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Introduced by Mr David Shoebridge, MLC

consultation draft

New South Wales

## **Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2012**

### **Explanatory note**

#### **Overview of Bill**

The NSW Court of Appeal has held that property held on trust under the *Roman Catholic Church Trust Property Act 1936* for the use, benefit or purposes of the Roman Catholic Church in New South Wales cannot be used to satisfy legal claims associated with sexual abuse by Roman Catholic clergy, officials or teachers. The object of this Bill is to amend that Act:

- (a) to allow a person suing a member of the Church's clergy, a Church official or a Church teacher in relation to sexual abuse to join the following as defendants in those proceedings (and to make them liable for any damages awarded):
  - (i) the body corporate established by the Act to hold property on trust for the dioceses in which the relevant abuse allegedly occurred,
  - (ii) the trustees that make up that body corporate,
  - (iii) if the regulations so provide, any body corporate established under the *Roman Catholic Church Communities' Lands Act 1942* by which the relevant member of the clergy, official or teacher was employed or that was established as trustee of community land of any community of which the relevant member of the clergy, official or teacher was a part, and

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- (b) to allow a person who is owed a judgment debt in respect of civil liability arising as a result of sexual abuse by a member of the Church's clergy, a Church official or a Church teacher to recover the debt from any of the following (as an alternative to pursuing the clergy member, official or teacher concerned):
- (i) the body corporate established by the Act to hold property on trust for the dioceses in which the relevant abuse allegedly occurred,
  - (ii) the trustees that make up that body corporate,
  - (iii) if the regulations so provide, any body corporate established under the *Roman Catholic Church Communities' Lands Act 1942* by which the relevant member of the clergy, official or teacher was employed or that was established as trustee of community land of any community of which the relevant member of the clergy, official or teacher was a part.
- (c) to suspend the operation of the *Limitation Act 1969* for 2 years in relation to such causes of action that would otherwise be out of time.

### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

### **Schedule 1      Amendment of Roman Catholic Church Trust Property Act 1936 No 24**

**Schedule 1** makes the amendments described in the above Overview.

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## **Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2012**

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# **Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2012**

No. , 2012

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## **A Bill for**

An Act to amend the *Roman Catholic Church Trust Property Act 1936* to provide for the ability of victims of sexual abuse where the abuser is found to be a member of the Catholic clergy and or another official and or officer in the Church to satisfy judgments awarded against such abusers as a judgment debt payable from the assets of the Trust and for other related purposes.

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Clause 1

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Roman Catholic Church Trust Property Amendment (Justice for Victims) Act 2012*.

**2 Commencement**

This Act commences on the date of assent to this Act.

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Schedule 1      Amendment of Roman Catholic Church Trust Property Act 1936 No 24

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## **Schedule 1      Amendment of Roman Catholic Church Trust Property Act 1936 No 24**

**[1] Part 1, heading**

Insert before section 1:

### **Part 1 Preliminary**

**[2] Part 2, heading**

Insert after section 2:

### **Part 2 Church property**

**[3] Part 3**

Insert after section 16:

### **Part 3 Sexual abuse claims paid from Trust funds**

#### **17 Definitions**

(1) In this Part:

***Church official*** means any person who acts as a representative of the Church and includes, but is not limited to, any of the following:

- (a) an official, officer or member of staff of the Church or of a diocese of the Church,
- (b) a lay assistant for the Church or for a diocese of the Church,
- (c) a volunteer for the Church or for a diocese of the Church,
- (d) a Provincial-General for New South Wales of a community,
- (e) a Provincial, Superior, Leader or President of a community.

***Church teacher*** means a teacher or member of staff of a theological college, school, orphanage or children's home operated under the auspices of the Church or of a diocese of the Church.

***community*** means a community within the meaning of the *Roman Catholic Church Communities' Lands Act 1942*.

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***member of the Church's clergy*** includes the following:

- (a) an Archbishop or Coadjutor Archbishop of the Church,
- (b) a Bishop or Coadjutor Bishop of the Church,
- (c) a Vicar Capitular of the Church,
- (d) an Administrator of the Church,
- (e) a Vicar-General of the Church,
- (f) a priest or assistant priest of the Church,
- (g) a sister, nun, brother, monk or seminarian of the Church,
- (h) any other member of a religious order of the Church.

***sexual abuse*** means sexual conduct, or conduct that includes sexual conduct (whether or not there was apparent consent to that conduct and whether or not that conduct would, at the time of the relevant conduct, have constituted a sexual offence) perpetrated by a person who was, at the time of the relevant conduct, a member of the Church's clergy, a Church official or a Church teacher, while acting in his or her capacity as such a member, official or teacher.

- (2) For the purposes of this Part, a person was ***under the care of the Church*** if the person was owed a duty of care or fiduciary duty by the Church, a member of the Church's clergy, a Church official or a Church teacher and includes, but is not limited to, having been owed such a duty in the following capacities:
  - (a) as a member or parishioner of the Church,
  - (b) as a nun, monk or seminarian of the Church,
  - (c) as an altar server or other assistant in a church or diocese of the Church,
  - (d) as a student of a theological college, school, orphanage or children's home operated under the auspices of the Church or of a diocese of the Church.

### **18 Conduct of proceedings relating to sexual abuse by Church clergy, officials or teachers**

- (1) The plaintiff in civil proceedings relating to sexual abuse by a member of the Church's clergy, a Church official or a Church teacher of the plaintiff who was, at the time of the sexual abuse, under the care of the Church, may join as a defendant in those proceedings:
  - (a) the body corporate established under this Act for the diocese of the Church in which the abuse, or the majority of the abuse, is alleged to have occurred, and

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- (b) the Bishop, and the Diocesan Consultors, of the diocese of the Church in which the abuse, or the majority of the abuse, is alleged to have occurred, in their capacity as trustees of Church trust property in that diocese, and
- (c) if the regulations so provide, a body corporate established under the *Roman Catholic Church Communities' Lands Act 1942*:
  - (i) by which the relevant member of the clergy, official or teacher was employed, or
  - (ii) that was established as trustee of community land of any community of which the relevant member of the clergy, official or teacher was a part.
- (2) In respect of any such proceedings, the relevant body corporate and its trustees are jointly and severally liable as if they were the member of the Church's clergy, the Church official or the Church teacher against whom the proceedings were also brought.
- (3) The court hearing such proceedings may extend the application of subsections (1) and (2) to a person who alleges sexual abuse by a member of the Church's clergy, a Church official or Church teacher and who was not at the time of the abuse under the care of the Church, but was so closely connected with the Church that the court believes it would be just to render the Church liable for the abuse, if proven.
- (4) A plaintiff who intends to joint any body corporate, Bishop or Diocesan Consultor as defendant in proceedings in reliance on subsection (1) must give notice of that intention to the body corporate, Bishop and Diocesan Consultor concerned within 28 days after the filing of the statement of claim in relation to the relevant proceedings.
- (5) This section extends to a cause of action arising before the commencement of this section.

**19 Judgments relating to sexual abuse by Church clergy, officials or teachers may be required to be paid from Trust funds**

- (1) A person who is owed an unpaid judgment debt in respect of civil liability arising as a result of sexual abuse by a member of the Church's clergy, a Church official or Church teacher against a person who was, at the time of the abuse, under the care of the Church, may bring an action for the recovery of the debt against:
  - (a) the body corporate established under this Act for the diocese of the Church in which the abuse, or the majority of the abuse, is alleged to have occurred, and



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- (b) the Bishop, and the Diocesan Consultors, of the diocese of the Church in which the abuse, or the majority of the abuse, is alleged to have occurred, in their capacity as trustees of Church trust property in that diocese, and
  - (c) if the regulations so provide, a body corporate established under the *Roman Catholic Church Communities' Lands Act 1942*:
    - (i) by which the relevant member of the clergy, official or teacher was employed, or
    - (ii) that was established as trustee of community land of any community of which the relevant member of the clergy, official or teacher was a part.
- (2) In respect of any such action, those bodies corporate and those trustees are jointly and severally liable as if they were the member of the Church's clergy, the Church official or the Church teacher against whom the judgment was given.
  - (3) The court hearing such proceedings may extend the application of subsections (1) and (2) to a person found to have been sexually abused by a member of the Church's clergy, a Church official or Church teacher and who was not at the time of the abuse under the care of the Church, but was so closely connected with the Church that the court believes it would be just to render the Church liable for the abuse.
  - (4) This section extends to a cause of action arising before the commencement of this section.

### **20 Suspension of bar to actions on basis of limitation period having elapsed**

- (1) Despite any provision of the *Limitation Act 1969*, an action on a cause of action for Church sexual abuse is maintainable if it commences during the suspension period, regardless of the date on which the cause of action first accrued.
- (2) In this section:
  - Church sexual abuse*** means sexual abuse by a member of the Church's clergy, a Church official or a Church teacher in relation to a person who was, at the time of the sexual abuse, under the care of the Church.
  - suspension period*** means the period commencing on the date of assent to the *Roman Catholic Church Trust Property Amendment (Justice for Victims) Act 2012* and ending on the second anniversary of that date.

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## **21 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is permitted to be prescribed by this Part.