proceedings are currently in progress:

- [REDACTED]
- [REDACTED]

2.3 We believe that there are more perpetrators responsible for sexual abuse at the Yeshivah Centre over the last 50-60 years including but not limited to:

■ [REDACTED]

■ [REDACTED]

iii. Rabbi Uri Kaploun a former teacher of the school, who is alleged to have sexually abused students at the Yeshivah College in the 1950s. It is alleged that upon learning of multiple and ongoing complaints by parents and students against Rabbi Kaploun, Rabbi Groner encouraged him to move to Israel, and did not report the alleged sexual assaults to Victoria Police or any other authorities.

2.4 Based on evidence given in Court, it is now apparent that multiple incidents of child abuse, [REDACTED] were reported to people in leadership positions, either contemporaneously or subsequently.

2.5 These incidents were reported to people in leadership positions including Rabbis Groner, Glick (then Principal and current head of Jewish Studies/Student Welfare and *Vaad Ruchni*) and Reuven (Ronny) Tatarka (then head of Chabad Youth).

2.6 In response, no known reports were made to the Police. In some cases, it is alleged that Rabbi Groner claimed or alluded to the fact that at least one alleged perpetrator was receiving counselling for his actions and that it was being dealt with "in-house". Attached is a link to an article from *The Australian* dated 16 July 2011 in which the then Chairman of the Committee, Harry Cooper, confirms that,

in the face of parental pressure, [REDACTED] was aided to leave the country (<http://www.theaustralian.com.au/news/nation/jewish-boys-school-gave-molester-free-run/story-e6frg6nf-1226095591892>). [REDACTED]

2.7 The prime deterrent for reporting real or perceived criminal acts to the Police and relevant authorities is an interpretation of the prohibition of "*mesirah*", which arguably means that Orthodox Jews are prohibited from reporting to secular authorities. This is a complex subject within Jewish law. For more information on *mesirah*, please see the link in the 'References' section below.

2.8 Whilst there are Rabbinic authorities who mandate that concerns relating to sexual abuse be reported directly to the Police and other appropriate authorities, there are those who still maintain that this should not be done until after a Rabbi has been consulted and sanctioned such reporting (for example, <http://forward.com/articles/156692/agudath-israel-abuse-claims-go-to-rabbis/?p=all>) . This appears to be the prevailing view amongst the leadership at the Yeshivah Centre both during the relevant period and currently.

2.9 It is understood based on actual experience and anecdotal evidence that Rabbi Groner had specifically requested that these matters be dealt with internally and that no external authorities should be involved.

2.10 It is important to note that following the Yeshivah Centre's inaction, until recently, [REDACTED]

2.11 To date, no direct approach has been made by anyone in a leadership position towards any of the victims of sexual abuse at the Yeshivah Centre.

2.12 In fact, since the publicity surrounding these cases arose in July 2011, the Yeshivah Centre, including by its current Rabbi and members of the Committee, has directly and indirectly harassed and intimidated victims and their families who have spoken out on the issue of child sexual abuse and called for transparency and open reporting. They have been labelled dissenters and denied ritual honours within the Synagogue.

2.13 Having witnessed the intimidation and treatment of victims to date, we are also aware that there are other victims who have chosen to not yet come forward.

- 2.14 We are concerned that in this environment other alleged paedophiles have and continue to operate within the Yeshivah community. There is currently no deterrent.
- 2.15 While the Yeshivah Centre has communicated a number of official materials to its community, the emphasis has consistently been on its current processes for dealing with matters relating to child sexual abuse. Indeed, this is an important initiative. However, we feel that Yeshivah need also address the past. This process has now commenced. In a letter to its community dated 20 August 2012, the leadership of the Yeshivah Centre apologised for ‘any historical wrongs that may have occurred’. While a number of the victims welcomed the apology, most if not all victims believe it to be insufficient. Concerns include the fact that:
- i. it has taken over a year to produce even this limited apology;
 - ii. the apology is expressed in theoretical terms (e.g. ‘If mistakes were made’);
 - iii. the apology did not at all address their despicable behaviour towards victims and their families over the past year (since the revelations became public);
 - iv. we believe that Yeshivah has misrepresented the level of cooperation with police and the views held by the Police in that regard (in court, police representatives submitted that the Yeshivah Centre was not fully cooperating); and
 - v. the offer of support to past victims appears to be insincere (the Yeshivah Centre is yet to contact directly any victims).
- 2.16 For many victims, this apology letter therefore presents as “too little too late”, particularly as it appears to have been driven by external pressure rather than a desire and an acceptance that this is the right thing to do.
- 2.17 We understand that Victoria Police is currently or will shortly launch further investigations into some of the other alleged paedophiles who are operating within the Yeshivah community. We believe that such paedophiles are likely to be emboldened by the culture and mentality which focuses on silencing dissent rather than protecting victims. In this environment and with the same leadership team, we are concerned for the safety of the children within that environment.
- 2.18 The Jewish community in Melbourne is small and tight knit. Hence, the issues surrounding sexual abuse within the Yeshivah Centre reach into the broader community and its ability to combat child sexual abuse. For example:
- i. Ms Sheini New, the spokesperson for the Jewish Taskforce against Family Violence, an organisation established to combat family violence and child sexual abuse within the Jewish Community, is married to a member of the Committee. This Taskforce has been silent in relation to the allegations of sexual abuse at the Yeshivah Centre. [REDACTED]
[REDACTED]
[REDACTED]

- ii. [REDACTED] Until very recently (the last week of August 2012), Ms Coleman was the Executive Director of the roof body of the Jewish Community, the Jewish Community Council of Victoria (JCCV);
- iii. [REDACTED]
 - a. roof body of the Council of Orthodox Synagogues of Victoria (apparently he is currently suspended due to the charges he is facing); and
 - b. board responsible for governing Elwood Hebrew Congregation, an Orthodox synagogue;
- iv. the current Jewish Chaplain to Victoria Police, Rabbi Meir Shlomo Kluwgant, [REDACTED] and [REDACTED]
- v. the current President of the Rabbinical Council of Victoria (RCV), Rabbi Yaakov Glasman, [REDACTED]

2.19 We understand that over the years sexual abuse incidents, against both children and women, which have occurred not only within the Yeshiva Centre community but across other sections of the Jewish Community in Melbourne have been brought to the attention of various Australian Jewish peak bodies. Apparently no action was taken by these leadership bodies to protect endangered children or women, remove suspected offenders from positions of authority or responsibility, or report the matters to the Police. The reality is that some offenders are currently utilising the protection of these leadership bodies to shield them from the possibility of prosecution—in some cases. We understand there are instances where claims about abusers/predators have been made to some of these organisations in an attempt to seek remedy. Sadly in these cases several Rabbis and other representatives of these bodies have apparently made threats against victims or their advocates and demanded that the accusations be immediately withdrawn.

2.20 While some of the peak bodies have undertaken some steps since the Yeshivah Centre cases became public, we believe that these have been insufficient, especially when compared with their responses to other matters of importance to the community (e.g. Israel, school funding/security, alcohol abuse and green light automation for pedestrian crossings on the Sabbath). Moreover, the serious conflict of interest by the JCCV noted above is evident through two separate actions this peak body has undertaken. In its initial (joint) media release, JCCV's then Executive Director [REDACTED] was listed as the contact person. In various forums victims were repeatedly encouraged to contact her if they required assistance and/or advice. In a recent development, the JCCV has launched its policy on child abuse. While these JCCV actions are commendable and demonstrate some willingness to address this complex and sensitive issue, this major and publicly-known conflict of interest undermined any actions taken in this regard. Besides this obvious conflict of interest, we again reiterate that all of the communal peak bodies can and should

be doing significantly more—both in terms of addressing the past and ensuring children are safe into the future.

2.21 It is important to note that the recent developments regarding the child sexual abuse cases in the Orthodox community in Melbourne have prompted significant interest within members of the Orthodox Jewish community, globally. Similarly, this Inquiry is also being closely monitored by Jewish communities overseas. Therefore, consideration should be given to the impact the outcomes of these actions in Victoria will have on a global scale. This is an opportunity for the State of Victoria to demonstrate genuine leadership.

3.0 Recommendations

- 3.1 Organisations dealing with children must maintain open and transparent structures at all times to enable the free flow of information and encourage reporting of, amongst other things, sexual abuse of children under the auspices of such organisations.
- 3.2 Funding should be made available to relevant agencies within religious communities to both educate about child sexual abuse and assist such victims within their respective communities. However, given the intertwined relationships described above, any such funding must be carefully vetted to prevent real and perceived conflicts of interest which might impact upon the protection of children.
- 3.3 The mandatory reporting requirements should be broadened—for example, this requirement should not just apply to teachers but also to others with responsibility for the welfare of children such as religious leaders (e.g. rabbis), lay leaders (e.g. Board members of relevant institutions such as the Yeshivah Centre and peak bodies) and leaders of student activities (it is very common within the Yeshivah Centre for 18yo-22yo students to lead younger students during weekly activities and on overnight camps).
- 3.4 There should be a standard (possibly government-authored) Code of Practice in relation to organisations responding to child sexual abuse allegations. Such a Code should make it clear that, for example, all allegations must be reported to the police as soon as they become known to the organisation and that under no circumstances should an alleged paedophile be assisted in leaving Australia. Similarly, the Code should address issues such as systemic practices to discourage reporting of child sexual abuse allegations (such as threats of excommunication or even invoking religious doctrine to engender silence through guilt, promise of success in the afterlife etc.)
- 3.5 Institute a scheme to encourage alleged victims, their families and organisations to go to the authorities.
- 3.6 Institute a scheme to compel organisations to fully cooperate with the authorities in investigations into allegations of abuse under their auspices. This should extend beyond the legal requirements where organisations may do the bare minimum and not be subject to criminal actions. Incentives may be an option to consider.

4.0 Additional recommendations

- 4.1 Beyond the above, as past victims we would ideally like to also encourage serious consideration for legislative amendments in the following areas:

4.2 Remove the statute of limitations on civil claims. There is no justifiable reason to set this at an arbitrary age limit of 36 years. Statutory limitations are there to balance the right of a plaintiff (victim) to bring a lawsuit as against the right of a defendant (harm-causer) to be able to carry on their business without an ever-present threat of litigation for all activity ever carried out.

However, the balancing of rights is only really relevant in cases of “true” negligence, such as where a manufacturer produces something that becomes faulty or harmful where the harm was not known at the time. A different principle must apply where the harm was not mere negligence, and not even reckless, but actually intentional, and which causes both immediate physical harm and non-immediate psychological harm (which may not manifest for decades, as is supported by research).

Institutions which employ or engage people who commit these sorts of acts should not be able to shield themselves from liability through an arbitrary and manifestly unjust limitation period.

It should be noted that removal of the limitation period (which effectively enlarges the “claims window”) does not necessarily prejudice these institutions. In other words, if the institutions do nothing wrong, they have nothing to worry about because no claims will be brought against them. Conversely, the institutions will need to improve their practices and procedures in order to protect themselves from possible liability which may eventuate decades later—this would effectively be a market-driven solution.

It should also be noted that removing the limitation period does not necessarily improve the position of the victim, as they are still required to prove their claim in a fault-based system (i.e. they need to establish a duty of care, that the duty was breached, that there was a causal link between that breach and the damage, and that the damage was not too remote nor unforeseeable). There are still a number of challenging and expensive hurdles for the plaintiff to navigate.

It is important to note that there is no statute of limitations on criminal charges.

4.3 Compulsory fund contributions. In order to ensure that there is compensation available to meet any future claims, certain institutions should contribute a statutory amount to a government-controlled fund to provide for payouts in the event that any of the responsible institutions are no longer in operation or have altered their business structure in some way to avoid liability. Whilst this may appear to be burdensome and intrusive, it should be borne in mind that some congregations (for example, the Catholic Church in Ireland and the United Church in Canada) have already self-imposed the creation of a compensatory fund, so this is a logical extension of the same principle. Indeed, given the quantum of compensation in many cases, the state burden in the event of insolvent institutions would represent a far greater community cost than would the creation and administration of a contribution scheme. Leaving the operation of

such schemes to the institutions themselves exposes these schemes to accusations of witness intimidation, evidence tampering, loss of independence and improper conduct of investigations.

The contribution scheme could be applied flexibly, such that it takes account of the differences among institutions, such as by size, number of institutional leaders, funding, assets or some other measure(s) to be determined. The value of the contribution could be calculated similarly, alternatively trigger points could apply such that some institutions could avoid contribution if they met certain disclosure, training or insurance requirements, or were not, for example, implicated in any reports to police or involved in any eventual convictions.

Finally, it should be noted that insurance policies are available which specifically indemnify institutions in respect of molestation and sexual abuse claims (subject to certain limitations). The establishment of contribution schemes is merely a minor advancement upon the concept of insurance, and would remove the uncertainty and additional stress of an insurance claims process.

- 4.4 Personal liability. Where fault is found on the part of the institution, there should also be strict personal liability for all those involved in the management/governance of the institution. Those responsible for setting the culture, practices and procedures of the institution should be and remain accountable for any actions carried out by those employed or engaged by the institution. This is no different to the way in which persons involved in the contravention of serious Occupational Health and Safety, corporate law or trade practices issues are treated, and is proportionate with the harm involved and the level of community outrage that is being generated.

The personal liability should apply even to those who were not present at the time of the alleged activity, as this would ensure that those seeking to assume a position in an organisation would make the necessary enquiries and conduct their own due diligence before assuming any position of responsibility. Any areas of concern noted during these enquiries should also be made a mandatorily reportable issue.

- 4.5 Criminal liability. This should also be considered for those found to have knowingly aided paedophiles in escaping jurisdiction. In some cases laws do exist but the penalties are relatively insignificant (similarly with mandatory reporting where consideration should be given to increase the penalties).

- 4.6 Institutional legal structure. Many of the institutions (especially the Catholic Church) have used organisational structure to avoid liability. This includes transferring assets into trusts or other arrangements which are either unidentifiable or which cannot be sued because they themselves did not cause the harm. The law should be changed to specifically permit courts to disregard any trusts or other defensive structures and make orders applying liability to the entity holding the assets.

This is not a novel concept, as courts have previously lifted the corporate veil in serious cases, such as large scale liquidations, and also in relation to the commission of torts (for example, where a tortfeasor establishes numerous small companies for discrete activities in order to limit the exposure to the entire common undertaking).

There is no justifiable reason why a religious or non-government institution should be exempted from the scrutiny and legal risk that ordinary businesses face every day, especially due to the tax benefits and government contributions many of these institutions are granted. There should therefore be the highest standard of transparency and accountability.

- 4.7 Loss of status. Consideration should be given to an accreditation or compliance system by which institutions are required to name all their managers, provide a service address, declare that they have assets, and nominate the entities which should be investigated and served in the event of a claim. Failure to do so would result in the institution losing tax free status, government funding, special privileges, etc.
- 4.8 Review of extradition provisions/arrangements. Given the complexities and time involved in securing the extradition of persons of interest with respect to abuse investigations (including from jurisdictions such as the United States which have co-operative extradition arrangements with Australia), it is incumbent upon the government to consider legislative amendments to either expedite extradition procedures or to simplify them so as to remove any obstacles to investigation and the administration of justice. If necessary, the government should approach the Federal Government and foreign governments to cooperate with any changes which will address these goals.

Yours sincerely,

Manny Waks

On behalf of numerous child sexual abuse victims of perpetrators within the Victorian Jewish community who have endorsed and/or contributed to this submission.

[REDACTED]

References

The sample references below provide some information and insights into the intricacies of the ultra-Orthodox community in the context of child sexual abuse:

<http://theawarenesscenter.blogspot.com.au/>

<http://jewishcommunitywatch.com/>

<http://failedmessiah.typepad.com/>

<http://whoisshmira.wordpress.com/2011/02/27/code-of-the-jewish-law-laws-of-messira/>

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2072116&fb_source=message

<http://blogs.timesofisrael.com/patterns-of-sexual-abuse-clarified/>

<http://www.vosizneias.com/107150/2012/05/31/brooklyn-ny-hynes-continues-to-slam-charedi-community-saying-nobody-gives-a-damn-about-abuse-victims>

<http://forward.com/articles/151505/child-sex-abuse-scandal-in-australias-jewish-commu/?p=all>

http://www.nytimes.com/2012/06/22/nyregion/4-ultra-orthodox-men-charged-with-trying-to-silence-accuser-in-abuse-case.html?_r=3&hp&pagewanted=all

http://www.nypost.com/p/news/local/brooklyn/molest_fiend_who_got_away_iOmYpBK7UEiNSdHacbnNUO

http://www.nytimes.com/2012/06/14/us/sex-abuse-statutes-of-limitation-stir-battle.html?pagewanted=1&_r=2&nl=todaysheadlines&emc=edit_th_20120614

<http://m.theage.com.au/victoria/call-to-stand-down-yeshivah-teacher-20120524-1z7xw.html>

<http://www.iwire.com.au/news/rabbi-faces-up-to-facebook/25658>

http://www.jewishjournal.com/community_briefs/article/yomtov_pleads_guilty_20020208/

http://www.tabletmag.com/scroll/102154/some-is-illuminated?utm_source=Tablet+Magazine+List&utm_campaign=b1055d74f1-6_11_2012&utm_medium=email

<http://www.jta.org/news/article/2012/08/22/3104741/jewish-day-school-apologizes-to-child-sex-abuse-victims>

<http://www.abc.net.au/pm/content/2012/s3574620.htm>