



# High Court finds Catholic Church not vicariously liable for historical sexual abuse

Author: [Delon Ranasinghe](#)

Email: [delon@guardianinjurylaw.com.au](mailto:delon@guardianinjurylaw.com.au)

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In this case review, we look at the November 2024 High Court decision in [Bird v DP](#), which found the Catholic Church held no vicarious liability for the sexual abuse of the Respondent (the abuse survivor) by assistant parish priest, Father Coffey in the 1970s. Earlier findings in both the Supreme Court of Victoria and the Court of Appeal found in favour of the Plaintiff/abuse survivor (DP – a pseudonym). A significant component of the High Court’s decision rested on whether or not an “employment relationship” existed between Coffey and the Church.

## Devastating result for abuse survivors’ access to compensation

The High Court’s decision in *Bird v DP* is devastating for [abuse survivors’ fight for access to compensation](#). This decision revives the notion that Churches and other like organisations cannot be found legally liable for the actions of their priests and other religious leaders if there is no employment relationship which exists between the parties.

## Background – Catholic Church has often argued that they cannot be held vicariously liable for historical abuse

As a response to the Royal Commission into Institutional Responses to Child Sexual Abuse, the Victorian government passed the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic). The Act addressed a critical legal gap by allowing non-governmental organisations (NGOs), which are often unincorporated and lack legal personhood, to be sued for historical sexual abuse. The passing of this legislation opened doors for survivors of sexual abuse to seek compensation for the abuse they suffered decades ago.

As an influx of cases were brought against entities like the Catholic Church after the passing of this legislation, the Church argued in several of these cases that they could not be held vicariously liable for the actions of their assistant priests or other volunteers as there was no “employee relationship” that existed.

## Relevant definitions and meanings

**Vicarious liability** is when one party is held responsible for the actions of another party. The [Australian Human Rights Council](#) defines it as follows:

*“Employers can be held legally responsible for acts of discrimination or harassment that occur in the workplace or in connection with a person’s employment. This is known as vicarious liability.”*

There is no definition of **employment relationship**. Determining if parties are in an employment relationship is governed by the *Fair Work Act*. In general, if a contract of employment exists between an employer and employee (notably, “employee” is also defined in the *Fair Work Act* and does not, for example, include contractors, volunteers, etc), then it is likely the parties are in an employment relationship.

## Supreme Court of Victoria Case - 2021

This issue of vicarious liability found its way to the Victorian Supreme Court in 2021 in the matter of [DP \(a pseudonym\) v Bishop Paul Bernard Bird \[2021\] VSC 850](#).

The plaintiff, DP, claimed he was sexually abused by Father Coffey at the age of five during visits to DP’s home in 1971. Coffey was an assistant parish priest and would visit the homes of families of the church in this capacity.

The Church argued that it could not be held liable for the actions of an assistant priest in abusing the plaintiff as there was no employment or agency relationship between the Church and Coffey during these home visits. For more information about the original case, you can view our blog, [“Vicarious liability and childhood abuse claims”](#).

## Supreme Court’s findings

The trial judge held that the Church was “vicariously liable” for the sexual assaults, however, it was found that DP had not established that the Church was directly liable to him in negligence.

This is because there was insufficient evidence upon which to find a conclusion that the Church should have known of the potential misconduct of Coffey. The Court found that there was insufficient evidence to demonstrate that there was a foreseeable risk in 1971 that Coffey might assault young boys such as DP.

The Church then appealed the decision (basically appealing the findings of vicarious liability) in *Bird v DP* [2023] VSCA 66 to the Victorian Court of Appeal.

## Court of Appeal findings

The Court of Appeal held that the relationship between Coffey, as assistant priest, and the Church, was one which **would render the Church vicariously liable** for any tort committed by Coffey in his role as an assistant priest within the Church, including visits to the home. In short, the Court of Appeal upheld the decision of the Supreme Court.

## Catholic Church appeals the decision to the High Court

The Church then sought to appeal the decision to the High Court.

In the November 2024 decision that appears to be a step backward in obtaining justice for abuse victims, the High Court of Australia has ruled in the appeal of [\*Bird v DP \(a pseudonym\)\* \[2024\] HCA 41](#), addressing the issues of vicarious liability and untransferable duties within the context of historical child sexual abuse by a Catholic priest.

The judgment, delivered on 13 November 2024, has significant implications for abuse survivors and the future of their claims against the Church (and possibly other like institutions).

## Key issues considered by the High Court

The High Court's decision focused on three primary issues:

1. Whether vicarious liability can extend beyond traditional employment relationships to those "akin to employment".
2. Whether the Church was liable for Coffey's conduct under such an extended vicarious liability principle.
3. Whether the Court should consider DP's contention that the Church owed a non-delegable duty to protect him from abuse.

A non-delegable duty is a duty of care which cannot be assigned to another individual, company or organisation. That is, the responsible party cannot delegate its duty of care to a third party.

## High Court's findings in *Bird v DP*

### Vicarious liability

The High Court, in a majority decision, ruled in favour of the Church. It found that the principles of vicarious liability should not be extended to relationships "akin to employment." There must be a clear employment relationship.

The Court emphasised that the established common law doctrine of vicarious liability is deeply rooted in the distinction between employees and independent contractors. The Court ruled that Coffey was not an agent of the Church as his actions were not authorised or directed (noting that the abuse took place in DP's private home) by the Church. As Coffey was not an agent, the law of agency, which would bring about vicarious liability, was not valid.

The Court found that expanding this doctrine to include relationships that are merely "akin to employment" would lead to uncertainty in the law. The majority of the High Court determined that an employment relationship is the foundation of vicarious liability arising, and it is not merely enough for the affiliation to be similar to that of an employment relationship.

## Non-delegable duty

The Court also rejected DP's contention that the Church owed him a non-delegable duty of care.

The Court noted that this issue was not raised in the lower courts (in the earlier decisions of the Supreme Court and the Court of Appeal) and that allowing it to be considered at this stage would prejudice the Church.

The Court emphasised the need for precision in identifying the nature and content of any asserted non-delegable duty, which was lacking in this case. The Court was open to this issue being raised by another case in the future which provides an adequate factual foundation for a determination to be made.

## Legislative context

The decision also highlighted the legislative context, particularly the Victorian Parliament's response to the Royal Commission into Institutional Responses to Child Sexual Abuse.

The Court noted that the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic) and amendments to the *Wrongs Act 1958* (Vic) were designed to address the legal challenges faced by survivors of institutional child abuse but did not go so far as to extend the doctrine of vicarious liability.

The Court held that the terms of the Victorian Parliament's legislative reforms as a response to the Royal Commission report 'weighed heavily' against any expansion of the doctrine of vicarious liability.

## Impact of the High Court decision for survivors of child sexual abuse

The High Court decision in *Bird v DP* has now put Australia at odds with countries such as the United Kingdom and Canada who have extended the principle of vicarious liability in the circumstances of historical sexual abuse claims.

For example, in the Canadian jurisdiction, the Court can find vicarious liability of the Church to exist where the perpetrator of the abuse has a sufficiently close relationship to the Church and the conduct is sufficiently related to the conduct authorised by the Church.

The decision of the High Court signals that the Court believes any expansion to the doctrine of vicarious liability must be spearheaded by Parliament. For a gruelling five years, survivors told their stories through the Royal Commission into Institutional Responses to Child Sexual Abuse, in hopes that the law would be reformed so that they and others who were not prepared to speak up about the terrible abuse they suffered, could seek justice.

Though the Royal Commission led to legislation like the *Legal Identity of Defendants Act* which revoked the [Ellis defence](#) used by religious and NGO organisations to shield them from liability, more needs to be done to protect the rights of victims.

## We call on State and Federal Parliaments to protect survivors of historical sexual abuse

Guardian Injury Law calls on the Federal and State Parliaments to introduce legislative change which extends the doctrine of vicarious liability to include non-employee relationships in the context of religious organisations.

Without this reform, survivors will be roadblocked from seeking the compensation they rightfully deserve, and organisations such as the Catholic Church will not be able to be held accountable.

## Get help from a lawyer experienced in abuse law

Given the decision in *Bird v DP*, it is imperative that you seek legal advice if you are a survivor of childhood sexual abuse. careful instructions must be taken.

At Guardian Injury Law, we understand the unique challenges survivors of abuse face. Our trauma-informed approach prioritises your well-being throughout the legal process. We'll listen carefully to your story and guide you every step of the way.

### Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

[enquiries@guardianinjurylaw.com.au](mailto:enquiries@guardianinjurylaw.com.au)

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