



## High Court delivers significant victory for child abuse survivors

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In April 2022, the NSW Court of Appeal granted the Catholic Church a permanent stay in proceedings in a historical child sexual abuse case. In a significant victory for abuse survivors, in the November 2023 judgement in [GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore \[2023\] FCA 32](#), the High Court of Australia has overturned that decision.

This decision clarifies that the passing of time and the inevitable loss of evidence in historical abuse cases will no longer be a barrier to seeking justice.

Stay of proceedings orders were protecting institutions from abuse claims

Following the Royal Commission into Institutional Responses to Child Sexual Abuse, survivors of sexual abuse are now able to make claims for abuse that was suffered decades ago due to the time limits in Victoria for these types of claims being removed. You can read more about this in our earlier blog, ["Time limits for childhood abuse compensation claims"](#).

In the course of these claims being decided in Court, many institutions have sought orders from the Court that these types of proceedings be permanently stayed. A permanent stay is where a Court may order a halt to proceedings permanently and indefinitely.

A permanent stay of a proceeding is usually granted where exceptional circumstances exist that result in a trial being prejudicial, unfair and an abuse of process to one or more parties. As a tactic during trial, institutions (prior to this recent High Court judgement) argued that due to the passing of time, death of key witnesses and loss of evidence that occurs in many childhood sexual abuse claims, defendant institutions are unable to receive a fair trial.

## Background of GLJ v Catholic Church

GLJ (a pseudonym) alleged that she was abused by Father Anderson of the Diocese of Lismore in 1968 when she was 14 years old. Anderson attended GLJ's family home after her father was injured in a motorcycle accident. GLJ alleges she was sexually abused by Anderson during these home visits.

Anderson was directed to attend the home by the Diocese to provide pastoral support. GLJ did not take legal action until a statement of claim was filed in the New South Wales Supreme Court in 2020. The Lismore Diocese only had knowledge of the abuse in 2019. The Diocese sought a permanent stay of proceedings.

## Decision of the Supreme Court of New South Wales

The Supreme Court in New South Wales refused to grant the application for permanent stay made by the Diocese on the basis that with the removal of the limitations period (time limits) for child abuse matters, *“the effluxion of... long periods of time and an inevitable resulting degree of impoverishment of evidence, provided a fair, not perfect, trial...”*.

Basically, in plain English, the Court held that the passing of long periods of time and its effect on physical evidence and the availability of witnesses does not automatically mean that a trial would be deemed unfair. As such, a permanent stay of the proceedings was refused as a fair trial was still able to be conducted with the available evidence.

## Appeal to the New South Wales Court of Appeal

The Diocese appealed the decision to the New South Wales Court of Appeal. The Court of Appeal granted the permanent stay.

The Court of Appeal held that the passage of time of nearly 54 years since the events of GLJ's alleged abuse does not itself warrant a grant of permanent stay. Rather, the consequences of the passage of time place GLJ's case in the category of exceptional circumstances which warrants a permanent stay.

## The High Court's decision

GLJ filed a special leave application to the High Court in respect of the Court of Appeal decision. The majority of the High Court overturned the decision of the Court of Appeal in granting the permanent stay application of the Diocese.

The majority of the High Court held that there was a major change in the abuse law landscape due to the changes in the legislation regarding limitation periods (time limits to bring a claim). With the removal of the limitations period for these types of claims, the **passing of time alone** could no longer be considered as a means of providing an unfair trial and being considered an abuse of

process.

The High Court acknowledged that the passing of time does cause an inevitable loss of evidence which could occur due to the death of witnesses or impoverishment of physical or documentary evidence. However, the Court held that these circumstances alone could not automatically trigger the requirement for exceptional circumstances. Nor could it be deemed an abuse of process for a permanent stay to be granted, given this was not analogous with the legislative intent of the removal of the limitations period.

## Difference between institutional child abuse and domestic child abuse

In its decision, the High Court also highlighted the differences between cases involving child abuse which occurred in a private or domestic setting versus abuse which occurred in an institutional context (like a church, sporting organisation or school).

The Court raised that documentary records and evidence concerning abuse circumstances are more likely to exist where an institution such as a church or school is involved, as compared with abuse that occurred privately by individuals who were not part of a larger organisation. This is due to perpetrators in organisations often having records kept of the report abuses or evidence of their tendency to abuse children.

The existence of tendency or documentary evidence provides a challenge for many survivors of abuse who have suffered in domestic settings. The Court held that the context in which the abuse occurred is likely to be relevant to any question of whether a trial will be deemed unfair or an abuse of process to constitute an application for a permanent stay.

As the circumstances of each case of abuse are different, careful instructions must be taken. At Guardian Injury Law, we take a trauma-informed approach and take the time to listen to our clients and provide advice on any compensation you wish to pursue.

[Free advice to find out where you stand: 1300 700 761](#)

## High Court decision's effect on historical childhood abuse cases

The High Court's ruling in the GLJ case offers clarity on the requirements that institutions must meet for an application for a permanent stay to be successful. It establishes that the death of the preparator or witness and the deterioration of evidence as a result of the passage of time, on their own, will not be sufficient grounds for a permanent stay to be granted where evidence of tendency or prior knowledge exists. It further reiterates that a permanent stay is a last resort measure that should only be granted in exceptional circumstances.

The case is a significant victory for survivors of child sexual abuse. As the case is binding on all courts in Australia, it will remove barriers for abuse survivors to seek compensation and have their stories told in Court.

## Get help from an abuse compensation lawyer

The Court's decision is essential in protecting the rights of survivors of sexual abuse and ensuring they have every opportunity to seek justice.

At Guardian Injury Law, we know the process of talking about [historical abuse](#) can be very confronting for survivors. We aim to provide all of our services in the most trauma-informed manner possible. We have worked with many survivors of historical childhood abuse in successful claims. Call us today to discuss any potential compensation options you may have. It costs you nothing to find out where you stand.

## Contacting Guardian Injury Law

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## Further reading

- [Two compensation options for survivors of childhood abuse – civil common law or National Redress Scheme](#)
- [Historical abuse claims with little information about the institution](#)
- [Do I have to report my abuse to police to claim compensation](#)

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