

# Catholic Diocese Appeals Landmark Abuse Decision Raises Questions Over Legal Responsibility



**Sydney, New South Wales Dec 19, 2024 (IssueWire.com)** - The [Catholic Diocese of Maitland-Newcastle](#) has launched an appeal against a landmark ruling that found it directly and vicariously liable for the sexual abuse of a Wallsend High School student in 1969. The case, which awarded the victim—known as AA—over \$500,000, raises significant legal questions about the scope of institutional responsibility in abuse cases.

The Diocese’s appeal challenges both the factual findings that the abuse occurred and the determination of negligence. The case, already notable for its findings against the Church, could set a new precedent for non-delegable duties of care owed by religious institutions.

AA, who is terminally ill, was abused by **Father Ron Pickin**, the parish priest at **St Patrick’s Catholic Church in Wallsend**, who provided scripture classes at the high school. Despite substantial evidence and testimony, the Diocese has also applied to delay payment of the damages until the appeal is heard in February 2025.

## “An Egregious Circumstance”

**Sarah McLellan**, Special Counsel at [Koffels Solicitors and Barristers](#), who have been fighting for AA since December 2022, criticised the Diocese’s decision to appeal, given the evidence against it.

“The High Court decision has spoken for us in relation to the prospect of defending the vicarious liability

determination. However, the Diocese has also based its grounds of appeal on factual findings of her Honour, including that the sexual abuse took place, together with the negligence finding,” Ms McLellan said.

“This is a man who has been found to have been seriously sexually abused by a priest in circumstances where the Diocese knew or should have known, that this priest was abusing children.

“One of the witnesses at the hearing gave evidence that he told two priests prior to our client being abused that this priest had abused him.

“This couldn’t be more an egregious circumstance for a religious organisation to be contesting a fairly modest award from a dying man already found by the Supreme Court to have been sexually assaulted by Father Pickin on church premises.”

### **The Issue of Non-Delegable Duty**

While the High Court’s decision in *Bird v DP* narrowed the scope of vicarious liability, McLellan said the Diocese’s appeal brings forward another critical argument: whether the Diocese owed a **non-delegable duty of care** to AA as a child on its premises.

“While the door may have closed on the question of ‘vicarious liability,’ in the appeal, we will argue that the Diocese owed a non-delegable duty of care to a child on its premises and that there was a breach of this duty, which is an area of law not yet tested in the context of a religious institution,” McLellan said.

The High Court left room for such an argument in *Bird v DP*. McLellan pointed to a provision within the **Civil Liability Act** that equates a breach of a non-delegable duty with vicarious liability.

“There’s a provision in the Civil Liability Act which states that a breach of a non-delegable duty will be considered the same as vicarious liability, but that hasn’t been ventilated in the courts as yet,” she explained.

McLellan highlighted the significance of this argument:

“It’s a very hot topic in the legal profession as to the circumstances in which an entity be found to have owed a non-delegable duty of care outside of the established relationships, such as school authorities with students, hospitals with patients, or prison authorities to prisoners. These relationships are based, in part, on an element of control by a defendant or the vulnerability of a plaintiff.

“So that’s certainly something that will be a very hot topic for the next 18 months or so.”

The AA case has raised this argument in its notice of contention. Should the Court of Appeal reject the argument, McLellan said it would “no doubt” need to be considered by the High Court for final determination.

### **Delaying Justice**

On December 17, Acting Justice Schmidt heard the Diocese’s stay application. If successful, it would prevent AA from receiving his damages until after the appeal is resolved. Given AA’s terminal condition, the decision could significantly impact his ability to see justice delivered in his lifetime.

Justice Schmidt was expected to deliver her decision on the stay application **on December 18.**

## **The Bigger Picture**

For survivors of institutional abuse, the AA case underscores the challenges of holding powerful institutions accountable, even when the evidence is clear. The case also highlights critical emerging legal debates about non-delegable duties and the responsibilities of religious organisations.

With the Diocese continuing to fight the findings, AA's case could prove pivotal in defining how institutions are held responsible for protecting vulnerable individuals under their care.

## **Media Contact**

Koffels Solicitors and Barristers

matthewswan@koffels.com.au

+61292835599

Level 9,263 Clarence St

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