

JUSTICE WITHOUT BORDERS: DP'S LAW PLAIN ENGLISH GUIDE

Why we need your help

Survivors of child sexual abuse and other abuses are being denied justice because of a legal loophole. Right now, institutions like churches, schools, sporting clubs and other organisations can avoid responsibility if the abuser was not technically their “employee”¹. This means survivors can be left without any legal remedy, even if the institution created the environment that allowed the abuse to happen.

¹ “The individual who is ‘akin to an employee’ may be an employed state-school teacher, a member of a religious organisation or a volunteer ‘employed’ to carry out the activities of an organisation for the benefit of that organisation. Examples include a scout leader, an officer of the Salvation Army, a member of the Jehovah’s Witnesses, a volunteer teacher in a Catholic School, or an athletics coach.”

What happened in DP’s case

- DP was sexually abused as a five-year-old by a Catholic priest, Father Coffey, in the 1970s.
- Coffey was later convicted of many serious sexual offences.
- DP took the Diocese of Ballarat to the Supreme Court of Victoria and initially won, with the court ruling the Diocese was responsible because the priest’s role was “like” employment.
- The case went all the way to the High Court, which overturned that decision.
- The High Court said that unless there is a formal employer/employee relationship, institutions can’t be held responsible even if abuse happened in the context of pastoral care.

Why this matters

- Australia now has weaker protections than other countries like the UK, Canada, New Zealand, Ireland, and Singapore.
- Organisations can argue they are not responsible if the abuser was a volunteer, priest, scout leader, sporting coach, or other non-employee role.
- Survivors like DP, abused by a convicted criminal, can be left with no legal pathway to compensation.
- This effectively re-opens the ‘Ellis defence’², which the Royal Commission into Institutional Responses to Child Sexual Abuse tried to remove.

² **The Ellis defence** was a legal loophole from a 2007 NSW case that let churches and institutions avoid liability for child sexual abuse by claiming there was no legal entity to sue.

It has since been abolished, but the reform is not retrospective, meaning survivors whose cases were blocked before the law changed cannot reopen them, **leaving many without access to justice.**

What needs to change

- Survivors need laws that make institutions responsible for abuse carried out by people in positions of trust and authority - not just formal employees.
- We need urgent legislative reform across all states and territories by the end of 2025.
- The reform must apply retrospectively so past survivors are not shut out.
- Laws should create a fair and consistent standard, based on accountability and responsibility, not narrow technicalities.

What you can ask your MP

- Will you support urgent legislative reform to close this loophole?
- Will you help ensure all states and territories act by the end of 2025?
- Will you stand with survivors to make sure institutions are held accountable, no matter the technicalities of employment?

