

TRANSCRIPT

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

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

Melbourne — 4 April 2013

Members

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Mr S. Kinmond, deputy ombudsman, and community and disability services commissioner, NSW Ombudsman.

The CHAIR — On behalf of the committee, I welcome Mr Steve Kinmond, deputy ombudsman, and community and disability services commissioner from New South Wales. 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. All evidence given today is being recorded, and witnesses will be provided with proof versions of the transcript. Please note that these proceedings are not being broadcast.

Following your presentation, committee members will ask questions relating to this inquiry. I thank you very much for providing additional information and a copy of your presentation today. Once we have heard from you, I will ask committee members to ask questions relating to the evidence that you provide to us. Again, thank you very much for being before us.

Mr KINMOND — It is a pleasure. What I would like to describe today is the Ombudsman's employment-related child protection system. The system was set up following the Wood royal commission into policing in the 1990s. Justice Wood had a paedophile reference as a part of that royal commission, and following on from looking at the issue of failure by agencies to appropriately report and deal with child sexual abuse matters and other serious abuse matters, Justice Wood recommended that the Ombudsman have a jurisdiction to oversight certain types of child-related employment and child abuse allegations. That has been in place since May 1999.

Very quickly, it is an allegation-based scheme under which reportable allegations and reportable convictions must be notified to the Ombudsman. It is under part 3A of our act, and 'reportable allegation' means an allegation of misconduct that may involve reportable conduct. 'Reportable conduct' means a conviction, including a finding of guilt proceeding to a conviction, in relation to matters such as assault and sexual assault, and then in addition there is psychological harm, neglect, ill treatment, clearly the sexual offences, as I have mentioned, but also, importantly, sexual misconduct. It is worthwhile noting that when the legislation first went through, sexual misconduct was not listed as reportable conduct, but within a very short period of time we learnt that it was important not just to require the reporting of sexual offences but also the reporting of sexual misconduct allegations.

The role of the Ombudsman is to scrutinise the systems for preventing reportable conduct and to scrutinise the handling of reportable conduct allegations; to oversight or monitor agencies' investigations is an essential part of the work; to respond to complaints about the inappropriate handling of these matters; to audit agency systems for protecting children and responding to reportable allegations; to undertake direct investigations where required — we have the Ombudsman's royal commission powers that we can invoke to obtain information not only from public authorities and employees who are the subject of allegations but indeed from any person within the community; and to report on trends and issues associated in connection with reportable conduct matters.

At the end of the completion of a matter, there are a number of options. One is that a matter is found sustained; another, not sustained/insufficient evidence. In terms of those two categories — both sustained and not sustained/insufficient evidence — those matters are currently notified to the commission for children and young people, and certainly with the sustained matter that will form part of any future employment check that is done by an employing agency at the point of employment in the relevant field. Bodies in child-related employment will conduct employment checks, and with matters that are sustained and not sustained/insufficient evidence they will be advised that there has been a finding to that effect.

That system is, as we speak, under review, and in future the system will be that in sexual misconduct findings arising from our jurisdiction — and offences will be picked up by the commission as well — and serious physical assault matters arising from relevant employment proceedings, the proceedings that we oversight, will be factored into the working-with-children check system in New South Wales. It is not the whole range of matters — for example, neglect findings, ill-treatment findings or other physical assault matters: they have to be sustained findings to guarantee that they will be factored into the commission's assessment. However, in recognition that we collect significant evidence in relation to a range of these matters, there is a provision to allow the Ombudsman — if we think the holdings we have, whether they are from our reportable conduct jurisdiction or indeed any of our holdings — if we have sufficient information which we believe may be enough to trigger a risk assessment by the commission in terms of a person's suitability to work in child-related

employment, we will have the ability to send that information across to the commission. That will be the new system.

It is important to see the connection between our oversight function, which is to ensure that matters are appropriately reported and investigated, and the working-with-children check system. A number of commentators who have looked at the New South Wales system would argue that the reportable conduct scheme, which involves the systematic reporting and oversight of matters of agencies within our jurisdiction, certainly adds to the information holdings that are relevant to the working-with-children check process. I hope I have made that clear.

In terms of the types of matters, of course you have ill treatment: as I said; neglect; physical assault; psychological harm; sexual misconduct; and sexual offences. If you were to combine ill treatment and physical assault, that represents about 40 per cent of the matters that are reported. In addition, sexual misconduct and sexual offences are about 30 per cent. Those two areas are the major areas of reporting.

In terms of agencies that fall under our jurisdiction — all public servants or all public sector employees — where there are reportable conduct allegations that occur whilst they are on duty, they are required to be notified to us. That includes all New South Wales agencies. The other major areas of business are in the education sphere, so the department of education and non-government schools as well. We cover the whole of the non-government school sector together with the out-of-home care sector. Of the slightly more than 1000 matters we dealt with last year, about 900 came from either the education sphere or from the out-of-home care area. In addition, there is the early childhood sector, which is also under our jurisdiction. There is out-of-home school care as well — the OOSH services are under our jurisdiction — and bodies such as juvenile justice and so on, who represent a certain proportion of matters. But overwhelmingly it is the education sector and the out-of-home care sector that generate most of the reports.

The other thing which is interesting to note is the improvements that have been made in practice since the inception of the jurisdiction. We now have over 20 class or kind determinations with agencies. We enter into class or kind determinations with agencies when we have sufficient evidence to indicate that the agencies have reasonably robust practices in place in relation to the handling of these matters. In terms of government departments — education, juvenile justice, community services. We have the 11 dioceses from the Catholic sector that are all under class or kind agreements, because they all have systems in place where child protection officers are appointed to drive this business and to ensure that there is quality handling in relation to matters; for example, in the Catholic education sector. So we have the 11 dioceses and also two with Centacare and two with CatholicCare. We have class or kind agreements because we are of the view that the quality of their handling of matters is of a sufficient standard for us to exempt certain matters from needing to be notified to us. The types of matters tend to be physical assault allegations where technically the allegation would constitute an allegation of a physical assault but is of a lower order, and we are of the view that they have the competency to deal with them.

In the out-of-home care sector we have class or kind agreements with the Department of Community Services and also with Barnardos and Life Without Barriers. We have a class or kind agreement with Christian Education National, which is one of the peak bodies in the independent Christian school sector, and also with Christian Schools Australia as well as with the Association of Independent Schools. There is also a class or kind agreement for out-of-home care bodies with five years accreditation in the out out-of-home care sector.

The effect of that is that if you look at the peak of reporting, which was around 2003–04, we were receiving about 2400 — in fact close to 2500 — reportable conduct allegations in each of the years we were overseeing. These days we oversee about 1000. That is a deliberate call we have made to focus our business at the very serious end, because that is the area where agencies need most support. Unfortunately in some areas — for example, the child-care area, which receives about 90-odd matters a year — we are not in a position to enter into class or kind agreements, because we are not confident that the level of competency is there.

As a result of our legislation being set up, and just to give you a few examples of how agencies have responded, I have already indicated that the Catholics have child protection specialists, and there are a number of other individuals they will appoint on a consultancy basis, to investigate matters and to report findings. Community services has a specialist unit that deals with these matters and the Department of Education and Communities has a specialist unit which deals with these matters. Christian Schools Australia and CEN have a particular firm

they have appointed on a retainer basis that provides them with educational support in this area and advice in relation to lower-level matters. In relation to more serious matters, they will investigate the matters directly.

There have been a number of other initiatives that we have embarked on. We have delivered quite extensive training. For example, since July 2010 we have delivered training in relation to reportable conduct and the handling of serious reportable conduct matters. Essentially, these are matters that would constitute very serious criminal offences. We have provided training for 271 participants since July 2010, and we have been recently approached by a number of agencies seeking to come under our jurisdiction because of feedback they have received as to the benefits of receiving technical advice in relation to the handling of matters.

In terms of the repositioning of our business, we have had to learn as things have gone on in this work. Increasingly we have become much more proactive in terms of the way we do business. We have significant involvement with the New South Wales police and with community services in relation to the handling of these matters. For example, we have direct access to the police system, and that is invaluable. If there is a report made — for example, a sexual misconduct report made against an individual — we will know from the police system the complete history of any similar reports that may have been made about that individual. We also have direct access to the child protection system — the KIDS' system — and so we will know also whether that individual has been the subject of any child-at-risk report.

Pulling that information together, together with our holdings, is invaluable in preparing a profile relating to risks in connection with certain high-risk individuals. On a number of occasions, that then has led to pulling information together and pulling together key stakeholders, which certainly involves community services and police. From that, a number of operations have been commenced and prosecutions have resulted. In the last 12 months I can think of a number of examples. Sometimes the holdings in relation to these individuals might go back 15 to 20 years, but no-one has been in a position to pull the threads together. It is one thing to have oversight, but it is another thing to make sure that the oversight body has the means, the technical skills and the access to the information to actually value add. That has been an important part of our work.

In respect to the strengths and weaknesses of the current New South Wales system, I note that in relation to child-related employment we have a reasonably rigorous system in place, in relation to bodies that are within our jurisdiction — and let me say there are a number of agencies that are not; for example, churches generally are not within our jurisdiction; organisations such as the scouts and other like bodies are not within our jurisdiction — the major areas are education, out-of-home care, child care and those who, even if they do not provide out-of-home care, provide substitute residential care.

It is a limited pool of matters and it concerns employees of those agencies, and also volunteers who are deemed to have been engaged to provide services for children. For that reason, for example, foster carers are caught, because whilst they are not employees they are volunteers who are engaged to provide services for children. In some contexts, a Catholic priest may be caught because they may be a local priest, there is a local parish school, and they are engaged to provide services to that local school and they are working with young people in that context. If that is the case, they may well come within our jurisdiction, but if that is not the case and if they are not involved in out-of-home care, for example, in a direct sense — and I emphasise in a direct sense — then they will not come within our jurisdiction. So we do have some reach in terms of the clergy within the Catholic Church but it is a limited reach.

We have noted, for example, that in the disability sphere there is no similar system for the reporting of serious abuse and neglect. In the disability field, for certain adults who one might classify as vulnerable — I need to make clear as the disability services commissioner of New South Wales that I am not saying that all people with a disability ought to be regarded as being vulnerable; that would be an inappropriate way of thinking about the issue — but there are certain people with disabilities who are living in certain contexts, for example, in residential contexts, who have significant, it may be cognitive, disabilities, where I would strongly suggest that it would be worthwhile having a look at the adequacy of the systems for reporting and responding to those matters.

Let me say that our work also shows that if you tighten up one area of the human services field in relation to this issue of abuse, the risk is that those people who have a tendency towards predatory behaviour and violence will move to another area. We have seen in the child-related employment area a number of individuals where clearly the water has got far too hot for them and we found that they then appeared in the disability field. In fact there

has been one matter in the last 12 months where he had worked in a range of different fields and simply moved when people became aware of his particular tendencies. I would strongly suggest that if you are looking at the issue of child abuse, you look at the issue more broadly in terms of what other groups may also be vulnerable and the implications of strengthening one part of the human services sector on other parts.

In terms of current weaknesses in New South Wales there is the vulnerability of the child-care sector. There are many child-care services and there are a number of peaks, and therefore it has been difficult — and it is still a work in progress in terms of us getting a system in place to ensure that right across the child-care sector, we can be confident that there is a high level of competency in this area. So that is an area of challenge, let me say.

Regarding the need for an independent oversight or review mechanism to assist religious organisations to respond to high-risk matters involving clergy, my point is that I think that warrants consideration. No doubt it will be considered not only by your committee but by the royal commission. Yes, there are bodies within our jurisdiction. There is an interesting question as to whether more broadly the leaders of those institutions, if nothing else, should be brought within a scheme where, if there are serious abuse allegations made, those matters have to be systematically reported. One might say, 'No, those matters are dealt with easily; you just introduce a mandatory reporting requirement to the police'. The reality is that the vast majority of matters that are reported to the police will not end up in a criminal charge and certainly a criminal conviction. That then leaves the agency in a difficult position on many of these matters, not knowing how it should deal with the matter.

It is an extremely complex area of work. My observation is that much of the poor conduct in this area is due to inexperience and the complexity of the issues. We regularly see matters reported to the police. Unfortunately, policing is a competitive environment, and depending on the quality of the information provided at the outset, the police may or may not show a keen interest. Then at the end of the day the agency is left dealing with the matter.

Let's assume that the agency makes some inquiries and let's assume that those inquiries are not particularly skilled. Subsequently, the agency is likely to appear before an inquiry of this type and be examined as to why they handled the matter incompetently. At one end of the spectrum there is the issue of agencies deliberately failing to deal with matters, but at the other end of the spectrum there are agencies that are extremely well intentioned but have no idea what to do in relation to this very complex area of practice. Having an intermediary in such a position that it has police information, child protection information, experience around investigative practice and the preparedness to pull agencies together to have a look at what needs to be done, has sufficiently strengthened the New South Wales system.

As I said previously, we used to deal with 2400 matters — far too many matters. We have repositioned ourselves to deal with around 1000 matters. We have substantially altered our structure to ensure that those people who are providing support in relation to serious criminal matters within our office are skilled investigators, and we are regularly in communication with police and other agencies around some of the technical challenges in relation to investigating these matters. Even if, for example, the police are making a good call in not investigating the matter, you are going to have in many cases a situation where the victim, for very understandable reasons, will not wish to proceed. There are some very tricky challenges that then arise in terms of how one effectively manages risk and that type of issue. There are some very difficult issues around the question of when the risk becomes so great that the individual should be removed from their employment.

The point I would like to make in this area is that regarding reportable conduct for serious child abuse matters, the notion that it is simply a matter of reporting these matters to the police and making sure that this is done consistently is not going to be the solution. In a lot of cases, it is the work that is done by the agency and the continued pursuit and monitoring of matters, together with the need to pull together relevant holdings — and that is where an independent external body can play an essential role — that moves a matter from going nowhere to being in a position to make good judgement calls about the risks that might be in play.

That is my not-so-brief introduction.

The CHAIR — Thank you very much indeed for that very thorough introduction, Steve. You have provided some additional information for us. In your presentation the reportable events that you referred to were predominantly in the various areas that you have responsibility for, including the education sector, and you have

highlighted the non-government education sector. Without going into the detail, you have provided us with some figures in relation to what you have in reportable cases. In relation to the Catholic education system do those reportable cases all pertain to teachers, or is that a break-up of teachers and clergy?

Mr KINMOND — The vast majority will pertain to teachers. Of course, the Catholics also have involvement in the out-of-home care area. The data that we provided related to 50 allegations from the non-government Catholic school sector between 1 April 2012 and 30 March 2013. They were all school-based matters. Many of those, of course, will be teachers within the school environment. They may be other employees within the school environment. A small subset of those may also involve allegations against priests. As I said, we might have a situation where they are the local parish priest and it is the school connected with the parish.

The CHAIR — Thank you for that clarification. You have also just described the cases since you have been involved and the reduction of those numbers from 2500, or thereabouts, to 1000 very serious cases. You talked about risk management. In your view, are your attempts to change the culture amongst organisations having an impact? Could you positively say that that is the case?

Mr KINMOND — Absolutely. For example, the department of education did not have a reasonably sized entity to investigate these types of allegations prior to the establishment of this scheme, or if they did, it was not a particularly sophisticated entity. The work that they do is very good. Community services has delays in relation to investigations, but the competence is there. I can say with confidence that Catholic schools' child protection officers are committed to the investigation of reportable conduct matters. A particular challenge can arise from time to time in relation to the responses to allegations involving the clergy. I do think that is a challenge for the church.

The CHAIR — What are those delays? Can you elaborate a little bit on that?

Mr KINMOND — In relation to the clergy, I think there is a challenge for the church, which will no doubt be something which will be the subject of consideration not just by the Catholic Church but by other institutions: in relation to, on the one hand, their desire to ensure that they provide pastoral support to a member of the clergy, but on the other hand balancing that against, the legitimate concerns that the public would have in relation to a priest who has engaged in inappropriate conduct. The decisions in relation to the vast majority of these matters concerning what action ought to be taken in relation to the priest is a decision that will be made by the bishop. Different bishops will have different levels of sophistication and different levels of appreciation as to where they should draw the line in terms of their pastoral responsibilities as against their broader community responsibilities, so I think that is an area which requires particular further focus by the church.

I think from the community's perspective, if one has a priest who has engaged in proven misconduct which is completely incompatible with their position as a priest, the community is entitled to ask the question as to why they might remain as a priest. There have been a number of cases that we have seen where we have some disquiet around where the line has been drawn on that issue, so I think that is an area which no doubt the church will give further consideration to. I think one of the reasons why the church has on occasions kept people as priests has been the view that they are better able to risk manage the situation if the individual remains as a priest. For example, they can remove the person's ministry areas, they can provide them with very specific directions as to what they should and should not do, and therefore the argument is once they are outside of the church there is less scope to manage the individual than within the church.

My response to that — and it is not for me to speak on behalf of the church, but as an independent observer — is that the community would think that if a priest has engaged in conduct which is completely incompatible with their position as a priest, it would be better for the church to make the decision that they ought to no longer have that title and have that position. That is not to say, of course, that the church could not continue to provide some kind of means of support so the person was not destitute, but that is separate from the question as to whether they ought to remain as a priest.

As somebody who has reviewed these matters over a number of years, that is the general observation I would make, but I would be keen, rather than for these things to be imposed on any institution, for these things to be worked through with the institution, whether it be the Catholic Church or any other institution, so there is a

collective commitment made and compact between the community and various institutions as to the way forward in this area.

Mrs COOTE — Steve, thank you very much indeed. There is a lot of information there, and you can see why you are so highly regarded with this model internationally. I think you are aware that our community services minister is looking into disability and sexual abuse very closely and is very proactive about it. But what I would like to talk about is when you spoke about having access to the police information and also the child protection information and how important that was to establishing what reporting you needed to make, you then went on to talk about some of the issues that are coming up that you are going to be addressing to enlarge what your program is going to be. What improvements would you be making to the current program to make it better going forward that we could look at as a committee when we are establishing our recommendations?

Mr KINMOND — Yes. I would be looking at the adequacy of the reach of our jurisdiction. We cover certain institutions, but we do not cover others, so I think that would warrant consideration.

The other point I would make is that if you were to set up an independent oversight body — it is one thing setting up an independent oversight body — one would need to make sure that it has significant powers; that it has the ability to obtain the necessary information so that it can add value; that it has the ability to establish the necessary relationships, particularly with child protection authorities and also with the police. We have a very good relationship on both fronts, and it is absolutely vital. Regularly we pick up the phone and we will bring police together with community services. On the other hand, they may pick up the phone and talk to us about particular information that is emerging and the need, in a tactical sense, to deal with that. There needs to be the powers, there needs to be the competency and there needs to be the relationships which are built.

If we were to look back in history in terms of our office, we tended to emphasise people with a strong child protection investigation background. That has certain strengths, but let me say in addition to that you need a solid platform of people with good legal and policing backgrounds as well. The stakes are high for these matters. There needs to be the highest level of competency from the oversight perspective. We have learnt things over the years, and we are continuing to learn. A change that I have made recently, for example, is increasing the number of principal investigators that we have. We had 25 staff to start with, and we now have 15 staff. Apart from government cutbacks, one of the reasons why we have 15 staff in that area is because I prefer to have more senior people with extensive investigative experience and fewer of those people, than to have more people but without the necessary skill set.

Mrs COOTE — Thank you very much indeed.

Ms HALFPENNY — Just a quick question first, do complaints about reportable conduct originate more from other staff members or from the victim who was subject to whatever the allegation may be?

Mr KINMOND — A significant number originate from the victim, so obviously it is very important under any system that there be a very strong system in place in terms of ensuring that people are aware of their right to make complaints and to be protected against this sort of behaviour. The act requires that heads of agencies — for example, the head of an agency in terms of a local school would be the principal — have to put systems in place to ensure that reportable conduct matters are identified and reported. That is a very important provision, together with the provision that requires us to keep under scrutiny the systems within agencies for the identification of and response to reportable conduct matters.

Ms HALFPENNY — If it is a victim, is there often a delay? We hear about delays. Or at the moment is it more allegations that you are receiving because of the way it is set up?

Mr KINMOND — That is a very good question. There is another provision I failed to mention, which is that there is a requirement on the head of an agency to report the matter to our office within 30 days. If I had my way, I would much more strongly emphasise as soon as practicable, because if you are dealing with a serious criminal matter, then from the moment that allegation arises, there is a potential risk to the investigation if the matter is not moved forward and evidence is not collected.

Ms HALFPENNY — In terms of the education sector, comparatively speaking are there more reports from independent, Catholic or government schools? Bearing in mind the difference in size and the number of children in each and all that sort of stuff, are there roughly the same number of reports from each area?

Mr KINMOND — I had a colleague of mine who has a doctorate in stats have a look at that couple of years ago and he could find no statistical difference in terms of reporting rates on a per capita basis across the different areas of the education sector. In terms of government schools, Catholic schools and independent schools there was no significant difference in reporting rates in statistical terms.

Mr O'BRIEN — Thank you for your evidence and for coming to give us assistance. I wanted to clarify one thing from your evidence. You made quite a strong statement in your conclusion that mandatory reporting to the police is not going to be the solution. Just so that is not misconstrued, I took that to mean it is not going to be the entire solution.

Mr KINMOND — Absolutely.

Mr O'BRIEN — You are not suggesting that there should not be an obligation to report to the police or an encouragement to do so?

Mr KINMOND — I think the obligation to report to police would have to be part of any system. It is interesting. We have in the last couple of years carried out a number of investigations which relate to the Department of Community Services — and I can mention this because it is on the public record — in terms of its failure to see that the allegations it had in front of it ought to have been reported to the police. It is essential that that be built into the system. Your point is a good one. My comment about mandatory reporting to police not being the solution alone does not mean that there should not be mandatory reporting to police.

Mr O'BRIEN — I took it that way, but I just wanted you to clarify that; thank you.

Mr KINMOND — Thank you.

Mr O'BRIEN — The next thing I wanted to take you to is since you have had that obligation you also keep a lot of data in your records. That is now an important part of your role. For example, in the material you provided to us you included fact sheet 1, 'Keeping records'. You probably recall it; I presume it is on your webpage.

Mr KINMOND — Yes.

Mr O'BRIEN — Do you still receive historical complaints?

Mr KINMOND — I am glad you have raised the issue of historical allegations. It is an extremely difficult area of practice, let me say. Yes, we often receive matters that relate to historical allegations. The test under our legislation is whether at the point of allegation the person is a relevant employee in a relevant field. If they are, the matter may well relate to something that occurred 20 or 30 years ago and yet it will come within our jurisdiction.

Mr O'BRIEN — It seems to me that a number of omissions have occurred in evidence we have received — assuming that evidence to be unchallenged in the finish — there has been no record of interviews or advice to police, whereas your formal advice to departments and internal processes encourages permanent record keeping, consideration of all allegations, advice given as to reporting to police and responses to that. It is quite a detailed list. Could you explain to us some of the importance of that detailed record keeping? If you are able to convert it into a formal recommendation as to how we as a committee recommending laws for Victoria might want to consider this as a best practice model for organisations, non-government in a sense, having the role you have seen they have in New South Wales, to comply with.

Mr KINMOND — Clearly if there has been any criminal allegation made, the fact that that allegation has been made ought to be kept by an agency and then all the relevant actions following on from that ought to be recorded. I think we both know when we are dealing with historical allegations that that will not be the case. I would be loath today to seek to give a prescriptive outline as to the nature of record keeping, because it is quite an involved area. There is record keeping concerning the nature of the allegations, but of utmost importance — and as somebody who has a tendency to lose things, let me say — absolutely solid records around the evidence that is collected are also important.

Mr O'BRIEN — Could you take the time to consider that and get back to us as best you can, because it is germane to some of the issues we are dealing with?

Mr KINMOND — Absolutely. I would be keen to get some further particulars from you later concerning what would be useful so that I can provide some tailored advice to you.

The CHAIR — I have one last point. Correct me if I am wrong. I think you said that different bishops will have different levels of sophistication in view of risk management with their clergy. Without going into detail and highlighting who those individuals are, could you impart to us in general terms something of the leadership they have provided that might be of assistance to us in our inquiry when we are looking at this particular issue?

Mr KINMOND — I think and I trust that within New South Wales the evidence will show that since the inception of our scheme there has been, generally speaking, improved responses by bishops to challenges. If, for example, you take the Sydney archdiocese, which is where it is located, it is in a position where it can have expert advisers that assist it in relation to matters. I would suggest that is of enormous benefit in terms of the way in which they handle matters. If one were to look at particular dioceses that are in more remote areas or in rural areas, it would not be unreasonable to assume that you are going to get variations in practice. One challenge for the church is to seek to identify where its potential risks might be, and in the areas where on a reasonable assessment one could say that the practices are not as strong, which might be for a whole range of reasons — location might be one — to seek to strengthen the system.

The interesting issue of course is the hierarchy of the church and the bishops, and of course you have the provincials as well, and their right to make decisions that they believe are appropriate decisions to make. As a layperson and a non-Catholic I would make the point that a system that encouraged much more peer review and the obtaining of expert assistance and that welcomed decisions being challenged would be a good way forward for the church. In making that comment I note that there is a national professional standards office, and in relation to matters that we oversight they can play an important role in relation to matters involving the clergy and in relation to other matters as well.

However, at the end of the day bishops have a great deal of power, and I do not want to present the picture that one should simply form the view that bishops who deal with matters poorly must be bishops who are poorly motivated. Sometimes matters are dealt with poorly because the necessary skills are not being brought to bear. The Catholic Church in New South Wales has a system where bishops can get good advice from the child protection officers and the national professional standards office, but from my review of a number of matters, on that test as to whether the right balance has been struck between pastoral responsibilities and broader responsibility to the community, I would have to say that there are occasions where one would feel uncomfortable.

The CHAIR — Thank you. Mrs Coote has a follow-up question.

Mrs COOTE — A question came to my mind as you were speaking about the changes that you have seen to the 11 archdioceses that you deal with. Do you have empirical data to back that up and show that there has been a direct change?

Mr KINMOND — The problem we have of course is that we do not have the baseline data in terms of where we were at, particularly solid baseline data as to where we were at when the scheme commenced. I could provide you with certain data in relation to deficiency rates in terms of investigations. I will seek to obtain that.

Mrs COOTE — That would be useful.

Mr KINMOND — As an operational person it is not pure speculation on my part. I am absolutely confident that there are a range of very competent investigators who are engaged by the Catholic Church to deal with employment-related child protection matters. We will see a significant number of findings of sexual misconduct and sexual offences that are found within the Catholic school system. We see, generally speaking, a high level of competency in terms of the way in which these matters are dealt with, but I will take that on notice.

Mrs COOTE — Thank you very much indeed.

Mr O'BRIEN — To follow up and to assist us so that we do not have to engage in lengthy correspondence, in response to my earlier question, and picking up on what Mrs Coote said, one of the reasons it may be helpful to get serious obligations in relation to poor reporting of so-called historical cases is to help establish some baseline data, particularly as to organisational management. I ask you to consider whether there needs to be a

distinction made between historical and so-called historical. Many victims have said that there should be no distinction as to whether the perpetrator has died, whether the person has moved on et cetera or whether there is no police case because of the need to understand what is going on in the organisation and for the organisation to have its best practice. Maybe there does not need to be a distinction, and if there is not, then let us know from New South Wales's point of view.

Likewise, in your evidence about the need for a broadbased reporting application, maybe does there need to be a distinction between government and non-government organisations in relation to child abuse because of the issues of the crimes that are occurring and the danger to children being broad issues? Could you give consideration to that? Even though you have submitted your keeping-of-records document to us — you already have, and that is obviously of help to us — whatever you could turn your mind to as to where it has been particularly effective, and why so, would be much appreciated.

I will add to that if I can. Mr Wakeling raised this with another witness, and given his absence it would be remiss of me not to raise it. One aspect that you have is in relation to employment findings, which again is broader than criminal misconduct. If you are aware of that as explained by Dr Tucci, it is an extremely useful aspect of your reporting obligations that are not necessarily in your pure mandatory reporting. Could you explain that quickly as well?

Mr KINMOND — In terms of sexual misconduct, for example, it does not mean a sexual offence. We have defined that as 'conduct which involves' — and let us see what my memory is like — 'an inappropriate and overly intimate or personal relationship with, focus on or conduct towards a child or young person or class of children or young people'. You might think, 'Why have we played the lawyers' game of being so careful in terms of our definition?'. It is because it is a very difficult area to describe, and if you describe it wrongly, then there is a whole lot of quite disturbing behaviour that you miss.

Let me, for example, illustrate that. We used to heavily rely on grooming. The problem with relying on grooming is that grooming requires you to find that the conduct that the person is engaged in is a precursor to a sexual offence. Okay, yes, you can show that the behaviour is crossing the professional boundaries, but the notion of grooming — you are grooming for a purpose, and the purpose is that there is a sexual offence.

There were many matters, for example, where the decision was made not to continue with the investigation because there was no prospect of finding grooming. And of course grooming is also, criminally, in terms of commonwealth legislation, an offence. So deliberately I altered the — I came into this role in 2010 — definition to describe the conduct. If you have got essentially a crossing of the boundaries — an inappropriate and overly personal or intimate conduct towards, focus on or relationship with a child or a class of children — then potentially you are in the sexual misconduct space.

Now we do in our guidelines caution against jumping to conclusions that one is dealing with sexual misconduct when in fact you may be dealing with somebody who is ignorant of their responsibilities in terms of proper professional boundaries. But employing agencies have indicated to us that describing the inappropriate conduct rather than attaching a label to that conduct — namely, grooming — has enabled them to legitimately, and in circumstances where there might be potential legal challenge, reach that kind of finding, when in the past they might not have been able to do so.

Let me say with historical allegations, my view is that they are the same as any other allegations: you take them as far as you possibly can. Now the circumstances of the alleged perpetrator — for example, if they are deceased — will have implications from an evidentiary perspective. But for very, very good reasons young people will often not be in a position to disclose, and the time when they are able to disclose will often be when they are adults. Therefore it is a vitally important area of work, and the evidence should be pursued as far as it can be pursued. Many cases that lead to prosecutions involve historical allegations. Increasingly for front-line police at local area commands — because these matters are not dealt with through the joint investigatory response teams, the specialist joint teams; they are dealt with at local area command levels — commanders advise me that there has been an increase in terms of historical allegations, not just in the child-related employment sphere but across the field more generally.

The CHAIR — Thank you. Steve, on behalf of the committee, I thank you very much for your insights and for the evidence you have provided to us this morning. It has been most helpful. Thank you very much indeed.

Mr KINMOND — Thank you.

The CHAIR — The hearing will now adjourn until 1.15 p.m. Thank you.

Witness withdrew.