

TRANSCRIPT

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

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

Melbourne — 1 March 2013

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Mr R. Mackay.

The CHAIR — Good afternoon everyone. On behalf of the committee I welcome Mr Robert Mackay. Thank you for your willingness to appear before this hearing. 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.

This hearing today is being recorded, and you will be provided with a proof version of the transcript. Following your presentation to us this afternoon committee members may have questions relating to both the submission that you have provided to us and your evidence that you are about to give to us. Again I thank you very much indeed for being before us. Please commence when you are ready.

Mr MACKAY — Thank you, Chair, for this invitation to attend and contribute to this inquiry. I am very grateful for this invitation and I warmly appreciate the opportunity to address the inquiry, and I do so very much in the recognition of the experience of those who have suffered harm as a result of the child sex abuse scandals.

In my submission today I want to focus primarily on point 3 of your terms of reference — that is, whether changes to law, practices or policy are needed to deal with allegations of child sex abuse. I do not come from Victoria, so I want right at the start to acknowledge the work of restorative justice organisations in Victoria, in particular the In Good Faith and Associates organisation and the Victorian Association of Restorative Justice. I will just very briefly say what my own background is in practice in restorative justice. A long time ago in Scotland I set up the first victim/offender mediation program, and I have also briefly served as a forum facilitator in New South Wales for a sentencing program with local courts. I have also served on peak bodies promoting restorative justice in Scotland, in the United Kingdom, in Europe and latterly in New South Wales. I have also worked as an academic in this field, and have done a lot of work promoting the theory of restorative justice.

Members of the committee, you probably are aware of what restorative justice entails. Briefly, I want to say that it is a means by which we can bring together all those who have been affected or have been involved in events where people have committed harm to each other. It is an opportunity for victims to be heard by those who have been responsible for perpetrating harms, and it is also an opportunity for those who have perpetrated harm to take ownership of what they have done and to be accountable to their victim. One of the aims of restorative practices is that perpetrators make some form of practical amends to their victims.

The child sex abuse scandal and its implications raises particular issues for restorative justice, and these are primarily that we have more than the state criminal and civil justice systems involved; we also have issues around the legal systems of the churches themselves — canon law. We also have a situation whereby many direct perpetrators will not accept responsibility for what they have done, and even if they do, their approach to their offending would indicate that they are unsuitable to participate in restorative practices. However, there are others who may be responsible for having subverted the justice process or have failed to protect victims who should be encouraged to participate in restorative processes. In cases where perpetrators cannot attend restorative processes, it could be said that officials of those institutions should stand in the place of the offender.

There are a range of responses which I have articulated in my paper. I do not intend to go through them, because you have had the opportunity to read them, but there is a question of whether any of these processes can be put into operation now rather than waiting for a royal commission. I think there are some which I would commend to policymakers and state governments. This partly reflects my conversations with In Good Faith and Associates. In particular I think there is the possibility of working with families and victims. Very often victims have been alienated from their families and need to have the opportunity to restore and heal those relationships. I think there is the possibility too of facilitated meetings involving mediators to allow victims, senior officials of institutions and senior clerics to meet and have positive conversations about their experiences.

Lastly, I think there is great scope in communities, particularly communities of faith, where there has been considerable conflict, dispute and trauma resulting from allegations of child sex abuse within individual congregations, for the use of restorative practices. It might be said that institutions need to get onto the front foot to think positively and creatively about what they can do to make things better for their communities in the future. I think the range of restorative justice processes that I have put in my paper can, in the long run, be put into operation, but I am aware that you might have some very close questions for me on that point, which I welcome.

I just want to add that nothing I am proposing today takes away from the need for criminal justice agencies and the courts to do their work, or from the need for prosecutions and convictions. In saying that, I would also say that from our experience around the world, restorative justice can operate at all levels of the criminal justice and penal system.

I am not going to say much more, except to say in conclusion that I hope the inquiry will be able to consider the potential for restorative justice to contribute to healing for victims, families of victims and virtuous communities that have been traumatised by the child sex abuse scandal. I welcome your questions and comments.

The CHAIR — Thank you very much indeed, Mr Mackay. You have just mentioned that you have had experience around the world, and in your opening comments to us you also said you have had experience interstate. Is that correct?

Mr MACKAY — Yes, in New South Wales.

The CHAIR — Could you just describe to the committee a little bit about that experience and expertise, what organisations you have worked with and maybe give us some examples?

Mr MACKAY — My actual direct practice experience is through the court system in New South Wales. I have not dealt with perpetrators or victims of child sex abuse either there or in my previous experience as a social worker in the United Kingdom, or as a victim and family mediator. I do not have direct experience with victims of this type of crime, I want to make that quite clear. What I have been doing is developing, with one or two of the churches, ideas about how they might develop restorative programs. In addition to that, my experience is that I am a practising family mediator. I regularly meet with people who have been the victims of a range of different types of trauma, including domestic violence, but I make it absolutely clear to you that I have not worked with victims in this particular setting.

The CHAIR — Which are the one or two churches you have been working with? Is that in Victoria or is it in New South Wales? Is it overseas?

Mr MACKAY — This is in New South Wales. One of the things I need to say is that as a mediator I have been approaching them in my role as a mediator, therefore churches are potential clients. Therefore I have to be very careful about what I say. I would be reluctant to name the particular denominations for professional reasons.

The CHAIR — I understand that. I suppose I am trying to ascertain whether it is within a large diocese or whether it is just an individual parish.

Mr MACKAY — I can say that it is at diocesan and higher levels.

Mr McGUIRE — Do you have any evidence that this has worked in any jurisdiction as far as child sexual abuse is concerned?

Mr MACKAY — This is a very new area for restorative justice. I think it is fair to say that it is experimental. However, I am aware of a project, which I do not believe has been evaluated, that is taking place in the United States. I am also aware that there are some initiatives being taken in Victoria that relate to work with reconciliation between victims and families, but they do not go as far as a full restorative model yet.

Mr McGUIRE — On that, do you think that might be where it has utility for us — to help victims reconnect with their families? Obviously the power imbalance between perpetrator and victim is extreme and probably far more complicated than any other area you would want to look at, so do you think that might be where you can have some real benefit? We had evidence yesterday of a family that was totally torn apart because of the circumstances. Are you thinking that is the area and the level at which you could help to resolve the issues?

Mr MACKAY — I think that is one of the areas, and I certainly think it is extremely positive. If a family is torn apart, it is very difficult for the victim to have support when they are trying to do things — to face the decision about whether they should approach the police and prosecution, for instance. A victim who has the support of what we sometimes call their community of care is much more likely to feel stronger and supported in the process of involving prosecution authorities — and they will need it because it is a traumatic process.

Mrs COOTE — I would like to tease out the issue of acknowledgement. Before you can start the restorative justice process, you need to have an acknowledgement that you did actually do something wrong to start with. We are getting a lot of evidence that aspects of the Catholic Church in particular are very reluctant to admit that they have been perpetrators of child sexual abuse. How would you approach something like that, when you are coming from a direction where one of the parties involved in some sort of restorative justice process does not even acknowledge that there is anything to restore?

Mr MACKAY — I am going to distinguish between direct perpetrators and indirect perpetrators, if I may. A direct perpetrator is the person who commits the abuse. An indirect perpetrator is somebody who might have been involved in suppressing evidence or subverting the course of justice. Then it could be said there is a third denomination, being representatives of the institution that has been responsible for the person who has caused the abuse. It is absolutely clear that you cannot have a fully restorative process unless somebody is standing in the place of the perpetrator during the process. There needs to be some way of persuading the institution that it is necessary to participate in the process and to take responsibility for the actions of those who operate in its name. How we do that is a very big question. That is something I am struggling with in one case but not in another case. I believe there are people within different denominations who want to go down this kind of road, but the question is whether they have the power and authority to support and promote it.

Mrs COOTE — One of the big issues we are finding is that there is no one person who has authority. Each one of the dioceses reports to Rome, and each one of the orders also reports to Rome, so it would seem there is no single figure or body. In that instance, how would you identify that victims — they call themselves survivors — were going to get the justice they were seeking from the organisation? How would you do that, given that this is such a protracted process?

Mr MACKAY — My impression is that I would not be wanting to involve victims in promises that they should be involved in the restorative process unless we were clear that the institution at least was onside and willing to play. It would be completely abusive of victims to say, ‘Would you like to have a meeting with the church?’, and then have the church turn around and say, ‘Sorry, we’re not playing’. There is absolutely no way that should happen. The proper function of a mediator or facilitator in this process is to do no harm. I would not be approaching victims unless I was absolutely clear that the institution, which was responsible for the harm, was willing to engage wholeheartedly and fully in such a process.

Ms HALFPENNY — I understand there is a theory in this program such that with domestic violence, say, there may be a situation where the family wants to stay together or there will be constant contact through children, and the question is about how to overcome the issues. How does that fit in terms of child sex abuse? Is it more about keeping the victim within the church and as part of the system? It seems that that process is more about keeping people together or working out a way for them to continue on together, rather than being separate entities.

Mr MACKAY — Yes, thank you. That is a very appropriate question. The position I would take as a mediator or as a facilitator is that victims have self-determination. Whether or not they wish to remain in a particular congregation is absolutely their own choice. They should feel under absolutely no pressure to either participate in the process or feel that by participating they are saying they are continuing to be a member of that community. In fact in one of the conversations I have had with one denomination we talked about the possibility of facilitating meetings with the senior clergy person and that one of the responsibilities of that senior clergy person would be to acknowledge that a person’s decision to leave that religious community, that religious denomination, was absolutely fine and subject to no sense of judgement.

So I am absolutely clear that restorative justice should not in any way be seen as trying to heal communities for the sake of healing communities. On the other hand, having said that, if there is a community which has been torn apart by allegations of child sex abuse and a victim does not want to participate in that process, then there is a role for a community facilitation, if you like — some form of circle or conference — to enable that community to deal with the hurt that has been experienced by that group.

Mr WAKELING — Thank you very much for your submission. I am just interested to see how this would work in terms of the criminal justice system. At present we have effectively two streams through which people can be dealt with — one is the criminal justice system, where the matter can be dealt with in a court of law; the

second option is what they call the Melbourne Response or Towards Healing, where the matter is dealt with by way of the awarding of compensation. So they are effectively the two streams that apply at the moment.

In terms of what you are proposing, will this be a third option and will that potentially overcomplicate the matter for victims in the sense that they may feel it is too much of a burden on them to go through all these options, and they may be less inclined to participate?

Mr MACKAY — What I would say is that in relation to individual perpetrators, as perpetrators, the criminal justice system takes precedence. So my view and the view of many people in the restorative justice movement would be that restorative justice works alongside the criminal justice system. It is the responsibility of the criminal justice decision-maker, whether it be the prosecutor or the judge, to decide whether or not it is necessary to prosecute, whether or not it is necessary to impose a particular sentence. Part of the consideration would be: does it meet the ends of justice to refer this case to restorative justice? But it would be very much under the supervision of the criminal justice process. I hope that deals with one part of the question.

The way I would come at this is to say that there is a fundamental need for victims to get justice, whether it be through the criminal justice system or the civil justice system. From my point of view I would see that as taking priority. So what is being proposed here is, if you like, a plus, an addition, and it may be that some restorative processes can only be put into operation once those other questions are being addressed: how much compensation is to be awarded and what quantum of punishment or sanction is to be awarded? So I do not know whether that entirely addresses your question. Please come back to me if it does not.

Mr WAKELING — I assume it is an addition. Can you perhaps give me an example of what some of the outcomes may then be? If the matter has been dealt with through the criminal justice system and if it has potentially been dealt with from a compensation perspective, what would the outcomes potentially be with your process as an addition?

Mr MACKAY — The primary outcome in all these processes is that the victim has the opportunity to be heard, to be able to tell their truth, tell their experience to either the perpetrator or somebody standing in the place of the perpetrator or the officials of the community that has been responsible, and to hear from the perpetrators or their substitutes a valid and honest acceptance of responsibility and an apology. That, I think, is the primary thing that can be of benefit to the victims. I think it is reasonably clear that the criminal justice system and the civil justice system do not provide those opportunities.

Mr O'BRIEN — I wanted to clarify a similar point. You confirm absolutely the primacy of the courts and the criminal justice system?

Mr MACKAY — Absolutely

Mr O'BRIEN — And do you have any views on the Melbourne Response and Towards Healing, in the sense that they provide victims with an either-or scenario — 'Either go to the criminal justice system or take our compensation path here'?

Mr MACKAY — I do not feel that I am qualified to speak directly about that. But having said that, I think that the child sex abuse scandal raises issues that go beyond what individual institutions may or may not choose to offer, so that it seems to me that the community as a whole — that is, government representing the community — needs to make a judgement as to whether what is on offer from individual institutions to those who have been harmed actually meet the ends of justice. That would be my benchmark. I could not answer that question fairly or authoritatively in relation to this case. That may sound a little bit abstract and abstruse, but I think it does have some bite.

Mr O'BRIEN — If I could just take you to your submission, for the last matter, which follows on again from Mr Wakeling and from what you have said, you refer to the scriptural cycle, and you call it a sequence of confession, repentance and then forgiveness. In terms of the abuse scandal, we have seen some statements of repentance. I will leave it for others to judge if it is to be forgiveness at an individual or society level; I think it is far too early for that. For mine, I have not seen much evidence from the church, either at an individual level to victims one-on-one or as explanations to this inquiry as to the reasons for this systemic abuse. That would be what I call the confession stage, which is actually the first stage, because if you do not have a proper confession,

the repentance is not seen as genuine. It is seen as what one priest described as a euphemism and a downplaying. Is that something you would agree with?

I have seen you nodding all the way through, and it was a bit of a long proposition, but could I ask you to comment on it and perhaps your knowledge of the scriptural sequence or confessional right. Could you give us your recommendations in relation to how the church leaders need to respond to this issue now for the purposes of this inquiry and other inquiries in relation to those victims — not all victims, but those victims who wish for a detailed account as to what happened and how it came to pass that they were systematically abused?

Mr MACKAY — What you are describing there is what might be described as the offender cycle. I am thinking a bit about how offenders deny, minimise or rationalise their behaviour. The question I think you are asking is, ‘How do you persuade individuals to change their approach?’. I think some of the insights we have from criminal justice practice may play a part in that. My sense is that the community at large, represented by government, has to set very clear boundaries and, if you like, positions that actually challenge and also deconstruct the ways in which offenders make sense of their behaviour, so that if there has been denial, if there has been reluctance to address these issues, that has to be confronted. Sometimes that may have to be confronted through the process of prosecution.

If there have been cases where the process of justice has been subverted, then the criminal law has an answer. I would also say — and again I am straying off my brief a bit — from my very limited understanding of theology, there is absolutely nothing in the writings of the New Testament that actually justifies a sense that the church is above the authority of the civil magistrate when it comes to these matters.

Mr O’BRIEN — You did not quite answer my question. You went to the next presumption of how they go about trying to engage in an act of confession. I am putting to you what a number of victims have put to us, which is that individually offending priests, institutional priests or the institution as a whole have not undertaken any exercise of public examination as to what went wrong and have not made a detailed account for those who wish it. Do you believe that is the very first step before they can even think about repentance, let alone forgiveness?

Mr MACKAY — I absolutely agree with that, yes.

Mr O’BRIEN — Can you say why, quickly?

Mr MACKAY — Very quickly, you cannot have a restorative process unless somebody has taken responsibility.

Mr O’BRIEN — And accountability.

Mr MACKAY — And accountability, yes, absolutely. The churches as organisations within civil society are accountable to civil government.

Mr O’BRIEN — To the detail that the victims require? We get one-line paragraphs of apology, but we do not get detailed accounts. Do you think the detail is important in some instances?

Mr MACKAY — I think that for victims they need a proper account of the behaviour of the individual or the institution and a proper statement of why they acknowledge that they have done wrong. That is very clear. I hope that answers your question.

Mr O’BRIEN — ‘Proper’ meaning detailed?

Mr MACKAY — And detailed, yes.

The CHAIR — Mr Mackay, on behalf of the committee I thank you very much for appearing before us this afternoon and providing the evidence that you have. It has been most helpful.

Mr MACKAY — Thank you very much for the opportunity. It has been an honour and a privilege.

Witness withdrew.