



www.libertyvictoria.org.au

Victorian Council for Civil Liberties Inc
Reg No : A0026497L

GPO Box 3161
Melbourne, VIC 3001
t 03 9670 6422
info@libertyvictoria.org.au

PRESIDENT
Professor Spencer Zifcak

SENIOR VICE-PRESIDENT
Jane Dixon SC

VICE-PRESIDENTS
Jamie Gardiner
Anne O'Rourke
Rachel Ball

PATRON
The Hon. Michael Kirby AC CMG

21 September 2012

**Liberty Victoria
Submission to the
Joint Investigatory Committee Family and
Community Development
Inquiry into the Handling of Child Abuse
By Religious and Other Organisations**

Liberty Victoria – Victorian Council for Civil Liberties Inc

GPO Box 3161

Melbourne VIC 3001

Ph: 9670 6422

Fax: 9670 6433

Email: info@libertyvictoria.org.au

Contact person:

Professor Spencer Zifcak
President

**Liberty Victoria submission
to the
Joint Investigatory Committee Family and
Community Development
Inquiry into the Handling of Child Abuse
By Religious and Other Organisations**

1. Introduction

- 1.1 The Victorian Council for Civil Liberties Inc—Liberty Victoria—is an independent non-government organization which traces its history back to the first civil liberties body established in Melbourne in 1936. Liberty is committed to the defence and extension of human rights and civil liberties. It seeks to promote Australia’s compliance with the rights and freedoms recognised by international law. Liberty is a frequent contributor to federal and state committees of inquiry, and we have campaigned extensively in the past on issues concerning civil liberties and international and national human rights and fundamental freedoms.
- 1.2 Liberty Victoria welcomes the opportunity to contribute to the inquiry. In particular we wish to make a number of preliminary comments about the issue of clergy abuse and our concerns about the process of investigation. First, governments must recognise the human harm that may be caused by the preferential treatment accorded to religious organizations. There are far too many examples of laws that apply equally to all except those in religious organizations. The exemptions of religious organizations from equal opportunity legislation provide one contemporary and regrettable example. Another has been parliamentary and governmental acceptance of the practice of religious organizations investigating, mediating and in secret settling matters that would otherwise clearly be regarded as within the province of the criminal law. The present inquiry is directed to a particularly regrettable example, that of religious organizations dealing with alleged sexual crimes committed by clergy - seemingly outside the normally applicable criminal law. With respect to crime, religious organizations and their employees should be subject to exactly the same law as secular organisations and individual citizens. This is what the rule of law requires. There has been a tendency amongst our various state and federal governments, in many different contexts, to treat religion and its institutional wrong-doing with undue deference and timidity. This tendency should be firmly discouraged.
- 1.3 Liberty’s second concern relates to the processes and procedures of the present Parliamentary inquiry, namely, reservations that Liberty has in relation to the terms of reference, the timeline, and the Committee’s lack of adequate independence. We hope that this inquiry will be just the first stage in a process that will properly lead to a full independent judicial inquiry on the Irish model as in the establishment in 1999 of an independent statutory inquiry headed in that country by Justice Sean Ryan. Indeed

Justice Ryan's recent report from a nine year investigation into abuse in the Roman Catholic Church in Ireland found that abuse, primarily sexual, was endemic and systemic in its institutions.¹ Such abuse flourishes where inappropriate deference is given to religion over and above the rights of others, and where laws are applied in an asymmetrical fashion. We believe, in accordance with the findings of the Ryan inquiry, that religious institutions should be subject to the same laws, rules, regulations, investigation and legal supervision as secular organisations.

1.4 Liberty Victoria is of the view that - given the seriousness of child sexual assault, and even rape and the number of instances of abuse that have already come to light - that there must be an independent inquiry conducted by a judge and in a judicial manner. A judicial inquiry reflects the seriousness of the matters under investigation. It would have the expertise to collect, assess and determine the weight of evidence presented to it. It would engage with the rightful concern of victims of abuse and their families and have their allegations fully and conclusively investigated. Unfortunately, this parliamentary inquiry can achieve none of these objectives. This is because the committee is, in essence, a political body rather than a judicial one and is therefore insufficiently independent of parliament and government. Even with high-level legal assistance (and in this regard we note with approval the appointment of former Justice Frank Vincent as counsel to the committee) the committee itself lacks the legal and investigatory sophistication necessary effectively to undertake an inquiry of this complexity. Most pertinently, the Committee is ill-suited to engage meaningfully and extensively in a dialogue with victims and their families as to actual cases of abuse and, therefore, to comprehend the inherent, intensely personal and tragic nature of the problems explored. Without this grounding, we fear that the Committee's recommendations may lack sufficient depth and empathy.

1.5 Members of the committee are at the same time members of their political parties. It may be in the political interests of some members, therefore, to exploit the inquiry in their wider political interests. It may be in the political interests of others to constrict its scope. In neither case can the requisite independence of judgment required for an inquiry of this kind be reasonably guaranteed. It would be enormously costly to victims and their families to find that the inquiry split on party lines in making key recommendations. The committee should at every juncture proceed in a bipartisan fashion and should to the greatest extent possible avoid split conclusions. The sexual abuse of children is a serious crime requiring a proper inquiry and due respect for the victims. We therefore urge members of the Committee to ensure individually and collectively that they do not allow political considerations to influence the committee's deliberations.

1.5 Liberty Victoria also believes that the terms of reference for the inquiry are too narrow. The terms of reference limit the scope of the inquiry to the consideration of the law, policies, practices and protocols established within church organizations and other organizations to deal with allegations of child sexual abuse. We do not doubt the value of such an inquiry. Informed recommendations as to these matters may be

¹ See Mr Justice Sean Ryan, *Summary of Commission to Inquire into Child Abuse*, (2009) http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/20_05_09_abuse.pdf

welcome. However, we note that in pressing for such an inquiry, victims of abuse and their families' primary concern, and that of the Victorian community more widely, has always been for a comprehensive investigation as to the nature and extent of the problem of abuse and for recommendations for further action, including prosecutions, to be made where credible evidence of abuse is uncovered. The parliamentary inquiry's terms of reference exclude any such examination and, for that reason, the inquiry is likely to confound the reasonable expectation of interested Victorians.

- 1.6 Liberty is concerned that the parliamentary committee may have insufficient time to conduct its systemic inquiry effectively. The Committee has six members none of whom are legally qualified. It will take committee members considerable time to establish a sufficient baseline of knowledge on the foundation of which to assess and deal with the evidence presented. If victims and their families are to be given the consideration and understanding that is required for them to present hurtful and upsetting stories, the committee will need to provide them with every reasonable opportunity to make their case. That too will take quite some time. The committee's deliberations as to the complex and emotionally charged material with which they will be presented will necessarily be lengthy and extensive. In this light, a reporting date of April 2013 would appear unrealistic, particularly given the fact that the Committee has been charged with completing two other inquiries at the same time. Should the timeline prove impracticable, we urge the Committee to seek an appropriate extension.
- 1.7 For all these reasons, Liberty believes that the Committee's inquiry should be just the first stage in the investigation of child sexual abuse in religious and other non-governmental organizations in Victoria. As the Ryan inquiry in Ireland demonstrated clearly, a full examination may take years and is best conducted judicially. An inquiry like the Ryan inquiry in Ireland is best able to make meaningful and appropriate recommendations for change. At the very least the committee should disavow the concept of self-investigation into child sexual abuse by the clergy and others in positions of power. Equal adherence to the laws and regulations of the state must, therefore, be the central principle underlying the Committee's deliberations and recommendations.
- 1.9 In conclusion, Liberty wishes to make it clear that we do not oppose the establishment of the Parliamentary inquiry. We hope that it will make a useful contribution to the resolution of existing allegations of sexual abuse and to ensuring that such abuse does not occur in the future. We fear, however, that the inquiry will fail to meet Victorians' expectations, thus necessitating the establishment of an independent judicial inquiry at some point in the foreseeable future.

Yours sincerely,

Professor Spencer Zifcak
President