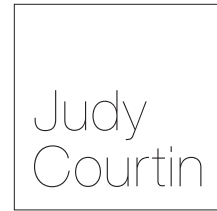


# Abolition of the Ellis Defence



*Legal*

## Victoria

The Ellis Defence was basically abolished in July 2018. The Legal Identity of Defendants (Organisational Child Abuse) Act 2018 (Vic) now says that a church authority, for example the Diocese of Ballarat, or the Christian Brothers, has to nominate a legal entity that is capable of being sued.

On 26 September 2019 our client, JCB, achieved a settlement with the Catholic Church in Ballarat concerning his Supreme Court damages claim for childhood sexual abuse by former priest Gerald Ridsdale. The amount of the settlement payment is confidential.

The settlement came after a landmark admission in August 2019 by the Ballarat Diocese, and by Ballarat Bishop Paul Bird on behalf of the former Bishop Ronald Mulkearns, that they are legally liable for Ridsdale's sexual abuse of JCB in 1982 at Mortlake.

This is the first time in Australia that a Catholic Diocese has admitted legal liability for child sexual abuse, and the first time in Victoria that the Catholic Church has made such an admission in a legal proceeding.

## New South Wales

The Ellis defence has been abolished in January 2019, with laws amended to allow survivors of institutional child abuse to bring proceedings against unincorporated associations. If the defendant fails to appoint a proper defendant within 120 days, an associated trust may be appointed by the court.

## Queensland

Queensland has also abolished the Ellis defence in 2020, with proceedings able to be commenced against unincorporated institutions. If the institution does not nominate a proper defendant within 120 days, an application may be made to the court to nominate a trust.

## South Australia

South Australia abolished the Ellis Defence in 2021. It was the last state to cease reliance upon the Ellis Defence.

## Tasmania

Tasmania abolished the Ellis defence in 2019 by allowing unincorporated organisations to appoint a proper defendant or if failing to do so within 60 days of the commencement of proceedings, allowing the court to appoint an associated trust.

## Western Australia

The Ellis defence was also overcome by amendments to the July 2018 law by allowing previously unincorporated institutions to be linked to their current form. The current institution may then stand in the place of the historically unincorporated institution.

## Australian Capital Territory

On 28 September 2018 the Ellis defence was effectively abolished, with new legislation allowing unincorporated bodies to nominate a defendant in child sexual abuse claims.

## Northern Territory

The Northern Territory has yet to pass any legislation to abolish the Ellis defence, with survivors of institutional abuse currently unable to sue unincorporated bodies.