

High Court overturns permanent stay in child abuse case

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In November 2023, the High Court handed down its decision in respect of the child sexual abuse claim, "GLJ v The Trustees of The Roman Catholic Church for The Diocese of Lismore [2023] HCA 32". This High Court case was brought by GLJ (a pseudonym), a survivor of child sexual abuse, after the NSW Court of Appeal granted the defendant (the Catholic Church) a permanent stay of proceedings, effectively denying GLJ access to compensation and justice due to the abuse. The High Court has overturned the decision of the Court of Appeal.

You can read about our observations following the hearing of this matter in the High Court (before this decision was delivered by the High Court) in our earlier blog, "Abuse survivor takes case to the High Court after NSW Court of Appeal orders a permanent stay".

This High Court decision is important for survivors of child sexual abuse who are considering bringing a claim for damages (compensation) for historic child sexual abuse as, in a nutshell, the High Court has determined that survivors of abuse are entitled to their "day in court" and the judicial system should not prevent this in GLJ's circumstances.

What is a 'permanent stay'?

A 'permanent stay' is an order which can be granted by a court in circumstances where it would be an abuse of process to allow the proceedings (e.g. a claim for damages) to continue. If granted, a permanent stay means that the claim is permanently prevented from proceeding, and the plaintiff /claimant (i.e. the injured person) will not be able to pursue their claim any further.

Permanent stays have been sought by defendants (in the GLJ case, the Catholic Church) in claims relating to historical child sexual abuse as the defendants assert that their ability to defend such a claim is prejudiced by the passage of time and subsequent loss of the ability to properly investigate the allegations of abuse against them.

Permanent stays have been sought increasingly since the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse. Prior to 2015, survivors of child abuse only had three years from the date they turned 18 to be able to bring a claim for compensation as a result of the abuse. The Royal Commission recognised that many survivors of child sexual abuse do not feel able to disclose the occurrence of abuse until they are much older, and subsequently, these restrictive time limits were removed in all states and territories of Australia.

This means there is now no time limit with regard to a claim for child abuse compensation.

History of GLJ's compensation claim due to child sexual abuse

As a result of the removal of time limits for child sexual abuse claims, there are now many claims being brought where the perpetrator of the abuse or other key people who are no longer alive or no longer capable of providing proper evidence in relation to the allegations. This was the basis for the Church's application for a permanent stay of the proceedings.

The Church's application for a permanent stay was originally rejected by the Supreme Court of NSW. The Church then appealed the decision to the Court of Appeal, which granted the permanent stay.

GLJ then appealed the Court of Appeal decision to the High Court of Australia.

Why did the High Court decide that the permanent stay should not be allowed?

The High Court, by majority, noted that in order to allow a permanent stay of proceedings, it would need to be satisfied that the matter, if it were to proceed, "would be irreconcilable with the administration of justice through the operation of the adversarial system".

The court categorised the granting of a permanent stay as a "last resort", which means that only an "exceptional case justifies the exercise of the power of a court to permanently stay proceedings."

In relation to whether a trial would be unfair in the circumstances, the High Court noted that:

> a lack of witnesses to contradict evidence does not of itself make a trial unfair, noting that uncontradicted evidence does not **have** to be accepted (for reasons such as plausibility, credit reasons);

> whether the passage of time and passing of relevant witnesses render a trial unfair would depend on the context of the actual claim, including whether it was in a domestic or institutional setting (for example, what influence might record keeping at an institutional level have);

The High Court also highlighted that "circumstantial evidence is still evidence".

In doing so, the court noted the following information that was available despite the inability of the respondent (the Catholic Church) to put GLJ's specific allegations to the perpetrator (due to his passing prior to GLJ making the claim):

> Whether the alleged perpetrator was at the relevant parish at the relevant time/s;
>
> The nature of the work the priest performed and whether this accords with GLJ's version of events;
>
> Other complaints of a similar nature made against the perpetrator, to which he did not have the opportunity to respond; and
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> the fact that the perpetrator had been attending a psychiatrist for his 'problem' before the alleged abuse occurred.

What does this mean for survivors of child sexual abuse?

This High Court decision resolves a significant matter of debate between injured people and the entities who frequently respond to child sexual abuse claims (e.g. churches/religious institutions, education departments/schools or child safety departments).

The decision:

> reduces the reliance that respondents will be able to place when seeking a permanent stay due to, for example, the passage of time, the death of a perpetrator, a lack of witnesses etc, when negotiating in pre-court processes; and
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> increases the financial and reputational risk respondents face if they are unwilling to negotiate in good faith with a claimant in pre-court processes.

The hope is that this decision may mean that survivors of historical child abuse may be able to receive the compensation they deserve more quickly without the need to formally commence a court action.

Beyond its comments in relation to the permanent stay, the High Court also made other comments relevant to other survivors of child sexual abuse:

> that "the inevitable fading of memories and loss of evidence… are properly to be understood as routine and unexceptional sequelae of the harm caused by the alleged act the subject of the claim."

For more information about the pre-court process compared to the formal court process, please see our earlier blog, "A guide to personal injury claims – the types of claims, the differences and the similarities".

Get help from an abuse compensation lawyer

It is important to note that despite this decision being helpful for survivors of historical child sexual abuse, it is still always preferable to begin any abuse compensation claim as early as possible.

This decision **does not** confirm that no claim could ever be permanently stayed due to impacts from a delay. The earlier your claim is started, the more likely it is that evidence, witnesses, and other information will still be available, which can significantly assist in achieving a successful result.

If you’re a survivor of child abuse, the important thing is to get legal advice early from lawyers who are experienced in recovering the significant compensation that survivors of child sexual or physical abuse deserve.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.