

# TRANSCRIPT

## FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

### Inquiry into the handling of child abuse by religious and other organisations

Melbourne — 19 October 2012

#### Members

Mrs A. Coote  
Ms G. Crozier  
Mr D. O'Brien

Ms B. Halfpenny  
Mr F. McGuire  
Mr N. Wakeling

Chair: Ms G. Crozier  
Deputy Chair: Mr F. McGuire

#### Staff

Executive Officer: Dr J. Bush  
Research Officer: Ms V. Finn

#### Witnesses

Dr C. Noone, acting secretary,

Ms M. De Cicco, executive director, strategic policy and legislation,

Ms F. Chamberlain, acting director, community operations and Victims Support Agency, Department of Justice.

**The CHAIR** — In accordance with the guidelines of the hearings I remind members of the public gallery that they cannot participate in any way in the committee's proceedings. Only officers of the Family and Community Development Committee secretariat are to approach committee members. A witness can request that personnel from their organisation approach the table during the hearing to provide information by leave of myself as Chair. Written communication to witnesses can only be provided by officers of the Family and Community Development Committee secretariat. Members of the media are also requested to observe the media guidelines. Please ensure that all mobile phones are turned off whilst in the gallery.

On behalf of the committee I welcome from the Department of Justice Dr Claire Noone, acting secretary, Ms Marisa De Cicco and Ms Fiona Chamberlain. Thank you very much for being here. All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act, attracts parliamentary privilege and is protected from judicial review. Any comments made outside the precincts of the hearings are not protected by parliamentary privilege. Witnesses may be asked to return at a later date to give further evidence. All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript. Please note that these proceedings are not being broadcast. Following the presentation the committee members will ask questions relating to the inquiry. I call on Dr Noone to give a brief presentation of no more than 30 minutes, then the remainder of the hearing will be allocated for questions by members of the committee. Thank you again for being with us.

**Dr NOONE** — Thank you, Chair, and thank you for the invitation to present to the committee today. I am accompanied by Fiona Chamberlain and Marisa De Cicco. I would like to start by giving you an outline of this submission and our presentation today so that you can follow what I am saying.

The Victorian government's approach to protecting the community and specifically children from sexual abuse involves collaboration between government and non-government agencies working within a range of interrelated legislative frameworks. The Department of Justice, the Department of Human Services and Victoria Police are key agencies in that, in particular in the prevention, detection and prosecution of child sex abuse, as well as managing and mitigating the risk posed by those offenders. Those departments work together with significant operational resources and within an authorising environment that includes a number of pieces of legislation, particularly the Children, Youth and Families Act 2005, the Working with Children Act 2005, the Sex Offenders Registration Act 2004, the Serious Sex Offenders (Detention and Supervision) Act 2010, the Corrections Act 1986 and the Family Violence Protection Act 2008.

My colleague the Secretary of the Department of Human Services will present to you during the course of your inquiry on Victorian government policy and legislative frameworks that guide her department's activities and initiatives to prevent, detect and prosecute sexual offending against children. I do not propose today to cover those matters so that we make the best use of the committee's time, and we have worked together to make sure that our presentations do not overlap and cover the same field.

I will cover today the main government policies and legislative framework that guide the Department of Justice's activities and some initiatives we put in place to prevent sexual offending against children and to manage the risks posed by sex offenders to children and to the wider community. I would also like to describe some existing Victorian laws and their relevance to some of the issues that I know are germane to the committee's inquiry, such as offences of failing to report a crime and offences of concealing evidence of a crime. Our activities can be characterised as preventing abuse in the first instance by probity checking persons working and volunteering with children, and I will describe these elements in more detail as I go.

Punishing and rehabilitating offenders in correctional settings is another aspect of our work, making sex offender parolees accountable in community corrections settings and also managing the risks posed by sex offenders who are living in the community, so each of those features I will cover off.

I will refer to the slide overview. You can see from that that I will be covering the range of issues I have just described. The Working with Children Act, the Sex Offenders Registration Act, the Serious Sex Offenders (Detention and Supervision) Act, mandatory reporting, general offences for failure to report and other aspects of the law.

First of all, going to the next slide, I would like to talk about the working-with-children check system and provide an overview of that element of our work. The Act complements the Children, Youth and Families Act

and the Child, Wellbeing and Safety Act 2005 by addressing the problem where individuals with relevant criminal or professional disciplinary histories may be working or volunteering with children. The Act was introduced in 2006. All relevant child-related employment sectors were phased in over a period of five years, commencing in 2006. As at 1 July 2011, all people engaged in child-related work as defined by the Act are legally obliged to have applied for and passed a working-with-children check. People engaged in child-related work within religious organisations were first required to apply for working-with-children checks between 1 July 2007 and 30 June 2008 and have been required to hold a working-with-children check since that time.

In terms of some of the features of the working-with-children check scheme, the Working with Children Act allows the Department of Justice to identify and prevent people convicted of certain offences from engaging in child-related employment or volunteering. It is a conviction-based scheme, and that needs to be understood. It allows the government to identify what is known about an applicant and assess their suitability to engage in child-related employment or volunteering. It provides parents, guardians and carers who entrust their child to a person who holds a valid working-with-children check with some assurance that the person has been screened by the government and a decision has been made that the person is suitable to work with children to the extent of the screening process that is required by the Act.

Broadly, the working-with-children check considers a range of offences — serious sexual, serious violent and serious drug-related offences. In terms of how we deal with sexual offences, where an applicant who applies for a working-with-children check has committed a sexual offence when they were an adult and the victim was a child, it is classified as a category 1 application, and the Secretary must refuse to give a working-with-children check in those circumstances. Some other serious sexual offences are classified as category 2 applications, and the Secretary must refuse to give a working-with-children check unless satisfied that the applicant does not pose an unjustifiable risk to children. There are those two types of tests that are applied and there are also category 3 applications, where the secretary must give a working-with-children check unless satisfied that it is inappropriate to do so. If required, we can elaborate on the operation of the scheme. Where there are no offences and no criminal history is disclosed, then that is not a concern and a working-with-children check will be granted. But it needs to be emphasised that it is a scheme about what is known about someone and their criminal history.

In relation to the working-with-children check and whether people who are engaged in working-with-children activity receive it, the check can only be based on known past criminal behaviour, as I have said. The working-with-children check also includes ongoing monitoring. If we have an applicant who does not have a criminal history but who then engages in some sort of criminal behaviour, then we reassess their suitability to hold a working-with-children check. This is an ongoing monitoring scheme. If you commit subsequent offences, then that will be found out and a process will be engaged to address your suitability to continue to hold that working-with-children check card. Those cards can therefore be revoked as part of that ongoing process. Amendments to the Act which will commence on 31 December 2012 will prevent a person with the most serious sexual, violent or drug offences from continuing to engage in child-related work until a full reassessment of their suitability has been undertaken. Pending the review of that, they will not be able to continue to work with children.

In relation to the working-with-children check and religious organisations, people engaged in child-related work within religious organisations, as I said, were first required to apply for a working-with-children check from 1 July 2007 and have been required to hold a check since that time. It does apply to those engaged in religious organisations. If an applicant has listed a religious organisation as their employer or organisation and does have a relevant criminal history, an assessment of their suitability to work with children is conducted by the working-with-children check unit within the department and a recommendation is made about their suitability in the same way as other organisations. The Secretary must refuse a working-with-children check if the Secretary believes an applicant is an unjustifiable risk to children, that it is appropriate to refuse a working-with-children check or in exceptional circumstances. They are the tests that are applied.

An applicant must be issued an interim negative notice prior to being refused a working-with-children check as part of the process. The interim negative notice informs the applicant of their right to appeal the decision, allowing them the opportunity to make a submission about why a negative notice should not be issued. A negative notice, in most cases, is issued within 28 days of the issuing of the interim negative notice. A negative notice does prevent a person from working with children for the next five years, so you cannot then reapply and be able to get a check. Approximately 81 000 working-with-children check applications have been received

from people engaged with religious organisations, and there are currently approximately 64 500 people in possession of a working-with-children check who have specified religious organisations as their employment or volunteer operational field. That is the scope of who has a working-with-children check.

In slide 7 you can see that as at 30 August 2012 approximately 81 000, as I have said, were from religious organisations, and 112 working-with-children checks have been refused to people engaged with religious organisations. That means they did not meet the requisite test to the satisfaction of the Secretary.

The working-with-children check unit conducted a number of information sessions, prior to it being applicable in July 2007, in which religious organisations were phased in. These had been attended by a number of appropriate religious organisations so that they can understand the operation of the scheme when it was being brought in. They specifically focused on compliance with the check scheme in those religious organisations, so there was an educative role before the scheme came in.

In relation to compliance with a working-with-children check, there is not specifically for the unit a compliance function with respect to enforcing the Act. If there are suspected breaches of the Act, they are referred to Victoria Police for investigation and possible prosecution, with the department providing assistance where that is required. There are some elements where in the submission the Child Safety Commissioner has called for the Working with Children Act to be expanded to include monitoring and an audit and compliance function and he recommends that the Act be amended to clarify and strengthen the scheme, including removing an exemption for parents who work with children that include their own children, as well as expanding the scope of the scheme in relation to people from religious organisations. These matters are not currently under consideration by government at this time.

Going to slide 9 and moving from the working-with-children check to the Sex Offenders Registration Act overview, the department works closely with Victoria Police on sex offender policy and law reform, as well as operations and information sharing on registered sex offenders. In particular, we exchange information with the Department of Human Services, Corrections Victoria and Victoria Police in relation to registered sex offenders, particularly with a view to protecting children.

The Sex Offenders Registration Act is administered by the Chief Commissioner of Police, and you will be hearing from police during the course of your inquiry. The Act requires offenders who commit certain sexual offences to keep police informed of their whereabouts, other personal details such as their email address or internet identities, any contact they have with children and their home and work addresses. The Sex Offenders Registration Act is intended to reduce the likelihood of reoffending, to assist police in detecting and prosecuting any future offences and also to prevent registered sex offenders from working in child-related employment, which is how it relates back to the working-with-children check. The Act provides an offence for engaging in child-related employment as well, so it operates, and that, as I said, is administered by the Chief Commissioner of Police.

What offences give rise to registration under the Sex Offenders Registration Act? It contains four classes of offence. The first relates to mandatory registration, where the courts have no discretion. The class 1 offences include such offences such as sexual penetration against children. Class 2 includes non-penetrative sexual offences, mostly against children, noting that offenders serving custodial sentences or registrable offences against children at the time of the Act's commencement, which was October 2004, were registered. Those that fall into the mandatory category are therefore registered. There are two discretionary classes of offending where the prosecution may apply to the court for registration, and that is a matter for the court. Class 3 offences include a range of offences involving sexual penetration against adults, with Class 4 being non-penetrative sexual offences against adults. We can provide you with more detail, and that information is all contained in the Act in any event. It should be noted that children are not subject to mandatory registration in any circumstances, so a child under 18 can only be registered by an order of the court regardless of their offence category.

In relation to the Serious Sex Offenders (Detention and Supervision) Act, the Department of Justice administers this Act. It applies to very dangerous sexual offenders and provides for ongoing detention or intense supervision of offenders who have completed custodial sentences — that is, those who have been in prison and have completed their sentence. The Act allows for those who have been released from custody to be made subject to ongoing detention or supervision, and this is aimed at preventing reoffending. It also facilitates treatment and rehabilitation under supervision.

The Act also provides for detention orders so that the Director of Public Prosecutions can apply to the Supreme Court of Victoria for a detention order before a person is released at the conclusion of their sentence. Those can be made for up to three years and can be renewed for further periods of three years. Detention orders must be reviewed by the Supreme Court on an annual basis. The detention and supervision order division of the Adult Parole Board is responsible for reviewing and monitoring the progress of offenders who are on those detention orders.

On the supervision orders, the Secretary of the Department of Justice applies either to the County Court or the Supreme Court before an eligible offender has completed their sentence. Those supervision orders can last up to 15 years and can be renewed for further periods of up to 15 years. They are reviewed every three years by the court or within a shorter period if the court so specifies. The court may impose core conditions in relation to a supervision order, and these can be specific to the management of the risk associated with the offender themselves. They might include electronic monitoring, specific restrictions on where an offender would reside or where they are allowed to be employed; contact restrictions with particular persons — so an order might be made in relation to particular people you are not allowed to come into contact with; they may prohibit contact with children by the particular offender; and orders can also impose curfews on the person under a supervision order. Again, the Adult Parole Board is responsible for the administration of those supervision orders as well.

Moving to the issue of mandatory reporting, this was passed into Victorian law in 1993 through the Children and Young Persons (Further Amendment) Act. That followed the death of Daniel Valerio, you will recall. These provisions remain virtually unchanged since that time and are set out in section 184 of the Children, Youth and Families Act 2005. Essentially, they require certain classes of professionals to make a report to the Department of Human Services where the professional forms a belief, on reasonable grounds, that a child is in need of protection because the child may be experiencing physical or sexual abuse. Failure to do so is a criminal offence. It should be noted that religious officials are not on the list of mandatory reporters.

In conclusion, I want to emphasise that child protection is more broadly an interaction between the Department of Justice, the Department of Human Services and Victoria Police, as well as other statutory and non-statutory agencies such as the Child Safety Commissioner. The focus of my presentation today has necessarily been on the work of the Department of Justice and the legislative mandate that is under our control. It is also, as I have said, an interaction of some prevention activity, prevention of abuse, but also how we deal with those who have found themselves in custodial environments and making sure that even after people have been in custody their risk of sexual offending against children can continue to be managed.

The Secretary of DHS and Victoria Police will also present on related matters. Thank you very much.

**The CHAIR** — Thank you very much, Dr Noone, for your presentation and for providing the committee with that background information. I am just wondering if there are any further comments from Ms Chamberlain or Ms De Cicco in relation to the presentation? I will now ask members of the committee to ask questions of you. I will ask the Deputy Chair, Mr Frank McGuire, to ask a question.

**Mr McGUIRE** — Thanks for your submission, Claire. As has been stated our aim is to try to come up with reforms to prevent any further abuse and protect children. On that basis, you have emphasised the working-with-children checks. Can you provide the committee with an indication of how successful they have been and any more detail you might have about that?

**Dr NOONE** — Of course, it is very hard to gauge the success of what is essentially a prevention activity. If we consider whether it is achieving its aim of ensuring that those who have been convicted of an offence are identified—we would say it has been quite successful at doing that. In terms of the classes of persons and categories of offences that are caught up in it and the nature of the Secretary's discretions (some being mandatory) and negative notices, we would consider that this has been a useful way of being able to identify who is or is not suitable to work with children. To assess the risk, we engage in a very detailed assessment using the criteria as specifically set out in the act, and this is something that we look at very carefully.

In relation to how many persons have been denied a working-with-children check — and maybe you might consider that a measure of its success 112 —

**Ms CHAMBERLAIN** — From religious organisations.

**Dr NOONE** — from religious organisations have received a negative notice, 62 received a negative notice at their initial application and 51 received a negative notice through ongoing monitoring of their suitability. These two figures add up to 113 because one individual has had two negative notices issued - one on initial application which was successfully appealed to VCAT - then another by ongoing monitoring which still stands). So that 51 would represent those who had originally received a working-with-children check card but committed subsequent offences or were charged subsequently and, in relation to your inquiry, with offences that may have been committed some years earlier but for which they have subsequently been convicted and their card has been taken away, so they have then been issued with a negative notice. In that regard you would say that the ongoing monitoring process we have in place does pick up those particular offenders.

**Mrs COOTE** — Dr Noone, thank you for your presentation. My question relates to the relationship with the police, reporting and time frames. Basically I believe the police have a policy of ceasing to release information about findings of guilt without conviction after a certain amount of time has passed — 10 years for adults and 5 years for children. Do processes that restrict the release of information about spent convictions affect the working-with-children check?

**Dr NOONE** — Could I refer that to Fiona?

**Mrs COOTE** — Thank you, yes.

**Ms CHAMBERLAIN** — Yes, we consider all offences, so spent convictions do not apply to the working-with-children check.

**Ms HALFPENNY** — I wanted to ask a question that was not really within the presentation, but I understand it is still within the jurisdiction of the Department of Justice. The committee will also be exploring the issue of redress for victims of child abuse in religious and non-government organisations. Does the justice department believe that VOCAT, the Victims of Crime Assistance Tribunal, is an avenue that will be supportive of victims of crime from religious and non-government organisations, bearing in mind things such as the delay in reporting, the crime, burden of proof requirements and that sort of stuff? The second thing is: if not, has there been any exploration or investigation of other types of redress schemes, whether internationally or in other jurisdictions?

**Dr NOONE** — In terms of the operation of VOCAT, at this time we have not looked at changes to that and how it might apply in these circumstances. We would be happy to take that on notice, if you like, Chair, and then provide you with some detail in relation to the specific operation of VOCAT as it relates to the subject of your inquiry. In relation to other redress schemes, we have not done that analysis. The civil law of course continues to apply as it does and is not limited in these circumstances.

**The CHAIR** — Thank you. If you would not mind taking that on notice?

**Dr NOONE** — Yes. Thank you, Chair.

**Mr WAKELING** — Thank you for your presentation. I am interested in addressing the issue of the statutory requirement for religious personnel to report abuse. If there were to be a statutory requirement for religious personnel to report abuse here in Victoria to Victoria Police, what do you see as the appropriate legislative avenue for that to occur?

**Dr NOONE** — The mandatory reporting regime is in place, as I have indicated, in relation to the Children, Youth and Families Act. The mandatory reporting issues are best dealt with by the Secretary of the Department of Human Services; she is in a better position to deal with those issues. In terms of the act, currently it would enable that to occur, but the consequence of that and the impact of that is something that the Secretary of the Department of Human Services is better placed to answer than I am.

**Mr O'BRIEN** — Thank you, Acting Secretary, for your presentation. My question follows on from that, but it relates to data on the mandatory reporting provisions specifically. I want to take up one thing in your presentation. You said religious officials are not on the list of mandatory reporters, and that is correct; however, the Catholic Church has pointed out that a number of personnel within their organisation — namely, doctors and nurses in Catholic hospitals and teachers in the Catholic education system; that is on page 105 of the submission — are required to mandatory report. I am wondering if you could provide some data specifically on

how many reports are made each year, going back in time, under the mandatory reporting legislation, and specifically is there any work being done to identify instances where there have been failures to report and what action has been taken in relation to those failures — from subsequent convictions or subsequent identified behaviour?

**Dr NOONE** — Again I am not in a position to answer that, Chair. That is a matter that is within the purview of the Department of Human Services, but we will make sure that — —

**Mr O'BRIEN** — If you could take it on notice and make some inquiries, that would be much appreciated.

**Dr NOONE** — Yes, we will do that.

**The CHAIR** — Thank you very much for undertaking to do that.

**Mr McGuire** — Can the Department of Justice comment about possible alternative redress schemes for victims of child abuse in organisations?

**Dr NOONE** — I indicated earlier in relation to that that we would look at that. We do not have a comment to make at this time; we have not explored alternative redress schemes. As I indicated, currently the civil law in terms of redress schemes applies, but in terms of alternative redress schemes and changes that might be made to the current civil law arrangements, we have not explored that at this stage, but we have indicated that we could do so.

**Mrs COOTE** — Acting Secretary, I know that you work closely with the Department of Human Services and also the police and the Commissioner for Child Safety. There is an issue that goes across all these areas, so it not specifically with the Department of Justice, and I know that it will be impacting on a lot of things. In specific relation to the Working with Children Act and the issues associated, the issue of confidentiality and confidentiality agreements that we have been alerted to, has your department any opinion or has it made any consideration of the relationship of the confidentiality agreements and the reporting of criminal offences in relation to the working-with-children checks?

**Dr NOONE** — Fiona might be better placed to answer that question, but to my knowledge our efforts in the working-with-children-check approach have not been hampered by confidentiality agreements in terms of the operation of the working-with-children-check scheme. In terms of other offence matters, that is an issue for Victoria Police, and I think they have indicated they will address that particular aspect. Our working-with-children-check scheme works on the basis of the actual criminal checks and, as I said, it is about what is known from a criminal record basis. That is the basis for the operation of the working-with-children-check scheme.

**Mrs COOTE** — Along that line then — and it is a very grey area, as I said — is it a point of discussion between the three departments working closely together, or is it something that is not tackled, or is it something that is put in the too-hard basket? Where does it actually fit?

**Dr NOONE** — Certainly in the operation of the working-with-children-check scheme we obtain our information from Victoria Police. If there is an issue, we would also be fully aware of any child protection-related issues, for example, in relation to the applicant. We obtain that information from the Department of Human Services. In the working-with-children-check scheme in particular we would have complete information apropos child-related matters with the Department of Human Services and the conviction matters that relate to Victoria Police.

**Mrs COOTE** — Have you had any instances where child protection have told you that there is a sensitive issue about confidentiality? Is that something that you have had information about at any stage?

**Dr NOONE** — I will ask Fiona to answer that question.

**Ms CHAMBERLAIN** — We have a very close relationship with the Department of Human Services. As the acting secretary has said, we are dealing with known information, and we have an ability to request information from the Department of Human Services. In my working knowledge, because my substantive role is as the director of the working-with-children-check unit, I cannot think of an incident where they have said, 'This is out of the bounds of anything that you can do with it'. If we request information about a particular

applicant, they provide it, and we make our assessment. Obviously the assessment in regard to that individual is confidential.

**Mrs COOTE** — In relation to your working with the police, for example, have they raised this as an issue of concern or seen it as a systemic issue?

**Ms CHAMBERLAIN** — The police are either giving us information that says someone already has a conviction, or they are letting us know that they have to charge someone, so that person is already under investigation. They know more than we do.

**Mr WAKELING** — Acting Secretary, I am interested in the Victoria Police submission, and I do not know if you have had the opportunity to see it. They flagged section 316 of the New South Wales Crimes Act, the concealing a serious indictable offence provision, and I am wondering whether or not the department has actually considered if similar legislation should be applied here in Victoria.

**Dr NOONE** — I will refer that to Marisa.

**Ms De CICCIO** — We are aware of the Victoria Police submission. As a consequence of this inquiry we have been doing some investigation of this matter, and we have looked at some of the historical general offences in the Crimes Act et cetera with respect to the reporting of suspected criminal activity and criminal abuse specifically. We would be happy to provide to the committee an overview of the work we have done to date, but at the moment we are not actively considering changes in law. Certainly as part of the preparation for the inquiry we have done some work on looking at what are the general offences in respect of the concealment or potential knowledge of offences that may have been committed.

**Ms HALFPENNY** — I note that you are noting that the Child Safety Commissioner has made certain recommendations about various changes. I am just wondering if there has actually been any internal review or other review of the mandatory reporting and the working-with-children legislation as to what effect it has had and how it is working.

**Dr NOONE** — As I indicated, there are some amendments to the Act that will come into operation come December, and that is a reflection of improvements that have been recognised in the assessment process, particularly if you like to provide a more objective test to the assessment of the working-with-children check. As I said in relation to the data that says we have given negative notices to a number of people in the context of this inquiry as it relates to religious organisations, the success of the ongoing monitoring program in being able to actually take cards away from those who have been convicted is part of the way in which we might attribute some success to it. But as I also said, it is often difficult when it is a preventative scheme to assess whether or not you have been effective in preventing people who might otherwise have committed an offence; if they have not committed one yet, it is not going to work to achieve that objective.

**Mr O'BRIEN** — There are two matters. I will handle them sequentially, if I can; if I cannot, that is fine. First, in your presentation you mentioned detention and supervision orders, and it may be that you cannot answer this in an open forum if there is sensitivity as to the publication of data, but I was wondering if you would be able to provide some advice to the committee as to the extent of those orders being made annually and what is the department's view of its success and appropriateness. The second matter is related to the views between the Catholic Church and the police that have emerged in relation to the reasons that there has been, on the data provided to the committee, a reduction in reporting of cases relating to the 1990s and 2000s. Essentially a key question for the committee will be: is this as a result of less offences occurring or is it as a result of a failure to effectively encourage the victims to come forward and report? That needs to be addressed.

**Dr NOONE** — We can provide the committee with numbers of persons who are on the sex offender register, and we could confidentially provide you with the number of supervision orders and detention orders. That is no problem. In relation to the number of people on the sex offender register, and this is Victoria Police's data and they may verify that, the total number is 3030 active registrants on that register. In relation to the other data, we can provide that to the committee.

**Mr O'BRIEN** — We are going to hear from other witnesses, being the church — —

**Dr NOONE** — Yes.



**Mr O'BRIEN** — It may be that you need to review some of those answers as they come forward as well, and we ask for that further cooperation as things come to light in relation to the question of the causes of the reductions in reporting and particularly on the sensitive question of whether victims are not wishing to go to the police or are they being discouraged.

**Dr NOONE** — Yes. In relation to that issue, we will be happy to take that into a continuous review, and if there are any specific questions that the committee would like to put back to the department, we would be happy to address those as well, and if required we would be happy to come back to the committee later during its deliberations if there is something you consider we would be able to assist with.

**Mr O'BRIEN** — Thank you.

**Mrs COOTE** — I have a technical question, and I would like it teased out, if I may. Can you give me some indication of what the situation is regarding pending cases and findings of guilt without conviction? Can you give me some detail and tease that out for me?

**Dr NOONE** — I am not quite sure what the issue relates to.

**Mrs COOTE** — There are pending cases that are out there at the moment where people have been found guilty but they have not got convictions. What actually happens to them? Are they in limbo at the moment? Is that part of the process of the Working with Children Act, and what actually happens?

**Dr NOONE** — In the context of the working-with-children check?

**Mrs COOTE** — Yes.

**Ms CHAMBERLAIN** — We are notified. If someone is charged, we are notified, and we can make an assessment on the basis that they have been charged. There has to be at least a charge in place, but we do not have to wait for a conviction, so we will do that assessment based on what we think the risk is. We can issue them with a negative notice.

**Mrs COOTE** — So you do not have any difficulties with that? Is the legislation clear enough to be able to provide you with the skills that you need to make quite certain that you can make those correct choices on anything that is pending? So you feel quite confident with the legislation as it stands?

**Ms CHAMBERLAIN** — I feel confident in the scheme that we can do it, and we do do it. We will often issue a negative notice to someone who has a charge pending.

**Mrs COOTE** — On the issue of the charges, we are assuming it is all sexual abuse here, but there is physical abuse as well. Are you confident that the legislation defines the differences between sexual abuse and physical abuse? It is a fairly grey area in the finer details, but are you prepared to think that the legislation and the four classes are actually definitive enough?

**Dr NOONE** — The classes relate to how we are to treat the different categories of offence. The working-with-children check as it relates to those classes goes back to the actual offence provisions in Acts such as the Crimes Act and Sentencing Act. It is a question more of: 'Are there offence provisions in these Acts adequate to describe and deal with different types of offences?'. That is a different question as it relates to the working-with-children check, and that is a question of review of the crimes and the categories of offence in the Acts themselves. That is a subject of ongoing review by the department. Do you want to say something about that, Marisa?

**Ms De CICCIO** — The working-with-children check act does allow the department, and we regularly in the course of assessing applications do obtain all information with respect to the individual's criminal record, if you like, and whether or not a conviction or a finding of guilt has been recorded. We obtain from Victoria Police and, as Fiona has indicated, from child protection a range of information that provides the actual criminal history record Victoria Police, via liaison officers between working with children, also provide other information from the file that may aid in understanding the circumstances of the offending. We regularly, as part of the assessment, provide not just the factual information of, if you like, the relevant offences, but we also cover other offences, whether a charge is pending or whether it is a conviction or finding of guilt, and other information that has been obtained from the actual circumstances of the offence. We also have information that

is capable of being gathered from referees and others who have dealt with the counsellors. They may be subject to orders or they may have undertaken treatment in other programs, so that information can all be considered as part of the assessment of whether the individual poses an unjustifiable risk.

**Mrs COOTE** — Thank you for that, because when you spoke of Daniel Valerio before, that was not sexual abuse, that was physical abuse. As we go through our deliberations, do you think it is important for us as a committee to be teasing out those differences between the sexual abuse and the physical abuse? Is that something that we should be concentrating on as we go through? You are our very first presenters today, but as we go through with this inquiry, is that an issue that we should be following through — that demarcation between physical and sexual abuse?

**Dr NOONE** — That is, of course, a matter for the committee.

**Mrs COOTE** — I would just like your advice.

**Dr NOONE** — The issue I think that is the gravamen of your question is really about the offence provisions themselves, whether or not they are sufficient to capture that difference and whether there is a need for a gradation in that. We look to both assault, sexual assault, serious violence and violence offences, and within that some may be sexual abuse and some may be physical abuse, but the actual description of the offence is not one or the other. So I think that if you look to the offences, you will find that you ought be looking at both aspects.

**Mr McGUIRE** — I would just like to follow up on the concealment laws issue that Nick Wakeling raised because I think this is going to be a critical point that we have to address. If I can ask, in your response on that, could you actually look at what mechanisms would be needed to provide protection for those who reveal crimes perpetrated by others, and how we actually look at that. Then the follow-on implication from that is what are the implications of such an offence for professionals and others — say, religious orders — who have confidentiality requirements. So the best information we can get on that would be vital to our considerations.

**Dr NOONE** — Certainly we can look at the issue of whether a whistleblower type of arrangement is something that would be applicable or could be established. I think that is what your question goes to.

**Mr McGUIRE** — How do we best deal with that issue?

**Mr O'BRIEN** — Following on from Mr McGuire's question, there are obviously different arrangements in different states, if you could draw on that. There is the old misprision offence as well — the failure to report. One aspect that I would like you to home in on as well is that since the Protecting Victoria's Vulnerable Children Inquiry, the Catholic Church has in fact altered its position on a key issue of mandatory reporting in a way that it now says on page 106 of its response to this committee's terms of reference:

... the Church now accepts that the requirement of mandatory reporting of cases of suspected child abuse under the —

Children, Youth and Families Act —

should be extended to ministers of religion and other religious personnel, provided that the sanctity of the confessional is maintained.

I do not know if you are able to establish the data. It may be very difficult to establish the data, and it may be that we need to hear from victims groups and others about this issue, but in terms of directing the committee's work, it would be very helpful to know from the department, the police and others to what extent is the issue of the sanctity of the confessional something that we need to probe further into in terms of that caveat that the church has put on its acceptance of mandatory reporting obligations?

**Dr NOONE** — Certainly we can follow that question up. I suspect it is something we are going to find difficult to actually obtain any data on. It may be something that you could benefit from hearing from victims and others.

**Mr O'BRIEN** — It relates to the other problem where there have been failures in the existing legislation to identify things that ought to have been identified, and it would require analysis of evidence where someone has effectively subsequently confessed that they effectively told someone in confession about an incident and that was not sufficiently followed up. We do not know how much of that is out there and how much of an issue it is,

but to the extent that we are considering that caveat that has been put on the church's submission, we need to know to what extent it is an actual problem.

**Dr NOONE** — I think that is something that Victoria Police would be able to assist with. There may be something within the courts' knowledge that could be helpful in that regard.

**Mr O'BRIEN** — It requires a detailed analysis in a lot of the cases, and we would appreciate the department working with Victoria Police to assist us with that as expeditiously as possible.

**Dr NOONE** — Yes. We will do what we can.

**The CHAIR** — Thank you. I do not believe there are any further questions, so on behalf of the committee I thank the three of you for appearing before us this morning. The evidence you have provided has been most helpful. Thank you again.

**Dr NOONE** — Thank you very much indeed.

**Witnesses withdrew.**