

Regional Clergy Briefings

The Civil Context for School Governance Reforms in the Archdiocese of Melbourne

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Civil Context

- Laws and regulations
- Public policy
- Funding agreements
- Regulators
- Contracts

Victorian Government Policy

“A Funding Provider must ensure that a Funded Organisation with which it proposes to reach a Funding Agreement is ***incorporated*** and ***appropriately insured***, and ***maintains*** its ***incorporated status*** and ***continues to hold appropriate insurance*** for the duration of the Funding Agreement”.

Victorian Funding Guideline for Services to Children – 25 October 2018

The Archdiocese is committed to the safety, wellbeing and dignity of all children and vulnerable adults.



CATHOLIC ARCHDIOCESE
OF MELBOURNE

Equation

**Incorporation + Insurance = Funding
Continues**

**Status Quo + Insurance = Funding
Ceases**

Betrayal of Trust – Recommendations 26.1 and 26.2

Recommendation 26.1

“That the Victorian Government consider requiring non-government organisations to be incorporated and adequately insured where it funds them or provides them with tax exemptions and/or other entitlements”.

Recommendation 26.2

“That the Victorian Government work with the Australian Government to require religious and other non-government organisations that engage with children to adopt incorporated legal structures”.

Betrayal of Trust Volume 2 – November 2013



Royal Commission – Case Study 35 - Finding

“In the Catholic Archdiocese of Melbourne Case Study, we found that the position of the Parish Priest as the employer of staff of diocesan schools has the potential to adversely impact on the open and effective reporting of complaints against priests. We concluded that teachers and other staff are placed in an invidious position of reporting complaints against their employer to a body with no authority to act on those complaints or to protect them from adverse action by their employer. it is understandable that a staff member seeking to report complaints diligently and openly would fear they could be unfairly treated as a result and that this could affect reporting”.

Royal Commission Final Report: Religious Institutions – Volume 16; Book 2 Page 680

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Royal Commission – Redress and Civil Litigation Final Report

Recommendation 95

“The Australian Government and State and Territory Governments should consider whether there are any unincorporated bodies that they fund directly or indirectly to provide children services. If there are, they should consider requiring them to maintain insurance that covers their liability in respect of institutional child sexual abuse claims”.



Royal Commission – Case Study 35 – Recommendation 16.6

“The Bishop of each Catholic Church Diocese in Australia should ensure that Parish Priests are not the employers of Principals and teachers in Catholic Schools”.



Approach of other Archdioceses/ Dioceses

Sydney	Incorporated Trustee as employer of staff and operator of parish/diocesan schools/colleges. The Parish is the beneficial owner of the land which is provided under licence to the incorporated Trustee.
Brisbane	Incorporated Trustee operating Brisbane Catholic Education as a registered business name which is the employer of school staff. The Parish is the beneficial owner of the land and the building improvements are accounted for within the accounts for the school.
Perth	With effect from 1 January 2020, schools to be conducted by Catholic Education WA Limited (with Bishops of WA as the members) which will employ all staff. The Parish will continue as the beneficial owner of the land on which the school operates.
Adelaide	Schools are operated and staff are employed by an incorporated association Catholic Church Endowment Society Inc. The Parish is the beneficial owner of the land and the building improvements are accounted for within the accounts for the school.
Sale	Diocese of Sale Catholic Education Limited governs and manages the operation of Catholic primary and secondary schools, employs principals and other staff and is the owner of the assets of schools. The Parish is still the beneficial owner of the land and the buildings are accounted for as leasehold improvement.



Approvals Required for Implementation

- Parish
 - Transfer of employees
 - Transfer of VRQA registration
 - Transfer of business
 - Transfer of right to use parish land and buildings

Approvals Required for Implementation

- Commonwealth/Regulatory Approval
 - Commonwealth and State Education Departments
 - ATO
 - SRO
 - VRQA
 - VIT
 - CCYP
 - ASIC
 - ACNC

Approvals Required for Implementation (continued)

- Stakeholders
 - School staff
 - CECV
 - Unions
 - CCI
 - CDF
 - Contractors, e.g. cleaners, school accountants, grounds and building maintenance

Stakeholders to be informed

- Parishioners
- Parish Finance Committee
- Parish Education Board
- Current and prospective school families
- Leaders of Congregations/PJPs operating schools in the Archdiocese

Implementation of Betrayal of Trust and Royal Commission Recommendations

Date	Reform	Type
13 November 2013	Betrayal of Trust released	
9 April 2014	Engaging in Grooming behaviour for sexual conduct with a child under 16 made a criminal offence	Crime
27 October 2014	Failure to report to police sexual offences committed against a child under 16 made an offence	Crime
1 July 2015	Failure by persons in authority to reduce or remove a substantial risk that a person will commit a sexual offence against a child made a criminal offence	Crime
1 July 2015	Removal of limitation periods for actions resulting from injury from child abuse	Civil
1 August 2016	Victorian schools required to comply with Child Safe Standards	Civil



Implementation of Betrayal of Trust and Royal Commission Recommendations

Date	Reform	Type
1 January 2017	Child Safe Standards become fully effective in Victoria	Civil
1 July 2017	Reportable Conduct Scheme applies to schools	Civil
1 July 2017	Commencement of new statutory duty of care to take reasonable steps to minimise risk of child abuse by organisational representatives	Civil
December 2017	Release of the final report of the Royal Commission	
1 January 2018	Reportable Conduct Scheme applies to religious organisations	Civil
1 July 2018	Commencement of Legal Identity of Defendants (Organisational Child Abuse) Act 2018 allowing a person to sue an organisational defendant of unincorporated organisations which use trusts to conduct their activities	Civil



Implementation of Betrayal of Trust and Royal Commission Recommendations

Date	Reform	Type
1 January 2019	Reportable Conduct Scheme applies to kindergartens and after hours care services	Civil
17 September 2019 (Date of Royal Assent – awaiting commencement)	Persons in religious ministry to be included as mandatory reporters	Civil
17 September 2019 (Date of Royal Assent – awaiting commencement)	Removal of confessional privilege	Civil & Crime
17 September 2019 (Date of Royal Assent – awaiting commencement)	Allowing for judgements and settlement agreements arising from child abuse entered into prior to 1 July 2015 to be set aside if just and reasonable to do so	Civil

Legislation Affecting Schools

- Education Acts
- Employment
- Discrimination
- Child Protection
- Occupational Health and Safety
- Building and Infrastructure
- Finance and Charitable Status
- Privacy and Confidentiality

