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WARRNAMBOOL STANDARD

# Landmark court ruling expected to lead to victims pursuing appropriate compensation

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Landmark: Dr Judy Courtin says victims of clergy abuse can review their legal position after a Supreme Court ruling.

Hundreds of Western Victorian victims of clergy abuse are expected to review their legal status and pursue appropriate compensation after a landmark court ruling.

Two weeks ago, Justice Andrew Keogh, previously a Warrnambool lawyer, handed down a significant and far-reaching decision in the Supreme Court of Victoria that addresses decades of injustices for victims of institutional child sex crimes.

In a pre-trial judgment, a plaintiff known as WCB, who is suing the Catholic Diocese of Sale, was successful in having a 24-year-old legally enforceable deed set aside by the court.

In 1996, WCB was offered \$32,500 by the church for being hideously sexually assaulted by Father Daniel Hourigan.

A condition of WCB receiving that payout was to sign away all his future legal rights to sue the church - known as a deed of release.

The Catholic church represents about two-thirds of all the institutions in Australia in which children were raped and sexually assaulted, according to public hearings.

Dr Judy Courtin - lawyer and advocate representing victims of institutional abuse - said until this decision, two critical barriers meant that victims could not sue.

She said victims were either out of time to sue, victims typically take decades to report the childhood crimes, and there was no legal entity for the Church that could be sued for historical sex crimes, known as the Ellis defence.

"Victims were denied justice," she said.

"These past harmful legal impediments, calculatngly raised as defences by the church, meant that victims had no choice other than to return to the offending institution as powerless supplicants.

"Highly inadequate sums were offered to the victim, some as low as a few thousand dollars, in exchange for a legally enforceable deed requiring the victim to never sue in the future."

Dr Courtin said victims were also forced to endure the pain of a life-long silence due to those deeds.

But, she said that since 2015, the Victorian Government has implemented multiple recommendations from the Victorian Parliamentary Inquiry and the Child Abuse Royal Commission that have effectively abolished these two damaging limitations.

"This Supreme Court Judgement by Justice Keogh is the first decision in Victoria to apply recent affiliated legislation giving the court the power and discretion to set aside a deed if it determines it 'just and reasonable' to do so," she said.

"It is also the first time in Australia a past deed has been set aside against a Catholic Diocese.

"The statute of limitations for child abuse cases and the Ellis defence were unsound and misguided laws.

"Not only have they been abolished, but Justice Keogh has ruled that the fallout or aftermath of those bad laws, binding deeds, can be set aside, opening the way for victims to pursue a proper civil claim in the courts."

Dr Courtin said the judgement would lead to significant change.

"We have today a very powerful wheel of justice - comprising victims, their families and advocates, that commenced its arduous journey back in the 1990s," she said.

"Brave people, breaking free from the shackles of decades of enforced silence, began to disclose the unspeakable sex crimes committed against them by revered and trusted people within powerful and respected institutions.

"Back then, with the public cries of victims echoing louder, the church got spooked.

"Police began investigating these clergy child sex offenders. Civil lawyers started polishing up on the law of negligence and the legal duties of bishops and other religious leaders to prevent harm to the children under their watch.

"Unfortunately, victims' and their lawyers' hands were tied as the church's hierarchy instructed their lawyers to enforce what were entrenched 'legitimate' legal defences.

"Despite these avaricious and malicious policies of the church hierarchy, this powerful wheel of justice pressed on. Leaders of institutions, including priests, bishops, cardinals, previously impervious to our civil laws, were eventually facing our courts."

Dr Courtin said that at the same time, Canon Law, which had forever provided the church with a protective shield, was beginning to lose its halo.

"Australia's inquiries, including the Child Abuse Royal Commission, exposed a pervasive institutional rot," she said.

"Child sex offenders, parading as holy men, and the hierarchy, parading as even holier men, were enjoying a prosecution-free impunity," she said.

"All the while, victims and their families were having to bear a lifetime of trauma and loss.

"The WCB decision is promising news for all those victims in the past who had no choice other than to suffer what was unfair, unjust, degrading and, in most cases, highly traumatising.

"Today, I can write to all my clients who have been waiting on this Supreme Court decision.

"Today I can also inform these same brave clients that they are all pivotal cogs in this powerful wheel of justice."