

HOPE IN HELL

For lawyers acting for victims in the Royal Commission into Institutional Responses to Child Sexual Abuse the work is a gruelling commitment.
Carolyn Ford reports

When Chrissie Foster left the stand in courtroom 3:3 of the County Court of Victoria after giving evidence about the sexual abuse of her young daughters, many in the packed room applauded. It was acknowledgement of the Melbourne mother's courage.

Fighting back tears, Mrs Foster told the Royal Commission into Institutional Responses to Child Sexual Abuse that serial paedophile priest Kevin O'Donnell was responsible for the suicide of her 26-year-old daughter Emma and the permanent brain damage another daughter Katie sustained in a car accident when she was 15.

O'Donnell, who died in 1997, repeatedly raped both little girls during the years they attended Oakleigh's Sacred Heart primary school in the late 1980s.

They applauded again when Paul Hersbach stepped down after giving evidence, under the gentle guidance of counsel assisting the commission Gail Furness SC and questioning of chair of the commission Justice Peter McClellan. Mr Hersbach was abused by priest Michael Glennon, as was Mr Hersbach's brother, father and uncle.

And again when a victim known as AFA recounted his story of molestation by a priest and detailed the subsequent guilt, depression and unemployment.

The accounts of abuse by Catholic clergy and the church's responses to it, as told by victims and family members, are no less affecting for hearing them 19 months into the Royal Commission process.

On day one of the two-week Melbourne hearings on Monday 18 August, the commission began Case Study 16 – its inquiry into the Melbourne Response, through which the Catholic Archdiocese dispensed counselling and compensation to abuse victims.

Each of the three selected witnesses said the Melbourne Response had failed to properly acknowledge the harm done – in its treatment of them and in matters of compensation. The church was urged to review the 326 settled cases and reform the Melbourne Response. They wanted, as Mr Hersbach said, some compassion from the institution which had blighted their lives.

Many hundreds of Australians have told their stories privately to the Royal Commission, with thousands more expected. Dozens more public hearings are forecast nationally. Already public hearings have heard evidence from Catholic Archdiocese, Swimming Australia, Marist Brothers, Christian Brothers, the YMCA, Scouts Australia, Salvation Army and various children's homes, schools and services. Realisation of the scale and magnitude of abuse has led to a two-year extension to the Royal Commission, as well as additional funding of \$125 million bringing the total

cost to more than half a billion dollars, which will see it report by 15 December 2017.

After victims gave evidence at the Melbourne hearings came institutional lawyers then the Melbourne Archdiocese's leaders and administrators – Cardinal George Pell via Skype from the Vatican, Archbishop Denis Hart who announced the appointment of former Federal Court judge Donnell Ryan QC to review its compensation payments, currently capped at \$75,000 but averaging \$36,000, and head of finances Francis Moore, who revealed for the first time the church had a war chest of \$222 million. From that came the \$1.2 million it paid to victims of abuse by Catholic clerics in 2013 in Victoria. Tripling compensation could, he said, be managed.

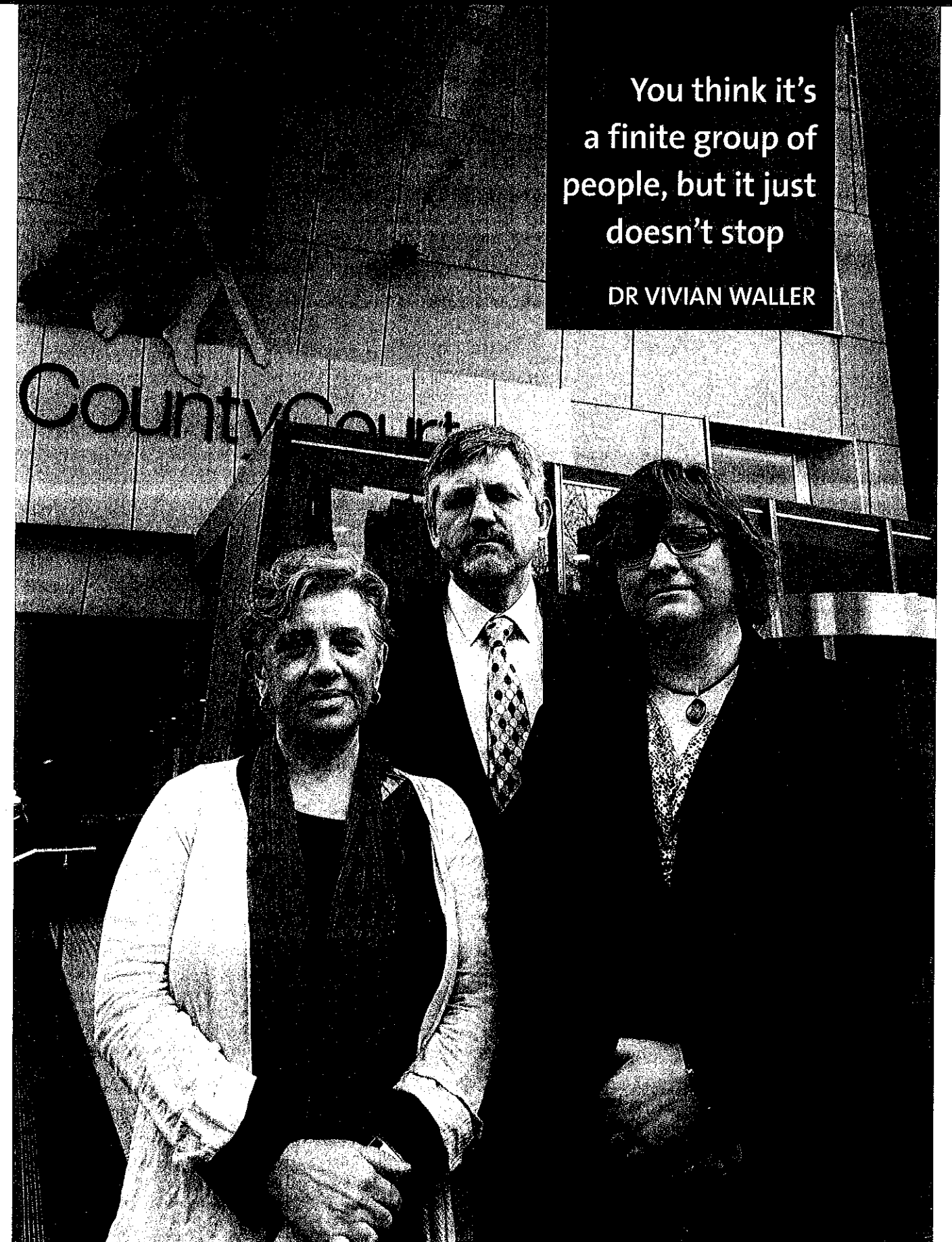
Others bore witness – the Hunter Valley policeman Peter Fox, who helped break the silence around institutional sexual abuse of children, journalist and ABC commentator David Marr, novelist Helen Garner. Manny Waks, whose documentary on his experience of abuse in the Jewish community had just aired, was in the crowd, as were other victims, their family and friends. There can be no doubt it is a lifelong nightmare for the victims, one that won't end when the Royal Commission finishes gathering evidence, makes its recommendations and sees them enacted.

For the lawyers involved, it is a uniquely gruelling commitment. The *LIJ* approached a cross section of practitioners for this report about Melbourne solicitors at the forefront of the Royal Commission. Those representing

SPEAKING OUT: Lawyers Angela Sdrinis, Paul Holdway and Dr Vivian Waller at the August Royal Commission hearing in Melbourne

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DR VIVIAN WALLER



PHOTOS DAVID JOHNS



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ANGELA SDRINIS

institutions declined to comment due to commitments at the Royal Commission hearings; three plaintiff lawyers – Dr Vivian Waller, Angela Sdrinis and Paul Holdway – agreed to speak.

Angela Sdrinis

Angela Sdrinis has been representing victims of institutional sexual abuse for 20 years – although for a time when her children were very young she stepped away from it because it was too distressing.

"It has been hard, heart-breaking, traumatic work," said Ms Sdrinis who has acted for about 1000 victims. To say the Royal Commission is welcome is an understatement, according to the long-time personal injuries accredited specialist and now sole practitioner.

"We've have been hitting our heads against a brick wall for years. It's amazing, it's great. It's given people permission to speak out. It has just snowballed. The number of people coming forward is truly frightening.

"The downside is that it's raised people's expectations although nothing has changed yet. People are still going to institutions, virtually cap in hand, saying, please sir, give me some more. Victims want recognition and redress and they want to know perpetrators and those who shielded them will be dealt with by the criminal justice system. Change will come but when?

"All too frequently I have had to say to clients, I believe you but there is nothing I can do for you. Or, I think I can get you some compensation but if you're not happy with what's offered there's nowhere else to go.

The legal barriers are significant, she said. The statute of limitations has meant the vast majority are barred from taking action. Child victims take decades to come forward because of the nature of the abuse. As well, the institutions involved are structured so that the only legal entity is a property trust which is incorporated to own and manage property. The High Court has said that as the property trust has nothing to do with oversight of priests the property trust cannot be held liable so there is no one to sue. Even if there was, proof is needed to show the institution knew or should have known the victim was at risk.

"As a lawyer you don't have access in many of these historical abuse cases to your best weapon which is fighting them in court. You

don't have the basis to make that threat or see it through.

"So sometimes we have had to say to clients, even though we can prove you were at risk, that the church absolutely knew that your perpetrator was abusing children, they can't be sued. That has been really, really difficult."

Clients often took their frustration out on Ms Sdrinis. "Often the clients shoot the messenger. You are the one they get angry with when you tell them some paltry amount is the best you can negotiate. Often you can't charge for a lot of the work you have done. If you did, there would be nothing left for them.

"But you are not just trying to get a cheque for the client. We do try to make it a therapeutic process but we can only do that if the institutions come to the table honestly and compassionately. All too often that doesn't happen."

Ms Sdrinis said victims needed a genuine response and an understanding of how the abuse was allowed to happen. "It's about betrayal and lack of trust. Parents didn't protect them or believe them or the church or society, the list goes on. By the time they come to you, particularly those from orphanages, they have been betrayed by every sort of authority figure and it creeps into the relationship with their lawyer.

"A lot of the men in particular find it hard to open up. These are men in their 50s, 60s and 70s, men who were born in the war years. For them it is huge. So you have to try very hard to deliver what you said you would. All lawyers do that, but more so with these people.

"It's not thankless work, clients are so grateful. You are usually the first person who has listened to them and believed them and done something about it for them. You know it's too little too late, but they are incredibly grateful. You change people's lives."

One victim told Ms Sdrinis; "I slept through the night for the first time since I was a child after my settlement because I finally felt safe, it's over for me now, I've drawn a line in the sand."

Dr Vivian Waller

Strangers come up to Dr Vivian Waller in the street, take her hand and say thank you.

They are, in some way, related to the work she has devoted her life to – the defence of victims of childhood institutional sexual abuse. The Waller Legal principal has represented

thousands of victims, heard scores of the most dehumanising stories, yet still on occasion she is moved to tears.

One such occasion was at the recent Royal Commission hearings in Melbourne when the Catholic Archdiocese conceded it had known about the offending of serial paedophile priest Kevin O'Donnell since 1958. This established that the events which overtook the Foster family and many, many others three decades later could have been avoided.

"We had been aware of that but it still had quite an effect to hear it," Dr Waller recalled.

"It was a moving moment for my clients... to know that what happened to two of their three children could have been averted. It's devastated three generations of that family and it didn't have to happen. The church knew."

"We went out for lunch afterwards and while we acknowledged this breakthrough, we were very mindful of the fact that Emma was gone and Katie was severely affected. There wasn't a dry eye at the table."

Beyond a general desire to help people, Dr Waller didn't set out to do what she does. "This work found me. It wasn't something I set out to do but I cannot stand the thought of the bully in the school yard and that's what the Catholic Church has been. It's thought itself to be above the state and a law unto itself."

"I could not bear it. I couldn't leave these people unrepresented. I was not prepared to send them away. I was just outraged on their behalf by the appalling attitude of the Catholic Church towards victims. I was not prepared to let it rest. People matter."

"This is my reason for living, to be involved in this journey. I don't want to be anywhere else in the process. I won't stop until the job is done."

Dr Waller has more than 500 clients, almost all victims of Catholic clergy, and the number grows by about 10 a week. "You think it's a finite group of people, but it just doesn't stop," Dr Waller said.

To keep up with demand she is hiring more lawyers at her firm – the first practice in Australia solely dedicated to representing victims of institutional sexual abuse. She works on a no win no fee basis.

"Every client touches me. As a human being you cannot help but be moved by them, the impact on their lives and the courage they have to keep going. Often I'm the first

person they've disclosed to and it's a real privilege to sit and listen, to not turn away, to say the right thing. It can bring someone real healing."

"Sex abuse is an evil in society but the thing that sets the Catholic Church apart is that at very high levels they had cover-ups and moved abusers around. Because they were teachers and the like they had incredible opportunity to abuse. Over 40 years the exponential harm is incredible."

Dr Waller said she had been "absolutely staggered" by what had come out at the Royal Commission hearings in Melbourne including the Catholic Church's ability to pay more generous compensation and Cardinal Pell's comparison of the church to a trucking company in relation to culpability if a driver sexually assaulted a hitch-hiker.

"I cannot even begin to tell you how many ways that is offensive. The Fosters didn't leave their children at a truck stop. They walked them to school and left them there to be supervised and looked after. For a long time Mrs Foster couldn't work out how the abuse happened. Kevin O'Donnell just took them out of the school playground at lunch and playtimes. He had unfettered access to them. He could get away with that."

"People ask me, 'how can you do this work?' I can't stop. There is so much work to be done, so many people to help... 2017 may not be long enough."

Paul Holdway

Every six weeks, Paul Holdway of Lewis Holdway Lawyers sees a psychologist. It helps him manage the horror he hears representing victims of institutional child sexual abuse. Like the woman who could only get the details of her abuse out by shouting it. She shouted at Mr Holdway for an hour and a half.

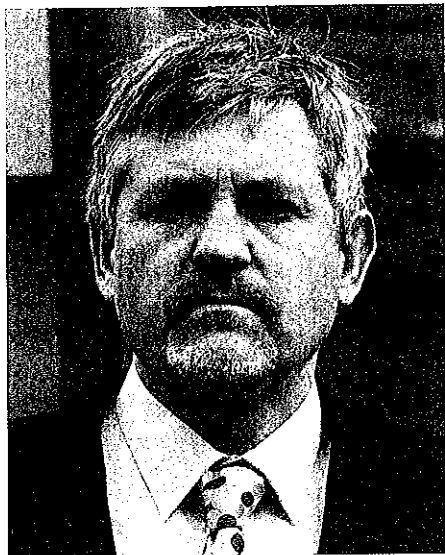
"Psychologically, that was how she got it out. They are all relieved to get it out," Mr Holdway said.

"For me, it's a debrief type situation. We know there's an impact, you can't pretend there's not. We actually told the Victorian parliamentary inquiry members that they would need counselling because we knew it would be horrific for them to hear and they had no background in it. I try to limit this kind of work to about one-third for my own sanity."



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PAUL HOLDWAY

Mr Holdway, whose firm works on a mediation model at a reduced or no fee in these matters, has represented about 250 victims of institutional sexual abuse over 19 years.

"The key role for a lawyer in this area is that a victim has been made powerless and diminished for life by the offending so our job is to stand as a classic advocate to even up the power balance so they get a fair go. That's an honorable thing to do and that's our role.

"Whether you are the Archbishop or a victim makes no difference to me. I don't mind where you come from, it's your actions and what's just for everybody in the situation that counts. I am extremely honored to act for victims. I am honored that they share their story with me and trust me with it. For some people, it's one of the first times they have told it and I think it is incredibly courageous for them to come forward to share that.

"With clients, my attitude is that I absolutely believe them straight away. We provide a strong listening environment, belief, acknowledgement and support. We try to give them options and information and context, empowering them to make the decision. It's a counter-balance to when they were abused and power was taken away.

"Also, it's done in their own time frame. We move forward when they are ready. We have had a number of cases that have taken more than a decade to settle. We make a financial loss out of it but we are very committed to the area. It's part of our contribution and solidarity with victims.

"I am astounded at their ability to battle through and persist. It's through their efforts we have got this change happening and we hope it will continue."

Compounding the difficulty for vulnerable victims in coming forward was an intimidating and hostile legal environment, he said.

"People tell me they call the cathedral and say they are a victim of abuse. They don't get a pastoral response. They get put through to the insurance claims investigator. It makes no sense.

"They are supposed to be Christian organisations and they are missing the opportunity to embrace victims, help them out.

"This economic rationalist approach doesn't make sense to me and the research shows that victims are not after money because no matter how much money you throw at them it doesn't

help. It's got to be big enough to acknowledge they have been taken seriously. But it doesn't fix them. Childhood sexual abuse is a life sentence. No amount of money can turn back the clock or provide full healing and recovery."

Mr Holdway said the Royal Commission was vital "because of the accountability and transparency" it brought but he didn't expect change at law for three to five years. "It is the only institution that is more powerful than the Melbourne Catholic Archdiocese. So it can compel transparency of documentation and history and therefore get a true picture about what has happened and what justice is required to look after victims.

"I would like to see victim-centred, transparent, accountable redress processes for victims – those who have come forward and those who are yet to do so. I would like to see law reform to make it a more just playing field for everyone in the situation. Law must meet the needs of society." ☉

WHAT'S NEEDED

- An independent national reparations tribunal to assess claims and compensation including a separate redress scheme for historical cases;
- Investigative units to refer evidence of abuse to police to pursue criminal sanctions against abusers;
- Laws to prosecute people who shield or fail to report abusers in civil litigation;
- Criminal abuse charges heard in one action;
- Abolition of the statute of limitations in child abuse cases, recognising it can take victims decades to come forward;
- Give victims ability to sue churches;
- More generous compensation;
- No cap on compensation;
- Vicarious liability to make institutions responsible for the actions of their employees as has begun to happen in the UK;
- Make charitable status conditional on organisations which care for children being incorporated and insured.