

Facing the Truth

Learning from the Past
How the Catholic Church in Victoria has
Responded to Child Abuse

A Submission by the Catholic Church in Victoria to the Parliamentary Inquiry into the
Handling of Child Abuse by Religious and other Non-Government Organisations

21 September 2012

The Catholic Church in Victoria

This submission is made by:

- The Catholic Bishops of Victoria:
 - Archbishop Denis Hart on behalf of the Catholic Archdiocese of Melbourne;
 - Bishop Peter Connors on behalf of the Catholic Diocese of Ballarat;
 - Bishop Christopher Prowse on behalf of the Catholic Diocese of Sale; and
 - Bishop Leslie Tomlinson on behalf of the Catholic Diocese of Sandhurst.
- The Catholic Religious Orders, Congregations and Societies within Victoria represented by:
 - Sister Annette Cunliffe rsc on behalf of Catholic Religious Australia (**CRA**); and
 - Sister Helen Toohey csb on behalf of Catholic Religious Victoria (**CRV**).

As bishops and leaders of religious institutes of the Catholic Church in Victoria, we acknowledge with deep sadness and regret that a number of clergy and religious and other church personnel have abused children, adolescents and adults who have been in their pastoral care. To these victims we again offer our sincere apology.

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1 Facing the Truth

“Let us take things as we find them: let us not attempt to distort them into what they are not... We cannot make facts. All our wishing cannot change them. We must use them.”¹

In the pages that follow, the Catholic Church in Victoria presents its submission to the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations (**Inquiry**).

The Inquiry is a formal and public process that seeks to deal with an issue that has caused much suffering. The Church welcomes the Inquiry and confirms its full co-operation.

While this Inquiry is a secular forum, sentiments of faith are not out of place. As Catholics, we value truth, freedom, justice and love. We follow one who asked us to always move towards the truth.

Our submission to this Inquiry is an expression of the Church’s commitment to facing the truth with humility and unflinching honesty.

As Cardinal Newman said: *“We cannot pretend things are not as they are. We must use the facts to bring forth whatever good is possible.”*

Let there be no misunderstanding: the sexual abuse of a child was, is and always will be a crime, and a profound contradiction of all we believe in.

We know that mistakes were made, and we apologise to victims and their families for these failures. The extent of sexual abuse and its terrible consequences first began to be understood by society and the Church in the late 1970s. Since that time, the Church has responded with policies and procedures to guide Dioceses and religious institutes in dealing with incidents of child sexual abuse.

We know that our early response was too slow. However, as our understanding of the dynamics and impact of child sexual abuse has grown, so we have shaped our response. We have learnt from our failures. We are focused on the needs of those who have been abused. We actively encourage victims to go to the police where there may have been criminal conduct. We have taken action to prevent further abuse. We have changed how we deal with offenders and are committed to best practice.

In Victoria, our response has included the *Melbourne Response* and *Towards Healing* processes, which are discussed in detail in this submission. The Church sees these as important priorities, and continues to refine these processes.

Our intention is to strive for healing for victims; to deal promptly and effectively with those who are guilty of abuse; and to prevent further abuse. Our approach, while respecting the privacy of those involved, takes a clear public stance against the sexual abuse of children.

We know from our work with victims that the effect on children and their families has been devastating and lasting. We know that parents feel an intense betrayal of trust that even one child could have been harmed by people called to serve.

We have systems and processes in place to deal appropriately with those accused of abuse. We are firmly committed to the proper administration of justice, and to the prevention of future abuse.

The Church renews its apology to victims and their families, and promises to continue to take decisive action to bring forth healing, and to guard against future harm. We know too that the damage done to the Church brings bewilderment, distress and suffering to the Catholic community at large.

Our prayers are with the victims and their families, and those entrusted with the conduct of this Inquiry.

¹ Blessed John Henry Cardinal Newman (1801-1890).

2 Executive Summary

The Catholic Church in Victoria condemns all forms of abuse of children, whether sexual, physical or emotional. Child abuse in the Catholic Church has caused shock and sadness among Catholics and the wider community. It is shameful that this abuse, with its devastating impact on those who were abused and their families, was committed by Catholic priests, religious and Church workers.

The Church is committed to facing up to the truth and not disguising, diminishing or avoiding the actions of those who have betrayed a sacred trust.

Cases of sexual and physical abuse of children involving the clergy, members of religious orders and other members of the Church began to emerge in Australia in the late 1970s. Since then, the Church has worked to offer healing to victims, assist other people who are affected, provide a just and effective response to those who are guilty of abuse, and prevent future abuse.

The Church's response has evolved as our understanding of the extent, nature and terrible consequences of abuse has grown. Dealing effectively with child abuse is a high priority for us, and the Church's cooperation with this Inquiry is part of that commitment.

The Catholic Church in Victoria

The Church in Victoria includes in excess of 1,428,000 Catholics in 336 parishes.² The role of the Church and its agencies in the State of Victoria is well known and it contributes in a wide variety of ways across the Victorian community.

The Church in Victoria comprises four geographic regions known as Dioceses. The Archdiocese of Melbourne and the three regional Dioceses of Ballarat, Sale and Sandhurst, geographically cover the State.

Religious institutes known as Orders, Congregations and Societies also operate in Victoria. Some of the areas that religious are working in today include chaplaincy, education (both school and tertiary), parish work, formation, community work, work with refugees and asylum seekers, aged and health care, overseas missions, prison ministries, social services, spiritual direction and retreats, work with indigenous Australians and pastoral care.

Responding to child abuse

The Australian experience about the developing understanding of the extent and the effect of child abuse is similar to that of other countries such as the USA, Canada, the UK, Ireland and New Zealand, in a number of respects.

Notably, the problem of child sexual abuse first became apparent in the context of incest and abuse within families; which led to a growing awareness of sexual abuse by others. While it is now known that offences have occurred over many decades, it is typically only in the last 30 years or less that victims have come forward to report their abuse.

The Church acknowledges that our early response was inadequate and too slow. Like society and many professionals of the time, the Church lacked insight into the issue of child abuse and, as a result:

- Took too long to respond decisively and effectively;
- Was slow to believe victims who alleged abuse by clergy, religious or other Church personnel;
- Was slow to accept that anyone could commit such crimes, let alone a priest or religious;
- Believed offenders that they would not reoffend and could be cured, especially when assured of this by professionals;
- Wrongly believed the denial of predators;
- Underestimated the long-term, often devastating, harm and effect on victims;

² Australian Catholic Bishops Conference, Pastoral Research Office, E-News Bulletin, 3 August 2012.

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- Was slow to place central priority on the care for victims;
- Initially required confidentiality clauses in settlements with some victims;
- Initially favoured a legal over a pastoral response; and
- Operated in an environment where there was a lack of transparency.

Our response has developed alongside our growing understanding of the complexities of abuse. We have been at the forefront of initiatives internationally to provide independent processes for victims of abuse.

The year 1996 was a defining one for the Church in Victoria, with the introduction of the *Melbourne Response*³ and the approval of *Towards Healing*⁴. These new processes were designed to prevent abuse and respond to abuse when it had occurred. Both processes recognise the need for clear structures and procedures for dealing with complaints of sexual abuse of children, as well as the need for a continuing review of those structures and procedures.

The core elements of both the *Melbourne Response* and *Towards Healing* are:

- Putting the victim first;
- Respect for the police process and encouragement to use it;
- An investigation process that is independent of the Church Authority;
- A pursuit of healing, including an apology to victims and their families;
- Counselling for victims and their families;
- Compensation/reparation; and
- Removal of offenders from all positions where they represent a risk.

The ***Melbourne Response***, when introduced in the Archdiocese of Melbourne in 1996, is understood to have been the first Diocesan protocol of its kind established anywhere in the world. A key element of the *Melbourne Response* is investigation of complaints by an Independent Commissioner, who operates independently of the Archbishop and Archdiocese of Melbourne. Free counselling and treatment is administered through Carelink and compensation is assessed by an independent Compensation Panel. Pastoral support is also available.

Towards Healing was approved in December 1996 and commenced in March 1997. Later that year it was commended by the Wood Royal Commission as providing “a model for other Churches and religious institutions to follow.”⁵ It sets out the principles that form the basis of the Church’s response to reports of abuse throughout Australia. The *Towards Healing* procedures apply throughout Victoria except for the Archdiocese of Melbourne.

The *Towards Healing* process has three principal phases: hearing the story, assessing the facts, and addressing the needs of the complainant. Throughout the process, independence is assured by a Director of Professional Standards who ensures the correct process is followed, arranges for a contact person to support the complainant, appoints assessors and, if necessary, makes contact with the police.

An important feature of the *Melbourne Response* and *Towards Healing* is that both processes encourage victims to go to the police, and have safeguards in place to ensure that any investigation by the Church does not interfere with police processes.

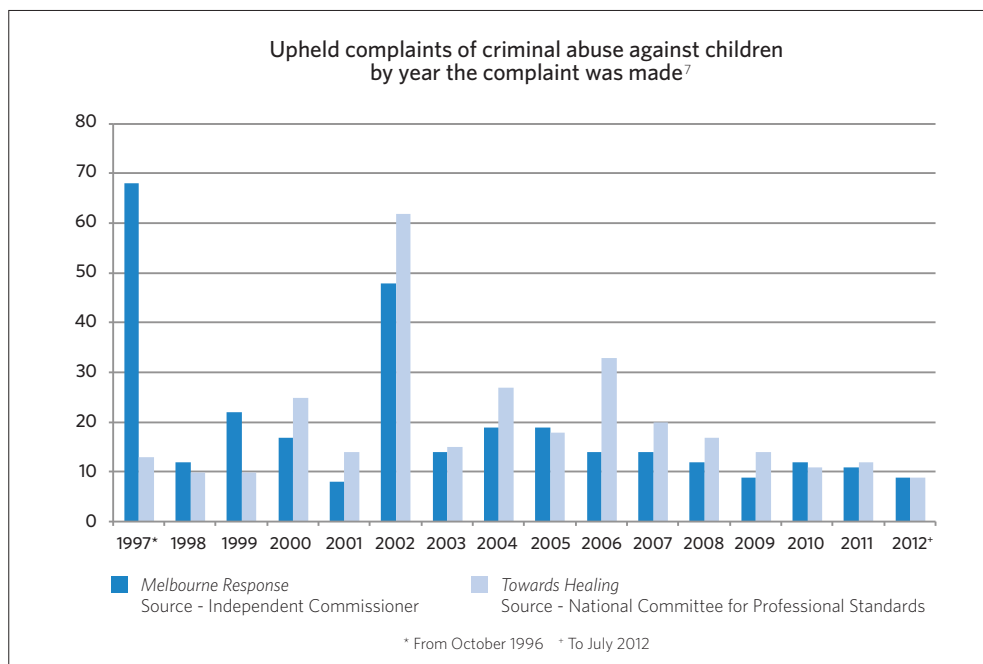
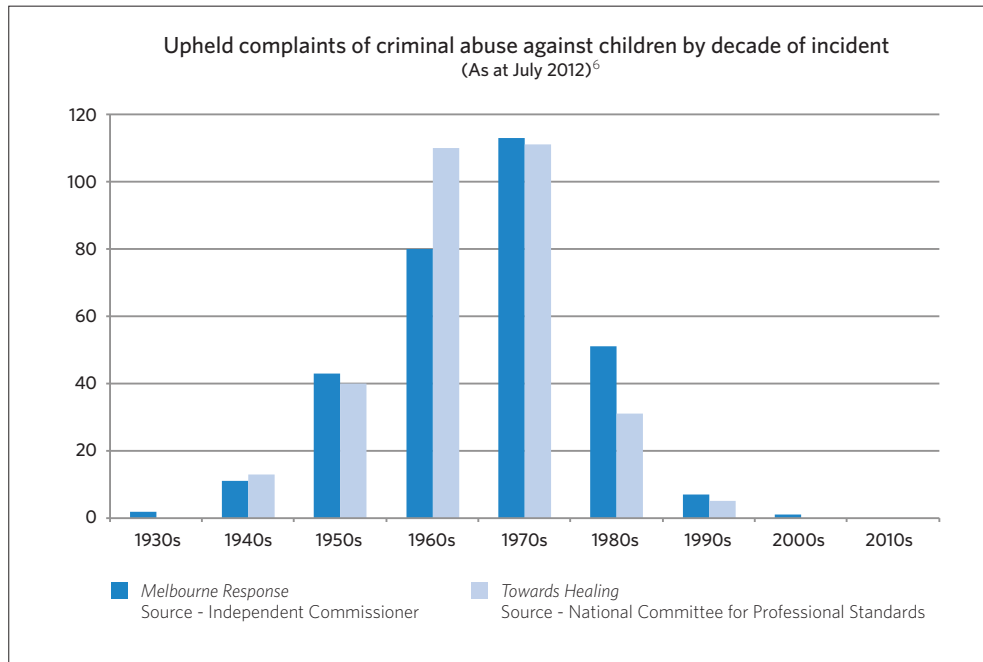
In the past 16 years, the complaints of about 620 victims of criminal child abuse have been upheld by the Church in Victoria. Most claims relate to incidents from 30 and up to 80 years ago. The Church has received very few complaints of abuse that has taken place since 1990.

³ See Chapter 8.

⁴ See Chapter 9.

⁵ *Royal Commission into the New South Wales Police Service, Final Report*, Vol V: The Paedophile Inquiry, Aug 1997, p 992

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Many offenders are now deceased or in prison. Of the remainder, the majority are elderly, retired and have no authority to exercise public ministry.

In a statement announcing this Inquiry on 17 April 2012, the Victorian Premier, the Honourable Ted Baillieu MP and the Victorian Attorney-General, the Honourable Robert Clark MP, noted:

While the investigation and prosecution of individual cases of abuse are matters for the police and the courts, the broader and systemic implications of this abuse need to be investigated to ensure that everything possible is done to protect children.⁸

⁶ See **Appendix 3** for complete table

⁷ See **Appendix 4** for complete table

⁸ "Statement: Inquiry into handling of child abuse by religious and other organisations", 17 April 2012.

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The Church's submission focuses on the specific issues covered in the Terms of Reference for this Inquiry, the Submission Guide, and the broader and systemic implications of abuse. Accordingly, the Church is not addressing individual cases at this time, but will provide such further responses as are appropriate in the course of the Inquiry.

The Church supports victims being able to make submissions and present their individual experiences to this Inquiry.

The Church is shocked and saddened that a number of victims of sexual abuse have committed suicide. The investigation of this issue is important and the Church believes that a Coronial Inquiry is long overdue. The Church stands ready to cooperate with any investigation.

Reporting child abuse

On the question of mandatory reporting, the Catholic Church in Victoria supports the extension of the current requirements relating to mandatory reporting under the *Children, Youth and Families Act 2005* (Vic) to ministers of religion and other religious personnel, with an exemption for information received during the sacrament of confession.

Regarding reporting to the police, the Church has found that many victims want their experiences to remain private and do not want their complaint reported. A tension exists between respecting the wishes of these victims and the increasing calls for all allegations of abuse to be reported to the police. We expect this will be an important matter for the Inquiry to consider. At its heart, this difficult matter requires a balance to be struck between:

- The rights of a victim;
- The responsibility of society to protect its citizens and punish offenders; and
- The right to the presumption of innocence.

The Church acknowledges that Victoria Police have the primary role and expertise in investigating criminal allegations. We emphasise the need to strike the appropriate balance between the rights of the community to ensure that crimes are prosecuted and the rights of individuals to privacy.

Therefore, the Church would support a position in which all allegations of serious crimes are reported to the police in a way that does not infringe:

- The confidentiality and privacy of victims who have come forward on that basis; or
- The sanctity of the confessional.

This could be achieved by implementing a regime in which details of an allegation (other than those that could identify the complainant) are reported to the police on the basis that the police's powers of compulsion cannot be used to discover the identity of the complainant.

The Church in Australia, as elsewhere, is continuing to learn about the abuse of children, the impact on victims, how to engage victims and the community in healing, how to deal with offenders, and how to respect the rights of all concerned and act for the common good.

As the Church's understanding grows, so too does our response.

3 Church Teachings Regarding Caring for Children

The Catholic Church recognises that the well-being of children is of paramount concern.⁹

“Whoever welcomes one such child in my name welcomes me. If any of you put a stumbling block before one of these little ones who believe in me, it would be better for you if a great millstone were fastened around your neck and you were drowned in the depth of the sea.”¹⁰

The Church does not believe that Catholic priests, or any other individual associated with the Church, should be excused of heinous crimes. In fact, the belief at the heart of Christianity is the promotion of the sanctity of all life and the protection of children.

The Catholic faith requires that there be a coherence between religious faith and daily living. This applies to all dimensions of a Catholic’s life including interpersonal relationships.

Historically and sociologically, religious faiths have an essential relationship between belief and behaviour. This is true in general for the Christian faith and, in particular, is of the essence of the Catholic tradition. When Catholics gather for Mass to worship God, we begin with a silent reflection on how we have lived in relation to God and others during the past week, and at the conclusion of our worship we are sent out to love and serve the Lord in our lives with others.

While this is the liturgical framework within which the Catholic faith is lived and practised, there are some central teachings which highlight how abusive behaviour of any kind is contrary to the teachings of the Catholic faith.

The teaching that every person is created in the image and likeness of God extends to a belief in the fundamental equality of all people. Any type of relationship with another person that does not mirror this belief is contrary to Catholic faith. This teaching includes the recognition of others as persons, not objects, who should never be used or manipulated.

The Second Vatican Council teaches that we must consider everyone without exception as our neighbour, ensuring that their dignity is always recognised and respected.

Empowering children and families is recognised as an essential way of preventing abuse. One aspect of empowerment involves education so that children are aware of their dignity and of when it is being compromised. Children are also taught about the dignity of their own bodies. A second aspect of empowerment is to ensure that children are able to verbalise and disclose abuse, and that support is provided to those who are unable to do so. The Church recognises the importance of co-operation with civil authorities to enable abuse to be disclosed and investigated.

The Church identifies three objectives for parents in educating their children about the meaning and expression of sexuality. These are to:

- Provide and maintain a positive atmosphere of love and personal respect for their children;
- Enable their children to understand sexuality and chastity as it is understood within the Catholic faith tradition; and
- Help them develop and discover their own sexuality in ways that will lead to appropriate expressions of friendship and love.¹¹

Any behaviour of adults which leads children away from or prevents children from growing in this understanding is contrary to the teaching of the Church.

The criminal offences and breaches of vows committed by clergy and others has caused untold damage to the community, including to some of its most vulnerable, and brings great shame upon the Church.

⁹ See for example the address by Monsignor Charles Scicluna, Promotor of Justice, at the Congregation for the Doctrine of the Faith in Rome, November 2011, *“The Church’s Role in Child Protection”*.

¹⁰ Matthew 18:5-6.

¹¹ Pontifical Council for the Family, *“The Truth and Meaning of Human Sexuality”*, 1995.

4 Structure and Governance of the Catholic Church

4.1 Introduction

The structure and governance of the Catholic Church is different from that of many secular institutions of authority. This chapter provides useful context on the origins and governance of the Catholic Church, including the structure of the Church in Victoria.

The Catholic Church sees herself as the continuing and direct descendant of the faith community of persons established by Jesus Christ. The first followers of Jesus Christ were the Twelve Apostles, under the leadership of St Peter.

The Twelve Apostles were augmented and became known as the College of Bishops. These bishops dispersed throughout the entire Roman Empire and beyond. As the numbers of these local communities (known as Dioceses) increased and expanded into the surrounding areas, bishops established what came to be known as parishes, led by a priest known as a parish priest, to support local communities within the Diocese.

Since the earliest centuries, there have been members of the Church who believe they are being called to follow Christ and live his gospel more intensively. These persons are commonly called religious and belong to religious institutes.

Canon 607 §2 of the Code of Canon Law¹² defines a religious institute as:

*A society in which, in accordance with their own law, the members pronounce public vows and live a fraternal life in common. The vows are either perpetual or temporary; if the latter, they are to be renewed when the time elapses.*¹³

The Church still exists with separate levels of administration and governance. This is very similar to that of society in general. A person living in Australia is governed by three levels of government: the local municipality; the state or territory; and the Commonwealth of Australia. Similarly, members of the Church belong to three distinct realities: a parish; a Diocese; and the Universal Catholic Church. Each reality is governed by its own governance personnel and structures. The governance and organisation of a parish is just as distinct from that of a Diocese, as a municipality is from a state.

In the Church, the three powers of governance (legislative, executive and judicial) are not required to be exercised by separate persons or bodies as in modern democratic governments. The Pope alone normally exercises these three powers.

At the level of the Diocese, the Diocesan bishop exercises his three powers as follows:

- Legislative power personally;
- Executive power personally or through vicars general and episcopal vicars he appoints; and
- Judicial power through a judicial vicar and judges.

At the level of the parish, all power of governance is exercised by the parish priest personally.

4.2 Canon Law

Canon Law is the body of laws and regulations made or adopted by ecclesiastical authority, for the governance of the Church and its members.

Canon Law is the internal ecclesiastical law governing the Catholic Church (both Latin Rite and Eastern Catholic Churches). Canon Law provides the structures and parameters for all governance in the Church.¹⁴

¹² See Section 4.2.

¹³ See Section 4.7.

¹⁴ The principal body of Canon Law in force at present is the legislation contained in the Code of Canon Law, "*Codex Iuris Canonici*", which was promulgated by Pope John Paul II on 25 January 1983, and came into effect on 27 November 1983. The English translation of the *Codex Iuris Canonici* approved for use in Australia is: "*The Code of Canon Law: New Revised English Translation Prepared by the Canon Law Society of Great Britain & Ireland in association with the Canon Law Society of Australia & New Zealand and the Canadian Canon Law Society*", 1997.

The Canon Law of the Church is a fully developed legal system, with all of the necessary elements including tribunals, lawyers, judges, a fully articulated legal code and principles of legal interpretation.

The sexual abuse of children is a crime. It is a crime in civil law and it is a crime in Canon Law. Sexual abuse by clergy or religious has two distinct aspects:

- The first is concerned with the civil and criminal responsibility of individuals, and this, being a matter for the civil authorities, is regulated by the laws of the State where the crime is committed.
- The second is religious in nature and as such comes under the internal responsibility of the Church which applies its own legal or canonical system. The Church has the duty to punish wrongdoers for the grave and grievous damage done to the community of the Church. Canon Law stipulates the norms, procedures and penalties for the relevant Church authority to apply. Generally speaking, a Bishop is the relevant Church authority in relation to parish priests, and the Congregation Leader (or "Provincial") is the relevant Church Authority in relation to members of Orders, Congregations and Societies.

4.3 Nature of the Governance of the Pope

The Pope is first of all the Bishop of Rome. The Pope governs the Diocese of Rome in the same way as any other Diocesan bishop governs his own Diocese. As well, as head of the College of Bishops, the Pope exercises a primacy over all other Dioceses in the Church, not in the sense that he governs them as bishop, but in the sense that he ensures that all Dioceses are united so as to believe and teach the same faith, and live in accordance with Christ's teachings.

The role of this primacy is to ensure unity throughout the Church, guarantee authenticity in questions of faith and morals, and ensure that the Christian faith is being propagated throughout the entire world.

The Pope exercises his office by reserving certain serious matters to himself, being the final court of appeal in disputes, and teaching through encyclical letters and other means of communication. The Pope also freely appoints most Catholic bishops, and confirms the election of the bishops of those Dioceses which have the right to elect their bishops. He also accepts the resignations of bishops who resign. Thus, by controlling completely the membership of the College of Bishops, he can ensure that they are a united body.

The Pope is the immediate superior of all Catholic bishops but is not their employer. The bishops report to the Pope personally every five years. However, their power is personal, and received from God, rather than delegated by the Pope.

The Pope has the support of:

- Consultative bodies to advise him and to assist him in exercising his powers (the Synod of Bishops and the College of Cardinals);
- Executive bodies (comprising a large bureaucracy known as the Roman Curia); and
- Diplomatic representatives (generally known as Papal Nuncios).

4.4 Dioceses

A Diocese is the fundamental unit in the Church. In 1965, the Second Vatican Council, in its decree on the pastoral office of bishops in the Church, defined a Diocese as follows:

A Diocese is a portion of the people of God, which is entrusted to a bishop to be nurtured by him, with the co-operation of the presbyterium,¹⁵ in such a way that, remaining close to its pastor and gathered by him through the Gospel and the Eucharist in the Holy Spirit, it constitutes a particular church. In this church, the one, holy, Catholic and apostolic Church of Christ truly exists and functions.¹⁶

Canon Law clearly states that the Diocesan bishop always represents and acts in the name of the

¹⁵ Presbyterium refers to the priests, in active ministry, of a particular Diocese.

¹⁶ Vatican II, Decree, *Christus Dominus*, 28 October 1965, n 11. This paragraph is now enshrined in the Code of Canon Law as Canon 369, and consequently is the current official Catholic definition of a Diocese.

Diocese. He is ultimately responsible for all Church activity belonging to the Diocese. However, he is not responsible for the activities belonging to the Universal Catholic Church, or for the activities of individual parishes, individual priests or individual members of the Church.

Bishops are also not responsible for the activities of religious institutes established by, and therefore accountable to, the Holy See.

Bishops can, and frequently do, delegate authority. However, the ultimate authority and responsibility lies with the bishop.

4.5 Parishes

Canon 515 §1 of the Code of Canon Law describes a parish as a certain community of Christ's faithful, rather than a piece of geography. It is within a Diocese, and stably established (i.e. of its nature perpetual).

The Canon states that the parish's "*pastoral care, under the authority of the Diocesan bishop, is entrusted to a parish priest as its proper pastor.*"¹⁷ The term *proper pastor* refers to the proper power or jurisdiction exercised by the parish priest. This power or jurisdiction is exercised in the priest's own name, not as the bishop's delegate or employee. A parish priest is a pastor independent of the bishop. At the same time, he is a pastor aligned with his Diocesan bishop.

A parish priest, in the conduct of his pastoral functions, is to act as a pastor according to the Diocesan bishop's "mind and will" for parish priests. However, the expression does not carry any connotations of retainer, employment or delegation. The parish priest is not an employee of his Diocese or his bishop. In the Church, priests have never been employees.

The priesthood is understood to be a vocation from God. The priest exercises it in union with the bishop of his Diocese. Most priests are office holders most of their priestly lives, holding offices such as parish priest, assistant priest (curate), and chaplain.

The parish priest's power is less direct than that of the Diocesan bishop, as the Church holds that the bishop receives his power from God. The parish priest's power has been entrusted to him by the Diocesan bishop.

The responsible ecclesiastical authority in the case of a parish is the parish priest. Canon Law determines that he alone, not the Diocesan bishop, acts in the person of the parish in all juridical matters. He alone is responsible not only for the sacraments, liturgy, doctrinal formation, etc., but also for the civil and administrative aspects.

A parish priest can be removed from office during his term of office (in Australia a term is six years) by the Diocesan bishop by means of the procedure in Canons 1740-1747 of the Code of Canon Law. Canon 1741 specifies reasons for removal. Effectively this means that a parish priest who is accused of wrongdoing is answerable to his Bishop.

4.6 Provinces

In Australia, there are 33 Dioceses; 28 are territorially defined and the other five are for special categories of persons within Australia. Each of these Dioceses is totally autonomous and independent of the others. The bishop of each Diocese has only the Pope as his superior. There are four territorial Dioceses within the State of Victoria:

- Melbourne;
- Ballarat;
- Sale; and
- Sandhurst.

¹⁷ Canon 515 §1.

In addition, there is a Diocese for members of the armed forces, and four groups of Eastern Church Catholics: Chaldeans, Maronites, Greek-Melkites and Ukrainian.

Bishops interact and co-operate with each other on two levels, namely provincial and national. There are five ecclesiastical provinces in Australia:

- Adelaide;
- Brisbane;
- Melbourne;
- Perth; and
- Sydney.

All of the bishops in Australia form what is known as the Australian Catholic Bishops Conference (**ACBC**). The purpose of these groupings is to promote common pastoral action between neighbouring Dioceses, and to foster good relations between bishops. However, they are not instruments of governance, and the authority of each Diocesan bishop remains intact.

The Ecclesiastical Province of Melbourne consists of the four Dioceses within Victoria. The sole Diocese within Tasmania, Hobart, is also attached to the Province. The Province is presided over (but not governed by) the Archbishop of Melbourne. Due to this position, he is known as an Archbishop and his Diocese is called an Archdiocese. He has only limited powers of co-ordination within the province (eg. convening and chairing meetings of bishops) and of supervision.

The ACBC is the assembly of the Australian Bishops. It meets twice annually. From its membership, it elects a president (currently Archbishop Hart) for a two-year term of office to preside over meetings. The president may serve as such for a maximum of three consecutive terms.

4.7 Religious Institutes

There are various groupings within the Church such as Orders, Congregations and Societies. However, each group is autonomous. Some religious institutes are comprised of religious women, some are comprised of religious brothers and some are comprised of religious brothers and priests.

A list of Orders, Congregations and Societies that operate within Victoria is contained in **Appendix 1**.

A true autonomy of life, especially of governance, is recognised for each institute. This autonomy means that each institute has its own discipline. Each institute has a Leader to whom the members are answerable and responsible. A member of an institute who is accused of wrongdoing must answer to their Leader.

In their governance and discipline, institutes of pontifical right are subject exclusively and directly to the Holy See. Institutes of Diocesan right are under the special care of a Diocesan bishop.

If an institute of pontifical right is invited by a Diocesan bishop to establish a religious house within his Diocese, that invitation gives the institute the right to engage in its proper works in that Diocese in perpetuity. Its proper works are the works defined as proper to it at its establishment.

In matters concerning the care of souls,¹⁸ public worship and co-ordinating works of the apostolate, religious of pontifical right are subject to the authority of the Diocesan bishop. However, in their own proper works they are subject only to the Holy See and to their own superiors.

A Diocesan bishop can invite religious to carry out works of the Diocese. If they agree to carry out these Diocesan works, they are subject to the bishop's authority in such works.

The vast majority of apostolic works carried out by religious in Victoria in the areas of primary and secondary education, health and aged care, and social welfare are the apostolic works of religious institutes of pontifical right, not of Dioceses or parishes.

¹⁸ The "care of souls" is a technical expression that embraces the spiritual needs of individuals, and includes the appointment and all the ministrations of chaplains and pastoral associates.

Works of a Diocese which a Diocesan bishop entrusts to members of religious institutes are under the authority and direction of the bishop. In these cases, an agreement is made between the Diocesan bishop and the major superior¹⁹ of the religious institute which covers the work to be done, the members to be assigned to it and the financial arrangements.

If an ecclesiastical office in a Diocese is to be conferred on a member of a religious institute, the religious is appointed by the Diocesan bishop on presentation by, or at least with the consent of, the major superior. The religious can be removed from office at the discretion of the bishop (with prior notice being given to the major superior) or by the major superior (with prior notice being given to the bishop). Accordingly, if a religious who is both the member of an Institute and has an appointment in a parish of a Diocese is accused of wrongdoing, both the Institute Leader and the Bishop of the Diocese are empowered to take action, depending on the circumstances.

A Diocesan priest may sometimes be appointed as a chaplain to a school or hospital operated by a religious institute. In such a case, the priest is subject to his bishop in his priestly ministry.

4.8 Catholic social service providers that work with children in Victoria

Catholic social services agencies have emerged over the past 150 years in response to needs within the community. They have adapted over the years in their structures and in the services they provide, as the needs of those who are disadvantaged within the broader society have changed.

The Catholic organisations that work today to support children can be categorised according to their origins:

- Organisations that build on the work previously conducted by Religious personnel, but are now led and staffed largely by lay people, and which continue the mission of the Congregation to the most vulnerable members of our community;
- Entities formed by Congregations, to extend their mission of service;
- Agencies to support families, the vulnerable and needy in their Dioceses. Each Diocese has a central agency (called CatholicCare or Centacare); and
- Other Catholic organisations formed by associations of Catholic lay persons which work with the needy, including children in need.

A list of these organisations is contained in **Appendix 2**.

The range of programs and services provided by Catholic organisations that engage directly with children is extensive and includes:

- Residential holiday camps for socially and/or economically disadvantaged children;
- Educational support for children of a refugee background;
- Support for children accompanying a parent experiencing family violence or accommodated in a refuge;
- Family support services including counselling, case management, material support, housing support;
- Supported housing programs working with young people and young parents with accompanying children;
- Justice and crime prevention services for young people involved with the justice system including youth justice conferencing, community sentencing supervision, accommodation and case management support;
- Mental health and well-being for young people with multiple and complex needs and those affected by suicide, trauma and complex bereavement;

¹⁹ Major superiors are those who govern an entire institute, or a province of it, and the vicars of both.

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- Settlement and community building for recently arrived immigrants, unaccompanied minors seeking asylum, refugees and disadvantaged communities;
- Specialist education settings for children experiencing social, emotional and behavioural difficulties in their relationships which impact on their academic progress;
- Supported accommodation, respite services, after school and school holiday programs, community and facility based respite for children with intellectual disabilities;
- Education services for primary and secondary students with physical and complex disabilities;
- Educational, therapeutic and community services for children aged six years and under with additional needs;
- Counselling support for students and staff in educational environments;
- Bridging programs for prep aged children who need additional preparation in readiness for school;
- Respite services (e.g. housing, flexible service for children with a disability, after school care programs); and
- Home-based and residential care for children who cannot live in their own home.

5 Emerging Awareness of Sexual Abuse Issues

5.1 Introduction

Since the late 1970s, society has become increasingly aware both of the extent of sexual abuse and its harmful effects. Prior to that, the extent of the damage suffered by children who had been sexually abused was not properly understood. As a result, society, including the Church, was slow to adequately respond to and address the issue.

Awareness of sexual abuse of children was slow to percolate through society and the Church. Initially, some parts of society thought of sexual abuse of children in terms of incest. The realisation gradually developed that the problem was significant and that sexual abuse was perpetrated by people of a range of temperaments, from all walks of life, including clerics and religious.

Over time, society became aware of the long-lasting effects of sexual abuse on children. Accordingly, both society and the Church are now striving to prevent further occurrences of abuse, especially where children are concerned.

Since the 1980s, the Church began to develop policies and procedures that would serve as guidelines for Dioceses and religious institutes in dealing with incidents of child sexual abuse.

An understanding of the dynamics and impact of child sexual abuse by both legal and clinical professionals has also improved exponentially over recent years.

This chapter outlines how the response to victims and offenders has changed, and provides an overview of major developments in the United States, Canada, Ireland, New Zealand, the United Kingdom and the Holy See.

5.2 Understanding the victim

Family systems, within which most sexual abuse of children occurs, struggle to protect the child victim from the adult family member. Child sexual abuse victims within the Church often come from families where their faith is a foundation of family life. Most child victims kept their abuse silent, fearing their abuser, or as a result of a misplaced sense of guilt and shame.

Across their lifespan, abused children develop a variety of psychiatric, addictive, employment, relational and spiritual problems. As these have emerged, the true and devastating impact of paedophilia has become better understood.

Victims of clergy sexual abuse, and their families, are victims of complex trauma. Victims' treatment issues fit a complex trauma model and tend to be multi-dimensional and enduring in nature.

Abused children are betrayed by those they had always expected would keep them safe and nurture them. Trust is destroyed and victims are damaged at their deepest level. Quite often the suffering of the child is long term and both the physical and psychological consequences can be devastating.

5.3 Church responses for dealing with offenders

In the Church, ordination or living under religious vows has meant that clergy offenders are not easily 'sacked.' Offenders are usually removed from ministry. However, the Church has obligations to offending clergy and most clergy offenders have remained under the supervision of their Diocese or religious order after their removal from ministry. If such offenders are ejected, they have no supervision, no career, no housing and often no support networks outside the Church. Work, safe housing, and social supports are three crucial variables that influence recidivism.

In the 1980s a recovering alcoholic priest set up a Rehabilitation Centre for alcoholic clergy in Canada, known as Southdown. Around the same time, a psychiatrist priest in Washington DC established an Alcohol and Substance Abuse Clinic known as the St Luke Institute (SLI). As Southdown and SLI began to treat alcohol and substance abusing priests and religious, they identified the need to provide

a comprehensive treatment approach targeting several problem areas including sexuality. As a result, their treatment programs were comprehensive and multi-disciplinary in nature.

As they listened to the recovery stories of their clients, both treatment centres identified that sexual abuse of children and vulnerable adults was common rather than rare and both centres established sophisticated psychosexual treatment approaches. Southdown associated with the Clarke Institute, Canada's leading psychosexual treatment centre and SLI associated with Johns Hopkins Hospital, one of the USA's leading research and treatment centres. Concurrently, the Association for the Treatment of Sex Abusers (**ATSA**) was establishing itself as a professional association and the staffs of both institutions were affiliated.

By the 1990s, Church leaders were seeking treatment for offenders. New treatment centres were established in both the USA and the UK. However, some treatment models were negatively influenced by the religious client cohort. They emphasised spiritual and pastoral rehabilitation to the detriment of sound psychological treatment for a problem that is psychological in nature.

Treatment centres with a close professional association to the ATSA and active in their networking provided state-of-the-art treatment. A key strength of their models was the Continuing Care component which engaged clients for at least five years after treatment. Southdown and SLI continue to offer effective treatment for priests and religious.

In 1996, building on previous developments, the Church in Australia established a nine point plan to guide a comprehensive response to sexual abuse.²⁰ The Church acknowledged that some of its priests and religious sexually exploited both children and vulnerable adults.

In 1997, Encompass Australasia was established jointly by the ACBC and the Australian Conference of Leaders of Religious Institutes (**ACLRI**) (now Catholic Religious Australia (**CRA**)), to provide psychosexual treatment programs as well as more general treatment programs. Encompass also engaged in education and research. Similar to Southdown and SLI, Encompass kept close ties to professional bodies such as ATSA and the Australia and New Zealand Association for the Treatment of Sex Abusers (**ANZATSA**) and provided exemplary treatment and excellent after-care.

Encompass operated assessment and treatment programs between 1997 and 2008. A decreasing number of clients meant it was not possible for Encompass to continue as a residential program. Many professionals from Encompass and other clinicians from around Australia continue to offer assessment, counselling and non-residential treatment.

Both the Church and society's understanding of the complexities of sexual abuse continues to grow. The Church in Australia, as elsewhere, is continuing to learn about clergy sexual abuse of children, the impact on victims and how to help victims, how to hold offenders accountable and to prevent them from re-offending, how to engage the community in healing, how to ensure that procedures respect the rights of all concerned while at the same time, being concerned for the common good.

As the Church's understanding of such abuse develops, so too does its response.

5.4 United States

In 1974, Congress passed the *Child Abuse Prevention and Treatment Act*. This Act was designed to enable communities to carry out family protection plans. In 1974, as a result of this Act, the National Centre on Child Abuse and Neglect was established. The first state laws requiring professionals to report suspected cases of child abuse were passed in the same year.

In 1986, Congress passed the *Children's Justice and Assistance Act*, providing state grants to improve the investigation, prosecution and judicial handling of child abuse cases, particularly cases involving child sexual abuse.

The Church in the USA responded to the issue of child sexual abuse in three phases:

²⁰ See Chapter 7.

- The first phase commenced in the early 1980s and continued to 1988;
- The second phase spanned the period from 1988 to 2000; and
- The third phase commenced in early 2001.

In April 2002, Pope John Paul II called the Cardinals of the USA to the Vatican to meet with members of the Roman Curia.²¹ In June 2002, the conference of bishops approved the document “*Charter for the Protection of Children and Young People*”.²² The Charter expressed the commitment of the bishops to address the issues of sexual abuse of minors and young people.

The following groups were also formed under the Charter:

- The National Review Board (**NRB**) comprises a group of lay Catholics; and
- The Office of Child and Youth Protection (**OCYP**).

In December 2002 the Church released the document, “*Essential Norms for Diocesan/Eparchial Policies dealing with Allegations of Sexual Abuse of Minors by Priests, Deacons and Other Church Personnel*.”²³

5.4.1 John Jay Study of the Nature and Scope of Sexual Abuse of Minors

In June 2002, the NRB was assigned responsibility to commission a descriptive study, with the full co-operation of the Dioceses/eparchies, of the nature and scope of the problem of sexual abuse of minors by clergy. The NRB engaged John Jay College of Criminal Justice of The City University of New York to conduct research, summarise the collected data, and issue a summary report to the United States Conference of Catholic Bishops of its findings (**John Jay Study**). The John Jay Study was based on surveys completed by the Catholic Dioceses in the USA.

On 27 February 2004, the initial version of “*The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States*”, commonly known as the John Jay Report was released. On 16 April 2004, an amended version of the John Jay Report was released with corrections and revisions.

The John Jay Report notes that the John Jay Study found the incidence of abuse began to rise in the 1960s, peaked in the 1970s and declined sharply in the 1980s. The new cases reported yearly continued to fall into this same pattern. While it often takes years for victims to come forward, in the years since the Study was released, the peak of reporting of the abuse has not increased.

In summary:

- The John Jay Study surveyed 4,392 priests with allegations of abuse for the period 1950-2002. The analysis revealed little variability in the rates of the alleged abuse across regions in the US; the range of abuse falling between 3% to 6% of priests working during that period.
- A total of 10,667 individuals made allegations of child sexual abuse by priests. Of those who alleged abuse, 17.2% of them had siblings who were also allegedly abused.

²¹ The meeting was held on 22 and 23 April 2002. Pope John Paul II, “Address to Summit of Vatican U.S. Church Leaders”, *Origins*, 31 (2001-2002), pages 757 to 759; Cardinal Angelo Sodano, “The Task of the Vatican Summit”, *Origins*, 31 (2001-2002), pages 759 to 760; “Final Communique of Vatican-U.S. Summit”, pages 771 to 772; “Letter to Priests”, page 772. These texts were also published in *L’Osservatore Romano*, weekly edition, No. 17 (24 April 2002) and No. 18 (1 May 2002).

²² United States Conference of Catholic Bishops, “Charter for the Protection of Children and Young People”, *Origins*, 31 (2001-2002), pages 102 to 106.

²³ *Ibid*, pages 107 to 108.

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- Alleged abuse sometimes extended over many years:

Allegations of abuse	Timeframe
38.4%	Within a single year
21.8%	More than a year but less than two years
28%	Between two and four years
10.2%	Between five and nine years
Under 1%	Ten or more years

- At the time of the abuse, 42.3% of priests were associate priests, 25.1% were parish priests, 10.4% were resident priests and 7.2% were teachers.
- The majority of priests (56%) were alleged to have abused one victim, nearly 27% were alleged to have abused two or three victims, nearly 14% were alleged to have abused four to nine victims, and 3.4% were alleged to have abused more than ten victims. The 149 priests who had more than ten allegations of abuse were allegedly responsible for abusing 2,960 victims, accounting for 26% of allegations.
- The largest group of alleged victims (50.9%) was between the ages of 11 and 14, 27.3% were 15-17, 16% were 8-10 and nearly 6% were under the age of seven. Overall, 81% of victims were male and 19% female.
- 6% of priests against whom allegations were made were convicted and about 2% received prison sentences.
- Half of the allegations that were made (49.9%) were reported by the victim. In one-fifth of the cases, the allegation was made by the alleged victim's attorney. The third most common was cases in which abuse was reported by the parent or guardian of the victim (13.6%). Allegations made by other individuals, such as by a police officer, a sibling, or another priest occurred in 3% of cases or less.

5.4.2 National Review Board - Ten Year Progress Report

A *Ten Year Progress Report*, published by the NRB on 13 June 2012,²⁴ highlights both what has been done and what remains to be done ten years after the signing of the Charter for the Protection of Children and Young People in 2002.

The Report notes:

*There has been striking improvement in the Church's response to and treatment of victims... Children are thought to be safer now because of the creation of safe environments and the action that has been taken to permanently remove offenders from ministry... Yet, much work still needs to be done.*²⁵

The Report focuses on the improvements made in the Church's work of healing and reconciliation and notes the following:

- Prior to the Charter, at least 25 Dioceses/eparchies had Victim Assistance Co-ordinators. Since 2002, all 195 Dioceses/eparchies have a Victim Assistance Co-ordinator who assists bishops in responding to those making allegations in ways that promote healing and reconciliation.
- The emphasis has moved towards a pastoral response. The Church in the USA is responding by offering therapeutic mental health services as well as spiritual experiences such as healing Masses, retreats and Diocesan novenas for healing.
- Prior to 2002, at least 77 Dioceses/eparchies had policies and procedures in place to

²⁴ National Review Board, "A Ten Year Progress Report", June 2012.

²⁵ Ibid, page 1.

respond to allegations of sexual abuse. Now, all 195 have such policies and procedures. Codes of conduct are in place for clergy, employees and volunteers. All Dioceses/eparchies have Review Boards (composed of both lay people and clergy) whose responsibility it is to advise the bishop on whether or not a cleric accused of sexual abuse should be reinstated or permanently removed from ministry.

- Confidential settlement agreements with victims have been abolished except when requested by the victim. Audits over the past ten years verify that in cases where confidentiality agreements were made, they were only at the request of the victim.
- The Church in the USA is required to advise victims of their right to make a report to public authorities.
- The Charter requires that for even a single act of sexual abuse of a minor, whenever it occurred, which is admitted or established after an appropriate process, the offending priest is to be permanently removed from ministry.
- All Dioceses/eparchies have written codes of conduct for clergy and church employees or volunteers who have contact with children. The codes of conduct give clear standards of behaviour and a concise vocabulary to spot and report infractions, including "boundary violations" that can cross the line of integrity and professional responsibility.
- The Charter requires Dioceses/eparchies to prevent child sexual abuse. This is accomplished by creating environments that keep all children safe. Safe environments are created by training clerics, employees and volunteers who work with children to understand the nature, scope and prevention of child sexual abuse in institutions. In the past ten years, Dioceses/eparchies trained and conducted background checks on 60,190 clerics and candidates for ordination, 159,680 educators, 249,133 employees and 1.8 million volunteers. They trained 94% of the 5.1 million students attending Catholic schools or parish religious education programs. Annually, \$20 million is spent on safe environment programs.

5.5 Canada

In Canada, as elsewhere, the 1960s saw changes in child protection legislation in response to the discovery of the battered child syndrome. The most notable of the changes was the addition of mandatory reporting laws in all jurisdictions except the Yukon. Alberta, for instance, introduced reporting legislation in 1966.

In 1980, the Minister of Justice and the Minister of National Health and Welfare established a Committee on Sexual Offences against Children and Youth "to enquire into the incidence and prevalence in Canada of sexual offences against children and youths and to recommend improvements in laws for the protection of young persons from sexual abuse and exploitation." The Committee published its report in 1984 (**Badgley Report**).²⁶

Largely due to the publication of the Badgley Report in 1984, sexual abuse was publicly recognised as a societal problem. In 1988, changes were made to the Criminal Code to strengthen laws governing child sexual abuse.

In 1998, the "Canadian Incidence Study of Reported Child Abuse and Neglect" collected information on over 7,000 child welfare investigations conducted across a three month period. The study estimated that there were 135,573 child maltreatment investigations in Canada. Just over one in ten involved sexual abuse as the primary or secondary cause of investigation, estimating that more than 15,000 children were sexually abused in some way.²⁷

²⁶ Christopher Bagley and Kathleen King, "Child Sexual Abuse: The Search for Healing". At page 98, they evaluated the report as follows: "In terms of its strong research base, its thoroughness, the lucidity and breadth of its proposals, and above all in its wholly child-centred approach, [it] is a unique document and the most important government report on the problem of child sexual abuse to appear in any country."

²⁷ 21% of those cases were substantiated, 15% were suspected and 64% remained unsubstantiated.

In 2003, equivalent research found that there was 103,297 substantiated cases of child abuse that year; a 125% increase in documented child abuse since 1998. This increase was considered a result of improvements in reporting and investigative methods for child abuse, as well as an enhanced awareness and understanding of child abuse, and not necessarily an increase in the amount of abuse.

In 2005, legislation to further amend sexual abuse provisions in the *Criminal Code* and the *Canada Evidence Act* was passed. The enactment served to amend child pornography provisions, add a new category to the offence of sexual exploitation of young people, and increase the maximum penalty for child sex offences.

In addition to laws that punish offenders who abuse children, there are also laws to prevent abuse. Under section 161 of the *Criminal Code*, a court can prohibit an offender:

[W]ho has been found guilty of a sexual offence against a child from: attending a public area where children are reasonably expected to be present; seeking, obtaining or continuing any employment or volunteer work which involves being in a position of trust or authority towards children; or using a computer system for the purpose of communicating with children.

Further, section 810.1 of the *Criminal Code* permits a court to order a person to abstain from various activities likely to bring them into contact with persons under the age of 14.

In June 1990, Mr Rix Rogers, Special Adviser on Child Sexual Abuse to the Minister of National Health and Welfare completed a significant national report, "*Reaching for Solutions*" (**Rogers Report**).²⁸

Later, in 1997, the Minister of Justice asked the Law Commission of Canada to study the ways in which the government should respond to what had become known as institutional child abuse.²⁹ In March 2000, the Law Commission released its report, "*Restoring Dignity, Responding to Child Abuse in Canadian Institutions*".

The recommendations of these reports encompassed issues of awareness and prevention, the justice system, healing and treatment, education and research.

The Rogers Report contained a recommendation concerning churches:

*That churches develop policies and procedures for responding appropriately to the problem of child sexual abuse. This includes the articulation of guidelines for church leaders to follow in the event of disclosures, training for appropriate pastoral counselling, procedures to follow in the event that church personnel are accused of sexual abuse, and comprehensive screening procedures for clergy and other personnel who work with children and youth.*³⁰

This recommendation endorsed recommendations proposed by the Canadian Conference of Catholic Bishops (CCCB) to Diocesan bishops.³¹

When investigating the response of the Church in Canada to child sexual abuse, it is important to examine the response of the Diocese of St. John's, Newfoundland, as well as the response of the CCCB.

The Archdiocese of St. John's had to face the issue of child sexual abuse on a scale unparalleled by any other Diocese in Canada at that time. In turn, the Archdiocese of St. John's unique response has impacted on the action of other Dioceses and of the CCCB.

In May 1989, the Archbishop of St John's appointed a Special Archdiocesan Commission of Enquiry. The

²⁸ Rix Rogers, "*Report of the Special Advisor to the Ministry of National Health and Welfare on Child Sex Abuse in Canada, Reaching for Solutions*", June 1990.

²⁹ More specifically, the Minister asked the Commission to advise on how the government might address the harm caused by physical and sexual abuse of children in institutions operated, funded or sponsored by the government. The Law Commission of Canada was careful to note that "'institutional child abuse' means abuse inflicted on a child residing in an institution, as distinguished from abuse occurring at home, or 'domestic child abuse'". The term does not imply that child abuse is an integral feature of all institutions for children, or that it has become "institutionalised".

³⁰ Rix Rogers, "*Reaching for Solutions*", pages 53 to 54.

³¹ In 1987, the CCCB distributed to all the Diocesan bishops a document, "*Proposed Procedure to Be Applied in Case of Child Sexual Abuse by a Cleric*". The intention of the executive of the conference of bishops was that each Diocesan bishop would use the document as a basis for preparing a policy and procedure for his own Diocese.

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mandate of the Commission was to:

- Enquire into the factors which may have contributed to the sexual abuse of children by some members of the clergy, including family background, education, lifestyles, mutual support systems, or any other pertinent circumstance.
- Enquire how such behaviour could have gone undetected and unreported for such a long period of time.
- Make recommendations to provide for the spiritual, psychological and social healing of the victims and their families.
- Make recommendations that will ensure that the Church has effective procedures for becoming aware of, reporting and dealing with incidents of deviant behaviour that may occur.
- Make recommendations respecting the selection of candidates for the priesthood, the promotion of the holistic growth of the clergy, the fostering of healthy relationships between clergy and laity, and the provision of support for the clergy to help them cope with deep psychosocial problems.³²

In June 1990, the Commission released *"The Report of Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy"*.³³ It concluded that a number of factors were responsible for the incidence of sexual abuse:

*Some of these were direct, such as the regressed sexuality of the offenders, their access to children, and the powerful status accorded to priests within the patriarchal church community. Others were indirect, and worked in less obvious ways, some to protect the offenders and inhibit public acknowledgement of the offences. They included a variety of sociocultural factors, a general lack of an appropriate understanding of sexuality, the social isolation of priests, inadequate support systems, ineffective and inappropriate management by the Archdiocesan administration, and a recurring pattern of denial throughout the Archdiocese generally.*³⁴

The Commission made 55 recommendations:

- Ten recommendations were directed at addressing the needs of the victims and others affected by abuse.
- Fourteen recommendations focused on education and formation, with six of these concentrating on issues in schools.
- Seven recommendations applied to the response of the Church to allegations and accusations.
- Five recommendations attended to the needs of priest offenders.
- In responding to the fifth clause of its mandate, the Commission addressed not only the needs of priests, but also those of the laity: communication, education, structures and lay leadership. The underlying theme of these recommendations was that the Church must respond primarily to the victims and others affected by abuse and to the situations that allowed the offences to occur. Moreover, the commission acknowledged the need for further education about sexuality and sexual abuse.³⁵

On 1 December 1987,³⁶ the CCCB distributed to all bishops, *Policies and Procedures Regarding Complaints of Sexual Abuse*, prepared by Francis G. Morrissey.³⁷ Directed to the bishops, the document proposed a structure that would serve as a basis for each Diocese to develop its own policy and process for responding to specific allegations.

³² G.A. Winter, (Chairman), *"The Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy"*, St John's NF, Archdiocese of St John's, NFLD, 1990, Volume 1, page v.

³³ *Ibid*, page v.

³⁴ *Ibid*, page 91.

³⁵ Recommendations 10, 13, 22, 24, 53, and 54 addressed this need.

³⁶ Rix Rogers was appointed Special Adviser on Child Sexual Abuse in 1987.

³⁷ F.G. Morrissey, *"Proposed Procedures to be Applied in Case of Child Sexual Assault by a Cleric,"* in *Winter Report*, Volume 1, Appendix A, pages 192 to 195.

On 12 July 1989, the President of the CCCB, Archbishop James Hayes, wrote an open letter to Canadian Catholics in which he expressed the anguish and anger of the Church community as well as the anguish of the victims. He acknowledged the betrayal of trust involved in the crimes, while calling for a solution that helps all the members of the Church community.³⁸

In June 1992, the document *"From Pain to Hope, Report from the CCCB Ad Hoc Committee on Child Sexual Abuse"*, was published, containing 50 recommendations. The underlying themes were:

- The need to break the silence;³⁹
- On-going pastoral care of the victim and others affected by the abuse;⁴⁰
- Concern for all the priests of the Diocese;⁴¹
- Respect for the requirements of Canon Law⁴² and of civil law;⁴³ and
- The need for pre-defined structures and roles.⁴⁴

While the Committee was set up to address the issue of child sexual abuse by priests, it noted that the recommendations may be applied to similar acts by others in the Church, or with appropriate adaptations, to adult sexual abuse.

In October 2007, the CCCB published *"Orientations for updating a Diocesan protocol for the prevention of sexual abuse of minors and the pastoral response to complaints regarding abuse"*. These were to assist Catholic Dioceses in strengthening their protocols for prevention of sexual abuse, by repeating, clarifying and building upon the recommendations in *From Pain to Hope*.

5.6 Ireland

The 1980s saw the emergence of a national awareness of child sexual abuse in Ireland. However, it was not until the 1990s that this awareness was translated into legislation that would make a difference in preventing abuse or in assisting people who had been abused.

In 1996, the document *"Child Sexual Abuse: Framework for a Church Response"*⁴⁵ was presented by the Irish Bishops' Conference and the Conference of Religious of Ireland who recommended to individual Dioceses and institutes that they might use it as a framework for addressing the issue of child sexual abuse by priests and religious.

As the title suggests, the document provides a detailed framework for Dioceses and religious institutes to establish their own policies and procedures. The document addresses child sexual abuse by clergy and religious only.

In 1999, the Department of Health published *"Children First – National Guidelines for the Protection and Welfare of Children"*.

Public awareness of child sexual abuse by clergy in Ireland focussed on individual cases in 1994 and 1995. During the following years, the focus moved to abuse in residential institutions operated by the Catholic Church. Then in 2002, several documentaries were broadcast that directed public attention to the mishandling by the Church of complaints of child sexual abuse.⁴⁶

³⁸ Most Rev. James Hayes, *"An Open Letter to Canadian Catholics,"* *Origins*, 19 (1989-1990), pages 216 to 217.

³⁹ Recommendations 1, 13.

⁴⁰ Recommendations 2, 10, 11, 12, 19.

⁴¹ Recommendations 5, 11, 19.

⁴² Recommendations 6, 14, 15.

⁴³ Recommendations 4, 16.

⁴⁴ Recommendations 6, 7, 8, 9, 13, 17.

⁴⁵ *"Child Sexual Abuse: Framework for a Church Response; Report of the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious."*

⁴⁶ On 19 March 2002, BBC2 screened the documentary *"Suing the Pope"*. In April 2002, Irish television (RTÉ) also screened that documentary. In November 2002, RTÉ screened the documentary *"Cardinal Secrets"*.

In June 2003, a Working Group on Child Protection was established by the Bishops' Conference, Conference of Religious in Ireland and the Irish Missionary Union, to develop a comprehensive and integrated child protection policy for the Irish Catholic Church.

In December 2005, the publication "*Our Children, Our Church*" was released to provide a set of policies and procedures for those who have responsibility for the protection of children and young people in the life of the Church in Ireland.

In May 2006, the National Board for Child Protection in the Catholic Church in Ireland (NBCPCC) was established:⁴⁷

- To offer advice on best practice in safeguarding children;
- To assist in the development of safeguarding policy, procedures and practice; and
- To monitor practice in relation to safeguarding children.

The Irish Episcopal Conference met with Pope Benedict XVI and members of the Roman Curia to discuss the issue of child abuse and how the Church responds in February 2010.

In 2011, *Towards Healing* was established as a successor to Faoiseamh which, since 1997, had been providing counselling to survivors of institutional, clerical and religious abuse. *Towards Healing* aims to maintain and expand on the services previously provided by Faoiseamh.

In March 2011, the Bishops' Conference published "*Towards Healing and Renewal*" to mark the first anniversary of the publication of the "*Pastoral Letter of the Holy Father Pope Benedict XVI to the Catholics of Ireland.*"

5.6.1 Ferns Report

On 28 March 2003, the Minister for Health and Children established the Ferns Inquiry to identify complaints of sexual abuse against clergy of the Diocese of Ferns in County Wexford, and to report upon the response of the Church and civil authorities.

The Ferns Inquiry did not concern itself with the truth or otherwise of the complaints made, but rather with the response to those allegations.

On 25 October 2005, the Ferns Inquiry presented its Report, commonly known as the Ferns Report, to the government. The Ferns Report identified more than 100 allegations of child sexual abuse made between 1962 and 2002 against 21 priests operating under the aegis of the Diocese of Ferns.

The findings of the Ferns Report included:

- The nature of the response by the Church authorities in the Diocese to allegations of child sexual abuse by priests had varied over the 40 year period.
- Between 1960 and 1980, it would appear that the bishop treated sexual abuse by priests of his Diocese exclusively as a moral problem. He penalised priests who had allegations made against them by temporarily transferring them to a different Diocese or post.
- By 1980, the bishop realised that there was a psychological or medical dimension to the issue of child sexual abuse. As of 1980, he sent priests alleged offenders to a psychologist. However, he continued to appoint priests to parishes who were alleged offenders and of whom psychologists had expressed concerns. The incoming Bishop, Brendan Comiskey, accepted the principle that where a credible allegation of sexual abuse is made, it is the responsibility of the superior of that individual to require him to step aside promptly from any position in which he has access to children. However, in almost every case, significant periods elapsed before the Bishop could persuade a priest to vacate his position: in no case did the Bishop persuade or compel the priest to stand aside from his priestly ministry. Using

⁴⁷ Now known as the National Board for Safeguarding Children in the Catholic Church.

Canon Law to force a priest to step aside from active ministry was difficult in circumstances where that law was unclear and untried.

- Bishop Comiskey told the Ferns Inquiry that prior to 1990, he would never have considered reporting an allegation of child sexual abuse against a priest to the civil authorities. It is improbable that his predecessors did so either.
- From 2002, more effective steps were taken to ensure the protection of children. In particular, all outstanding allegations of child sexual abuse were reviewed by the bishop in conjunction with a new Advisory Panel. In addition, the Bishop appealed widely to members of the public to come forward to the Diocese, the police and the Health Board with information in relation to any allegation or suspicion of child sexual abuse not previously known.
- Before 1990, there appears to have been reluctance on the part of individual police to investigate properly some cases of sexual abuse that came to their attention. Such reluctance was neither appropriate nor adequate.
- The Ferns Inquiry noted the reluctance of victims, whether children or adults, to report abuse to statutory authorities. It therefore recommended that efforts be made to reduce this reluctance by enhancing public confidence in the reporting and investigative system.

5.6.2 Ryan Report

On 23 May 2000, a Commission to Inquire into Child Abuse (**CICA**) was established under the *Commission to Inquire into Child Abuse Act 2000*.⁴⁸

On 20 May 2009, the CICA published its 2600 page public report, commonly known as the Ryan Report.

The Ryan Report tabled the following findings in relation to the sexual abuse of children:

- Sexual abuse was endemic in boys' institutions. The situation in girls' institutions was different. Although girls were subjected to predatory sexual abuse by male employees or visitors or in outside placements, sexual abuse was not systemic in girls' schools.
- It is impossible to determine the full extent of sexual abuse committed in boys' schools. The schools investigated revealed a substantial level of sexual abuse of boys in care that extended over a range from improper touching and fondling to rape with violence. Perpetrators of abuse were able to operate undetected for long periods at the core of institutions.
- Cases of sexual abuse were managed with a view to minimising the risk of public disclosures and consequent damage to the institution and the Congregation. This policy resulted in the protection of the perpetrator. When lay people were discovered to have sexually abused, they were generally reported to the police. When a member of a Congregation was found to be abusing, it was dealt with internally and was not reported to the police.
- The damage to the children affected and the danger to others were disregarded. The difference in treatment of lay and religious abusers points to an awareness on the part of Congregational authorities of the seriousness of the offence, yet there was a reluctance to confront religious abusers who offended in this way. The desire to protect the reputation of the Congregation and institution was paramount. Congregations asserted that knowledge of sexual abuse was not available in society at the time and it was seen as a moral failing on the part of the brother or priest. This assertion, however, ignores the fact that sexual abuse of children was a criminal offence.
- The recidivist nature of sexual abuse was known to religious authorities. The documents

⁴⁸ The Bill was introduced in the *Dáil* on 2 February 2000 and was signed on 26 April 2000. This short passage through all stages suggests a high measure of agreement within the Parliament.

revealed that sexual abusers were often long-term offenders who repeatedly abused children wherever they were working. They were aware of the propensity for abusers to re-abuse but saw the risk in terms of potential for scandal and bad publicity should the abuse be disclosed. The danger to children was not taken into account.

- When confronted with evidence of sexual abuse, the response of religious authorities was to transfer the offender to another location where, in many instances, he was free to abuse again. Permitting an offender to obtain dispensation from vows often enabled him to continue working as a lay teacher.
- Men who were discovered to be sexual abusers were allowed to take dispensation rather than incur the shame of dismissal from the Order. There was evidence that such men took up teaching positions sometimes within days of receiving dispensations because of serious allegations or admissions of sexual abuse.
- Sexual abuse was known to religious authorities to be a persistent problem in male religious organisations throughout the relevant period. Nevertheless, each instance of sexual abuse was treated in isolation and in secrecy by the authorities and there was no attempt to address the underlying systemic nature of the problem. There were no protocols or guidelines put in place that would have protected children from predatory behaviour. The management did not listen to or believe children when they complained of the activities of some of the men who had responsibility for their care. At best, the abusers were moved, but nothing was done about the harm done to the child. At worst, the child was blamed and seen as corrupted by the sexual activity, and was punished severely.
- In the exceptional circumstances where opportunities for disclosing abuse arose, the number of abusers identified increased significantly.
- The Congregational authorities did not listen to or believe people who complained of sexual abuse that occurred in the past, notwithstanding the extensive evidence that emerged from police investigations, criminal convictions and witness accounts.
- Sexual abuse of girls was generally taken seriously by the Sisters in charge and lay staff were dismissed when their activities were discovered. However, attitudes and mores made it difficult for them to deal with such cases candidly and openly, and victims of sexual assault felt shame and fear of reporting the abuse.
- Sexual abuse by members of religious orders was seldom brought to the attention of the Department of Education by religious authorities because of a culture of silence about the issue.
- The Department of Education dealt inadequately with complaints about sexual abuse. These complaints were generally dismissed or ignored. A full investigation of the extent of the abuse should have been carried out in all cases.

5.6.3 Murphy Report

Released a few months after the Ryan Report, the Murphy Report addressed a more specific investigation into the institutional response to complaints, suspicions and knowledge of child sexual abuse.

The Murphy Report included the following findings:

- The Archdiocese of Dublin's priorities in dealing with cases of child sexual abuse, at least until the mid 1990s, were the maintenance of secrecy, the avoidance of scandal, the protection of the reputation of the Church and, the preservation of its assets. All other considerations, including the welfare of children and justice for victims, were seen as less important. The Archdiocese did not implement its own Canon Law rules and did its best to avoid any application of the law of the State.

- The situation improved from the start of the implementation of the Framework Document⁴⁹ in 1996. However, it took some time for the structures and procedures outlined in that document to be fully implemented. The Commission found that there was an effective structure and procedures in operation at the time of the report. In particular, the Commission was satisfied that all complaints of clerical and child sexual abuse made to the Archdiocese and other Church authorities were now being reported to the police.
- The Church authorities failed to implement most of their own Canon Law rules on dealing with clerical child sexual abuse.
- The moving around of offending clerics with little or no disclosure of their past demonstrates the importance placed on protecting the reputation of the institution and of priests.
- In the early years of the Commission's remit, there was little or no concern for the welfare of the abused child or for the welfare of other children who might come into contact with the priest. Complainants were often met with denial, arrogance and cover-up, and with incompetence and incomprehension in some cases.

On 11 December 2009, Pope Benedict XVI stated the following regarding the Murphy Report:

After careful study of the Report, the Holy Father was deeply disturbed and distressed by its contents. He wishes once more to express his profound regret at the actions of some members of the clergy who have betrayed their solemn promises to God, as well as the trust placed in them by the victims and their families, and by society at large.

The Holy Father shares the outrage, betrayal and shame felt by so many of the faithful in Ireland, and he is united with them in prayer at this difficult time in the life of the Church.

...

He assures all concerned that the Church will continue to follow this grave matter with the closest attention in order to understand better how these shameful events came to pass and how best to develop effective and secure strategies to prevent any recurrence.

The Holy See takes very seriously the central issues raised by the Report, including questions concerning the governance of local Church leaders with ultimate responsibility for the pastoral care of children.

The Holy Father intends to address a Pastoral Letter to the faithful of Ireland in which he will clearly indicate the initiatives that are to be taken in response to the situation.⁵⁰

On 19 March 2010, Pope Benedict XVI published a Pastoral Letter in which he apologised to the Catholics of Ireland.⁵¹

5.6.4 Cloyne Report

On 31 March 2009, the Government appointed the Dublin Archdiocese Commission of Investigation (DACI) to conduct a similar investigation into the Diocese of Cloyne.

On 13 July 2011 DACI published a 421 page public report, commonly known as the Cloyne Report.⁵² The Cloyne Report investigated how the Church and state authorities dealt with complaints, allegations and suspicions of sexual abuse of children in the Diocese of Cloyne in the period from 1 January 1996.

The Cloyne Report was important as it dealt with allegations made after the Catholic Church in

⁴⁹ "Child Sexual Abuse: Framework for a Church Response; Report of the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious."

⁵⁰ Press Release of the Holy See on the meeting of the Holy Father, Benedict XVI, with representatives of the Irish Episcopal Conference and Senior Officials of the Roman Curia, 11 December 2009.

⁵¹ Pastoral Letter of the Holy Father Pope Benedict XVI to the Catholics of Ireland, 19 March 2010.

⁵² Dublin Archdiocese Commission of Investigation, "Report into the Catholic Diocese of Cloyne", 13 July 2011.

Emerging Awareness of Sexual Abuse Issues

Ireland had implemented a detailed policy for dealing with child sexual abuse. In assessing how the Diocese of Cloyne responded to complaints, DICA judged them by the standards set in the Church's own policy,⁵³ which provided that the Church, amongst other things:

- Refer allegations of abuse to the police;
- Refer allegations of abuse to the health authorities;
- Establish a support system for complainants independent of the Diocese; and
- Establish and operate an independent advisory panel.

The Cloyne Report acknowledged that:

*[T]he standards which were adopted by the Church are high standards which, if fully implemented, would afford proper protection to children.*⁵⁴

The DACI found that despite the Bishop of Cloyne's stated position that he was fully committed to implementing the Framework Document, the guidelines were not fully or consistently implemented in the Diocese during the period 1996 to 2009.

The Bishop had charged the Vicar General with the responsibility of investigating all complaints of sexual abuse against children and implementing the Church's policy. Despite this, the Cloyne Report noted that the Vicar General had not approved of the procedures set out in the Framework Document.

The DACI, while placing ultimate responsibility on the Bishop of Cloyne as head of the Diocese, found that the implementation of the policy was in practice stymied by the Vicar General.

The Cloyne Report included the following findings:

- The Diocese of Cloyne had failed to:
 - report nine of the 15 complaints of sexual abuse made during the relevant period that should have been reported to the police;
 - report any complaints to the health authorities between 1996 and 2008;
 - appoint support people to assist complainants;⁵⁵
 - operate an independent advisory panel; and
 - properly record and maintain information about complaints of child sexual abuse between 1996 and 2008.
- The Diocese of Cloyne "put far too much emphasis on the concerns of the alleged offenders".
- The Bishop of Cloyne and the Vicar General had misled the previous inquiry conducted by the Church's National Board for Safeguarding Children⁵⁶ on the question of the existence of an admission of abuse by Father Caden.
- The Bishop of Cloyne had misled the health authorities by stating that the Diocese of Cloyne was reporting all abuse allegations to the authorities.

⁵³ Policy documents entitled "Child Sexual Abuse: Framework for a Church Response" agreed by the Irish Bishops' Conference in 1996 and the document issued in 2005 entitled "Our Children, Our Church", which did not significantly change the procedures set out in the earlier document.

⁵⁴ Dublin Archdiocese Commission of Investigation, "Report into the Catholic Diocese of Cloyne", 13 July 2011, paragraph 1.15.

⁵⁵ The Cloyne Report acknowledged (at paragraph 1.26) that the Diocese of Cloyne had however provided pastoral care to a number of complainants insofar as counselling was paid for by the Diocese.

⁵⁶ The National Board for Safeguarding Children was established by the Catholic Church following recommendation made in the "Our Children, Our Church" policy.

The Cloyne Report also revealed a number of findings adverse to the state authorities including that:

- The police in some instances:
 - failed to, at the minimum, adhere to proper procedures in relation to the recording of complaints of sexual abuse;
 - failed to undertake proper investigation of two complaints;
 - failed to keep proper records of complaints;
 - failed to send a complaint to the DPP despite rules requiring it to do so; and
 - failed to report concerns of abuse to the health authorities.
- The health authorities in some instances failed to properly record or maintain adequate records of complaints.

DACI recommended that the Diocese of Cloyne, amongst other things:

- adopt a safeguarding policy for children in accordance with the standards expected of it within the Church as a whole; and
- develop an open and collaborative working relationship with key statutory agencies relevant to child sexual abuse.

On 3 September 2011, the spokesman for Pope Benedict XVI, Monsignor Ettore Balestrero, issued a 19 page response to the Cloyne Report in which he said:

At the outset, the Holy See wishes to state its abhorrence for the crimes of sexual abuse which took place in that Diocese, and indeed in other Irish Dioceses. The Holy See is sorry and ashamed for the terrible sufferings which the victims of abuse and their families have had to endure within the Church of Jesus Christ, a place where this should never happen. It appreciates how difficult it must have been for them to approach the authorities and speak of their appalling and traumatic experiences, which continue to blight their lives, and hopes that the sharing of these experiences will go some way towards healing their wounds and allowing them to know inner peace and serenity.

...

Furthermore, the Holy See is close to the people of the Diocese of Cloyne, who are in an understandable state of anger, confusion and sadness because of what has happened, and to its priests, the majority of whom are irreproachable and continue to do much good in their communities in these trying circumstances...⁵⁷

On 19 December 2011, the Diocese of Cloyne released a statement fully accepting the findings contained in the Cloyne Report, expressing regret that the Church's policy for handling child sex abuse allegations was not carried out and expressing profound sorrow and sympathy to victims of abuse and their families.

Further, the Diocese gave an assurance that all of the child safeguarding procedures set out by the National Board for Safeguarding Children, which had been established by the Irish Bishops of the Catholic Church, were being fully implemented.

5.6.5 Criminal Justice Act 2012

On 18 July 2012, the *Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012* (**Criminal Justice Act**) came into operation in Ireland.

The Criminal Justice Act, which applies not only to persons who work with children but to all

⁵⁷ "Response to Mr Eamon Gilmore, Tanaiste and Minister for Foreign Affairs and Trade of Ireland, concerning the Cloyne Report", 3 September 2011.

members of the public, makes it a criminal offence to fail to disclose information to police which would assist in prosecuting a person who commits a serious offence (including sexual offences) against a child or vulnerable adult.

Pursuant to section 2 of the Criminal Justice Act, an offence arises where a person knows or believes that a specified offence has been committed against a child or vulnerable person; he or she has information which would be of material assistance in securing the apprehension, prosecution or conviction of another person for that offence; and he or she fails, without reasonable excuse, to disclose that information as soon as it is practicable to do so to a member of the police.

The Criminal Justice Act provides for defences against a charge of withholding information where:

- A child or vulnerable person against whom the offence concerned was committed, requests that details of the offence not be disclosed; or
- A parent or guardian of a child or vulnerable person against whom the offence concerned was committed (who lacks capacity) requests that details of the offence not be disclosed, and the person who is accused of withholding information knew of and relied on that request.

Pursuant to the Criminal Justice Act, the maximum penalty for a person found guilty of an offence of withholding information about an offence against a child or vulnerable person is 10 years imprisonment.

The introduction of this legislation will force clergy members to reveal all details of offences against children and vulnerable people disclosed within the seal of the confessional.

However, priests have vowed to defy the law despite the threat of a 10 year jail sentence.⁵⁸ For example, Auxillary Bishop of Dublin, Raymond Field, stated that: “[t]he seal of confessional is inviolable as far as I am concerned, and that’s the end of the matter.” Fr Sean McDonagh of the Irish Association of Catholic Priests, which represents 800 clergymen also noted: “I certainly wouldn’t be willing to break the seal of confession for anyone.”

5.6.6 Draft Children First Bill 2012

After publication of the Ryan Report in May 2009, there was cross-party political agreement to place the national guidance on child protection and welfare, known as *Children First: National Guidance for the Protection and Welfare of Children*, on a statutory footing.

On 25 April 2012, the Minister for Children and Youth Affairs published the *Heads of the Children First Bill 2012 (draft Bill)* which was recently considered by the Joint Oireachtas Committee on Health and Safety.

The measures proposed in the draft Bill are largely confined to the requirement for employees and volunteers of an organisation to report suspected child abuse to a designated officer of the organisation who, in turn, must report the suspected child abuse to the health authorities. A broad range of organisations and professionals come within the ambit of the legislation, including many whose primary function is not related to child welfare.

The only defence to the mandatory reporting obligations contained within the draft Bill are of having a “reasonable excuse” (which is not defined) or of having reported the matter to the police instead of the health authorities.

In July 2012, the Joint Oireachtas Committee on Health and Safety released a report for the purpose of informing and guiding the drawing of the *Children First Bill*.⁵⁹ The Committee recommended that the Bill be drafted to ensure that its provisions, definitions and offences were consistent with, amongst other things, *the Criminal Justice Act* and *the Children First: Guidance*. The

⁵⁸ M. Brennan, “Priests: We won’t break seal of confession to report sex abuse”, Irish Independent Newspaper, 26 April 2012.

⁵⁹ Houses of the Oireachtas, Joint Committee on Health and Children, “Report on Children First (Heads of) Bill”, July 2012.

Committee noted that the “reasonable excuse” defence to mandatory reporting obligations was vague and required clarification.

The *draft Bill* has progressed to drafting. It is expected that the Minister for Children and Youth Affairs will publish the Bill and progress it through the legislative process during autumn 2012.

5.7 New Zealand

In 1993, the Bishops of Aotearoa New Zealand adopted a provisional protocol for dealing with sexual abuse.⁶⁰ Work progressed on a document of principles and procedures during the following five years, particularly via world wide consultation.

In March 1998, at their annual meeting, the bishops and congregational leaders of New Zealand approved for a period of three years the document, “*Te Houhanga Rongo A Path to Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse by Clergy and Religious of the Catholic Church in New Zealand.*”⁶¹

In developing “*Te Houhanga Rongo A Path to Healing*”, the leaders of the Catholic Church drew on the experience and the documents already in existence in Australia, Canada, England and Wales, Ireland and Scotland.

In 2001, the document was reviewed by the six Dioceses and the religious institutes which were signatories to the document. The review found that only minor changes were required. Consequently, the bishops and congregational leaders accepted the document for a further five year period.

In 2007, the Church again reviewed “*Te Houhanga Rongo A Path to Healing*”. The major amendments related to:

- Procedures for receiving, investigating, assessing and resolving complaints;
- Bringing a complaint to resolution where:
 - the accused admits guilt;
 - guilt is proven by evidence adduced in the investigation; or
 - the complaint is not proven;
- Review of process if either the complainant or the accused is not satisfied with the investigation or decisions taken by the relevant church authority in respect of the complaint.

In 2010, “*Te Houhanga Rongo A Path to Healing*” was further revised to mandate the involvement of the National Office for Professional Standards (**NOPS**) in the process. Prior to 2010, the NOPS would conduct a review of process if requested by a party. As a result of the 2010 amendment, the NOPS is required to be notified as soon as a complaint is made. The NOPS then oversees the process.

The NOPS also now undertakes reviews of all cases in which it has previously not been involved. If a review is requested for a case that the NOPS has overseen, this review will be carried out by an independent person.

5.8 The United Kingdom

In the UK, issues surrounding child abuse were aired in the late 1980s. Various inquiries have shown that abuse occurred, particularly in residential care situations. Later inquiries judged that the disclosures of incidents of abuse were not always handled appropriately.

⁶⁰ New Zealand Catholic Bishops Conference, “*Protocol*”, typescript, 1994.

⁶¹ New Zealand Catholic Bishops Conference and the Congregational Leaders Conference of Aotearoa-New Zealand, “*Te Houhanga Rongo A Path to Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse by Clergy and Religious of the Catholic Church in New Zealand*”, 2001. The unpublished document, distributed by Catholic Communications New Zealand, consists of two parts together with a Handbook containing more detailed guidelines.

In 1987, the Cleveland Inquiry,⁶² was the first of a series of inquiries into issues of child sexual abuse in England. Following the release of the report of the Cleveland Inquiry in 1988, numerous reports were commissioned into issues concerning children in care in each country.

In 1996, "as a result of continuing revelations of widespread sexual, physical and emotional abuse of children in children's homes over the preceding 20 years,"⁶³ a review of safeguards for children living away from home was undertaken.⁶⁴

While each of these inquiries was directed to a particular issue or a particular geographical area, their findings coincide. To prevent future child abuse, they recommend the formulation and implementation of standards for the selection and recruitment of staff and care givers, the need to develop expertise and provide resources, the education of parents, and the regular inspection of facilities. To ensure incidents were better handled, they also recommended increased inter-agency co-operation and the establishment of procedures for reporting concerns.

The findings of these inquiries impacted significantly on legislation. Due to the multiplicity of legislation that had developed since the passing of the *Children Act 1948*, a Parliamentary Select Committee was established in 1983 to examine this legislation. The *Children Act 1989*,⁶⁵ incorporating the findings of this committee and those of the Cleveland Report, forms the basis for child care policy and practice.⁶⁶

The Paramountcy Principle, namely that the child's welfare shall be the court's primary concern, underlies all clauses of the *Children Act 1989*, which is effective throughout the UK.

Also passed by the UK Parliament, the *Care Standards Act 2000* is concerned with establishing and maintaining standards in providing for both children and vulnerable adults.⁶⁷

A number of laws also apply to sexual offences and sex offenders. Among these are the *Sexual Offences (Conspiracy & Incitement) Act 1996*,⁶⁸ and the *Sex Offenders Act 1997*.⁶⁹ The latter, effective in England, Wales and Northern Ireland, requires persons who have previously committed certain sexual offences to provide their contact details to the police. The period for which the offender is required to notify the police depends on the length of the sentence. The *Sexual Offences (Amendment) Act 2000* deals specifically with people in a position of trust.⁷⁰

While the majority of the UK legislation has focussed on standards of facilities, or on procedures, due emphasis has also been given to prevention through the placing of restrictions on offenders.

Following the passing of *The Children Act 1989* and the public inquiries of 1991, the Committee for Social Welfare of the Bishops' Conference of England and Wales commissioned a paper entitled "*The Sexual*

⁶² The Cleveland Inquiry investigated the abnormally large number of children who were referred to hospitals in the Cleveland area of England in 1987 with suspected sexual abuse. Elizabeth Butler-Sloss, "*The Report of the Inquiry into Child Abuse in Cleveland 1987*", London, HMSO, Cmnd 412, 1988.

⁶³ The House of Commons Select Committee on Health refers to inquiries into abuse at the Kincora boys' hostel in East Belfast (1989), the "Pindown" regime in Staffordshire children's homes (1991), Castle Hill School (1991), Ty Mawr former approved school in Gwent (1992), Feltham Young Offenders' Institution (1993) and Leicestershire children's homes (1993).

⁶⁴ Sir William Utting et al., "*People Like Us: The Report of the Review of the Safeguards for Children Living Away From Home*", Norwich, The Department of Health, The Welsh Office, HMSO, 1997. In his report, Sir William expressed concern that education and health needs were not being met for many children in care.

⁶⁵ *Children Act 1989* c 41.

⁶⁶ As a consequence, and to promote and guide inter-agency co-operation, the Home Office, the Department of Health and the Welsh Office, in 1991, jointly issued "*Working Together Under the Children Act 1989: A Guide to Arrangements for Inter-Agency Co-operation for the Protection of Children from Abuse*", London, HMSO, 1991. Based on lessons learned from experience and research, this document was replaced in 1999. Department of Health, Home Office, Department for Education and Employment, London, The Stationery Office, 1999.

⁶⁷ *Care Standards Act 2000* c 14. This Act provides for the registration and inspection of care providers: children's homes, care homes, independent hospitals, boarding schools and colleges, child minding and day care centres. It fosters standards among social workers, by legislating for their registration and addresses issues of training and their code of conduct.

⁶⁸ *Sexual Offences (Conspiracy & Incitement) Act 1996* c 29. This Act is applicable only in England, Wales and Northern Ireland.

⁶⁹ *Sex Offenders Act 1997* c 51.

⁷⁰ In addition, this Act reduced the age of consent for homosexual acts from eighteen to sixteen years. See *Sexual Offences (Amendment) Act 2000* c 44.

Abuse of Children". The paper was approved in November 1992.⁷¹ The paper urged communities to consider the effect of sexual abuse on the child as well as the response of the whole of society to the problem.

The Paper proposed nine steps that the Church could take to address the issue of sexual abuse:

1. Dioceses to develop a policy in relation to personal/social education, which looks at the whole question of sex education, abuse, etc.
2. Diocesan schools commissions to look at a policy for governors in relation to sexual abuse in schools, taking particular care over the documenting of disciplinary procedures.
3. The directors of in-service training for clergy to arrange study days on sexuality and the sexual abuse of children.
4. The subject of the sexual abuse of children to be on the agenda of both deanery conferences and the council of priests.
5. The same subject to be on the agenda of local parish councils and Diocesan pastoral councils.
6. Local communities to explore how to care for those who have been abused and those who have been abusers.
7. Diocesan child welfare agencies to review their child protection procedures.
8. Priests and local communities to look at the whole question of 'forgiveness and reconciliation'.
9. Bishops to look towards policies in relation to clergy and Diocesan employees who may abuse children or others.⁷²

The paper endorsed a multi-faceted approach to both the prevention of child abuse and the healing of victims that included formation and education, policy development as well as pastoral care. Having pastoral concerns as priorities and recognising the responsibilities of the Church, the paper endorsed existing action and challenged local communities and Dioceses to respond to needs.

In June 1994, the Bishops' Conference of England and Wales (**BCEW**) published a report that provided guidelines for dealing with allegations of sexual abuse involving priests, religious and other Church workers.⁷³

Relying heavily on the two documents:

- "*Working Together Under the Children Act 1989: A Guide to Arrangements for Inter-Agency Co-operation for the Protection of Children from Abuse*"; and
- "*Procedures and Guidelines*",⁷⁴

the bishops' document, "*Child Abuse: Pastoral and Procedural Guidelines*", comprised the first stage of the Church's response to child abuse. Part One of the document focused on definitions and principles. Part Two focused on structures and procedures.⁷⁵

⁷¹ Committee for Social Welfare of the Bishops' Conference of England and Wales "*The Sexual Abuse of Children*," Briefing, 23, 1 (14 January 1993), pages 2 to 6.

⁷² *The Sexual Abuse of Children*," Briefing, 23, 1 (14 January 1993), page 6.

⁷³ Bishops' Conference of England and Wales, "*Child Abuse: Pastoral and Procedural Guidelines*", 1994. The working party included people from a range of backgrounds, including canonists, the police, health and welfare workers and two bishops. In the preface to the document, Bishop Christopher Budd, the Chairman of the Working Party, acknowledged inadequate responses in the past and apologised to the survivors of abuse, their families and communities.

⁷⁴ This document is a regional application of "*Working Together Under the Children Act 1989*".

⁷⁵ The objective of the working party, appointed by the BCEW, was to establish guidelines for Church authorities for dealing with cases of child abuse by those exercising responsibility in the Church, clerics, religious and laity.

The Paramountcy Principle, the first principle enunciated, affirmed that “the welfare of the child is the paramount consideration in proceedings concerning children.”⁷⁶ The scope of the procedures includes all forms of abuse: neglect, physical injury, sexual abuse and emotional abuse, even though the primary concern remained sexual abuse. Evidenced in its frequent citation of *Working Together*, the document pledges the Church’s full co-operation with statutory authorities.

The document states emphatically that “the Church will unequivocally condemn the behaviour which is both immoral and criminal.”⁷⁷

In the nature of guidelines, the document presents a series of recommendations, while, at the same time, acknowledging that no single course of action covers the range of situations that occur. The immediate response to all allegations made to the Church, according to the guidelines, must take the form of a prompt and circumspect preliminary investigation which generally will not include challenging the accused person, followed by consultation with statutory agencies.

Should the preliminary investigation and the consultation reveal cause for suspicion, the guidelines recommend that the alleged abuser be placed on administrative leave. These guidelines contained an implicit assumption that any thorough investigation will be conducted by a statutory authority in accordance with *Working Together*. The guidelines concern themselves with the pastoral support of victims and survivors.

The second stage of the Church’s response was set in motion by the resolution of the BCEW dated 18 November 1993, which proposed the establishment of a working party to investigate how the Church could best offer care and support to victims and survivors of abuse, together with families and other social groups affected. The subsequent report, “*Healing the Wound of Child Abuse: A Church Response*”, was completed in 1996.⁷⁸

The report acknowledged the difficulties experienced by many in responding to allegations and incidents and focused on the “wound” of child abuse. It recognised that the impact of the abuse on the child can continue into adulthood, and that the abuse also impacts families, the local community and the local parish. The effects include traumatic sexualisation, powerlessness, betrayal and stigmatisation.

In September 2000, Archbishop (later Cardinal) Cormac Murphy-O’Connor, on behalf of the BCEW, established an Independent Review Committee “to examine and review arrangements for child protection and the prevention of abuse within the Catholic Church in England and Wales, and to make recommendations.”⁷⁹ The review did not focus on past action, or on how the Church has responded to abuse, but looked to the future. Moreover, it addressed all forms of abuse, not only child abuse, and not only sexual abuse. In April 2001, the Committee provided its first report to the President of the BCEW.⁸⁰ The report, containing 50 recommendations, was accepted unanimously by the BCEW.

The Committee recommended that priority be given to preventive policies and practices. For this reason, although building on the 1994 Guidelines, it proposed alternative approaches. It suggested that the scope of the guidelines should be changed to cover lay workers as well as clergy.

A final report was presented to the BCEW in August 2001.⁸¹ A *Programme for Action* recommended that the Church:

[S]hould make it clear... that members of the Church who bring forward concerns are acting in the

⁷⁶ This is taken from “*Working Together under the Children Act 1989*”, Appendix, IX. The Paramountcy Principle applies to issues of confidentiality, training of personnel, the requirement for administrative leave as well as the determination of Church authorities to investigate the truth of allegations.

⁷⁷ “*Child Abuse: Pastoral and Procedural Guidelines*”, page 8.

⁷⁸ Bishops’ Conference of England and Wales, “*Healing the Wound of Child Sexual Abuse: A Church Response (Healing the Wound)*”, London, 1996.

⁷⁹ *Briefing*, 30, 10 (11 October 2000), page 3.

⁸⁰ “*Review on Child Protection in the Catholic Church in England and Wales, First Report*” was published as a supplement to *Briefing* 31, 5 (16 May 2001).

⁸¹ Bishops’ Conference of England and Wales, “*A Programme for Action: Final Report of the Independent Review on Child Protection in the Catholic Church in England and Wales*”, September 2001, published with *Briefing* 31, 9 (17 September 2001).

*interests of the Church (and should be so regarded by all other members of the Church, not just the authorities).*⁸²

A consequence of this stance is embodied in a further recommendation that:

*The person who raised the concern should be kept informed subsequently of any steps that have been taken, subject to legal constraints and appropriate confidentiality.*⁸³

This is a further development of the review's earlier recommendation that the person should be informed of how the matter will be dealt with and advised of the expected timing.

In considering the future of priests who had been found guilty of offences, the final report recommended that the procedure for laicisation be initiated if the cleric is sentenced to a term of imprisonment of 12 months or more.⁸⁴ The Report suggested that suspension or declaring a priest impeded may also be appropriate action.⁸⁵ The Report noted that even if a cleric is laicised "*the Church may nonetheless be able to assist with the rehabilitation and pastoral needs of the individual.*"⁸⁶

In relation to people who have been cautioned or convicted of an offence against children, the Report recommended that they:

*[S]hould not be allowed to hold any position that could possibly put children at risk again. The bishop or religious superior should justify any exceptions to this approach publicly.*⁸⁷

In 2002, the Catholic Office for the Protection of Children and Vulnerable Adults (COPCA) was established. The COPCA has published the following policies:

- The National Policy for Responding to Allegations of Child Abuse in the Catholic Community in England and Wales (2004);
- The National Policy for Creating a Safe Environment for Children and Young People in the Catholic Church (2005);
- "Healing the Wound," National Policy for the Catholic Church in England and Wales for the Support of Those Who Have Suffered Abuse and Those Accused of Abuse (2006); and
- The National Policy on Cross Boundary Placements within England & Wales from abroad and the National Policy on Clergy Supply and Testimonial of Suitability (2007).

There were also several contemporaneous developments in child protection made at State level. In April 2001, the UK government announced a statutory inquiry, headed by Lord Laming, into the events surrounding the death of eight year old Victoria Climbié. The inquiry was to determine the adequacy of the statutory framework for child protection in the UK.

On 28 January 2003, Lord Laming's report was published. The Joint Chief Inspectors report, *Safeguarding Children*, was published in October 2002. The *Children Act 2004* was then passed, amending the *Children Act 1989*.

These legislative changes have been supplemented by a number of publications by the Department for Education and Skills, the Department of Education and the Department for Children, Schools and Families.

5.9 The Holy See

Canon Law has procedures for dealing with serious crimes.

⁸² *Ibid*, page 12.

⁸³ *Ibid*, page 13.

⁸⁴ *Ibid*, Recommendation 78, page 40.

⁸⁵ *Ibid*, Recommendation 79, page 40.

⁸⁶ *Ibid*, Recommendation 79, page 40.

⁸⁷ *Ibid*, Recommendation 77, page 39.

Canon 1395 §2 deals specifically with sexual abuse of a child and provides:

A cleric who has offended in other ways against the sixth commandment of the Decalogue, if the offence was committed by force, or by threats, or in public, or with a minor under the age of eighteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

Canon Law procedures are applied in Victoria in addition to any measures taken pursuant to civil law, the *Melbourne Response* or *Towards Healing*.

On numerous occasions, Pope John Paul II spoke about sexual abuse.⁸⁸ As early as 1993, he spoke at length on the issue to the bishops of the United States, during their *ad limina* (periodic) visit, acknowledging the harm that results from clerical misconduct and affirming the need "to discern scrupulously the charism of celibacy among candidates for the priesthood."⁸⁹

Following the Synod of Oceania, the Pope declared:

*In certain parts of Oceania, sexual abuse by some clergy and religious has caused great suffering and spiritual harm to the victims. It has been very damaging in the life of the Church and has become an obstacle to the proclamation of the Gospel. The Synod Fathers condemned all sexual abuse and all forms of abuse of power, both within the Church and in society as a whole. Sexual abuse within the Church is a profound contradiction of the teaching and witness of Jesus Christ. The Synod Fathers wished to apologize unreservedly to the victims for the pain and disillusionment caused to them.*⁹⁰

Since 2001, the Holy See, in consultation with Episcopal Conferences and individual bishops, and following careful examination of the various aspects of the issue of the sexual abuse of children, has continued to modify the relevant Canonical legislation and procedures to make them easier to apply, more effective and more expeditious.

On 30 April 2001, to provide more comprehensive rules and simplify some of the procedures, Pope John Paul II promulgated the *Motu Proprio Sacramentorum sanctitatis tutela*. Sexual abuse of a minor under 16 years of age committed by a cleric was included in the list of more grave crimes reserved to the Congregation for the Doctrine of the Faith (CDF).

In 2002, changes were also made to Canon Law such that the definition of a minor was changed from 16 to 18 years of age and the limitation period for prosecuting a priest was increased from 5 to 10 years after the victim turned 18 years of age.

On 23 April 2002, in an address made in the Vatican by Pope John Paul II to the Cardinals of the United States of America, the Pontiff unambiguously established the fact that the Church cannot, and would not, condone the grave crime of the sexual abuse of minors. Pope John Paul II stated:

It must be absolutely clear to the Catholic faithful, and to the wider community, that bishops and superiors are concerned, above all else, with the spiritual good of souls. People need to know that there is no place in the priesthood and religious life for those who would harm the young.

His statements are reflected in the statements of both conferences of bishops and individual bishops.⁹¹

In 2003, the then Cardinal Ratzinger (now Pope Benedict XVI), obtained authority to deal with grave crimes through a Canon Law administrative procedure from Pope John Paul II. Such crimes had previously required a lengthy Canon Law trial. The available sanction included a request for the Pope to dismiss a priest from the clerical state, without any possibility of appeal.

⁸⁸ Pope John Paul II, Letter to US Bishops, 11 June 1993, in *Origins*, 23 (1993-1994), pages 102 to 103; Address in Denver, USA, 14 August 1993, in *Origins*, 23 (1993-1994), page 195; Address to the Roman Curia, December 1993; Address to Youth in St. Louis, USA, 26 January 1999, in *Origins*, 28 (1998-1999), page 598; Letter to Priests of the World, Holy Thursday, 21 March 2002, in *Origins*, 31 (2001-2002), pages 693 to 699.

⁸⁹ Pope John Paul II, *Ad limina* Address to the Bishops of New Mexico, Utah, Arizona, Colorado, Wyoming, 8 June 1993, in *Origins*, 23 (1993-1994), page 78.

⁹⁰ Pope John Paul II, Post-Synodal Apostolic Exhortation, *Ecclesia in Oceania*, 22 November 2001, Australian edition, Sydney, St. Pauls Publications, 2001, Number 49.

⁹¹ See, for example, Statements of Bishop W. Gregory, Archbishop (later Cardinal) J. Rigali, Bishop D. Wuerl in *Origins*, 31 (2001-2002), pages 613 to 615 and 677 to 679.

Facing the Truth

On 19 July 2008, during a homily at St. Mary's Cathedral in Sydney, Pope Benedict XVI stated:

Here I would like to pause to acknowledge the shame which we have all felt as a result of the sexual abuse of minors by some clergy and religious in this country. Indeed, I am deeply sorry for the pain and suffering the victims have endured, and I assure them that, as their Pastor, I too share in their suffering. These misdeeds, which constitute so grave a betrayal of trust, deserve unequivocal condemnation.

They have caused great pain and have damaged the Church's witness. I ask all of you to support and assist your bishops, and to work together with them in combating this evil. Victims should receive compassion and care, and those responsible for these evils must be brought to justice. It is an urgent priority to promote a safer and more wholesome environment, especially for young people.

In these days marked by the celebration of World Youth Day, we are reminded of how precious a treasure has been entrusted to us in our young people, and how great a part of the Church's mission in this country has been dedicated to their education and care. As the Church in Australia continues, in the spirit of the Gospel, to address effectively this serious pastoral challenge, I join you in praying that this time of purification will bring about healing, reconciliation and ever greater fidelity to the moral demands of the Gospel.⁹²

As a further demonstration of the seriousness with which the Church deals with these grave crimes, the measures referred to above were incorporated in the revision of the Motu Proprio approved by the Holy Father, Pope Benedict XVI, on 21 May 2010.

The new rules provide that in the case of abuse of minors, the limitation period is now set at 20 years, calculated from the 18th birthday of the victim. In individual cases, the CDF is able to extend that limitation period. The canonical crime of acquisition, possession or distribution of child pornography is also considered to be a grave crime in the revised Motu Proprio.

The canonical measures applied in dealing with a cleric found guilty of sexual abuse of a minor are generally of two kinds:

- Measures which completely prohibit any public ministry as a priest; and
- Ecclesiastical penalties, among which the most grave is the dismissal from the clerical state (i.e. laicisation).

In summary, the actions that can be imposed on a priest, in ascending order of seriousness, are:

- **Administrative leave.** A temporary suspension imposed while allegations are investigated. It does not imply wrongdoing. Different conditions can be imposed as part of administrative leave. In the case of a priest accused of sexual abuse of a child or another serious criminal offence, a priest on administrative leave is typically prohibited from any public ministry. Accordingly, the priest cannot say Mass publicly or celebrate ceremonies such as weddings or funerals. Usually the priest is permitted to say Mass privately, that is, to engage in private prayer on his own account. In some instances, a bishop might temporarily lift the restrictions imposed on a priest on administrative leave for particular reasons (for example to permit the priest to officiate at the funeral of a parent or sibling).
- **Withdrawal of faculties.** A permanent measure imposed after a finding of wrongdoing which prohibits the priest from any public ministry. The priest can say Mass privately by himself but is not permitted to present himself publicly, or offer his services in any way as a priest.
- **Precept.** Withdrawal of faculties together with additional conditions (for example, as to where the priest can live, who he can have contact with, etc.). A breach of these conditions could result in a penal prosecution which could result in laicisation. Some penalties may be imposed automatically if a breach of conditions is proven.
- **Laicisation.** The most extreme penalty that can be imposed on a priest under Canon Law. Laicisation means that the person is returned to the lay state.

⁹² Eucharistic Celebration with Bishops, Seminarians and Novices, Homily of His Holiness Benedict XVI, St. Mary's Cathedral, Sydney, Saturday, 19 July 2008.

Emerging Awareness of Sexual Abuse Issues

Equivalent examples in the civil context are as follows:

- Administrative leave equates to being stood down on full pay;
- Withdrawal of faculties, with or without a precept equates to the cancellation of a licence or practicing certificate and the imposition of a prohibition on continuing to work in the profession or career for which the person had qualified; and
- Laicisation equates to the stripping of the person's qualification, degree or diploma, as though they had never studied, achieved the degree or diploma and graduated.

6 Previous Inquiries - Victoria and the Wood Royal Commission

6.1 Emerging awareness

For Victoria, the prosecution of Michael Glennon can in hindsight be identified as a turning point to disclosing the issue of child sexual abuse within the Church.

On 22 May 1971, Glennon was admitted to the priesthood, aged 27. He then held appointments as Assistant Priest at the following parishes:

- Holy Spirit Church, Geelong - 20 December 1971 to 4 March 1972;
- Holy Spirit Church, East Thornbury - 4 March 1972 to 19 January 1974;
- St Monica's Church, Moonee Ponds - 19 January 1974 to 22 January 1977; and
- St Gabriel's Church, Reservoir - 22 January 1977 to 15 April 1978.

It was during the course of his appointment at St Gabriel's Church, Reservoir that Glennon was instrumental in setting up the Peaceful Hand Youth Foundation Pty Limited which conducted children's camps and other activities for children. He was governing director of the Foundation. The Foundation owned a property in Lancefield, known as "Karaglen", which children attended for karate camps. These karate camps were not run, funded or auspiced by the Church.

In 1978, the first allegation of sexual abuse by Glennon surfaced. On 15 April 1978, he was charged with a sexual offence against a 10 year old girl. He was immediately placed on administrative leave and, from this time, ceased to be a practising Catholic priest.

On 22 June 1978, Glennon pleaded guilty to, and was convicted of, indecent assault of the 10 year old girl. He was sentenced to two years in prison. He served seven months of that sentence before being paroled. On release from prison he remained on administrative leave.

In the following years, many more victims came forward with allegations of sexual abuse. Glennon continued to run karate camps at Karaglen.

In March 1984, Glennon resigned as a priest and said he wished to apply formally for laicisation. His faculties to exercise the priesthood in any manner, including the celebration of Mass privately, were withdrawn as was his authorisation to act as marriage celebrant.

On 12 November 1985, he was charged with 12 sexual offences involving teenage boys that were alleged to have been committed between 1975 and 1983.⁹³ On 7 March 1986, he was charged with three further sexual offences alleged to have been committed against a young female at Lancefield between 1 July 1982 and 30 November 1982.

In 1997, he was charged with 65 new offences, involving 15 male victims and one female, between 1974 and 1991. Many of Glennon's crimes were committed whilst he was on bail awaiting trial for other sex offences. Those charges were heard over three separate trials from 1999 to 2003.

In May 1999, Glennon was convicted on 24 further charges relating to the abuse of six children between 1974 and 1978.

Despite Glennon's request, he had not pursued his own laicisation. Archbishop Pell made application to Rome to have him laicised. On 17 May 1999, Glennon was laicised by Pope John Paul II.

In August 2003, he was convicted in relation to further sexual assaults in 1983. In October 2003, Glennon was convicted of another 23 offences against children between 1986 and 1991. In November 2003, he was sentenced to an effective total of 22 years in jail with a minimum of 15 years. He appealed this sentence. In 2005, some of the charges were quashed. Consequently, his sentence was reduced to a minimum of 10 years and six months, dating from October 2003.

⁹³ *Hinch & Macquarie Broadcasting Holdings Ltd v Attorney-General (Vic)* [1987] HCA 56, Mason CJ, Wilson, Deane, Toohey and Gaudron JJ.

This case raised many questions in relation to the response to allegations of clergy sexual assault at the time. Although Glennon had been convicted of sexual offences against children, some parents continued to trust him with their children, allowing them to sleep in his bed and accompany him on overnight trips. As can be seen, many of his offences were committed after his release from prison in 1979.

During one of the trials, a public prosecutor told the court that the victim had revered Glennon. Neither the victim, nor anyone else, saw anything suspicious about his request that the victim join him for the night.⁹⁴

During another trial in 2003, a woman testified that she had seen her nephew in bed with Glennon at Karaglen one night when she walked through his room on the way to the bathroom. When asked by the judge if she trusted Glennon, she answered:

*Of course I did. I'm a Catholic aren't I? I mean, you go by the cloth... Who else do you trust in this world? ... He came around to our houses and we used to sing and we used to talk all hours of the night and enjoy each other's company because he was just good to talk to... I thought this world was good when you talked to a priest.*⁹⁵

This type of evidence was repeated during Glennon's other trials.

Often, child victims of clergy sexual abuse came from families where their faith was a foundation of the family life. Consequently, allegations of clergy sexual abuse had a profound impact on deeply religious Catholic families or, as was often the case, such allegations were simply not believed by the victim's parents. The abhorrent betrayal of trust by the person those families had always expected would keep them safe and nourish them, also compounded the abuse.

The damage done by Glennon to his victims was shocking and enduring. Through the *Melbourne Response*, the Archdiocese has compensated 21 of his victims.⁹⁶ All of the victims whose allegations of abuse by Glennon have been upheld by the Independent Commissioner have been compensated, regardless of whether the abuse occurred whilst Glennon had his faculties to operate as a priest, after his faculties were removed, after his conviction or after he was laicised; and, regardless of whether the abuse occurred in a Church setting, a secular karate camp, or elsewhere.

During the 1980s just as the Glennon matter was a key alert of the issue of child sexual abuse within the Church, Australians came to understand that sexual abuse of children occurred all too frequently in the broader community.

Sadly, as evidenced by recent inquiries,⁹⁷ sexual abuse of children continues to be a troubling problem within Australian society to this day. The terrible case of Glennon is only one of a number of notorious offenders in the Church who have destroyed the lives of children entrusted to their care.

Society and the Church are striving to prevent further occurrences of such abuse. Governments and non-governmental bodies continue to respond to the sexual abuse of children. In Australia, inquiries continue, legislation is enacted and the functions of various commissions and consultative bodies concerned with the rights of children change.

This Chapter attempts to deal with key inquiries and reports relevant to Victoria and to the Church regarding this Inquiry.

6.2 Victorian Parliamentary Inquiry into Sexual Offences against Children and Adults

On 16 April 1994, the government announced that an inquiry into sexual offences against children and adults was to be conducted by the Victorian Parliamentary Crime Prevention Committee (PCP

⁹⁴ Dan Silkstone, "Priest and Predator", *The Age*, 11 October 2003.

⁹⁵ *Ibid.*

⁹⁶ As at July 2012.

⁹⁷ The most recent being the Protecting Victoria's Vulnerable Children Inquiry. See Section 6.6.

Committee),⁹⁸ under the Chairmanship of Mr Ken Smith MLC.

Mr Smith stated to the media at the time of the inquiry:

*Committee members ... were like the rest of the community in terms of their understanding of sexual offences. We understood there was a bit of a problem, but we didn't understand the enormity of it. It is quite frightening. It is a gigantic problem.*⁹⁹

This view was mirrored with respect to sexual abuse against children, and in particular against male children, in the PCP Committee's report.

By its Terms of Reference, the PCP Committee resolved to analyse the increased levels of rape and sexual assault identified in the 1992-1993 Victorian Police Annual Report, examine the causes of the increased levels of rape and sexual assault, and report on initiatives aimed at reducing these levels.

In May 1995, the PCP Committee tabled its report, "*Combating Child Sexual Assault - An Integrated Model*",¹⁰⁰ focussing primarily on the sexual assault of children. The report highlighted the significant gaps in protection offered to victims by protection workers, service providers and the police. It drew attention to the inconsistencies in the collection of child sexual assault data and noted the importance of education and community awareness of sexual assault and its ramifications on victims and society in general.

Within the Report, the PCP Committee attributed blame to community beliefs and attitudes and the structure of the criminal justice system for enabling sex offenders, particularly child sex offenders, to continue their offending behaviours.¹⁰¹ Emphasis was placed on the need to review the way child sex abuse was addressed to ensure responses were co-ordinated and continually improving as better information came to light.

In the Chairman's foreword to the report, Mr Smith reported that:

Protocols of some religious organisations have received critical comment by witnesses regarding both the reporting of suspected sexual assaults and the appropriateness of internal investigation of such assaults.

*Evidence has been presented before the Committee of barriers to proper investigation and in some instances a lack of co-operation between some service providers...*¹⁰²

The PCP Committee noted that, while there had been a concerted effort over the previous decade to educate the community that spousal sexual assault was a crime and to introduce legislation to that effect, alarmingly, assaults on children were, alarmingly, still primarily considered to be welfare issues.

The PCP Committee revealed that sexual abuse, both in general, and against children, was more widespread within the community than previously thought. The report highlighted that only in the previous decade had there been an increase in research into sexual assault. Consequently the systems and responses in place to address sexual assault were seen to potentially be based on incomplete and misleading information.

The report confirmed society's lack of understanding of the magnitude of sexual abuse within the community:

*The statistics presented below give an indication only of the size of the problem of sexual assault in Victoria. It will be seen that some of the data relating to the nature of sexual offending is in fact quite different from what was previously believed. For example, it was a common community perception that the majority of sexual assault was committed by strangers, whereas more recent data reveals that this is not the case.*¹⁰³

⁹⁸ The predecessor to the Drugs and Crime Prevention Committee.

⁹⁹ "World Trip's Cost Angers Labor MP", Sunday Age, 5 June 1994, page 3.

¹⁰⁰ Victorian Parliamentary Crime Prevention Committee, "*Combating Child Sexual Assault - An Integrated Model*", Inquiry into Sexual Offences Against Children and Adults, First Report, May 1995.

¹⁰¹ Parliamentary Crime Prevention Committee, "*Combating Child Sexual Assault - An Integrated Model*", Inquiry into Sexual Offences Against Children and Adults, First Report, May 1995, section 6.6.

¹⁰² *Ibid*, page ix.

¹⁰³ *Ibid*, section 3.1.

The report revealed that the crime analysis system introduced by the Victoria Police, the Law Enforcement Assistance Package (**LEAP**), had enabled more detailed and reliable analysis to be carried out on reported crime. The PCP Committee credited the introduction of LEAP with revealing for the first time that a large proportion of rape victims and the majority of sexual assault victims in Victoria were children. The report drew attention to the following alarming figures relevant to the year 1993-1994:

- Of 898 rape victims, 31% (281) were children aged under 17 years (with 16% of all rape victims being under 14 years of age); and
- Of 4,141 victims of sexual assault other than rape, 62.4% (2,583) were children aged under 17 years (with 44% of all sexual assault other than rape victims being under 14 years of age).¹⁰⁴

The PCP Committee analysed all sexual offences reported to community policing squads in the year 1992-1993 and discovered that, of the 3,561 sexual offences reported:

- 70.6% (2,514) were against children aged 16 or under;
- Approximately 25.5% of child victims were male; and
- Most male child victims were aged between five and 10 years of age.¹⁰⁵

With respect to these statistics, the report stated:

The assumption that child sexual abuse is a problem affecting girls only has led researchers and publishers to concentrate on issues relating to female victims.

As figures such as these show, boys too are sexually abused and some recent writers, such as Hunter (1990), have suggested that the sexual abuse of boys is grossly under-reported and under-recognised. He points to the fact that, even when therapists ask adult clients about sexual abuse, those who were victimised seldom report it. This is not because of distrust or dishonesty but the fact that males tend to have a definition of abuse which does not include what happened to them.¹⁰⁶

The PCP considered that the rise in reporting rates of sexual offences was likely due to a combination of factors, namely, the availability of crimes compensation for victims, the higher public profile attached to sexual offending, an increase in the number of support agencies for victims of abuse, an increase in the number of past sexual assaults and rapes being reported and the active encouragement of victims to report sexual assaults to the police.

With respect to reporting rates, it was stated:

It is unfortunate that some organisations and institutions had no requirement that sexual assault be reported to the police. The policy was very much one of keeping it 'in house'. Unfortunately, this attitude, which has been common across the community, has had the effect of supporting sex offenders.¹⁰⁷

The mandatory reporting of child abuse was introduced in Victoria for doctors, nurses and police on 4 November 1993 and for teachers and principals on 18 July 1994. The PCP Committee attributed a 52% increase in notifications of child abuse to the introduction of mandatory reporting requirements.¹⁰⁸

The report served to greatly expand upon both the community's and the Church's understanding of the makeup of child sex offenders and the nature of child sex offending. It revealed child sex offenders as being "cunning, devious, manipulative and recalcitrant individuals" who often ingratiated themselves into vulnerable families with children of the gender and age they preferred to abuse, and who were drawn like "magnets" to occupations which provided a position of authority and control over children.¹⁰⁹

The report drew attention to the fact that child sex offenders often had likeable personalities, held

¹⁰⁴ *Ibid*, section 3.4.3.

¹⁰⁵ *Ibid*, section 3.4.4.

¹⁰⁶ *Ibid*, section 3.4.4.

¹⁰⁷ *Ibid*, section 3.3.1.

¹⁰⁸ *Ibid*, section 3.7.13, citing Armitage, Public Hearing, 28 September 1994.

¹⁰⁹ *Ibid*, section 6.1.

responsible positions in society and were often known socially by their victims and their families. It was concluded that:

Sex offenders will often refuse to accept that their behaviour is of a criminal nature, and that their behaviour will have long-term negative effects on their victims, and will go to great lengths to justify their behaviour to themselves, to blame events or others for their behaviour, and to deny that they made a conscious choice to commit the offence.¹¹⁰

Publication of the report served to increase awareness of child victims of sexual abuse, the long-term impact of sexual abuse on children and highlighted the misguided community perception of child victims:

Under the surface there still exists the myth that children are seductive and ask for it. This idea was common until a few years ago and it confuses cause and effect. Children learn to respond sexually because that is the way they have been treated. It is important to remember that children are physically weaker, they are dependent, easily coerced, easily threatened and easily bribed. They don't have a real choice about how they are treated. What is often forgotten is that these children suffer horribly and quite often the suffering is long term. The physical and psychological consequences can be devastating.¹¹¹

It was noted that research demonstrated that stereotypes, myths and preconceptions about sex offenders and sex offending held in the previous decade were incorrect. Sex offenders come from all occupations and socio-economic backgrounds, are notoriously difficult to identify and may continue to offend throughout their lifetime. The report concluded that sex offenders were not curable and would remain a danger to society all of their lives.

The report also specifically addressed the issue of clergy sexual abuse of children.

The PCP Committee noted that the way in which clergy members responded to knowledge of sexual abuse against a child depended upon the official policy of the religious organisation to which that clergy member belonged.

Specific mention was made of the Victorian Catholic Church's Melbourne Protocol. At the time of the Inquiry in 1994, the Melbourne Protocol had been drafted to "*spell out what the Australian Catholic Bishops Conference protocol has set down*"¹¹² but had not been finalised. As set out in this submission, the *Melbourne Response*¹¹³ and *Towards Healing*¹¹⁴ are the processes of the Church in Victoria currently in place.

The Report highlighted the fact that some significant information received by members of religious organisations may be told to them in the confessional. Nevertheless, the PCP Committee expressly stated that it:

[D]id not wish to question the sanctity of the confessional and the confidentiality offered to those who choose to cleanse their souls in such a way.¹¹⁵

However, concern was raised about occasions where sexual abuse against children came to the attention of clergy members outside the confessional and was not reported to the authorities.

The report quoted Monsignor Cudmore, the then Vicar General of the Archdiocese of Melbourne, as stating during a public hearing of the Inquiry on 28 September 1994, regarding being informed of allegations of sexual abuse outside the confessional, that:

¹¹⁰ *Ibid*, section 6.3.

¹¹¹ *Ibid*, section 6.3.1.

¹¹² Victorian Parliamentary Inquiry into Sexual Offences against Children and Adults Public Hearing, 28 September 1994. Evidence of Monsignor Cudmore, then Vicar General of the Archdiocese of Melbourne.

¹¹³ See Chapter 8.

¹¹⁴ See Chapter 9.

¹¹⁵ Parliamentary Crime Prevention Committee, "*Combating Child Sexual Assault - An Integrated Model*", Inquiry into Sexual Offences Against Children and Adults, First Report, May 1995, section 11.5.

If I saw it was a serious accusation I would probably say, "I think you should go to the police."¹¹⁶

Monsignor Cudmore also stated with respect to priests currently on charges of sexual offences:

Off the top of my head I can really only say one that I know of in Melbourne, and investigations are underway into two others. There are five priests who have been stood down through admission rather than conviction.¹¹⁷

Monsignor Cudmore went on to explain that, in addition to reporting the matter to the Archbishop, if a priest confessed to him that he had been the perpetrator of sexual abuse:

I would obviously be aware that something is seriously wrong and action would have to be taken. I think again I would advise and arrange for him to have psychological counselling.¹¹⁸

The Report stated that religious organisations should implement protocols to ensure the "action" Monsignor Cudmore suggested he would take would mandate reporting the matter to the police.

The PCP Committee noted that it had received evidence which suggested that leaders of religious organisations were informed of the existence of offenders within their organisations yet failed to take any external action, instead conducting internal investigations, taking internal disciplinary action and/or moving the alleged offender.

When queried by the PCP as to whether he undertook investigations on behalf of the Church, Monsignor Cudmore advised at the public hearing on 28 September 2004:

Usually this is the first port of call if they come to me – for a variety of reasons they may not have gone to the police.

...

After the interview is concluded the matter is examined by a small group, who indicate whether it should be proceeded with. The priest is brought in and confronted with the allegation ... evidence is taken. Action is taken.¹¹⁹

In response to questions about mandatory reporting, Father Murphy, a representative of the Diocese of Ballarat stated:

[I]f someone is an adult and they come to us we say to them clearly, right from the start, that we have a pastoral concern for their welfare as somebody who may need assistance.

We also say that as Victorians and Australians they have a criminal and civil avenue open to them and we in no way, as you will see when you read the protocol, stand in the way of that. If the person made known to us was a child for instance, if the child came to one of our schools and made a disclosure to a teacher and the teacher made a disclosure to us, they would have complied with mandatory reporting. So there would be a parallel notification to the department of Health and Community Services as well as notification coming to us from a pastoral point of view, which is to see if we can offer competent, professional assistance, with no strings attached to this person, the person's parents, siblings or whomever may be distressed, distraught or affected.¹²⁰

The recommendations contained in the Report focused on, amongst other things, developing a new integrated structure to co-ordinate victim and prosecution services and increasing judicial and service provider education aimed at addressing issues relevant to the sexual abuse of children. Two recommendations were made specific to religious organisations, namely that:

- Protocols be developed within religious organisations to ensure that Sexual Assault

¹¹⁶ Parliamentary Crime Prevention Committee, "Combating Child Sexual Assault - An Integrated Model", Inquiry into Sexual Offences Against Children and Adults, First Report, May 1995, section 11.5.1.

¹¹⁷ *Ibid.*

¹¹⁸ Victorian Parliamentary Inquiry into Sexual Offences against Children and Adults Public Hearing, 28 September 1994. Evidence of Monsignor Cudmore, then Vicar General of the Archdiocese of Melbourne.

¹¹⁹ *Ibid.*, paragraph 11.5.2.

¹²⁰ Victorian Parliamentary Inquiry into Sexual Offences against Children and Adults Public Hearing, 28 September 1994. Evidence of Father Murphy, representative of the Diocese of Ballarat.

Response Teams (**SARTs**)¹²¹ be immediately notified of any suspected sexual assault (**SART recommendation**);

- Religious organisations develop protocols to ensure that evidence is not contaminated by internal investigations or inquiries (**protocols recommendation**).

In relation to the SART recommendation, the PCP Committee advised that religious organisations should review existing or develop new protocols to compel the immediate notification to police of any suspected sexual offence.

In relation to the protocols recommendation, the PCP Committee noted its concern that internal investigations by religious organisations may jeopardise official investigations:

*Loss of essential evidence, intimidation of victims, who have to tell their story and convince yet another group of people that they are not lying and warn the alleged offender, giving them time to destroy any evidence. Whilst the Committee does not dispute the organisations right to conduct its own investigation, the committee wishes to ensure that any such investigation in no way jeopardises an official investigation.*¹²²

In making its recommendations, the PCP Committee noted that no single state or country had yet devised a successful model for sexual assault management.

On 14 May 1996 the Victorian Government released its response to the PCP Committee's report in which it announced that it did not support a number of recommendations made by the PCP Committee. Relevantly, the recommendations made with respect to religious organisations were not adopted by the Government.

The Government surmised that establishing SARTs was not financially or practically feasible and that, in any event, it would not be appropriate for such bodies to have a management or review function.

The Government did however note their support of the principles underlying the recommendations made by the PCP Committee to ensure adequate accountability of actions by professionals investigating incidents.

The PCP Committee's comments and report relate to Church processes prior to the *Melbourne Response and Towards Healing*. The *Melbourne Response and Towards Healing* processes both encourage complainants to report allegations of abuse to the police. The Church process, if underway, is suspended until the completion of any police processes. These processes are discussed in the following chapters.

6.3 Wood Royal Commission into the New South Wales Police Service

On 13 May 1994, the Royal Commission into the New South Wales Police Service was established by Letters Patent authorising the Honourable Justice James Wood to investigate the existence and extent of corruption in the NSW Police Service, and other related matters.

The Terms of Reference required the Hon Justice Wood to inquire into six areas, including the nature and extent of corruption, promotions and the internal informers policy.¹²³ He was also to inquire into "the impartiality of the Police Service and other agencies in investigating and/or pursuing prosecutions including, but not limited to, paedophile activity".

While required to focus on government departments and agencies, the Commission also found it necessary to consider churches and religious associations. Justice Wood based the decision on four findings:

- *There had been a substantial incidence of sexual abuse involving clergy, members of religious orders,*

¹²¹ The Parliamentary Crime Prevention Committee recommended that the Government establish a Victorian Child Protection (Sexual Assault) Board and that such Board co-ordinate Sexual Assault Response Teams.

¹²² Parliamentary Crime Prevention Committee, "*Combating Child Sexual Assault - An Integrated Model*", paragraph 11.5.2.

¹²³ See Letters Patent issued by the Governor (Rear Admiral Peter Sinclair) on 13 May 1994 in the "*Royal Commission into the New South Wales Police Service, Final Report*", Volume III: Appendices, August 1997, page A38.

ministers of religion, acolytes, and others involved on a paid or unpaid basis in and around Churches or institutions associated with or conducted by Churches or religious bodies;

- *In very many cases, investigations or prosecutions of these incidences had been suppressed, discontinued, or failed in circumstances suggestive of either protection or failure on the part of the official agencies involved to exercise their powers impartially;*
- *There was a serious absence of protocols, guidelines, accepted practices or established lines of communication with the Police Service, concerning the way that allegations of this kind should be managed; and*
- *There had been a history of ignorance or misunderstanding of the existence of the problem, as well as a pattern of denial and repression of any allegations which happened to be raised.*¹²⁴

The Final Report of the Commission comprised five volumes:

- In May 1997, the Commission released Volumes I, II and III of its Final Report, titled “Corruption”, “Reform” and “Appendices” respectively.
- In August 1997, the Commission released Volumes IV and V, both entitled “The Paedophile Inquiry”.

Chapter 11 in Volume V focused solely on “The Churches”.¹²⁵ Observing that the response of the Churches had been defensive in the past, the Commission noted that the Churches now recognised sexual abuse of children as a major problem.¹²⁶

The Commission identified several reasons for the lack of appropriate and timely response by the Churches:

- Ignorance of matters of sexuality, and lack of any ability, particularly by older members of the clergy, to comprehend or accept the fact of sexual indiscretion by their brethren;
- Ignorance of the fact that paedophile activity is strongly compulsive and recidivist in nature, and that it is impossible to dismiss an apparent indiscretion as a one-off event;
- Confusion over loyalty to the Church and its community;
- Confusion between forgiveness and trust towards offenders, and the duties of protection owed to the wider community, and ignorance concerning the limits of counselling;
- Concern to avoid or limit legal liability, in order to protect the Church as a viable institution, which has led to an adversarial approach rather than a response based on pastoral concern;
- Confusion in relation to the limits of confidentiality concerning matters disclosed, or learned, outside the confessional; and
- Uncertainty as to the appropriate response where the complainant does not wish the matter to proceed to police action.¹²⁷

In further examining the Churches’ response to allegations, the Commission also examined protocols developed by each of the Churches, including the then recently established *Towards Healing*.¹²⁸

While not making specific recommendations, the Commission affirmed that offending clergy, youth workers and others associated with Church schools, homes and other religious institutions should be subject to the same safeguards and restrictions as other members of the community having care of children.

¹²⁴ “Royal Commission into the New South Wales Police Service, Final Report”, Volume V: The Paedophile Inquiry, August 1997, page 991.

¹²⁵ The Royal Commission stated clearly that it did not attempt to consider churches individually on a denominational basis.

¹²⁶ The process of confrontation and acknowledgement of the problem was hastened by the evidence led in the Royal Commission hearings, and by media pressure, as much as it was by the mounting number of complaints. “Royal Commission into the New South Wales Police Service, Final Report”, Volume V: The Paedophile Inquiry, August 1997, page 993.

¹²⁷ *Ibid*, page 994.

¹²⁸ See Chapter 9.

In summary, the Commission both criticised the shortcomings of the Churches and praised their achievements.

6.4 Victorian Law Reform Commission Review

On 27 April 2001, the Victorian Attorney-General gave the Victorian Law Reform Commission (VLRC) a reference:

- To review current legislative provisions relating to sexual offences to determine whether legislative, administrative or procedural changes were necessary to ensure the criminal justice system is responsive to the needs of complainants in sexual offences cases having regard to:
 - the findings of the Victorian Parliamentary Drugs and Crime Prevention Committee's 1995 report on Combating Child Sexual Assault and 1996 report on Combating Sexual Assault Against Adult Men and Women;
 - the Rape Law Reform Evaluation Project's 1996 report into the *Crimes (Rape) Act 1991*; and
 - the Model Criminal Code Officers Committee of the Standing Committee of Attorney-General's 1999 report on Sexual Offences Against the Person; and
- To develop and/or co-ordinate the delivery of educational programs which may be necessary to ensure the effectiveness of existing and proposed legislative, administrative and procedural reforms.¹²⁹

Using the Model Criminal Code as a basis, the review considered both substantive and procedural laws and recommended changes to Victorian law.

On 25 August 2004, the "*Victorian Law Reform Commission Sexual Offences: Final Report*" was tabled in Parliament. The Final Report did not make specific reference to religious organisations.

The VLRC stated that the overall aim of the recommendations made in the VLRC Final Report was to increase reporting rates of sexual offences and to "*make it easier for complainants to tell their story to police, lawyers and the courts.*" The VLRC also stated that when drafting its recommendations, it attempted to ensure that the system was fairer for complainants while at the same time ensuring that those accused of sexual abuse received a fair trial.¹³⁰

Reference was made in the report to the fact that people who are sexually assaulted are the least likely of all victims of crime to report to the police. The VLRC identified several reasons for the low level of reporting by victims:

- They may know their attacker and be reluctant to report the crime;
- They may feel ashamed by what has happened to them and may not want other people to know; and
- They may fear the way they will be treated in the criminal justice system.

The VLRC noted that children who are sexually assaulted face many barriers to reporting the crime. It was reported that children often do not tell anyone because they fear punishment, they do not want to upset family members or they do not know that what has happened to them is a crime.

The VLRC also made reference to the fact that of the many incidents of sexual assault in Victoria each year:

- Only a small number were reported to police, of which an even smaller number were prosecuted;
- Conviction rates for rape were very low and had fallen over recent years; and
- Conviction rates for offences against children were also very low.

¹²⁹ Victorian Law Reform Commission, "*Sexual Offences: Law and Procedure: Discussion Paper*", page vii.

¹³⁰ *Ibid*, page vii.

The VLRC Final Report made 201 recommendations, including:

- Better education and training for police, lawyers and judges;
- Improved police responses to all complainants, but particularly Indigenous people, children, and people with a cognitive impairment;
- Reducing time taken to get to trial for children and people with a cognitive impairment;
- Introducing a specialist approach to the listing of sexual offence cases in the Magistrates' Court to improve the speed and sensitivity of the process;
- Reducing the number of times children and people with a cognitive impairment must give the same evidence;
- Tightening cross-examination regulations and barring the accused from questioning the complainant or other vulnerable witnesses in person;
- Allowing videotaped testimony for children and people with a cognitive impairment;
- Widening the definition of allowable evidence and who can give it;
- Amending the Crimes Act, which outlaws sexual relationships between children and people in a position of care or authority over them, by listing the types of people the offence may apply to (such as teachers, religious instructors, youth workers etc.); and
- Creating a new offence to protect children from paedophiles 'grooming' them to participate in sexual activities.

The Victorian Attorney-General applauded the VLRC's recommendations.

The Victorian Government committed itself to implement the suggested legislative reforms. Some of the VLRC's 201 recommendations have been implemented.

6.5 Victorian Ombudsman's report into improving responses to allegations involving sexual assault

In March 2006, the Victorian Ombudsman tabled a report in Parliament entitled "*Improving responses to allegations involving sexual assault*" which considered how government agencies could improve responses to allegations involving sexual assault of children and adults in Victoria.

The enquiry which gave rise to the Ombudsman's Report was initiated on the Ombudsman's own motion and against the backdrop of the VLRC's review of sexual offences and its Final Report issued in 2004.¹³¹

The *Crimes (Sexual Offences) Act 2006* reformed a number of aspects of the law and procedure governing sexual offences as recommended by the VLRC. The Ombudsman concurred with the VLRC's view that legislative reform alone could not achieve all of the change required.

The Ombudsman's Report found that not enough attention had yet been given to broader areas of government administration to reduce the incidence of sexual assault and to support those who experienced it. The Ombudsman stated that his enquiry had found, amongst other things:

- An inconsistent understanding of mandatory or other reporting requirements;
- Differences in the way government agencies categorise and collect information;
- Difficulties in identifying offending patterns and systemic issues;
- Deficiencies in some aspects of police practice relating to sexual assault investigations; and
- Significant lack of understanding within the community about sexual assault.

The Ombudsman's Report revealed that he had received complaints from individuals who reported presenting at a police station to report a sexual assault that had happened some time ago, often in

¹³¹ See Section 6.4.

childhood, only to be told to go away and gather more information. Those individuals reported that when they returned at a later stage, there was often no accessible record of their previous visit. The Ombudsman recommended that Victoria Police should electronically record details every time someone reports a sexual assault irrespective of the sufficiency of the evidence.

The Ombudsman found there had been a sharp increase in the number of reported cases of sexual assault being withdrawn by complainants from 14% in 1994-1995 to 24.8% in 2001-2002. He recommended that Victoria Police develop a range of measures to reduce the number of complaints withdrawn, including independently and automatically reviewing cases where a complainant withdraws a report of sexual assault.

The Ombudsman noted that a consistent message emerging from his enquiry was that large numbers of people are not well informed about sexual assault. He recommended that the government implement a statewide whole-of-government community education strategy aimed at improving community understanding of sexual assault, including sexual assault against children; encouraging early reporting of sexual assault and encouraging access to support services that promote recovery of people who have experienced sexual assault.

6.6 Protecting Victoria's Vulnerable Children Inquiry

On 31 January 2011, the Victorian Government announced the Protecting Victoria's Vulnerable Children Inquiry (**PVVC Inquiry**). The PVVC Inquiry panel comprised the Honourable Phillip Cummins, Emeritus Professor Dorothy Scott OAM and Mr Bill Scales AO.

In summary, the PVVC Inquiry was established to:

- Investigate systemic problems in Victoria's child protection and related services system;
- Recommend changes to improve the protection and care of Victorian children who are at risk of, or who have experienced, abuse or neglect; and
- Meet the needs, improve the lives and secure the rights of Victoria's vulnerable children and young people.

The PVVC Inquiry aimed to produce a report that was forward-looking and solutions-focused. It was not to examine individual cases or review individual organisations.

The Terms of Reference required the PVVC Inquiry to consider the incidence and negative impact of child neglect and abuse, and develop recommendations to reduce such incidence.

On 27 January 2012, the PVVC Inquiry presented its Report (**PVVC Report**) to the Minister for Community Services. On 28 February 2012, the PVVC Report was tabled in Parliament.

The PVVC Report states that in 2010-2011, more than 55,000 reports of alleged child abuse were made to the Victorian child protection system, and the Victorian Government allocated more than \$600 million for direct child protection activities.¹³²

Further, the Executive Summary to the PVVC Report highlighted the fact that child abuse, and child sexual abuse, is a significant problem affecting the Victorian community, requiring urgent and comprehensive government action and greater community understanding:

The vast majority of Victoria's children and young people live in families where they are loved, cared for and encouraged by their families. These children will be supported by their families through the highs and lows of childhood and adolescence and will grow up with the personal resources and capabilities to live independent, well-adjusted and productive lives.

However, a significant number of Victoria's children and young people are not as fortunate. Every week, nearly 60 children and young people from across Victoria are removed from their parents by the State

¹³² Report of the Protecting Victoria's Vulnerable Children Inquiry, January 2012, The Honourable Philip Cummins (Chair), Emeritus Professor Dorothy Scott OAM, Mr Bill Scales AO, Executive Summary, Volume 1, xxvi.

and placed in the care of another person or organisation because there are sound reasons to believe they are at risk of significant harm.

...

The most common types of alleged child abuse and neglect were: psychological harm (46.5 per cent), physical harm (33.6 per cent) and sexual harm (11.0 per cent). Reports for sexual harm increased with age, particularly for females.¹³³

The PVVC Report also noted that child sexual abuse was one of the major issues raised in submissions, Public Sittings and consultations:

The Inquiry heard from parents of victims of sexual abuse that preventative information and guidance about sexual abuse is not readily available in the Victorian community. Submissions argued that greater education for children, parents, youth groups and other groups and professionals working with children is needed to build community capacity and knowledge of sexual abuse and the practices of paedophiles (Gippsland CASA, p. 1; Ms L, Bendigo Public Sitting; Ms Wilson, Warrnambool Public Sitting).¹³⁴

The PVVC Report identified a number of key issues central to the problem of child abuse and neglect in Victoria, including:

- The nature and incidence of child vulnerability across Victoria, relevantly:
 - the number of children who were the subject of a report of concern had increased by 49% and the report rate per 1,000 children aged 0 to 17 years had increased from 25.5 to 33.5 children per annum between the years 2000 and 2011;
 - approximately 50% of children for whom abuse or neglect had been substantiated in 2009-2010 had been involved in multiple substantiations;
 - approximately 75% of children for whom reports of abuse or neglect had been made in 2009-2010 had been the subject of multiple reports; and
 - a significant number of children had been the subject of a very large number of reports;
- The importance of preventing child abuse and neglect at the outset, to ensure repeated intervention is not required over the course of a child's life;
- The importance of ensuring there exists a comprehensive and co-ordinated system of early intervention services for vulnerable children and young people and their families;
- The importance of ensuring the efficiency and effectiveness of Victoria's child protection services increases at the rate necessary to deal with the growth in reports of child abuse or neglect; and
- The importance of strengthening the regulation of Victoria's system for protecting vulnerable children and young people.

The PVVC Inquiry made 82 recommendations which included:

- Investing resources as a matter of priority into the system protecting children and young people;
- Developing and implementing a vulnerable children and young people strategy;
- Meeting the needs of children and young people both within the statutory system and in out-of-home care;
- Realigning court processes to meet the needs of children and young people;
- Strengthening community sector capacity;
- Strengthening court clinical services;
- Expanding and strengthening the role of government agencies; and

¹³³ *Ibid*, Executive Summary, 1:xxvi.

¹³⁴ *Ibid*, Volume 5, page 105.

- Strengthening the regulation of Victoria's system for protecting vulnerable children and young people.

The PVVC Report also made two specific recommendations regarding the Church:

- *Recommendation 47*

The Crimes Act 1958 (Vic) should be amended to create a separate reporting duty where there is a reasonable suspicion a child or young person who is under 18 is being, or has been, physically or sexually abused by an individual within a religious or spiritual organisation. The duty should extend to:

- *A minister of religion; and*
- *A person who holds an office within, is employed by, is a member of, or a volunteer of a religious or spiritual organisation that provides services to, or has regular contact with, children and young people.*

An exemption for information received during the rite of confession should be made.

A failure to report should attract a suitable penalty having regard to section 326 of the Crimes Act 1958 and section 493 of the Children, Youth and Families Act 2005.

- *Recommendation 48*

A formal investigation should be conducted into the processes by which religious organisations respond to the criminal abuse of the children by religious personnel within their organisations. Such an investigation should possess the powers to compel the elicitation of witness evidence and of documentary and electronic evidence.¹³⁵

The PVVC Inquiry also concluded that the *Working with Children Act 2005* (Vic) applies to persons in religious organisations. This Act regulates who may work with children, for the purpose of ensuring that children are protected from sexual and physical abuse.

Importantly, the PVVC Report found that, in the absence of:

- Research into the diversity of religious faiths and practices; the number of ordained and appointed ministers, and the expertise and capacity of ministers of religion to report suspected cases of child physical and sexual abuse; and
- Input from all religious and spiritual faiths across Victoria,

any proposal to extend the mandatory reporting duty under the *Children, Youth and Families Act 2005* (Vic) to ministers of religion may not achieve the desired aim of facilitating an effective systematic state wide practice of reporting accurate protective concerns to the Department of Human Services.

The Church's response to the recommendations of the PVVC Inquiry, and the submissions it proposes to this Inquiry, are set out in Chapters 15 and 16 of this submission.

Following the release of the PVVC Report, this submission notes with interest the following media interview on 17 July 2012, between Neil Mitchell (**NM**) and Carolyn Worth (**CW**) from the Centre Against Sexual Assault (**CASA**):

NM: *I told you some time ago about the problem - a four to five month delay in the eastern suburbs counselling kids who are victims of sexual abuse and victims of domestic violence. The Government still hasn't answered that. I think we raised that three weeks ago; they still haven't answered.*

...

CW: *The worst waiting time is actually six months. Now having said that, it's not the average waiting time. But there are two of the regional CASAs that actually have waiting times of four and six months respectively.*

NM: *So what sort of people would be waiting the six months?*

¹³⁵ *Ibid*, Executive Summary, 1:vii; .xcii; pages 342 to 356.

CW: *Well this is the problem of course. The children's waiting times to some degree for CASA got fixed in 2008/09 when the Government allocated over \$10 million over four years to address that issue. But the people who got left behind are adult survivors of childhood sexual assault. And they're women and men who've come forward having some difficulty with what's happened in their childhood and you know, something that's occurred in their life now is making it really difficult for them to manage either their children or their lives generally. They wait because it's not that they're in crisis, because people who are in crisis with a recent assault will get seen. Most CASAs put children's waiting times - or make appointments for children first before they do for adults.*

So these people will wait, and it could be that they had an assault in their childhood and didn't tell anybody and something has happened in their life now that triggers memories of what happened. And it could be their children have got to the same age and are asking to sleep over somewhere and they just won't let them and that becomes...

NM: *But they're still in a form of crisis, aren't they?*

CW: *They are in a form of crisis, but of course what happens when you've got limited resources is you - I mean triage is such a dreadful word, but you know, you actually work out which crisis to deal with first. And obviously, you deal with recent assaults; you deal with children who aren't managing at all, and you work your way down the line.*

...

But then you would go on the list and it could be anything between seven weeks, and as I said to you in [indistinct] - one of the regional CASAs, six months.

NM: *But - that's for an immediate crisis?*

CW: *Yes, after the very immediate crisis has been dealt with - you know the need to collect forensic evidence and report to the police, yes that's right.*

NM: *But that's obscene, Carolyn.*

CW: *I think you're quite right, it is. It's actually unacceptable.*

...

Children are waiting. The average across the state for children is four weeks. And it's been sitting at four weeks since March. Now since March, everyone's waiting times have moved out, it - we've had a bit of a surge in demand.

And I mean you never know all the reasons. But I think a couple of the reasons are we have encouraged people who didn't come forward in the past, such as people with a disability and men to come forward and talk about sexual assaults.

And people have become much more open about disclosing. But also the other thing that impacts on us is when there's been a lot of publicity about sexual assault, well, there have been recently. There's been a lot of publicity around about the Defence Force, about the church inquiry, and even though you may not be involved in either of those institutions, you will start to think about your own situation and ring.

NM: *But we've got - just for someone I was... you're telling me we've got men and women waiting some seven weeks, some six months for treatment... And we've got kids that are waiting four weeks after assault.*

CW: *Yes. That's right.*

NM: *But that - for a child that's forever.*

CW: *For a child it is forever, and actually for some of the adults it's forever...¹³⁶*

¹³⁶ Interview with Neil Mitchell on 3AW - 17 July 2012 at 9:09am. Transcript.

7 Initiatives of the Catholic Church in Australia - 1988 to 1996

7.1 Introduction

In December 1988, the Australian Catholic Bishops Conference (**ACBC**) considered the implications of allegations of criminal behaviour (especially those relating to children) made against clergy and religious. It established the "Australian Catholic Bishops Conference Special Issues Committee Relating to Priests and Religious". The Committee was required to develop a protocol to be observed if an accusation was made, and to advise on its implementation.

In November 1989, the Chairman of the Special Issues Committee distributed the document "*Protocol for Dealing with Allegations of Criminal Behaviour*" to be followed by Diocesan bishops and leaders of religious institutes. The document drew heavily upon publications from Chicago and Canada. During the following years the Committee developed and refined the protocol.

In May 1990, a Plenary Meeting was held during which the Conference accepted in principle the "*Protocol for Dealing with Allegations of Criminal Behaviour*" on a trial basis for 12 months, to be later revised in the light of experience. The Conference also released a statement endorsing the United Nations Convention on the Rights of the Child.

In August 1990, a "final" version of the "*Protocol for Dealing with Allegations of Criminal Behaviour*" was issued to bishops and superiors. In April 1991, the protocol was adopted. In December 1992, the Conference approved publication of a Pastoral Statement on Child Protection and Child Sexual Abuse.

In April 1994, the Conference established a new committee: the Bishops' Committee for Professional Standards. The Committee decided to revise the protocol to clarify and improve the procedures and to include allegations against employees of the Catholic Church.

In April 1996, the ACBC and the Australian Conference of Leaders of Religious Institutes (**ACLRI**) wrote a Pastoral Letter reflecting the learning that had occurred and the recognition of the need for further learning in relation to sexual abuse.

There were then two very significant developments for the Catholic Church in Victoria:

- In October 1996, Archbishop Pell established the *Melbourne Response*.
- In December 1996, the bishops and religious leaders announced *Towards Healing*.

The *Melbourne Response* and *Towards Healing* processes are discussed in the following chapters.

7.2 Common Elements between Australia and other countries

In reviewing the situations concerning sexual abuse of children in the USA, Canada, the UK, Ireland, New Zealand and Australia, a number of common elements can be identified. For example, the public awareness of child sexual abuse was initially focused more on incest and abuse within families. A growing realisation of sexual abuse by others, outside the family emerged during the 1970s and 1980s.

In institutional settings, authorities focused on the incidence of physical abuse and neglect. An increased awareness that sexual abuse had also occurred was followed by a growing understanding of the seriousness of abuse and a heightened commitment to its prevention.

Another common element is that while offences have occurred over several decades, it is generally only in the past 30 years or so that people have come forward.

As well as investigating allegations, governments have responded with new or revised criminal and civil legislation aimed at deterring offenders and providing a safer environment for children by placing restrictions on offenders.

Child sexual abuse is a widespread phenomenon. It has taken many years for authorities, both civil and ecclesial, to understand the nature of abuse, the nature of the perpetrators, the harm caused by these offences, how to appropriately deal with the allegations of offences and how to care for victims.

Churches and civil authorities have acknowledged mistakes in their response to past allegations. All jurisdictions acknowledge the need for continuing vigilance, study and pastoral concern. No one has yet claimed to have developed the definitive set of procedures.

The *Melbourne Response* and *Towards Healing* have introduced clear structures and procedures for responding to victims and investigating alleged offences.¹³⁷ It is believed that at the time of its introduction, the *Melbourne Response* was the first Diocesan protocol of its kind established anywhere in the world.

The Australian Church seeks to apply best practice and, ideally, to generate it. Accordingly, the Church continues to inform itself as to developments overseas.

For the assistance of the Inquiry, a chronology of significant developments internationally and in Australia both in the Church and in civil society is contained in **Appendix 5**.

The Church acknowledges that it will always have more to learn and to apply in this difficult area.

¹³⁷ See Chapters 8 and 9.

8 *Melbourne Response*

8.1 Summary

The *Melbourne Response* commenced in October 1996. It was introduced into the Archdiocese of Melbourne by then Archbishop George Pell, following his installation as Archbishop of Melbourne on 16 August 1996.

The *Melbourne Response* was introduced following discussions between Cardinal Pell and a number of civic leaders and specialist advice provided to the Archdiocese. Cardinal Pell was urged by the civic leaders to introduce an independent process to respond to a number of allegations of abuse made against the Melbourne Archdiocese, which had not been resolved at the time he took office.

The *Melbourne Response* is understood to have been the first Diocesan protocol of its kind established anywhere in the world.

Information about the operation of the *Melbourne Response* is contained on the website of the Archdiocese of Melbourne¹³⁸ and a brochure describing the *Melbourne Response* is at **Annexure 1**.

The *Melbourne Response* was established with the following goals:

- The pursuit of truth;
- Healing for the victims;
- Assistance for other persons affected;
- Affording natural justice to those accused; and
- Preventing future offences.

The introduction of the *Melbourne Response* preceded *Towards Healing*,¹³⁹ which was approved by the bishops of Australia and the Conference of Religious Leaders in November 1996 for commencement in March 1997.

When the *Melbourne Response* was introduced, it incorporated the core elements set out below, which have continued to the present day.

8.2 Core elements

The core elements of the *Melbourne Response* since its introduction are:

- An Independent Commissioner to receive and inquire into allegations of sexual and other abuse by priests, religious and lay people under the control of the Archbishop of Melbourne. The Independent Commissioner is the first point of contact for people wishing to make allegations or complaints. The Independent Commissioner also makes recommendations to the Archbishop as to how to deal with the offender. Integral and essential to the *Melbourne Response* is the commitment of the Archbishop to accepting the recommendations of this independent senior lawyer. The Archdiocese provides full co-operation to the Independent Commissioner, including the provision of relevant documents and information. The Archbishop also empowers the Independent Commissioner to require priests to participate in the Independent Commissioner's inquiries by providing the Commissioner with a formal delegation under Canon Law;
- The continuing and unfettered right of complainants to report all criminal conduct to Victoria Police and the encouragement for them to do so;
- A Compensation Panel to recommend ex gratia compensation, to be paid by the Archdiocese, to victims of abuse by priests, religious and lay people who are, or were, under the control of the Archbishop of Melbourne. A victim who wishes to accept an offer of ex gratia compensation is

¹³⁸ <http://www.cam.org.au>

¹³⁹ See Chapter 9.

asked to sign a Deed of Release. The Deed of Release does not bind the victim to any confidentiality restrictions, including in relation to the amount of the ex gratia compensation received by the victim.

- Carelink to co-ordinate the provision of free counselling and professional support services for victims. Carelink co-ordinates the referral of victims to psychiatrists, psychologists and other specialists who have the expertise required to address the individual needs of victims and their families arising from their abuse and related issues. The counselling and support is provided to victims for as long as it is needed; and
- A Pastoral Response Team to provide victims and parish communities with spiritual support and counselling at the parish level.

Each of the above elements is discussed in further detail below.

8.3 Reasons for introduction

Cardinal Pell established the *Melbourne Response* in an attempt to lessen the sufferings of the victims of abuse and their families, by enabling a prompt and independent investigation of their complaints and access to compensation and free counselling.

When launching the *Melbourne Response* in October 1996, he made an unreserved and public apology to the victims of abuse and the people of the Melbourne Archdiocese for the actions of those Catholic clergy and others “*who have betrayed the trust placed in them by virtue of the privileged position they occupy in society*”.

This apology has been repeated on subsequent occasions by both Cardinal Pell and his successor as Archbishop of Melbourne, Archbishop Denis Hart.

On 1 July 2010, Archbishop Hart issued a Pastoral Letter on sexual abuse to the people of the Catholic Archdiocese of Melbourne, in which he stated:

The full extent of sexual abuse by Catholic priests and religious continues to emerge, not only here in Australia but throughout the world.

Once again, therefore, I express my deep sorrow and offer a sincere and unreserved apology to all those victims who have suffered the pain and humiliation of sexual abuse and to their families.

...

As your Archbishop, I want you to know that I share in your desolation and sense of betrayal. The criminal offences and breaches of vows committed by some priests and religious bring shame upon the entire Church. How can we Catholics not be shocked and shamed?

With great humility we acknowledge that the crimes of the perpetrators have done great harm. We recognize that in the past we have not always dealt appropriately with offenders. We have had to learn from our mistakes, and continue to do so.

For me personally, this is one of the saddest times of my 43 years in the Catholic priesthood.

Sexual abuse in any form, and any attempt to conceal it, is a grave evil and is totally unacceptable. As Christ's Church we must face up to the truth of these revelations and not attempt to disguise, diminish or avoid in any way the actions of priests and religious who have betrayed their sacred trust.

...

The public is rightly concerned about the way in which Church authorities have responded to complaints and proven offences, especially where those involved are under age. For this reason you may find it helpful for me to describe what we are doing in the Melbourne Archdiocese. In 1996, we introduced the Melbourne Response as the most compassionate way of caring for victims.

In the past 14 years, about 300 people have been compensated as victims of sexual abuse within the Archdiocese. Most of the complaints relate to incidents from thirty and up to eighty years ago. We

receive few complaints of abuse that has taken place since the 1970s.

We have sought to do everything in our power to bring these victims aid, consolation and, if possible, reconciliation with the Church. They have been given access to compensation, on-going counselling and medical support.

Victims have had the unfettered ability to take their complaint to the Victoria Police. Indeed, they are encouraged to do so. We do understand, however, that not all victims want to go to the Police. Nor do all complaints involve criminal offences that the Police can investigate.

Of the victims to whom compensation offers have been made in accordance with the Melbourne Response, five have not yet accepted them. Eighty-six offenders have been identified over an eighty year period, of whom sixty were priests of the Archdiocese. Thirty-five of those priests are now deceased.

I have acted in accordance with every recommendation of the Independent Commissioner under the Melbourne Response in relation to the remainder.

Of course, as a Church we must do more than provide justice to the victims of past sexual abuse. We must also work to prevent future abuse. Since 1996, we have introduced procedures to protect parishioners and children against sexual abuse, and processes have been developed and applied to deal with offending clergy. We ensure that there is rigorous screening of all people who aspire to the priesthood, and seminarians are required to undertake study of the Church's code of conduct for priests and religious on integrity in ministry.

We cannot completely set right the wrongs of the past or take away the anguish of victims of abuse and their families. Nevertheless I believe that the Melbourne Response goes a long way towards addressing compassionately the issue of sexual abuse in the Melbourne Archdiocese.

In 1996, the Terms and Conditions of the Melbourne Response were formulated in consultation with Victoria Police. We are currently discussing with the Police how best we can continue to facilitate co-operation and assistance between the Archdiocese and the Police.¹⁴⁰

8.4 Independent Commissioner

The Office of the Independent Commissioner is the first point of contact for people wishing to make allegations or complaints, to seek counselling services and to obtain information about compensation.

In 1996, the appointment of an Independent Commissioner to investigate complaints replaced the arrangement then in place in the Archdiocese of Melbourne, under which the office of Vicar General was responsible for both the Archdiocese's pastoral response initiatives and for responding to complaints against priests.

The Independent Commissioner is funded by, but acts independently of, the Archdiocese in accordance with the "*Terms of Appointment of the Independent Commissioner to Enquire into Sexual and Other Abuse*", the principles of natural justice and relevant provisions of Canon Law.

The Independent Commissioner's Terms of Appointment are available on the website of the Archdiocese of Melbourne¹⁴¹ and a copy of the current terms is at **Annexure 2**.

The written terms and conditions of the Terms of Appointment of the Independent Commissioner were compiled in consultation with, and the approval of an Assistant Commissioner of Victoria Police.

There are currently two Independent Commissioners appointed by the Archbishop of Melbourne under the *Melbourne Response*. In 1996, Mr Peter O'Callaghan QC was appointed by Archbishop Pell on the commencement of the *Melbourne Response*. In July 2012, Archbishop Hart appointed Mr Jeffery Gleeson SC as an Independent Commissioner. Mr Gleeson SC's appointment commenced on 1 August 2012.

¹⁴⁰ Archbishop of Melbourne, Denis Hart, "*To the people of the Catholic Archdiocese of Melbourne, A Pastoral Letter on Sexual Abuse*", 1 July 2010.

¹⁴¹ <http://www.cam.org.au>

From time to time, the Archbishop of Melbourne has appointed ad hoc Independent Commissioners to investigate complaints of abuse when Mr Peter O'Callaghan QC has been unable to undertake the investigation. Ad hoc Independent Commissioners appointed since 1996 have included Mr Paul Guest QC (prior to his appointment to the Family Court), Mr Paul Lacava QC (prior to his appointment to the County Court), Mr James Elliott SC and Mr Jeffery Gleeson SC.

The Archdiocese appoints Independent Commissioners based on their reputation, skill and experience to assure complainants and accused that they will be fairly dealt with.

The Independent Commissioner receives complaints and enquires into allegations of abuse by priests, lay people and religious who are, or were, under the auspices of the Catholic Archbishop of Melbourne. The Independent Commissioner makes an appraisal of all of the circumstances of the situation and helps victims to explain and address their very personal issues.

The Independent Commissioner meets with complainants to hear their personal recollections of abuse and to conduct an investigation. The Commissioner recognises how difficult it is for victims to talk about their own situation. However, experience has shown that going through this process has brought a sense of closure and relief to many. From the initial contact with the Independent Commissioner, the *Melbourne Response* respects the individual's privacy.

All complainants are informed that they have a continuing and unfettered right to go to the police and the Independent Commissioner encourages them to do so if the conduct complained of may constitute criminal conduct. He also explains that the police have greater powers of investigation than the Independent Commissioner.

The Independent Commissioner will assist any victim wishing to go to the police and will take no further steps until the police investigation and any resulting proceedings are completed. Counselling support through Carelink will continue to be available.

The *Melbourne Response* also recognises, however, that some complaints will not be dealt with by the police, based on the wishes of the complainant, or for reasons such as the alleged offender being deceased or the complaint having been previously reported to the police and police action having been finalised.¹⁴²

The Independent Commissioner can also refer a victim to Carelink at any time for the provision of free counselling, psychological and other professional support. If the Independent Commissioner finds that a complaint has been established, he refers the victim to the Compensation Panel.

Since the commencement of the *Melbourne Response*, Independent Commissioners have investigated 331 complaints of abuse that fall within the Terms of Reference of this Inquiry (254 by males and 77 by females), of which:

- 308 were upheld (236 by males and 72 by females);
- 8 were unsubstantiated; and
- 15 remain undetermined.¹⁴³

Accordingly, of the complaints that have been determined, over 97% have been upheld in favour of the victim. Further details are contained in **Appendices 3 and 4**.

8.5 Hearings before the Independent Commissioner

Many complaints received by the Independent Commissioner relate to priests who are deceased or who have already been dealt with by the police, either in relation to that complaint or in relation to the complaints of other victims. In these circumstances, only limited investigation by the Independent Commissioner is usually required in order to accept or reject the complaint.

¹⁴² The proposition that all complaints should be dealt with by Victoria Police is discussed in Chapter 16.

¹⁴³ As at July 2012. These figures relate to complaints by primary victims who fall within the Independent Commissioner's Terms of Reference. They do not include complaints referred to *Towards Healing* or complaints that were not pursued by the complainant

In other circumstances, the allegations are denied by the accused person. The Independent Commissioner will then conduct a confidential hearing at which the relevant parties and any legal representatives can be present. Both the complainant and the accused person are asked to sign a confidentiality agreement to enable the hearing to occur. The confidentiality agreement does not restrict the complainant from discussing the circumstances of the abuse, but relates to what transpires at the hearing. In circumstances where the hearing does not have statutory protection, this confidentiality is considered appropriate to protect the legal rights of all parties, including but not limited to preventing the accused person from disclosing what the complainant said at the hearing and vice versa.

It must be stressed that the confidentiality agreement is not intended to prevent and does not prevent the complainant from discussing the fact of the abuse or the details of the abuse.

In October 1999, the then Chief Magistrate, Mr Adams, reviewed the Independent Commissioner's appointment and processes and found that it was clearly in the public interest to protect the integrity of the Independent Commissioner's private and confidential proceedings.

Magistrate Adams held:

[I]nformation voluntarily disclosed in the course of a private investigation, albeit in confidence, must be available to police officers charged with the investigation of allegations of sexual assault.

...

In most cases there will be no issue of confidentiality of communications but where that issue does arise, as it does in the present case, or perhaps in the doctor-patient relationship, then in my view the Court has an obligation to ensure, in the public interest, that the confidentiality of the relevant communication is breached, only as far as is necessary to satisfy the legitimate forensic purpose of the police.

In my view, in this case there should be some limits placed on the access the police should have to the documents in question so as to preserve the confidentiality as far as is possible without interfering with the proper investigation of the offences alleged to have been committed.

...

I wish to emphasise that the protection of Mr O'Callaghan's confidence in my view does not rest on a finding of public interest immunity but on general policy that communications in confidence should be acknowledged and protected by the Court wherever it is in the public interest to do so...

What is sought to be protected is the integrity of Mr O'Callaghan's confidential and private proceedings which, in my view, based on the material contained in Mr O'Callaghan's affidavit is clearly in the public interest.

8.6 Dealing with offenders

After he has investigated a complaint, the Independent Commissioner makes recommendations to the Archbishop as to how to deal with the offender. The Archbishop has complied with the Independent Commissioner's recommendation in every case.

Priests found to have offended against children are excluded from active ministry.

When misconduct is alleged against a priest who is in active ministry, it becomes necessary to consider whether the priest ought to retain his position while the complaint is investigated. Similar considerations arise when misconduct is alleged against doctors, teachers, police and politicians, and must have regard to the presumption of innocence. Each case must be considered based on its facts. However, the priority is to avoid the possibility of harm for those who may be at risk.

If an allegation of sexual abuse is made against a priest, he is removed from ministry while under investigation.¹⁴⁴ This process involves the Canon Law suspension known as Administrative Leave. Whilst on Administrative Leave, a priest is suspended from his position and prohibited from exercising any public ministry (such as saying Mass or conducting weddings or funerals). If the priest is a parish

¹⁴⁴ See Section 5.9 for a more detailed description of these Canon Law issues.

priest, another priest will ordinarily be appointed to his parish on a temporary basis. This priest is known as the Administrator of the parish.

Since the establishment of the *Melbourne Response*, it has been the practice of the Archbishop of Melbourne to seek advice from the Independent Commissioner as to whether an accused priest should be placed on Administrative Leave while under investigation. It has been the invariable practice of the Archbishop to accept the Commissioner's recommendation.

An accused person will also be suspended if they are facing criminal charges, at the direction of the Independent Commissioner or if the Archbishop considers it appropriate to do so.

8.7 Compensation Panel

The Church acknowledges that for many victims compensation is an important consideration. It is rare that the individual offender is a realistic source from whom to seek compensation. Victims therefore look to the Church. An important component of the *Melbourne Response* is the provision of compensation to victims without the requirement that they establish a claim at law.

The Compensation Panel arranges for the provision of ex gratia compensation for people who have been found by the Independent Commissioner to have been abused by priests, religious and lay people who are, or were, under the control of the Archbishop of Melbourne.

The Compensation Panel, like the Independent Commissioner, operates independently of the Archbishop and the Archdiocese.

The Compensation Panel commits that it will preserve the confidence of what it is told by each applicant. Such confidentiality is considered appropriate in the context of the applicants' painful stories. Like all dispute resolution processes, the engagement with the Compensation Panel is "without prejudice". Applicants are therefore asked not to reveal offers made to them that are not accepted. This confidentiality is considered appropriate to protect the legal rights of all parties.

However, there are no restrictions imposed on victims to prevent them from discussing the circumstances of the abuse.

Further, as discussed in Section 8.10, a victim who wishes to accept an offer of ex gratia compensation is not bound by any confidentiality requirements. Victims who wish to accept a compensation offer are asked to sign a Deed of Release. The Deed of Release does not bind the victim to any confidentiality restrictions, including in relation to the amount of the ex gratia compensation received by the victim.¹⁴⁵

The Compensation Panel has four members, comprising the Chairman, a psychiatrist, a solicitor and a community representative. At all times the Compensation Panel has been chaired by Senior Counsel from the Victorian Bar, consistent with the principles on which the *Melbourne Response* is based that its office holders should be leaders in their profession.

The Chairs of the Compensation Panel since its commencement have been Mr Alex Chernov AC QC (until his appointment to the Victorian Supreme Court and the Court of Appeal), Mr David Habersberger QC (until his appointment to the Victorian Supreme Court), Mrs Susan Crennan QC (until her appointment to the Federal Court and her subsequent appointment to the High Court), and currently Mr David Curtain QC, a senior barrister and a former Chairman of the Victorian Bar Council.

The Compensation Panel operates in an informal way and is designed to facilitate the resolution of complaints. The Archdiocese is not represented before the Panel. Victims can be legally represented before the Panel, and some choose to be, but the Panel can also deal directly with a victim who wishes to tell their own story. Victims attending before the Compensation Panel often bring a support person with them.

The Compensation Panel relies on the finding of the Independent Commissioner that the applicant is a

¹⁴⁵ On 14 August 2012, an article in The Age newspaper written by Barney Zwartz and entitled "Abuse victims fear having lost the right to testify", incorrectly stated that victims had been the subject of "gag agreements".

victim of abuse. A report is provided to the Panel by the Independent Commissioner. Victims are also encouraged to provide the Panel with a report from Carelink or from other treatment providers.

If an expert psychiatric or medical opinion is not available from Carelink, the Panel attempts to obtain some other form of expert report to assist with its considerations. The Panel welcomes other relevant information that people appearing before the Panel wish to present.

Compensation payments, binding on the Archbishop, are recommended at the discretion of the Panel, currently up to a maximum of \$75,000 per person.¹⁴⁶ This maximum amount exceeds the compensation currently available from the Victims of Crime Assistance Tribunal, under the Victorian Victims of Crime Compensation Scheme.¹⁴⁷

If the victim accepts the recommended compensation payment, the amount will be paid in full and final settlement of all legal claims against the Archbishop and the Archdiocese of Melbourne in relation to the Independent Commissioner's findings.

An important aspect of the *Melbourne Response* is that victims who accept compensation remain entitled to counselling and support through Carelink for as long as needed. Counselling and support are funded at no cost to the victim in addition to the compensation payment.

8.8 Claims initiated outside the *Melbourne Response*

If the recommended compensation payment is not accepted, or if a complainant does not wish to participate in the Compensation Panel or the *Melbourne Response* processes, the complainant is free to use the normal civil processes. However for any person who has been found by the Independent Commissioner to be a victim of abuse, Carelink services remain available, at no cost to the victim, so that they can obtain the appropriate counselling and treatment.

Some victims do elect to take legal action against the Church. The Church responds to these claims in accordance with the law.

Some victims who issue legal proceedings then resolve their claims through the *Melbourne Response*. If that is not possible and the case proceeds as a civil legal claim, it is the Archdiocese's strong preference to resolve claims pastorally and in a non-adversarial manner, rather than litigating to final judgment. As a result, victims are often ultimately able to resolve their complaint without the need for a formal court hearing. Often these claims are resolved through a formal mediation process where settlements are negotiated by lawyers for the parties. These settlements generally have the features of settlements negotiated in relation to civil litigation, including some confidentiality requirements, particularly in relation to the details of the settlement. The settlement may also include future counselling and treatment costs if this is what is agreed between the parties.

Since the introduction of the *Melbourne Response* in 1996, the Melbourne Archdiocese has never bound victims of abuse to confidentiality in relation to their discussing the abuse, identifying the offender or criticising the Church.¹⁴⁸ This is so regardless of whether there has been a settlement or whether the settlement was under the *Melbourne Response* or otherwise.

A small number of victims, who have settled claims in a legal context, and outside the *Melbourne Response*, have agreed to limited confidentiality in relation to the details of the settlement (for example, the amount) but not in relation to the details of the abuse.

Some people who were not themselves victims of abuse have, at times, made complex claims,

¹⁴⁶ In 1996, when the *Melbourne Response* was introduced, compensation payments for victims were capped at a maximum of \$50,000 per person. This amount was the same as that available through the Victorian Victims of Crime Compensation Scheme. In 2000, the maximum compensation payment was increased to \$55,000 per person. In 2008, the maximum compensation payment was increased to \$75,000 per person.

¹⁴⁷ In Victoria, Victims of Crime compensation is capped at \$60,000. This was increased from \$50,000, effective as of 1 July 1997, with the introduction of the *Victims of Crime Assistance Act 1996* (Vic). The Act also abolished the entitlement to compensation that could be awarded for pain and suffering (capped at \$20,000) (also effective 1 July 1997).

¹⁴⁸ See Section 8.10.

including in an employment context. In a handful of these cases, settlements have included broader confidentiality considerations.

The Archdiocese respects the Parliament's sovereignty in relation to these matters and has sought to reassure such persons that they are not restricted by the Church in any way from making submissions to this Inquiry.

8.9 Apology

Every victim who receives an offer of ex gratia compensation also receives a personal letter of apology from the Archbishop of Melbourne for the wrongs and hurt suffered by the victim and those around them as a result of the abuse.

The letter of apology is provided whether or not the victim elects to accept the compensation recommended by the Compensation Panel.

Victims have expressed their appreciation for the personal apology, the acceptance of their complaint by the Archbishop as the leader of the Archdiocese, and the sense of closure which this brings for them.

The Archbishop is also available to meet personally with the victim of abuse and the family should they wish to do so and, over the years, Archbishop Hart has met with victims who have requested such a meeting.

8.10 Release

A victim who wishes to accept an offer of ex gratia compensation is asked to sign a Deed of Release. Since the inception of the *Melbourne Response* in 1996, the Deed of Release has contained no confidentiality restrictions.

The Deed of Release records the finding of the Independent Commissioner that the person was a victim of sexual abuse and the Archbishop's acceptance of the amount of compensation recommended by the Compensation Panel. In return for the payment, the Release precludes any further civil legal claims against the Archbishop and the Archdiocese, related to the abuse.

The Deed of Release does not bind the victim to any confidentiality restrictions, including in relation to the amount of the ex gratia compensation received by the victim. No restrictions are imposed on victims preventing them from discussing the abuse, from referring to the offender or from criticising the Church. Further, there are no restrictions on reporting matters to the police at any time.

As noted above, the settlement and the Deed of Release do not restrict the victim's ongoing entitlement to the services supplied through Carelink.

8.11 Carelink

Carelink co-ordinates the provision of free counselling and other professional support to victims of abuse by priests, religious and lay people who are, or were, under the control of the Archbishop of Melbourne. The support is offered by Carelink from the time a complaint is first made to the *Melbourne Response*, and remains available for as long as is required by the victim. Support is also available to victims who have made a complaint to the police and who are going through a court process.

Carelink, like the Independent Commissioner and the Compensation Panel, operates independently of the Archbishop and the Archdiocese of Melbourne.

Carelink refers victims to psychiatrists, psychologists and other health care providers who have the appropriate background and expertise to address sexual and other abuse, and related problems. It seeks to tailor the support provided to meet the individual needs of the victim.

Treatment and counselling co-ordinated through Carelink is provided at no cost to victims.

Initially, each victim is interviewed and assessed by Carelink so that individual needs can be identified.

The detailed history that Carelink takes from each victim helps Carelink to understand how the abuse has impacted or affected on various aspects of the victim's life.

Carelink asks treating therapists to provide regular progress reports so that a victim's treatment can be monitored.

Since its introduction in 1996, Carelink has been led by distinguished psychiatrists Professor Richard Ball (1996-2006) and Dr Michelle Pathe (2006-2009). Since 2009, the consulting psychiatrist to Carelink has been Dr Susan Brann.

The Carelink Co-ordinator is consulting psychologist, Ms Susan Sharkey, who has been in this position since 2003. Ms Sharkey also held this position previously from 1996-2001. Ms Elizabeth Harding, also a psychologist, was the Carelink Co-ordinator from 2001-2003.

Since 1996, Carelink has facilitated counselling and other support for approximately 550 victims of abuse and family members.¹⁴⁹

While the findings of the Independent Commissioner and the Compensation Panel process both apply to primary victims of abuse, Carelink provides free assistance not only to primary victims but also to family members and others who are affected by such abuse.

Carelink's role is to ensure that the treatment received by each victim is appropriate to their needs. To that end, Carelink conducts periodic reviews of progress.

8.12 Parish Pastoral Response

The parish pastoral response element was included in the *Melbourne Response* process as a specific focus of support to parish communities and parish priests at times of crisis following the disclosure, or imminent disclosure, of misconduct by parish clergy and Church personnel.

It was acknowledged that parishioners hearing information about their previous or current priest would be in need of support to understand and work through sensitive issues of breach of trust, disbelief, anger and fear.

It was also acknowledged that parish priests in charge of parishes where abuse had previously occurred and those parish priests who were appointed to replace a priest immediately following serious allegations, faced particular difficulties and were in need of targeted professional and pastoral support.

8.12.1 Nature of the support to parish communities and priests

The nature of the support is guided by the type of issues being addressed, the timing of the disclosures (historical abuse or recent allegations), the experience and capacity of the parish priest and the particular dynamic of the parish community. This last factor is usually affected by the timing of the events and the level of connection between the parish priest and his community.

The type of support provided has included:

- Providing advice about the support available to victims;
- Meeting with parish priests and parish leadership teams to explain processes and protocols of the Archdiocese when abuse occurs;
- Assisting priests to prepare announcements and answer questions, prepare homilies as part of and following public disclosures of abuse;
- Meeting individual and small groups of parishioners to provide pastoral support and answer questions about processes and protocols;
- Providing information about child protection protocols and processes;

¹⁴⁹ As at July 2012. This includes primary victims outside the scope of this Inquiry.

- Providing pastoral support to principals and school staffs;
- Providing advice to school principals on dealing with the outcomes of disclosures relating to priests in their community;
- Making referrals, as required, to the Independent Commissioner and Carelink;
- Attending in parishes over successive weekends to provide ongoing support to the priest and community as required;
- Meeting with parents, siblings, friends or associates of victims, on request; and
- Providing referrals to spiritual directors when requested.

8.12.2 Advice to Archbishop and Vicar General

Feedback is provided to the Archbishop, usually through the Vicar General's office, following time spent working in parishes. This feedback usually takes the form of information on further support required or on issues of concern that may have arisen as part of the parish support.

General advice has been provided through the Vicar General's office on a range of pastoral and professional standards issues not all directly related to abuse. Advice on appropriate intervention as a preventative measure as well as follow up on more general matters, including disputes and mediation, also forms part of the role.

A range of professional development programs on professional standards in ministry have also been conducted.¹⁵⁰

Further, direct on-call advice and support to parish priests and parish personnel on issues related to general pastoral ministry is available.

8.13 Co-operation with Victoria Police

It has been alleged from time to time in the media that the Independent Commissioner has failed to advise complainants to go to the police. This allegation is untrue and is rejected.

The *Melbourne Response* does not aspire or purport to replace the police and does not restrict the role of the police to investigate and prosecute allegations of criminal conduct. All victims of abuse are encouraged to report allegations of criminal conduct to Victoria Police. This is the situation at all stages of the *Melbourne Response* process.

The Church acknowledges that Victoria Police have powers which the Independent Commissioner does not have, including the power to issue search warrants and to make arrests, and it is only through the police that a person can be brought before a court to answer allegations of criminal conduct.

In his Pastoral Letter on Sexual Abuse issued on 1 July 2010, Archbishop Hart stated:

*Victims have had the unfettered ability to take their complaint to the Victoria Police. Indeed, they are encouraged to do so. We do understand, however, that not all victims want to go to the Police. Nor do all complaints involve criminal offences that the Police can investigate.*¹⁵¹

The Terms of Appointment require that when the Independent Commissioner receives a complaint of sexual or other abuse which may constitute criminal conduct, he must immediately inform the complainant that he or she has the unfettered and continuing right to make that complaint to the police, and that he must encourage them to do so. This has been the invariable practice of all of the Independent Commissioners under the *Melbourne Response*.

The Independent Commissioner's Terms of Appointment provide that when he becomes aware of allegations of sexual or other abuse which may constitute criminal conduct he may report that

¹⁵⁰ See Chapters 11, 12 and 14 for further details of programs conducted by the Church in Victoria.

¹⁵¹ Archbishop of Melbourne, Denis Hart, "To the people of the Catholic Archdiocese of Melbourne, A Pastoral Letter on Sexual Abuse", 1 July 2010.

conduct to the police. The Independent Commissioner will always report such conduct to the police if the complainant has requested that he do so. However, the Independent Commissioner's Terms of Appointment provide that he may not report to the police if the complainant informs him that he or she is only prepared to make the complaint upon the Independent Commissioner's assurance that he will not (unless required by law) breach that confidentiality.

From time to time, the Independent Commissioner has been approached by the police requesting information in respect of police investigations of allegations of sexual abuse against a priest of the Archdiocese. In these circumstances, the Independent Commissioner provides the police with all the information he can and advises the police to inform the victim that at the end of the police and court processes, the victim has the opportunity to make an application under the *Melbourne Response*.

There have been some cases in which the Independent Commissioner has commenced an investigation, conducted a hearing and even made findings and then the complainant has reported the offence to the police. This is a right which complainants have and nothing is done to prevent a complainant from doing so.

If a victim refers allegations to the police after having made a complaint under the *Melbourne Response* but before the investigation of that complaint has been completed, the Independent Commissioner suspends any further action until the police investigation and any resulting court proceedings are completed.

During his term as Independent Commissioner, Mr Peter O'Callaghan QC has had considerable contact with the police and, particularly, the Sexual Offences Unit (by its various names). In more recent times, discussions centred on the establishment of a formal protocol to facilitate co-operation and assistance between Victoria Police, the Archdiocese and the Independent Commissioner. In 2010, these discussions led to the development of a draft protocol which:

- Emphasised the desirability of all allegations of criminal conduct being reported to and investigated by Victoria Police and set out the practical steps to be taken by the Independent Commissioner to encourage victims to make a report that would allow this;
- Consistent with the Terms of Appointment, confirmed that the Independent Commissioner would take no steps to investigate matters that were subject to pending police investigations;
- Included a procedure designed to avoid any unwitting interference by the Independent Commissioner with pending police investigations; and
- Encouraged enhanced co-operation and liaison between the Archdiocese and Victoria Police.

During a meeting in November 2010 between the Independent Commissioner and representatives of the Archdiocese, the then Deputy Commissioner, Sir Ken Jones QPM, expressed his support for the processes that the Archdiocese had in place to respond to abuse allegations and stated that the processes dealt with victims in an appropriate way.

The Deputy Commissioner also stated that because of issues that had arisen relating to other Victoria Police protocols then in place with the Australian Football League and with the builders of the desalination plant at Wonthaggi, the Victoria Police would no longer enter into such protocols, including the one which had been jointly developed with Victoria Police for the Archdiocese of Melbourne.

Before the withdrawal of support for the draft protocol by Victoria Police, the then Head of the Sexual Offences Squad, Detective Inspector Glenn Davies, asked the Independent Commissioner to proceed on the basis that the key terms of the draft protocol applied (i.e. the liaison arrangements between the Independent Commissioner and the Head of the Sexual Crimes Squad, and not informing the alleged offender of any complaint for four weeks or such further period as agreed when the complainant decided to go to the police).

Following the decision of Victoria Police not to agree to a protocol, the Archbishop of Melbourne varied the Terms of Reference of the Independent Commissioner to address matters that would have been covered by the protocol. On 9 February 2011, Victoria Police approved a statement from the Archbishop announcing the changes.

Following various media reports in mid-May 2012 regarding reporting to the police, the Archbishop publicly reiterated his position, which is made clear to all victims, that their complaints should be reported to Victoria Police and that it is for the police to investigate crime.

The Church supports a process that protects the rights of victims, whilst also holding offenders to account for their actions. The Church and Victoria Police have a common goal in this respect. The views of Victoria Police about the *Melbourne Response* have evolved since 1996. The Church stands ready to consider further revisions in light of any proposals arising from this Inquiry.

Reporting of offences to Victoria Police is discussed in further detail in Chapter 16.

8.14 Developments since 1996

The *Melbourne Response* was subject to ongoing review by Cardinal Pell, whilst he was the Archbishop of Melbourne, and has been subject to ongoing continuing review by his successor, Archbishop Hart. Copies of the original brochure describing the *Melbourne Response* and the Compensation Panel are at **Annexures 3 and 4**. As set out in section 8.1, the current brochure describing the *Melbourne Response* is at **Annexure 1**.

In 2000, the amount of compensation available to be awarded by the Compensation Panel limit was increased from \$50,000 to \$55,000.

In 2001 Archbishop Hart was appointed as Archbishop of Melbourne. Having reviewed the operation of the *Melbourne Response* since its commencement in 1996, Archbishop Hart determined that it should be retained. He also renewed the appointment of Mr Peter O'Callaghan QC as the Independent Commissioner.

In July 2002, the Terms of Appointment of the Independent Commissioner were expanded to cover non-sexual abuse as well as sexual abuse.

In 2008, the maximum compensation payment was increased to \$75,000.

In November 2010, an updated brochure about the *Melbourne Response* was produced, circulated to all parishes and published on the website of the Archdiocese.

In February 2011, the Terms of Appointment of the Independent Commissioner were revised to address matters that would have been covered by the draft protocol with Victoria Police referred to in Section 8.13.

In July 2012, Archbishop Hart appointed Mr Jeffery Gleeson SC as an Independent Commissioner. Mr Gleeson SC's appointment commenced on 1 August 2012.

9 Towards Healing

In December 1996, the Australian Catholic Bishops Conference (**ACBC**) and the Australian Conference of Leaders of Religious Institutes (**ACLRI**)¹⁵² published “*Towards Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse against Personnel of the Catholic Church in Australia*”, which formally commenced in March 1997.

Towards Healing sets out the principles that form the basis of the Church’s response to complaints of abuse. The principles apply throughout Australia. The procedures set out in *Towards Healing* for responding to individual complaints of abuse apply to the Dioceses of Ballarat, Sandhurst and Sale and to all religious congregations in Victoria. The procedures do not apply in the Archdiocese of Melbourne.¹⁵³

The *Towards Healing* document is publicly available on the website of the Australian Catholic Bishops Conference¹⁵⁴ and a copy of the current *Towards Healing* document is at **Annexure 5**.

Independence is critical to any Church process dealing with people who have been abused. It is therefore essential that there is a balance between, on the one hand, the bishop or religious leader maintaining personal responsibility and involvement, and on the other, the *Towards Healing* process being independent. Accordingly, the Church leaders established the National Committee for Professional Standards (**NCPS**), a joint committee of Catholic Religious Australia (**CRA**) and the Australian Catholic Bishops to oversee the development of policies, principles and procedures in responding to Church-related abuse complaints and to ensure pastoral care for victims.

The Church leaders also appoint the Director of Professional Standards (**Director**), and the members of the Professional Standards Resource Group (**PSRG**) in each State and Territory.

9.1 Principles for dealing with complaints of abuse

Part Two of *Towards Healing* lists “Principles for Dealing with Complaints of Abuse”. These principles cover both the processes under *Towards Healing* and those under the *Melbourne Response*. After setting out the Church’s absolute opposition to sexual, physical and emotional abuse, *Towards Healing* discusses the effects of abuse on victims, and describes some characteristics of offenders.

Part Two lists the following seven objectives to which the Church is firmly committed:

TRUTH

*The Church makes a commitment to seek to know and understand the full extent of the problem of abuse and the causes of such behaviour within a community that professes the values of Jesus Christ. It also seeks to know the truth, so far as possible, about individual allegations of abuse.*¹⁵⁵

HUMILITY

*It is very humbling for a Christian Church to have to acknowledge that some of its clergy, religious and other Church personnel have committed abuse. We recognise that humility is essential if we are to care for victims and prevent abuse in the future.*¹⁵⁶

HEALING FOR THE VICTIMS

*Whenever the offender is a cleric, religious or another person appointed to a position of pastoral care by an agency of the Church, Church Authorities¹⁵⁷ accept that they have a responsibility to seek to bring healing to those who have been victims of abuse.*¹⁵⁸

¹⁵² Now known as Catholic Religious Australia (**CRA**).

¹⁵³ See Chapter 8 for the procedures of the *Melbourne Response*.

¹⁵⁴ <http://www.catholic.org.au>.

¹⁵⁵ *Towards Healing*, paragraph 13.

¹⁵⁶ *Ibid*, paragraph 15.

¹⁵⁷ Church Authority includes a bishop, a leader of a religious institute and the senior administrative authority of an autonomous lay organisation, and their authorised delegates, responsible for the Church body to which the accused person is or was connected at the time of the alleged abuse.

¹⁵⁸ *Ibid*, paragraph 16.

ASSISTANCE TO OTHER PERSONS AFFECTED

*We shall also strive to assist in the psychological and spiritual healing of those persons who, as well as the victims, have been seriously affected by incidents of abuse.*¹⁵⁹

A RESPONSE TO THOSE ACCUSED

*All persons are presumed innocent unless and until guilt is either admitted or determined in accordance with the requirements of the law governing their position. Proper consideration should be given to the importance of confidentiality in the handling of the complaint, particularly prior to the conclusion of an assessment. If Church personnel accused of abuse are asked to step aside from the office they hold while the matter is pending, it is to be clearly understood that they are on leave and that no admissions or guilt are implied by this fact. Every effort should be made to conclude inquiries as quickly as possible in relation to a person who has been asked to step aside from a position. Unless and until guilt has been admitted or proved, those accused should not be referred to as offenders or in any way treated as offenders.*¹⁶⁰

A RESPONSE TO THOSE GUILTY OF ABUSE

*If guilt has been admitted or proved, the response must be appropriate to the gravity of what has happened, while being consistent with the civil law or canon law which governs that person's position. Account will be taken of how serious was the violation of the integrity of the pastoral relationship and whether there is a likelihood that such behaviour could be repeated. Serious offenders, in particular those who have been found responsible for sexually abusing a child or young person, or whose record of abuse of adult pastoral relationships indicates that they could well engage in further sexual exploitation of vulnerable adults, will not be given back the power they have abused. Those who have made the best response to treatment recognise this themselves and realise that they can no longer return to ministry.*¹⁶¹

PREVENTION

*We commit ourselves to making every effort to reduce risk of abuse by Church personnel through education and the implementation of appropriate codes of conduct. Special care shall be taken in relation to all who work with children and young people. No person shall be permitted to work in a position if the Church Authority believes, on the basis of all the information available, that there is an unacceptable risk that children or young people may be abused.*¹⁶²

9.2 Procedures for dealing with complaints of abuse

Part Three of *Towards Healing* sets out the procedures to be applied where complainants (or others speaking on their behalf) seek a response from the Church to an allegation of abuse by present or former Church personnel.

Part Three is separated into the following sections:

34. Notes;
35. Structures and Personnel;
36. Receiving a Complaint;
37. Criminal Offences and the Reporting of Child Abuse;
38. Responding to a Complaint;
39. Selecting the Appropriate Process;
40. Assessment;

¹⁵⁹ *Ibid*, paragraph 20.

¹⁶⁰ *Ibid*, paragraph 26.

¹⁶¹ *Ibid*, paragraph 27.

¹⁶² *Ibid*, paragraph 30.

41. *Outcomes Relating to the Victim;*
42. *Outcomes Relating to the Accused;*
43. *Outcomes Relating to the Other Affected People and Communities;*
44. *Review of Process and Findings;*
45. *Preventative Strategies; and*
46. *Concluding Statements.*¹⁶³

9.3 Core elements

The core elements of *Towards Healing* are:

- Contact Persons¹⁶⁴ receive complaints of abuse, explain the procedures for addressing the complaint and ensure that the complainant gives his or her consent to proceeding on the basis of the procedures in *Towards Healing*. In appointing Contact Persons for the *Towards Healing* process, the PSRGs seek mature persons who are empathetic, patient and able to relate well to those bringing the complaint, as well as being skilled listeners. One of the responsibilities of the Contact Person is to ensure that the *Towards Healing* process is initiated only if the complainant has been encouraged to make a report to the police and has declined to do so.¹⁶⁵ The Contact Person informs the complainant that, in cases of alleged crimes, “*the Church has a strong preference that the allegation be referred to the police.*”¹⁶⁶
- Assessors¹⁶⁷ investigate complaints of abuse, examine the areas of dispute and advise the Director¹⁶⁸ of their findings. In appointing Assessors for the *Towards Healing* process, the PSRGs seek persons with skill and training in interviewing and forensic investigation as well as the clarity and objectivity to analyse the available data and information.
- Facilitators¹⁶⁹ facilitate a communication process, which may include a meeting, between the victim and the Church Authority and endeavour to mediate an agreement between a victim and the Church Authority about what the Church body can and should do to assist the victim to move “towards healing”.
- Consultative Panels advise Church Authorities at significant stages of the *Towards Healing* process.
- Reviewers¹⁷⁰ review the *Towards Healing* process or the findings of the assessment if requested by the complainant, the accused or the Church Authority. The review is an independent evaluation, not only of whether there is substance in any of the grounds for complaint, but also whether the principles established in Part Two of the *Towards Healing* document have been adhered to.

Each of the above elements is discussed in further detail below.

In *Towards Healing*, the Church acknowledges that it is impossible to change the past and to “compensate” for the past. However “financial assistance or reparation” may be paid to victims. This process has an emphasis on what specific assistance can be provided to assist the person to move forward, to move “towards healing”.

¹⁶³ *Ibid*, pages 13 to 30.

¹⁶⁴ *Ibid*, see, for example, paragraphs 36 and 37.

¹⁶⁵ See Section 9.5.

¹⁶⁶ *Towards Healing*, paragraph 37.1.

¹⁶⁷ *Ibid*, see, for example, paragraph 40.

¹⁶⁸ The Bishops and Leaders of Religious Institutes jointly appoint a Director of Professional Standards responsible for each State and Territory. The Director shall manage the process in relation to specific complaints, appoint assessors and facilitators when required, convene and chair meetings of the Professional Standards Resource Group as required, liaise with the National Committee, other Resource Groups and individual Church bodies and their professional advisers, have an overview of all matters dealt with under the *Towards Healing* procedures within the Director’s responsibilities, and be responsible for the safe-keeping of all documentation connected with these procedures.

¹⁶⁹ *Ibid*, see, for example, paragraph 41.

¹⁷⁰ *Ibid*, paragraph 44.

In recent years the Church has found that many of those victims who come forward to *Towards Healing* do so with the support and assistance of a counsellor. If this is not the case, then early in the *Towards Healing* process those coming forward are offered a referral to counselling.¹⁷¹

In 2001, in addition to the *Towards Healing* document, the NCPS produced a booklet, "*Towards Healing: Guidelines for Bishops and Leaders of Religious Institutes 2001*".¹⁷² In 2011, this was updated and re-published as "*Towards Healing: Guidelines for Church Authorities*", to reflect the changes in the revised *Towards Healing* document, the extension of the concept of Church Authority beyond bishops and congregational leaders and the learnings of the Church, especially in the areas of responding to victims and offenders.

The Guidelines provide clarification to Church leaders about the nature, purpose and procedures of *Towards Healing*. The document is based on the Church's experience of responding to complaints and has a strong pastoral focus.

In addition, a second booklet was produced, *Implementation of Towards Healing: Notes for People Involved in the Process for 2003 to 2005*.¹⁷³ This document provides guidelines for the Director of Professional Standards, the Contact Person, the support person for the accused, the Assessors and Facilitators.

9.4 The *Towards Healing* process

The *Towards Healing* process has the following four principal phases:

- Hearing the story;
- Assessing the facts;
- Addressing the needs of the complainant; and
- Dealing with offenders.

9.4.1 Hearing the story

After a complainant makes initial contact with *Towards Healing*, they are assigned a Contact Person to provide support and assistance. The Contact Person arranges to meet the complainant to explain the *Towards Healing* process, answer any questions and begin the preparation of a Contact Report.

At each stage of the *Towards Healing* process, a complainant is encouraged to have a support person of their own choosing present.

At the first interview complainants should be assured that abuse must be named for what it is and victims assisted to move the blame from themselves to the offender. Victims should be asked what needs to be done to ensure that they feel safe from further abuse, and be offered whatever assistance is appropriate.¹⁷⁴

A Contact Report is a written account of the details of the complaint, as told in the words of the complainant. A complainant may require several meetings with the Contact Person to produce a report with which they are fully satisfied. Complainants may also choose to write the Contact Report themselves.

The *Towards Healing* process is formally initiated when a signed Contact Report is received by the Director.

When the signed Contact Report is completed, the Director takes it to the appropriate Church Authority. The accused should be informed by the Church Authority of the nature of

¹⁷¹ *Ibid*, paragraph 36.8.

¹⁷² National Committee for Professional Standards, "*Towards Healing, Guidelines for Bishops and Leaders of Religious Institutes 2001*", 2001.

¹⁷³ National Committee for Professional Standards, "*Implementation of Towards Healing: Notes for People Involved in the Process for 2003 to 2005*", 2003.

¹⁷⁴ *Towards Healing*, paragraph 18.

the complaint and given sufficient detail to be able to respond. If the accused or the Church Authority do not contest the substance of the complaint, the matter then proceeds to the Facilitation stage.¹⁷⁵ However, if there is a significant dispute about the facts or where there is a need for further information concerning the complaint, the complaint will proceed to the Assessment phase.¹⁷⁶

9.4.2 Assessing the facts

The Assessor(s) receive a copy of the Contact Report and proceed according to Section 40 of *Towards Healing* to interview the complainant, the accused and other persons, as appropriate, to determine the facts of the matter.

At the interview, the complainant is encouraged to bring their support person. When the evidence has been gathered, it is examined by the Assessor(s) who are required to draw conclusions based on the balance of probabilities.

The Assessor(s) prepare an Assessment Report setting out conclusions and the rationale on which they are based, taking care to indicate whether or not the complaint has been substantiated. A copy of the Assessment Report or the assessment findings and the reasons for them are provided to both parties by the Director.

9.4.3 Addressing the needs of the complainant

The *Towards Healing* process is concluded when a facilitated communication process, which usually includes a meeting, between the victim and the Church Authority or their representative takes place. The facilitator speaks to both parties about their expectations prior to the facilitation.

A facilitated communication process provides an opportunity for the Church Authority to respond pastorally to the victim and to give consideration to the needs of the victim and their family and ways to assist them to move forward.

If a settlement is to be agreed upon at the facilitation, the victim is urged to seek independent legal advice before signing any Deed of Release. The cost of that legal advice is covered by the Church Authority.

Since 2000, *Towards Healing* has provided that:

*Complainants shall not be required to give an undertaking which imposes upon them an obligation of silence concerning the circumstances which led them to make a complaint, as a condition of an agreement with the Church Authority.*¹⁷⁷

The victim and the Church Authority may be accompanied by their respective support persons at the facilitation.

Facilitation is central to the *Towards Healing* process, even in those cases where a complaint cannot be substantiated. The aim of facilitation is to assist the complainant to reach some level of healing.

9.4.4 Substantiated complaints

Since the commencement of *Towards Healing*:¹⁷⁸

- 269 complaints of criminal abuse of children made to *Towards Healing* in Victoria have been upheld (221 by males and 48 by females); and
- 41 further complaints made to *Towards Healing* offices in other States of criminal abuse of children that occurred in Victoria have been upheld (all males). Those complaints have been progressed by the *Towards Healing* office in the State in which the victim now resides.

¹⁷⁵ See Section 9.4.3.

¹⁷⁶ See Section 9.4.2.

¹⁷⁷ *Towards Healing*, paragraph 41.5.

¹⁷⁸ As at July 2012.

Accordingly, a total of 310 complaints of criminal abuse of children in Victoria have been upheld by *Towards Healing*. In addition

- Approximately 30 complaints, not all of which relate to the criminal abuse of children, are presently undetermined;
- 110 allegations against accused perpetrators received by *Towards Healing* have not proceeded through the process, some because the allegations have been pursued via the police or civil action and some because the complainants have elected not to proceed; and
- Additional complaints have been investigated and upheld that do not relate to the criminal abuse of children. These include some of the claims regarding standards of care in orphanages.

Further details are contained in **Appendices 3 and 4**.

9.4.5 Dealing with offenders

An allegation of abuse can be extremely distressing for both the victim and the accused. The timing of a complaint, often many years after an alleged offence, brings its own distress for the accused. When a complaint is received, the accused is often required to stand aside from ministry, employment, or volunteer service.¹⁷⁹

The accused must be regarded as innocent unless or until it is clearly demonstrated that there is substance to an allegation.

When a complaint is one of criminal abuse, the victim is encouraged to refer the matter to police. Whenever a victim indicates a clear intention to pursue that course of action, neither the Director nor the Church Authority is permitted to bring the matter to the attention of the accused.

At any time, the Director may recommend to the Church Authority that the accused be asked to stand aside from a particular office or from all offices held in the Church, pending investigation, taking into account the gravity of the allegations and the risk of harm to others if the allegations are true. The Church Authority must seek the advice of the Consultative Panel before making a decision unless urgent action is required to address a significant risk of abuse, and shall give the accused the opportunity to be heard on the matter.¹⁸⁰

If there is seen to be any significant risk of abuse to other persons, the Church Authority must act at the earliest possible moment on the best advice available.¹⁸¹

If accused persons are asked to stand aside from any office they hold while the matter is pending, it is to be clearly understood that they are on leave and that no admissions of any kind are implied by the fact. Therefore, accused persons shall receive their normal remuneration and other entitlements while the matter is pending and they are standing aside. They may not engage in any public ministry during this time.¹⁸²

Once an offence has been substantiated or admitted, the Church Authority must evaluate the situation and recommend an appropriate response. The Church Authority may commission professional reports or make other inquiries as are necessary to determine what action should be taken.

Where the offender is a current employee of the Church, the offender's future will be determined in accordance with the applicable procedures of employment law.¹⁸³

¹⁷⁹ If the Bishop or Congregational Leader judges before God that the situation demands it, he can limit the exercise of the ministry of the cleric or religious until the accusations are clarified. This is permitted under Canons 1341 and 1342 §1. The provision is also contained in *Towards Healing*, paragraph 38.10 which requires the Church Authority to seek the advice of the Consultative Panel.

¹⁸⁰ *Ibid*, paragraph 38.10.

¹⁸¹ *Ibid*, paragraph 38.10.1.

¹⁸² *Ibid*, paragraph 38.10.2.

¹⁸³ *Ibid*, paragraph 42.4.

In making decisions on the future of a person found guilty of abuse, the Church Authority shall take such action as the situation and the seriousness of the offence demand. In relation to child abuse, the Church Authority shall be guided by the principle that no-one should be permitted to exercise a public ministry if doing so presents an unacceptable risk of abuse to children and young people.¹⁸⁴

Serious offenders, in particular those who have been found responsible for sexually abusing a child or young person, or whose record of abuse of adult pastoral relationships indicates that they could well engage in further sexual exploitation of vulnerable adults, will not be given back the power they have abused.¹⁸⁵

In relation to unfounded allegations, *Towards Healing* states:

*If either a police investigation, a civil process or a Church procedure makes it clear that the accused did not commit the alleged wrong, the Church Authority shall take whatever steps are necessary to restore the good reputation of the accused, in consultation with the accused.*¹⁸⁶

The bishop or congregational leader will consider what steps need to be taken to assist affected people and communities, through the provision of counselling or other pastoral support.

9.5 Reporting to police

Pursuant to *Towards Healing*, when a complaint of criminal abuse is brought to the notice of the Church Authority, a person will be encouraged to refer the matter to the police and will be offered assistance to do so.

The following sections of *Towards Healing* relate to reporting to police:

- 37.1 *When the complaint concerns an alleged crime, the contact person or Director shall explain to the complainant that the Church has a strong preference that the allegation be referred to police so that the case can be dealt with appropriately through the justice system. If desired, the complainant will be assisted to do this. Where it applies, the contact person shall also explain the requirements of the law of mandatory reporting.*
- 37.2 *If the complainant takes the matter to the police, the Director may make recommendations to the Church Authority concerning the funding of counselling or other such assistance for the complainant pending the outcome of the criminal justice process. The complainant should be advised that he or she may approach the Church again under *Towards Healing* when the criminal justice process has been concluded.*
- 37.3 *In all cases other than those in which reporting is mandatory, if the complainant indicates an intention not to take the matter to the police, this shall be recorded and confirmed by the signature of the complainant. Unless and until the complainant signs this document, the matter cannot proceed to an assessment.*
- 37.4 *In the case of an alleged criminal offence, if the complainant does not want to take the matter to the police, all Church personnel should nonetheless pass details of the complaint to the Director, who should provide information to the police other than giving those details that could lead to the identification of the complainant.*
- 37.5 *Church personnel who are required by law to report suspected child abuse shall conscientiously comply with their obligations. State or Territory law regarding the reporting of knowledge of a criminal offence must be observed.¹⁸⁷ The appropriate Church Authority shall also be notified of any such report.*

¹⁸⁴ *Ibid*, paragraph 42.6.

¹⁸⁵ *Ibid*, paragraph 27.

¹⁸⁶ *Ibid*, paragraph 42.2.

¹⁸⁷ See Section 16.1 .

- 37.6 *No Church investigation shall be undertaken in such a manner as to interfere in any way with the proper processes of criminal or civil law, whether such processes are in progress or contemplated for the foreseeable future. However, where the complainant has chosen not to report the matter to the police or other civil authority, or the civil authorities have decided not to take further action under the criminal law or child protection legislation, the Church Authority must act on the complaint.*
- 37.7 *The Director shall endeavour to establish a protocol with the police in each relevant State or Territory to ensure that assessments under these procedures do not compromise any police action.*

Reporting to the police is discussed further in Chapter 16.

9.6 Reparation

Towards Healing acknowledges that no sum of money can repair the damage to victims of child sexual abuse. Nevertheless, financial assistance or reparation may be paid to victims of a criminal offence or civil wrong, as a practical way of assisting them to move “towards healing”.

“Reparation” is defined in the *Towards Healing* document as:

Reparation may take the form of a monetary sum or some form of in-kind assistance that is directed to the provision of practical means of support in order to promote healing for the victim. It is provided by the Church Authority as a means of recognising the harm suffered by a victim of a criminal offence or civil wrong, and as a tangible expression of the Church Authority's regret that such abuse occurred. Reparation may be offered independently of whether the Church Authority is legally liable.¹⁸⁸

9.7 Review of process and findings

An independent review of the *Towards Healing* process or the findings of the assessment, is available to the complainant, the accused and the Church Authority.¹⁸⁹ A request for a review should normally be made within three months.

The Reviewer provides a written report setting out recommendations to the Chairperson of the National Review Panel. The Panel is chaired by Mr Gerald Gleeson AC, former head of the NSW Premiers Department and the members include Mr David Landa OAM, former Chief Magistrate of NSW. The Panel considers the Reviewer's report and makes recommendations to the Church Authority. A copy of the report and the Panel's recommendations is given to each party.

The Church Authority bears the expenses of the review.

9.8 Reviews since 1996

Since the introduction of the *Towards Healing* document in 1996, Professor Patrick Parkinson AM¹⁹⁰ has been engaged by the NCPS to lead two processes of revision: the first in 2000 and another in 2009.

The review processes included broad consultation with victims, accused persons, Church authorities, and those involved in implementing the *Towards Healing* procedures.¹⁹¹

In May 2003, further changes were also made to the 2000 version of the *Towards Healing* document.

During all of the reviews and changes, the Church's goal of moving “towards healing” remains paramount.

¹⁸⁸ *Towards Healing*, page 5

¹⁸⁹ *Towards Healing*, paragraph 44.

¹⁹⁰ Professor Parkinson is author of the book “*Child Sexual Abuse and the Churches*”, and was pro-Dean of the Faculty of Law at the University of Sydney when he was first engaged by NCPA.

¹⁹¹ Professor Parkinson received submissions and responses to questionnaires from church authorities, victims, accused, personnel working as contact persons, assessors, facilitators and reviewers as well as engaging in dialogue with the *National Committee for Professional Standards* and the State Directors of Professional Standards.

9.8.1 Changes in 2000

In 2000, as a result of the experience of the four years since the introduction of *Towards Healing* and the feedback provided during the consultation, a number of changes were made including the following:

- The extension of the definition of abuse to include physical and emotional abuse, not just sexual abuse.¹⁹² This extension formalised a change that had been accepted as more complainants came forward. Thus, throughout the revised document the term “sexual abuse” was replaced with the generic term “abuse”;
- The widening of the scope to include other Church personnel besides clergy and religious.¹⁹³ This recognised that other people employed by an official agency of the Church or appointed to voluntary positions may also be in a pastoral role;
- A greater emphasis on co-operation with civil authorities in reporting child abuse and criminal offences. While the following points were made in the 1996 version of the *Towards Healing* document, they were stated more explicitly in the 2000 version:

37.1 *When the complaint concerns an alleged crime or reportable child abuse, the Contact Person shall tell the complainant of the complainant’s right to take the matter to the police or other civil authority and, if desired, provide assistance to do so. The Contact Person should also explain the requirements of the law of mandatory reporting.*

37.2 *In all cases other than those in which reporting is mandatory, if the complainant indicates an intention not to take the matter to the police or other civil authority, this should be recorded by the Contact Person and confirmed by the signature of the complainant.*

37.3 *All Church personnel shall comply with the requirements for mandatory reporting of child abuse that exist in some States/Territories, and State or Territory law regarding the reporting of knowledge of a criminal offence must be observed. The appropriate Church Authority shall also be notified of any such report.*

37.5 *The Director of Professional Standards shall endeavour to establish a protocol with the police in each relevant State or Territory to ensure that church assessments do not compromise any police action.*

- The extension of the principles of response to those guilty of abuse. This formalised the requirement for the response to be appropriate to the gravity of the offence and consistent with Canon and civil law. If guilt is admitted or proved, the response must be appropriate to the gravity of the offence, while at the same time being consistent with the precepts of Canon Law or civil law which govern that person’s position; and
- Changes to the process for management of a case. While the basic steps of the procedures are the same as the 1996 version of the *Towards Healing* document, the management of cases was centralised with the Director. It is now the relevant State Director who co-ordinates contact with the victim, the Church Authority and the personnel involved (e.g. Contact Persons and Assessors).

Copies of the *Towards Healing* documents from 1996 and 2000 are at **Annexures 8 and 7**.

¹⁹² It is recognised that physical and emotional cruelty also constitute an abuse of power. Where a priest, religious or another person appointed to a position of pastoral care by an agency of the Church has acted towards a child or young person in a way which causes serious physical pain or mental anguish without any legitimate disciplinary purpose as judged by the standards of the time when incidents occurred, then this constitutes abuse.

¹⁹³ In *Towards Healing* – 1996, the application beyond clergy is only provided in a note later in the procedures. It states that procedures apply to all complaints of sexual abuse by Church personnel, whether they be clerical, religious personnel, lay employees or volunteers. In *Towards Healing* – 2000, the position is clarified.

9.8.2 Changes in 2003

In May 2003, further changes were made to the 2000 version of the *Towards Healing* document, including:

- Provisions regarding Consultative Panels that are available to advise Diocesan bishops and religious leaders at every stage of the *Towards Healing* process. This was seen to provide both support and a source of independent advice when considering difficult decisions. The Panel must consist of at least five members who collectively provide the expertise, experience and impartiality that are necessary in this field.
- The specific situations in which the bishop or leader is required to consult the Panel were outlined, as well as circumstances in which consultation may be advisable. The changes specified that the Panel must be consulted when an alleged crime is prosecuted before a criminal court and in any decision concerning whether a person constitutes an “unacceptable risk” to vulnerable persons. The changes also expressed the Church’s strong preference for a victim to present allegations of a criminal act to a civil authority.¹⁹⁴
- Changes to the processes regarding complaints made against a bishop or leader of a religious institute. The bishops and religious leaders affirmed their willingness to be subject to the same processes as other clerics and religious.¹⁹⁵
- Strengthening the statements in the 2000 version of the *Towards Healing* document regarding the reporting of child abuse and criminal offences¹⁹⁶ and providing a pro forma statement to be signed by a complainant who did not wish to go to the police.¹⁹⁷

In November 2003, a further amendment was made to *Towards Healing*, providing for the appointment by the ACBC and ACLRI of a National Review Panel to decide whether or not to accept a request for review of process and to appoint a Reviewer from a list of available persons.

The aim of the Panel is to provide a greater degree of objectivity for decisions related to and the conduct of the review. The Panel receives the report of the Reviewer and makes any necessary recommendations to the Church authority.

A copy of the *Towards Healing* document with the 2003 amendments is at **Annexure 6**.

9.8.3 Changes in 2009

In 2009, Professor Parkinson undertook his second review of the *Towards Healing* document. The revised document re-affirmed the principles of *Towards Healing*, clarified the application of the *Towards Healing* procedures and sought to simplify some of the procedures.

Significant changes arising from Professor Parkinson’s review included the following:

- Guidance is given to assist Church leaders in identifying “serious offenders” who ought to be removed from ministry.
- Sections referring to the Church’s strategies for prevention were expanded.
- There is clarification that the procedures of *Towards Healing* are subject to specific legislation in the States and Territories.¹⁹⁸

¹⁹⁴ If the victim is unwilling to do so, the changes required that the victim sign a statement to this effect.

¹⁹⁵ The amendments were approved by the Bishops in May 2003 and the Religious Leaders in June 2003 and replaced paragraph 38.4.1 and the appropriate Appendices 1 and 2 in the 2000 version of *Towards Healing*.

¹⁹⁶ Above in 155, Paragraph 37.1:

When the complaint concerns an alleged crime, the Contact Person shall explain to the complainant that any process the Church establishes cannot compel witnesses, subpoena documents or insist on a cross-examination of witnesses. It cannot impose the same penalties as a criminal court. Because of these serious limitations, the Church has a strong preference that the allegation be referred to the police and, if desired, the complainant will be assisted to do this. Where it applies, the Contact Person shall also explain the requirements of the law of mandatory reporting.

¹⁹⁷ *Ibid.*:

In all cases other than those in which reporting is mandatory, if the complainant indicates an intention not to take the matter to the police, this shall be recorded by the Contact Person and confirmed by the signature of the complainant. Unless and until the complainant signs this document, the Church process cannot proceed beyond paragraph 38.4.

¹⁹⁸ For example, the *Ombudsman Act 1974* (NSW), under which the Ombudsman’s Office has certain specific requirements for the investigation of complaints of child abuse.

- The State Directors of Professional Standards are given particular responsibility for ensuring, as far as possible, the expeditious resolution of cases and for keeping appropriate persons informed of progress in the resolution of the matter.
- There is more explicit direction about how to deal with cases that should have a pastoral response, such as issues of inappropriate care practices in children's homes which are not of sufficient gravity to warrant the full implementation of the processes of *Towards Healing*.
- There is clarification of how complaints are to be received and dealt with. All complaints, whether initially received by a Contact Person, the Director of Professional Standards or the Church Authority, are to be managed by the Director of Professional Standards.
- Confirmation that if complaints concern more than one Church Authority, the Director should identify a "lead agency" which had the most responsibility in relation to the matters about which complaint is made, and which can liaise with others in relation to any response.
- The encouragement of personal meetings, at an early stage between the Church Authority, the Director of Professional Standards and the victim.
- Confirmation that assessors are to make findings "on the balance of probabilities".
- The inclusion of a section concerning the significance of support for the faith community of which an accused person is, or was, a member, in the aftermath of the resolution of a case.

9.8.4 Further report by Professor Parkinson

After Professor Parkinson completed his review of *Towards Healing* in 2009, he decided to pursue some particular cases including issues involving the management of allegations of abuse by the Salesians. Professor Parkinson commenced this investigation without the knowledge of the Salesians.

Professor Parkinson prepared a report that was critical of the Salesians and which recommended a public inquiry and police investigation. For their part the Salesians were very critical of the process and content of Professor Parkinson's report. Attempts were made in discussions between Professor Parkinson and the Salesian authorities to arrive at an agreed understanding of what happened. Professor Parkinson insisted on maintaining positions which the Salesians claim were incorrect.

As a result of the NCPS being unable to achieve a resolution between Professor Parkinson and the Salesians, Professor Parkinson and the Salesians have also been critical of the NCPS. The NCPS believes that it has done all it reasonably can within the *Towards Healing* framework to achieve an agreed outcome.

9.9 Confidentiality

As noted above,¹⁹⁹ *Towards Healing* provides that settlement agreements with victims should not include confidentiality obligations. This provision was included in *Towards Healing* in 2000. The 1996 version did not contain this provision and some settlements with victims did include confidentiality obligations.

The Church in Victoria does not seek to enforce these obligations and will not restrict any abuse victim from speaking publicly about their abuse.

In the context of some civil compensation claims which are settled outside of the *Towards Healing* process, it is possible that on some occasions confidentiality provisions may still be included.

This should not occur, and where they benefit a Church entity, that entity does not seek to rely on these provisions, either in the context of this Inquiry or elsewhere.²⁰⁰

¹⁹⁹ Section 9.4.3.

²⁰⁰ Some media reports in August 2012 inaccurately represented the Church's position regarding confidentiality in the context of this Inquiry.

9.10 Assessment of *Towards Healing* by the Wood Royal Commission - 1997

As set out in Section 6.3, on 13 May 1994, the Royal Commission into the NSW Police Service was established under Justice James Wood to investigate the existence and extent of corruption in the NSW Police Service, and other related matters.

Chapter 11 in Volume V of the Commission's Final Report focused solely on "The Churches".²⁰¹ Observing that the response of the Churches had been defensive in the past, the Commission noted that the Churches now recognised sexual abuse of children as a major problem.²⁰²

The Final Report was released in 1997, after the introduction of both the *Melbourne Response* and *Towards Healing*. Section C of Chapter 11 was headed "Church Protocols for Dealing with Allegations of Sexual Abuse".

The Final Report commended the Catholic Church's principles, processes and procedures:

- 11.5 *While a good deal of evidence and assistance was provided by the Catholic Church, it is not the case that the Commission finds particular fault with that Church or its constituent bodies. Indeed, its response to the matters disclosed by the Royal Commission is held up as a model for other Churches and religious organisations to follow, as set out in more detail later in this chapter.*

The Final Report commended the Church's developments in relation to *Towards Healing* and set out the *Towards Healing* principles and procedures for dealing with allegations of sexual abuse as a model for other Churches or religious organisations:

- 11.92 *The Report [prepared for the Royal Commission by the PSO] closes with the following observation:*

"The church in New South Wales is now much more aware of its past deficiencies and failures in dealing with allegations of sexual abuse brought against its members. The Church offers no excuse for this and is indebted to the Royal Commission for drawing its attention to those deficiencies in its processes that were thought to be addressing whatever problems there were. The Church has been faced with a crisis: it is now seeking to address the matters constructively by establishing appropriate policies and procedures that demand openness and transparency throughout.

The Church in New South Wales is committed to act justly and with compassion in respect to its pastoral, moral and legal responsibilities to all parties wronged by any criminal activity involving its members. The Church will also pursue the responsibilities defined in its own law to assess and determine the present and future status of, and sanctions against offenders within the Church, irrespective of the outcome of any criminal proceedings."

- 11.93 *The Commission commends these developments. For assistance of other Churches or religious organisations which have not yet progressed as far, the key points of the *Towards Healing* protocol are outlined below.*

The Final Report also acknowledged that *Towards Healing* differed from the previous Church procedures and that *Towards Healing* was proof of a concerted effort by the Church to overcome past deficiencies:

- 11.96 *The protocol has undergone considerable improvement since the 1992 version. It attempts to balance the rights of the victim and the accused fairly and it has lost the damage control element of previous protocols where the emphasis was on protecting the reputation of the Church. Commendably it deals with prevention and screening of potential clergy. Generally it appears that Church policies are becoming more constructive.*
- 11.97 *The development of this protocol and the other steps outlined earlier indicate that the Catholic Church is now aware of its past deficiencies in dealing with allegations of sexual abuse and is making a concerted effort to overcome them. As with all policies and plans, the proof will lie in their implementation.*

²⁰¹ The Royal Commission stated clearly that it did not attempt to consider churches individually on a denominational basis.

²⁰² "The process of confrontation and acknowledgment of the problem was hastened by the evidence led in the Royal Commission hearings, and by media pressure, as much as it was by the mounting number of complaints." *"Royal Commission into the New South Wales Police Service, Final Report"*, Volume V: The Paedophile Inquiry, August 1997, page 993.

10 *Melbourne Response and Towards Healing*

As is evident from Chapters 8 and 9, the *Melbourne Response* and *Towards Healing* share core principles, and many common elements. The shared principles are articulated in Part Two of *Towards Healing*.

While respecting the privacy of those involved, the Church takes a clear and public stance against abuse of children.

Under both the *Melbourne Response* and *Towards Healing*, complainants are encouraged to go to the police, and it is the Church's strong preference that they do so. Church processes are invoked only if a complainant declines, in writing, to go to the police. If a complainant does elect to do so, any Church processes are suspended until the completion of all police processes.

Both the *Melbourne Response* and *Towards Healing* recognise the need for clear structures and procedures for dealing with complaints of sexual abuse of children.

10.1 Joint statement

In June 2002, the Archbishops of Melbourne and Sydney issued a joint public statement in which they expressed their shared goal of moving "towards healing":

On behalf of the Catholic Church in Melbourne and Sydney, and personally, we apologise, sincerely and unreservedly, to all victims of abuse, and to the Australian community, for the wrongs and hurt suffered.

A copy of the joint public statement is at **Annexure 9**.

In the apology, the Archbishops referred to the Independent Commissioner and the *Towards Healing* office as the contact point for complaints, while reminding "anyone wishing to make allegations that may involve criminal conduct of their complete right to refer those allegations to the police at any time".

On the question of compensation, they identified the following common features of the *Melbourne Response* and *Towards Healing*:

- 1 *Compensation payments are not an attempt to buy silence.*
- 2 *They are offered in response to the needs of victims as an alternative to litigation, and in some cases where there are no grounds for litigation.*
- 3 *When a compensation offer is made, it can be accepted or rejected.*
- 4 *If it is accepted, the applicant will be required to sign a release, which brings any further legal proceedings to an end. However if the offer is rejected the applicant's rights to commence or continue legal proceedings are not affected.*
- 5 *The discussions and documents produced in the compensation process are confidential. (This occurs all the time in out-of-court and mediated settlements).*
- 6 *Victims are not prevented from discussing the abuse they have suffered at any stage, but many prefer their privacy to be respected. Victims are not silenced as a condition of receiving counselling or compensation.*

10.2 Core elements

The core elements of the *Melbourne Response* and *Towards Healing* are:

- Putting the victim first;
- An investigation process that is independent of the Church Authority;
- Respect for the police process;
- The pursuit of healing, including an apology to victims and their families;
- Counselling for victims and their families;

- Compensation/reparation; and
- Accountability and removal of offenders from all positions where they represent an unacceptable risk to children.

Through these core elements, the Church is striving to provide healing for victims and their families, to deal justly and effectively with those who are guilty of abuse, and to prevent further abuse.

10.3 Why are there two systems?

As can be seen from Chapter 8, the *Melbourne Response* began operating before *Towards Healing*. The reasons for establishing the *Melbourne Response* are set out in Chapter 8.

Having established the *Melbourne Response*, then Archbishop Pell considered that there would need to be a compelling reason for change before abandoning the *Melbourne Response* in favour of *Towards Healing* within the Archdiocese of Melbourne. He could see no compelling reason for change. Archbishop Hart remains of this view.

Bishop Prowse of Sale and Bishop Tomlinson of Sandhurst were both Vicars General of the Archdiocese of Melbourne in the period since the *Melbourne Response* commenced. As such they were familiar with the *Melbourne Response* when they were installed as bishop of their diocese. Upon their appointment, they each elected to retain the *Towards Healing* process, which they have found works equally well in their respective dioceses.

The Church's view is that, while there is no perfect system, both Australian systems work well and both have particular strengths. The Church is confident that abuse victims are not disadvantaged by the parallel systems.

In Victoria, the Independent Commissioner and the *Towards Healing* Director of Professional Standards liaise closely with each other and refer complainants to each other where jurisdiction overlaps or when the victim is uncertain which process applies in their particular circumstance.

The Archbishop of Melbourne is represented by an observer on the *Towards Healing* Professional Standards Resource Group in Victoria so that members of the Group, and the *Melbourne Response*, are fully informed about the process.

10.4 Compensation and reparation

When reviewing *Towards Healing* in 2009, Professor Patrick Parkinson considered the question of whether all claims for compensation should be left to the courts. He stated:

There is a way in which complainants' claims can be dealt with independently of the Church. This is to commence a 'civil' claim for compensation. Generally the basis of such a claim is that the Church is in some way responsible for the wrongdoing committed by Church personnel and for the harm that the wrongdoing has caused.

However, there are many issues involved for complainants in proceeding by way of filing a civil claim. First, the Limitation Acts of the various States may bar such an application if there was too long a delay between incident and the initiation of the proceedings. That hurdle may be overcome in some instances, particularly when the abuse occurred in the person's childhood and complaint was made within a few years of reaching adulthood, but the Limitation Acts still represent a significant barrier for many complainants.

Secondly, there is the cost and stress of litigation. Some lawyers will take cases on a no-win, no fee basis. That means there is no upfront cost, but the eventual legal bills may eat significantly into a settlement or award of damages. There is also the problem of the person or entity against whom litigation can be brought. Church organizations, such as dioceses or religious orders, are typically unincorporated associations. That is they are not constituted as companies that can be sued. Their legal structure is much more primitive. If the Bishop or Archbishop of a diocese at the time the events occurred, or the leader of the religious order at the time, is still alive, that person can be sued in his (or her) capacity as

the leader of the organisation (Ellis v Pell).²⁰³ However, many complaints arise in relation to events years and years beforehand, when those in leadership positions have long since died.

A third obstacle is establishing legal responsibility. That responsibility is most likely to be found if the leader of the time knew of the abusive behaviour and did not remove the person from ministry; but what if the leader knew nothing of the abuse, and nor did anyone else in the organization? Sexual abuse usually occurs in secret. The responsibility for the abuse is in the first instance that of the offender. Establishing the liability of an organization to which that offender belonged is not at all straightforward.

For these reasons, there are significant obstacles to civil claims. Towards Healing therefore offers another kind of response. It is a pastoral response which does not depend on proving that the Church is legally liable. It is a response to the needs of victims of abuse, rather than a response driven by settling legal claims. It aims to promote healing, and one of its central features is the meeting between the Bishop or leader of the religious order and the complainant. In this meeting, the complainant's suffering can be acknowledged, truth can be told, apologies offered and a response given to the needs of the complainant.

The closest analogy to Towards Healing is a Victims' Compensation Scheme. These have been established in the States and Territories to provide compensation for victims of violent crime. The funds come from the State. They are paid not because the State is legally liable, but out of concern for the victim. The State schemes provide monetary sums and money for counselling costs. In certain states, for example Western Australia, state governments have set up special funds to compensate those who have been abused in children's homes. Typically, a deed of release is sought in return for a compensation payment. In the same way, if money is given as part of a resolution of a Towards Healing case, it is intended to be to help meet the needs of the victim rather than merely to provide compensation for pain and suffering. No sum of money can repair the damage from serious forms of child abuse...

Complainants cannot expect the same level of compensation as if they had been able to prove a civil case in court and to show that the Church authority was legally liable. In some cases, a Church authority or its insurance company may be persuaded to pay substantial sums by way of compensation because there is a strong basis for a civil claim and the case is settled under the 'umbrella' of Towards Healing – usually with legal representation. However, in many other cases dealt with in Towards Healing, the difficulties in establishing the legal liability of the Church authority in a civil case would be very considerable – but even still the Church authority makes a response out of concern for the complainant.²⁰⁴

The Church in Victoria endorses these statements. Professor Parkinson's comments regarding the basis of settlements in *Towards Healing* are equally applicable to the *Melbourne Response*.

The Compensation Panel in the *Melbourne Response* is closely analogous to the Victorian Government's Victims of Crime Compensation Scheme. Pursuant to that Scheme, victims of crime may be entitled to financial assistance from the Victims of Crime Assistance Tribunal (**VOCAT**).

To be eligible to be awarded financial assistance by VOCAT, an individual must be a victim of a violent crime that happened in Victoria, including but not limited to a sexual offence, an actual or threatened assault or injury, or the death of a person.

The crime must have been reported to police within a reasonable time and must have occurred within the past two years, except in the case of some childhood sexual crimes. In other circumstances, VOCAT may also grant an extension. The parents or guardians of a child who has been the victim of a violent crime can also make an application to VOCAT on the child's behalf.

The amount of assistance that a victim is entitled to from VOCAT depends on the particular circumstances of the crime, the victim's injury and whether they are a primary,²⁰⁵ secondary²⁰⁶ or

²⁰³ See Section 10.6.

²⁰⁴ Professor Patrick Parkinson AM, "*Final Report: Towards Healing Review*", April 2009, pages 8 to 10.

²⁰⁵ A primary victim is a person who is injured or dies as a direct result of a violent act.

²⁰⁶ A secondary victim is someone who is injured as a result of being present at and witnessing a violent act; or is the parent or guardian of a child who has been the primary victim of a violent crime

related victim.²⁰⁷ Typically, a deed of release is sought in return for a compensation payment from VOCAT.

The maximum total financial assistance awarded by VOCAT is \$60,000 to a primary victim, and \$50,000 to a secondary or related victim. These amounts may include medical, counselling and funeral expenses, loss of earnings and other expenses in exceptional circumstances.

Entitlements to financial assistance from VOCAT may be reduced where assistance is available from other sources such as WorkCover, the TAC, Medicare or through insurance policies.

As set out in Chapters 8 and 9, payments made under the *Melbourne Response and Towards Healing*, can exceed those paid by VOCAT and under the *Melbourne Response*, victims also have access to free counselling and other professional support for as long as it is needed. Under *Towards Healing*, counselling is invariably offered to victims.

The Church acknowledges that no sum of money can repair the damage to victims of child abuse. Nevertheless, compensation or reparation may be paid to victims under the *Melbourne Response* or *Towards Healing*, as a practical way of assisting them to move “towards healing”.

10.5 Compensation panels and reparation

In his 2009 review of *Towards Healing*, Professor Parkinson compared the approach to compensation under *Towards Healing* and the *Melbourne Response* and said:

One version of a legal approach, in terms of awarding monetary sums to [a] complainant, is to establish a compensation panel to adjudicate on the amounts to be awarded. This is the approach taken, for example, by the Archdiocese of Melbourne. A compensation scheme of this kind has the advantage of providing consistency. One of the criticisms of Towards Healing is that there can be significant variation between the amounts of money provided in what are apparently similar cases of criminal offences or civil wrongs.

I gave serious consideration again in this review to the possibility of proposing compensation panels in each state. In the 2000 version of Towards Healing, there was reference to the option of establishing a compensation panel, but no diocese or religious order did so.

After careful reflection, I do not consider it desirable to establish compensation panels. They may offer some measure of consistency. However, I consider that while consistency in monetary awards is a desirable goal, it is difficult to achieve, and for three reasons.

- a) *The purpose of monetary payments is to meet the needs of the victim. The intention is, wherever possible, to tie the payments to something specific such as education for the person; paying for a drug rehabilitation program; providing a holiday that will mark the beginnings of a fresh start; helping to provide some accommodation; or paying for counselling costs and other treatment. Because people’s needs vary, so may also levels of monetary payment. Furthermore, because a compensation panel can only award monetary sums, it is not a suitable means of working out the creative in-kind forms of provision that will meet tangible needs of the victim and which ties payments to those purposes.*
- b) *Many claims brought under Towards Healing are uninsured. A compensation panel could make recommendations for an appropriate level of monetary compensation, but if that is not backed up by insurance, there may [be] issues about whether the payment is affordable. The different dioceses and religious orders vary considerably in their resources. People often think the Catholic Church is a single organization. It is rather a collection of semi-autonomous organizations sharing a common faith and with a common recognition of the authority of the Vatican. As the Cumberlege report in the UK stated:*

²⁰⁷ A related victim is a person who at the time of an act of violence was a close family member of, a dependent of, or had an intimate personal relationship with, a primary victim who has died as a result of the act.

“The Church is collegiate, not a homogenous organisation working to a clearly established hierarchy with lines of accountability as generally understood by the secular world. Authority rests with each Bishop in his diocese and each Congregational Leader in his or her congregation. Though they come together through the Conference of Bishops and as a federation in the Conference of Religious respectively, they have differing priorities and, just as importantly, different levels of resources upon which to draw.”
(‘Safeguarding with Confidence – Keeping Children and Vulnerable Adults Safe in the Catholic Church’, *The Cumberlege Commission Report (2007)* at 2.11).

One Church authority may simply be unable to afford what another one might be able to pay in response to an uninsured claim.

- c) *Even in relation to insured claims, the amount awarded by a compensation panel may not be what the insurance company is willing to pay in the circumstances. The insurance company will look not only at the level of harm but also the risk of an adverse finding in court proceedings. Two people may have been abused in a similar way, and have experienced reasonably similar levels of harm, but one may have a strong civil claim and the other a weak one. The civil justice system will not treat both cases equally, and nor can an insurance company which has obligations not only to shareholders but also to reinsurers to make commercially defensible decisions on the award of monetary compensation.*

For these reasons, I do not believe that a compensation panel on a statewide or national basis would be an appropriate way forward. It is necessary to accept that there will be some variation in monetary awards through the Towards Healing process just as there will be in the courts. However, there is a degree of consistency provided by the fact that the insurer for most Church authorities is Catholic Church Insurances (CCI). In relation to insured claims at least, it can be expected that CCI will provide a similar level of consistency to that which could be expected from a compensation panel in cases where there is a similar likelihood of an adverse finding for the Church Authority in civil proceedings.²⁰⁸

The Church in Victoria endorses Professor Parkinson’s views stated above. While a compensation panel delivers advantages in a single Diocesan system such as the *Melbourne Response*, particularly with counselling and treatment costs being funded on an ongoing basis in addition to the compensation paid, the flexibility of the facilitation process is better suited to a system such as *Towards Healing*.

The above extracts from the 2009 Report of Professor Parkinson touch on two other issues that will now be addressed – civil legal issues and insurance.

10.6 Civil legal issues

The Catholic Church is often unfairly criticised for “managing” its affairs and assets in a manner which discourages or prevents civil legal action being taken by victims.

Victims are in no way prevented from bringing civil legal claims against the offender. The victim of sexual or physical abuse has a clear action in law.

Criticism of the Church stems from a misunderstanding of the Church’s structure. Under Australian law, a church is recognised as a voluntary association.²⁰⁹ Voluntary associations are established simply by members agreeing to participate. Unless there is a clear indication that they contemplated the creation of legal relations, the rules adopted for their governance would not normally be treated as amounting to an enforceable contract.²¹⁰ There is no separate legal entity created by the members coming together for their common cause. This is not a structure deliberately set up by the Church for any particular purpose, but is simply the legal status that Australian law assigns to the Church.

²⁰⁸ Professor Patrick Parkinson AM, “*Final Report: Towards Healing Review*”, April 2009, pages 11 to 13.

²⁰⁹ *Attorney-General for the State of New South Wales v Grant* (1976) 135 CLR 587, 600. A voluntary association is a body of people who have combined to further some common end or interest, be it social, sporting, political, scientific, religious, artistic or humanitarian, which is not about private gain and material advantage. *Cameron v Hogan* (1934) 51 CLR 358, 370.

²¹⁰ *Cameron v Hogan* (1934) 51 CLR 358, 370.

As described above, the Catholic Church has separate levels of administration and governance, which are regulated by Canon law. There is no single entity known as the “Catholic Church”, any more than “the people of Victoria” constitute a legal entity. Some of these levels of administration and governance comprise the local parishes and the Dioceses. As voluntary associations, the parishes and Dioceses are not legal entities and therefore cannot own property under civil law.

To assist with this, Victorian legislation²¹¹ and equivalent provisions in other States create statutory bodies corporate to act as trustees, with the power to appoint, manage, and deal with Church land. The trustee’s power is limited to the terms of their appointment, and they do not have the power to appoint, manage, discipline or remove members of the clergy. These statutory bodies corporate do not sit above the Dioceses, but rather sit alongside to hold their property and assets.

The precise responsibilities arising from these various structures were carefully examined in 2007, when John Ellis initiated civil proceedings in the Supreme Court of New South Wales. As a teenager in the 1970s, Mr Ellis was an altar server at the Bass Hill Parish. Mr Ellis alleged that between 1974 and 1979, he was sexually abused by an assistant priest at the Parish, Father Aidan Duggan. Mr Ellis sued his alleged abuser, as well as Cardinal George Pell, Archbishop of Sydney, and the body corporate set up under the relevant legislation in New South Wales, the Trustees of the Roman Catholic Church for the Archdiocese of Sydney (**Body Corporate**).

Mr Ellis argued that Cardinal Pell was the “representative” of the Roman Catholic Church in the Archdiocese of Sydney, and the Body Corporate was the “holder of the property” of the Archdiocese of Sydney. Mr Ellis argued that Cardinal Pell and the Body Corporate were vicariously liable for Father Duggan’s conduct.

The Court of Appeal²¹² found that neither Cardinal Pell nor the Body Corporate could be held liable for Fr Duggan’s criminal conduct. Cardinal Pell could not be sued as the “representative” of an unincorporated association, because an unincorporated association is not a legal entity and therefore cannot have representatives. The Court acknowledged that persons holding a managerial role in an unincorporated association can be sued for conducting or authorising particular activities,²¹³ however this liability is personal. The relevant member is the person in the managerial role at the time of the alleged incidents. In this case, Cardinal Pell had assumed the role of Archbishop in 2001, after the time of the alleged incidents. Furthermore, as the Body Corporate had no involvement in the matter of appointing, managing, or supervising priests, the Court found that it was also not liable for Fr. Duggan’s misconduct. The Body Corporate could not be found to be negligent in exercising an authority regarding Fr. Duggan, because it did not have any authority in this regard.

Special leave to appeal to the High Court was refused.

There is a misconception that the Ellis decision stands for the proposition that no-one in the Church can be sued or that the Church is “immune from suit” in relation to crimes committed by priests, religious and other Church personnel. This is incorrect. It is a longstanding and important matter of public policy that there is no direct vicarious liability for criminal acts. The reasons for that policy are obvious. However, where there is negligence or other actionable conduct by superior or supervisor of the accused person, there will generally be a defendant available, which may include a deceased estate.

Importantly, the Church accepts moral responsibility for abuse matters regardless of the legal position in any particular case, and even where liability is not clear. Very few claims against the Church involve civil proceedings being issued and none have been defended to verdict.²¹⁴

This acceptance of moral responsibility is reflected in the compensation and reparation paid through the

²¹¹ *Roman Catholic Trusts Act 1907* (Vic).

²¹² *Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565.

²¹³ *Ibid*, 50.

²¹⁴ Based on the best information available to the signatories of this submission.

*Melbourne Response*²¹⁵ and *Towards Healing*,²¹⁶ as well as in mediated and negotiated settlements reached out of court. Any victim who is dissatisfied with these responses remains free to pursue their claim in the civil courts, according to civil law.

The legal status of the Church reflects Australian and Victorian law. Where an individual in a supervisory role is negligent in their management, they may well be liable for the misconduct of those under their authority.

It is important to note that this is simply the status of unincorporated associations under Australian law. There are no unusual immunities available to the Church. There are neither statutory immunities nor common law immunities from suit, such as those available to the Crown, for example. The Church rejects allegations that it has adopted new structures to defeat claims. The basic structure of the Church in Victoria has not changed since 1907.

10.7 Insurance

The Victorian Dioceses and religious congregations which subscribe to either the *Melbourne Response* or *Towards Healing* have public liability insurance in place. The specific terms of these policies vary. Typically, such insurance policies provide indemnity for personal injuries arising from events occurring during the year of cover, even though the injury might manifest years later.

Historically, not all Dioceses and congregations held insurance and some held cover from insurers that are now defunct. For a period during the 1990s, some retrospective policies were also available.

Some of the relevant insurers take the position that intentional acts such as the abuse of a minor cannot be regarded as an “accident” within the meaning of public liability insurance. There is no uniform position as to whether any insurance cover will apply in relation to abuse claims.

Irrespective of the position of individual insurers and the financial protection available, the Church has continued to respond positively to the financial and other needs of victims.

It should be noted that in those circumstances where insurance cover is available, no indemnity from an insurance policy is available to any offender for either civil or criminal proceedings.

²¹⁵ See Chapter 8.

²¹⁶ See Chapter 9.

11 Codes of Conduct - Catholic Church in Australia

11.1 Integrity in Ministry

While the *Melbourne Response* and *Towards Healing* are concerned in particular with addressing allegations of abuse, the Church has also introduced codes of conduct for clergy and others as part of its efforts to prevent abuse. These apply throughout Australia.

In June 1999, "*Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia*" (***Integrity in Ministry***),²¹⁷ was published as a resource for those preparing for ministry in the Church and as a code of conduct and guide for reflection for those already involved in ministry.

Integrity in Ministry was substantially updated in 2004. The current version of the document is "*Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia – June 2004 (Reprinted April 2010)*".²¹⁸

Integrity in Ministry sets out behaviour for clergy and religious to integrate into their day-to-day ministry and serves as a check-list against which they can review the quality of the ministerial activities in which they engage.

The *Integrity in Ministry* document is publicly available on the website of the Catholic Church in Australia²¹⁹ and a copy is at **Annexure 10**.

11.1.1 Core elements

Integrity in Ministry is based on the premise that "clergy and religious enter into a covenant relationship with the People of God ... modelled on God's steadfast love and faithfulness".²²⁰

When recommending the document in 1999, the co-chairs of the NCPS stated:

*Seeing the Church as communion means recognising the central importance of relationships. It recognises firstly the privileged relationship we all have in sharing the life of God in the communion of Father, Son and Holy Spirit, and secondly it means recognising the reflection of God's life in our relationships with one another. The image of the Church as communion emphasises the gifts that are present in all God's people and the richness of collaborative ministry between them.*²²¹

Flowing from this, the aim of *Integrity in Ministry* is expressed as being:

*[T]o support Australian religious and clergy and others who work or minister on behalf of the church in their effort to live dedicated and committed lives. It seeks to offer them an ecclesial context for measuring their behaviours as witnesses and ministers of the Church's mission. While conscious of the need to protect against harm, its goal is to provide positive guidelines both for healthy lives among clergy and religious, and for the highest standards of pastoral practice.*²²²

The objectives of the *Integrity in Ministry* document are:

- To offer a theology of Church as the context of shaping and measuring behavioural standards for religious and clergy;
- To encourage clergy and religious in their vocation as witnesses and ministers of the reign of God, through lives of respect, service, integrity and selfless love;
- To support clergy and religious in their efforts to care for themselves and one another;

²¹⁷ National Committee for Professional Standards, "*Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia*", 1999.

²¹⁸ *Integrity in Ministry* was re-printed in 2010 to provide the correct references to the latest version of *Towards Healing*.

²¹⁹ <http://www.catholic.org.au>.

²²⁰ *Integrity in Ministry* 1997, page xiv.

²²¹ *Integrity in Ministry* 1999, page ii.

²²² *Integrity in Ministry*, June 2004 (Reprinted April 2010), page v.

- To support clergy and religious in their efforts to be visibly accountable as witnesses and ministers of the Church's mission;
- To support clergy and religious in their concern to protect children and adults from all abuses of power, including sexual abuse and harassment; and
- To support the Church in responding to instances of sexual abuse and professional misconduct, in the best interests of those who have been harmed, the wider community, and the offender.²²³

Each section of *Integrity in Ministry* begins with a summary of the vision relevant to its particular topic. A number of principles that flow from this vision then follow. A non-exhaustive list of behavioural standards for clergy and religious is set out below each principle. Standards range from those that promote good health to those that support the highest level of pastoral practice and those that guard against professional misconduct.

For the greater part, these behavioural standards are illustrative. However, a number of them are considered "necessary to safeguard integrity and clarity around issues of sexual and professional boundaries". *Integrity in Ministry* emphasises that these standards "call for a high degree of compliance."²²⁴

The final chapter of *Integrity in Ministry* provides some guidance for responding to instances of non-compliance.²²⁵

11.1.2 Principles and behavioural standards relevant to this Inquiry

The following sections in the *Integrity in Ministry* document are directly relevant to the subject matter of this Inquiry:

1. **A Communion of Love**

1.1 *In their lives and ministries clergy and religious witness God's love for every human person by sensitivity, reverence and respect in their relationships.*

To safeguard integrity, and to preserve clarity of sexual and professional boundaries with regard to this principle, it is essential that clergy and religious:

- *Avoid any behaviour that could reasonably be interpreted as harassment.*

Harassment encompasses a broad range of behaviours, including but not limited to:

...

- *Sexual jokes and comments;*
- *Request for sexual favours;*
- *Display of pornographic materials.*

Harassment can occur as a result of a single incident or a pattern of behaviour where the purpose or effect is to create a hostile, offensive, humiliating or intimidating environment.

...

1.4 *Pastoral love requires that clergy and religious respect the physical and emotional boundaries appropriate to relationships with adults and minors.*

Among the behavioural standards that follow from this principle are:

- *Exercising sensitivity with regard to the physical and emotional space others require in pastoral encounters;*

²²³ *Ibid*, page v.

²²⁴ *Ibid*, page vi.

²²⁵ *Ibid*, Chapter 8, pages 19 and 20.

- *Exercising a prudent judgment, that has the well-being of the other as its goal, in initiating and responding to physical contact, such as giving a comforting hug or an affirming touch;*
- *Providing pastoral ministry only in places that offer a sufficiently safe environment where there is openness and visibility;*
- *Exercising prudent judgment in the expression of affection and regard, and in the giving of gifts.*

To safeguard integrity, and to preserve clarity of sexual and professional boundaries with regard to this principle, it is essential that clergy and religious:

- *Do not provide pastoral ministry in the sleeping quarters/bedrooms of one's community house or of the presbytery/parish house.*

1.5 *Religious and clergy witness to God's care for the most vulnerable by their concern for the dignity and safety of children and youth.²²⁶*

Among the behavioural standards that follow from this principle are:

- *Avoiding any form of over-familiarity or inappropriate language;*
- *Ensuring whenever reasonably possible that another adult is present or close by when providing pastoral ministry to a minor;*
- *Avoiding whenever reasonably possible, being alone with a minor or group of minors in sleeping, dressing or bathing areas, making sure to exercise prudent judgment and behaviour when another adult cannot be present;*
- *Familiarising oneself with the causes and signs of child abuse or neglect, the steps to be taken for the protection of children, and the procedures to follow if abuse or neglect is suspected or observed;*
- *Familiarising oneself with the procedures outlined in the document Towards Healing.*

To safeguard integrity, and to preserve clarity of sexual and professional boundaries with regard to this principle, it is essential that clergy and religious in the exercise of their ministry:

- *Behave with due prudence, not staying overnight in the same room as a minor or vulnerable person unless it is impossible to avoid. In that circumstance every provision needs to be made to provide a safe environment, e.g. the permission of a parent or guardian, and appropriate openness and visibility;*
- *Never administer corporal punishment;*
- *Use electronic and print media responsibly;*
- *Do not supply or serve alcohol or any controlled substance to a minor without the express permission of a parent or guardian.*

...

5. Ministers of Communion: Commitment to Justice

...

5.3 *Clergy and religious act with integrity and fairness when they receive complaints of sexual, physical or psychological abuse.*

Among the behavioural standards that follow from this principle are:

- *Responding to information promptly and seriously, and with pastoral sensitivity;*
- *Promptly informing the relevant church authority;*

²²⁶ John Paul II, *Familiaris Consortio*, 27.

- *Alerting the complainant to the existence of the Towards Healing process and providing relevant contact and referral details;*
- *Working with the complainant to identify what needs to be done immediately to ensure that he or she feels safe from further abuse;*
- *Explicitly assuring those who allege abuse that immediate assistance can be made available to provide independent support;*
- *In collaboration with the church authority, supporting the healing of others who, as well as the victims, have been seriously affected by incidents of abuse – family, friends and community of both the alleged victim and offender.*

Legal Compliance

It is essential that clergy and religious abide by the requirements of mandatory reporting and other relevant civil legislation. They also take care to ensure that the proper processes of law are not interfered with, nor hindered. Notwithstanding the civil law requirements, clergy and religious are required to alert Church authorities in accordance with Section 5.3.

11.1.3 Responding to instances of non-compliance

It is acknowledged that religious and clergy sometimes fall short of the behavioural standards they set for themselves. Accordingly, Chapter 8 of the *Integrity in Ministry* document outlines procedures to be followed when a serious breach of the code of conduct is brought to the notice of a Church Authority. Chapter 8 states:

When Communion is Broken

...

- 8.1 *Where there is a complaint of a serious violation of the principles and standards set out in this document, it is essential that:*
- *The responsible Church authority ensure that it is listened to fully and compassionately;*
 - *The responsible Church authority act promptly, on advice from the Consultative Panel,²²⁷ to determine how the complaint should be investigated.*
- Options for dealing with the matter include:*
- *Reporting to the police;*
 - *Referral to be dealt with under Towards Healing;*
 - *Appropriate industrial procedures, where applicable;*
 - *Investigation in accordance with Canon Law (e.g. Canon 1717);*
 - *Referral to conflict resolution processes.*
- 8.2 *Where there is a complaint against a bishop or religious leader, the complaint should be referred to the person designated as the appropriate Church authority for the case in accordance with Towards Healing Clause 35.3.2 and the footnote of Clause 35.3.2.*
- 8.3 *In cases of proven violation of the principles of this document, Church authorities should have as their first concern the care and healing of those who have been harmed by ministers of their community.*
- To express the primacy of this concern, it is essential that Church authorities:*
- *Have a concern both for those who have been directly harmed and also for others who have been affected, e.g. the parent and family of those harmed and the community where the*

²²⁷ *Towards Healing*, paragraph 35.8: "[E]ach Diocesan bishop and religious leader of Australia shall have, or have access to, a Consultative Panel to advise and assist him or her at significant stages of the [Towards Healing] process."

violation has occurred;

- Be concerned both to heal any harm that has been done and to prevent any future harm;
- Offer support and assistance, as appropriate, to those who have been harmed.

8.4 In determining the appropriate response to be made to the parties concerned on completion of the investigation, the Church authority shall have regard to advice from the Consultative Panel.

8.5 In cases of proven violation of the principles of this document, Church authorities also have a concern for the care and healing of the cleric or religious concerned.

To express this concern, it is essential that the Church authorities observe towards the person involved the same standards of care as are set out in 2.2 in relation to all clerics and religious.

8.6 Since this document applies to all clergy and religious, bishops and religious leaders ensure that they themselves are subject to its provisions. They submit themselves to all principles, standards and procedures of "Integrity in Ministry."

11.1.4 Ongoing development since 1996

As noted in Chapter 7, in April 1996, the ACBC and the ACLRI wrote a Pastoral Letter to the Catholic people of Australia. The sixth element of the plan concerned the development of a code of conduct for priests and religious. An advisory committee was established to carry out the task of developing the code of conduct.

The advisory committee sent a code of conduct survey to all Dioceses, all religious institutes, a number of victims, a number of lay organisations in the Church and all Catholic Education Offices.²²⁸ Using the 6,000 responses as a basis, it developed the draft document, "*Integrity in Ministry: A Document of Ethical Standards for Catholic Clergy & Religious in Australia*," which was published in December 1997.²²⁹

In June 1999, following responses to the draft document, a new document, "*Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia*,"²³⁰ was published. This document differed significantly from the draft document. Bishops and religious leaders were urged to take the document to their Diocese or institute and seek the support of clergy and religious in putting it into effect for a period of two years.

During 2002, the NCPS undertook a consultation on *Integrity in Ministry*. The responses indicated a high level of acceptance by the clergy and religious who participated in the survey.

The document was reviewed again in 2004. The Foreword to "*Integrity in Ministry – June 2004 (Reprinted April 2010)*" states:

Conscious of the privilege it is for clergy and religious to be called to minister among the People of God, the committee members appointed to revise Integrity in Ministry hope that this new edition of the document will serve to renew and enhance the ministry of deacons, priests and religious throughout the Catholic Church in Australia.

Integrity in Ministry also acknowledges the responsibility to comply with civil legislation:

In view of the frequent changes to legislation which relates to Integrity in Ministry, the National Committee for Professional Standards has decided not to list all the relevant legislation in force

²²⁸ The Code of Conduct Survey for Clerics and Religious comprised twenty-eight discussion questions under headings of Contact with Minors; the Sacrament of Reconciliation; Counselling; Physical Contact; Boundaries between Living a Personal Life and Pastoral Ministry; Record Keeping; Finance and Administration; Pastoral Support of Religious and Clergy; and Protective Behaviours. 6000 responses were received by August 1997.

²²⁹ The document contained questions that might be used for discussion leading to either group or individual responses that were to be submitted by June 1998. *Integrity in Ministry: A Document of Ethical Standards for Catholic Clergy & Religious in Australia*, [Canberra], 1997.

²³⁰ National Committee for Professional Standards, "*Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia*", 1999.

in the various jurisdictions throughout Australia. However, the Committee reminds those to whom Integrity in Ministry applies of their serious obligation to comply with legislation relating to such matters as Privacy, Discrimination, Harassment and the Protection of Children. It is incumbent on clergy and religious to familiarise themselves with the relevant legislation and to abide by such legislation.

11.2 Integrity in the Service of the Church

"*Integrity in the Service of the Church - 2011*" represents the third stage²³¹ in the compilation of a document of principles and behavioural standards for lay workers²³² in the Catholic Church in Australia, prepared by the NCPS.

The *Integrity in the Service of the Church* document is publicly available on the website of the Catholic Church in Australia²³³ and a copy is at **Annexure 11**.

The *Integrity in the Service of the Church* document is for:

- Organisations or bodies within the Church to which Church Workers, both paid employees and volunteers, belong; and
- Those who employ, engage, assign, supervise, train or are responsible for Church Workers.

11.2.1 Core elements

Integrity in the Service of the Church aims to help Church Workers reflect on and uphold Christian vision and values in all relationships and actions.

The principles and standards in *Integrity in the Service of the Church*, with due distinction, parallel those for religious and clergy found in *Integrity in Ministry*, and reflect the fundamental belief that all people are made in the image of God and should be treated with respect and dignity.

The principles and standards put forward in *Integrity in the Service of the Church* are extensions of five basic principles for Church Workers in which they:

- 1 Are committed to justice and equity;
- 2 Uphold the dignity of all people and their right to respect;
- 3 Are committed to safe and supportive relationships;
- 4 Reach out to those who are poor, alienated or marginalised; and
- 5 Strive for excellence in the performance of their work.²³⁴

The document is not, itself, a code of behaviour. Rather, it aims to provide resources which groups of Church Workers might use in devising their own specific guidelines, documents and processes.²³⁵

11.2.2 Principles and behavioural standards relevant to this Inquiry

The following sections in *Integrity in the Service of the Church* are directly relevant to the subject matter of this Inquiry:

2.1 *Church Workers treat all people with respect, sensitivity and courtesy.*

People observing this principle will:

...

²³¹ Previous consultations in 2007 and 2009.

²³² Paid employees and volunteers.

²³³ <http://www.catholic.org.au>.

²³⁴ *Integrity in the Service of the Church - 2011*.

²³⁵ See Chapter 14 for the Codes of Conduct in operation within Victoria.

2.1.2 *Respect gender difference and honour the dignity of women, men and children.*

...

3.1 *Church Workers know, understand and respect the physical and emotional boundaries of adults, children and young people.*

People observing this principle will:

3.1.1 *Understand that:*

An unsafe relationship is one that poses risk to the emotional, physical or sexual health of any of the individuals involved;

An unsupportive relationship is one that does not recognise the needs of those it is supposed to assist; and

Unsafe and unsupportive relationships have an extremely harmful impact on human dignity and self-esteem.

3.1.2 *Be conscious of and respect the physical and emotional space and privacy required by others.*

3.1.3 *Provide pastoral support always in accordance with proper accountability guidelines.*

3.1.4 *Provide pastoral support in places that offer sufficient safe, open and visible environments.*

3.1.5 *Recognise that physical contact can be necessary and helpful in giving care, comfort or affirmation, and follow the appropriate standards for such contact.*

3.1.6 *Interact with others in a consistent professional manner.*

3.1.7 *Work within a well-defined role description that complies with the relevant legal obligations associated with the tasks.*

...

3.4 *Church Workers take appropriate action when a relationship is not benefitting those served.*

People observing this principle will:

3.4.1 *Recognise when service relationships are becoming unsafe and/or ineffective and be prepared to terminate those relationships with appropriate referral.*

3.5 *Church Workers understand the problems which can occur because of the imbalance of power in a service relationship.*

People observing this principle will:

...

3.5.3 *Not engage in any form of physical, psychological or emotional coercion within relationships.*

In relation to the treatment of children, *Integrity in the Service of the Church* states:

4.2 *Church Workers involved with people who are vulnerable or abused express particular concern, care and protection for them.*

People observing this principle will:

4.2.1 *Listen in a non-judgemental way to the story of one who speaks of abuse or neglect.*

4.2.2 *Familiarise themselves with:*

- *the causes and signs of child and adult abuse and neglect;*
- *the steps to be taken for the protection of the vulnerable;*
- *the procedures to follow if abuse or neglect is suspected or observed.*

- 4.2.3 *Avoid any form of over-familiarity or inappropriate language.*
- 4.2.4 *Provide, whenever reasonably possible, for another adult to be present or close by when providing any form of pastoral care to a child or young person or to a disturbed/vulnerable adult.*
- 4.2.5 *Avoid, whenever reasonably possible, being alone with a child or young person, or group of such people, in sleeping, dressing or bathing areas, and exercise prudent judgement and behaviour when another adult cannot be present.*
- 4.2.6 *Follow relevant laws and protocols concerning supply or use of alcohol, drugs, and the supply or administration of medication.²³⁶*

11.2.3 Responding to instances of non-compliance

Integrity in the Service of the Church recognises that unfortunately, organisational guidelines are not always observed. Accordingly, the document states:

When Church Workers Breach Guidelines

When guidelines are breached, effective response by individuals and by the appropriate authority in the Church is necessary. Concern for justice and healing requires full co-operation with applicable civil authorities and processes.

Therefore:

- *All Church bodies need to have appropriate Policies in place for protection of vulnerable persons, and Church Workers need to be aware of and understand and comply with them.*

All Church bodies and agencies must comply with all relevant State and Commonwealth legislation.

- *Guidelines need to specify the Responsible Authority to whom Church Workers are to report any breaches of guidelines.*
- *All Responsible Authorities in the Church and all Church Workers need:*
 - *to be aware of their obligations in reporting suspected abuse of children or other vulnerable persons under both civil law and Church protocols;*
 - *to see that reports of breaches of guidelines are dealt with appropriately and in compliance with relevant legislation; and*
 - *to follow the principles of natural justice and procedural fairness in dealing with breaches of the guidelines.*
- *A primary concern of Responsible Authorities within the Church is to remedy any harm that has been done and to prevent harm to others.²³⁷*

²³⁶ *"Integrity in the Service of the Church - 2011", page 8.*

²³⁷ *"Integrity in the Service of the Church - 2011", page 5.*

12 Formation of Future Priests and Religious

12.1 Introduction

The screening and formation of future priests and religious is one of the central elements in the prevention of any future abuse of children by Church personnel. As the extent and effect of sexual abuse of children by clergy and religious has become clearer, the Church has taken significant measures to review and strengthen its procedures for the admission and formation of future priests and religious. These measures seek to ensure that only appropriate candidates are accepted, that their training includes extensive formation for healthy celibate living, and that they have specific training on the matter of sexual abuse.

As part of their formation according to the principles set out in *Integrity in Ministry* and *Towards Healing*, seminarians are taught the Church's unequivocal stance against sexual abuse of children, and the fact that such abuse constitutes a profound and fundamental betrayal of all that the Church believes in.²³⁸ Candidates are made aware of the importance of caring for the victims of abuse and meeting their needs wherever possible. They are informed that the Church's practice is to actively encourage victims to go to the police and they are educated on the Church's *Melbourne Response* and *Towards Healing* protocols.

Bishops and congregational leaders take active responsibility for the formation of future priests and religious for their Dioceses and congregations. The usual context for this formation in Victoria is in the provincial seminary (for Diocesan seminarians) or in the seminaries or houses of formation of religious congregations. There are currently 16 such seminaries or houses of formation in Victoria.

The "*Programme for Priestly Formation Australia*"²³⁹ (**Programme**) forms the basis for training in Australian Diocesan seminaries. International religious congregations possess their own foundational documents for the formation of their candidates.²⁴⁰ However, both the Programme for Diocesan seminaries and all congregational norms for formation draw heavily upon two documents of the Universal Catholic Church governing formation of future priests and religious:

- Post-Synodal Apostolic Exhortation²⁴¹ "*Pastores Dabo Vobis*" (I Will Give You Shepherds) to the Bishops, Clergy and Faithful on the Formation of Priests in the Circumstances of the Present Day, released on 25 March 1992 by his Holiness, Pope John Paul II; and
- "*Ratio Fundamental Institutionis Sacerdotalis*" (Basic Programme for Priestly Formation) published on 19 March 1985 by the Congregation for Catholic Education (for Seminaries and Educational Institutions).

Religious congregations undertaking formation within Australia adapt their programs to conform as closely as possible to the Programme for Diocesan seminaries formulated by the ACBC. As a consequence, while the precise details of formation programs differ between seminaries in Victoria, there are common principles that guide all aspects of formation of candidates for priesthood and religious life.

In addition, academic formation for both Diocesan and religious candidates is provided in common at a small number of theological colleges. Those courses are accredited by civil authorities. The common principles are particularly evident when seminaries provide specific training regarding sexual abuse, as all seminarians and religious in formation are required to abide by the principles and standards set out in *Integrity in Ministry*. All candidates must also be aware of the principles and processes contained in the *Melbourne Response* and *Towards Healing*.

²³⁸ See Chapter 3.

²³⁹ "*Programme for Priestly Formation Australia (Ratio Nationalis Institutionis Sacerdotalis)* (2007)".

²⁴⁰ For example: "*General Norms for Oblate Formation*," rev. ed. (Rome: Oblates of Mary Immaculate, 2012); "*Formation of Salesians of Don Bosco: Principles and Norms*," 3rd ed. (Rome: Salesians of Don Bosco, 2000); "*Criteria and Norms for Salesian Vocation Discernment*," 3rd ed. (Rome: Salesians of Don Bosco, 2000); Dominican Fathers: "*Initialis Formatio Fratrum Ordinis Praedicatorum*," (Santa Sabina, Rome: 1999).

²⁴¹ An apostolic exhortation is a communication from the Pope that encourages a community of people to undertake a particular activity, but does not define the development of Church doctrine.

12.2 Procedures for admission

Potential candidates for priesthood and religious life undergo an extensive screening process prior to being granted entry to the seminary. This screening includes a form of accompaniment prior to entry, testimony of others regarding their suitability, and a comprehensive psychological assessment by a competent practitioner.²⁴² Each of these elements has a particular focus upon the prospective candidate's capacity to live out a commitment to celibacy.

A critical aspect of the pre-entry psychological assessment is the identification of any psycho-sexual pathology, especially paedophilia. Applicants must receive a positive evaluation from each element of this screening before they can be admitted into a seminary formation program.

The *Programme for Priestly Formation Australia* also requires candidates who have previously enrolled in a different seminary to provide an account of their formation history and requires the previous seminary to provide all relevant information regarding the candidate and their reason for leaving.²⁴³

The strengthening of these admission procedures has been an important part of the Church's response to sexual abuse by clergy. A more rigorous psychological examination that focuses on assessing the psycho-sexual maturity of candidates is an important development.

12.3 Fostering human development and healthy celibate living

After candidates have undertaken the required screening, formation programs have a strong emphasis on fostering psycho-sexual maturity and, as such, provide extensive theoretical and practical formation for cultivating celibate chastity, respect for all and the appropriate exercise of power. The Church believes that this is the most significant way that formation programs can contribute to the prevention of future sexual abuse of children.

Candidates are encouraged to form mature and healthy relationships with a range of men and women, and are educated in their awareness of appropriate boundaries in words and actions with both adults and children. To support this, each seminary has a comprehensive program for education in human maturity and celibate living.

These programs seek to form future priests and religious to be able to live out their celibate commitment in a manner that is healthy, respectful of the dignity of others, and consistent with the Church's ethics regarding sexuality. These programs are extensive and, whilst they vary in precise content and length, every student for the priesthood or religious life consistently receives substantial formation in this area throughout his time of formation.

As the duration of seminary formation is typically seven to nine years, candidates receive regular and ongoing substantial formation in psycho-sexual maturity and healthy celibate living over that length of time.

Candidates are also provided with mentoring and ongoing spiritual direction. Open dialogue about sexuality and psycho-sexual development is encouraged as a part of these relationships.

Many religious congregations arrange for their novices to attend the Kairos formation program in Sydney.²⁴⁴ This includes a specific five-day component regarding psycho-sexual integration and further sessions regarding psychological growth. This program at Kairos is supplemented by sessions within the separate novitiates where those responsible for the formation of the novices (who also attend sessions at Kairos with the novices) work with the novices to personalise the sessions and to mentor them as they integrate the sessions with their own life experience. Time is also spent on the *Integrity in Ministry* document and its implications as well as understanding the Vows taken by religious and their implications, including the Vow of chastity lived in a celibate way.

²⁴² Examples of practitioners and assessments include Corpus Christi: Reflections Psychological Services (Tony Pirotta), Oblates: Minnesota Multiphasic Personality Inventory. MGL: Canberra Clinical Forensic Psychology (Dr Bruce Stevens MTH PhD Psychology; Sam van Meurs BA/BPsych(Hons) Assoc MAPS). Salesians: Michael Hill (Sydney).

²⁴³ "Programme for Priestly Formation Australia (*Ratio Nationalis Institutionis Sacerdotalis*) (2007)", page 9.

²⁴⁴ Some significant Victorian-based formation programs that attend the Kairos formation program are: Jesuits, Missionaries of the Sacred Heart, Franciscan and Missionaries of God's Love Sisters.

These and similar programs are provided externally to the seminary by professionals with appropriate expertise in their field.²⁴⁵ As a consequence, students receive training in these areas in a variety of contexts. This provides important reinforcement of the relevant principles.

If a candidate experiences difficulties in achieving and maintaining healthy psycho-sexual maturity, seminaries arrange professional psychological counselling for the candidate concerned. This may also be a clear indicator that the candidate is unsuitable, and lead to a review of the continuation of the candidature.

The current focus and development of these resources for future priests and religious to live out their commitment to celibacy is unparalleled in the history of the Church in Australia. This intense focus is, in part, a response to the sexual abuse of children by clergy and religious. It is also part of the Church's commitment to preparing future clergy and religious for healthy celibate living, in which they are happy and fulfilled as human beings, with well-developed and mature relationships that enrich the lives of those around them.

12.4 Ongoing evaluation of candidates

The suitability of all candidates for priesthood and religious life is constantly reviewed by formation staff. Further, each year there is a formal process of evaluation of each student. The mechanisms for this vary from seminary to seminary, but all seminaries seek to measure a candidate's progress in the light of the documents outlined above.

Seminarians are evaluated in light of their actual ministry experiences, with particular attention paid to the way in which a candidate relates to minors. The psycho-sexual development of each candidate is also reviewed. Evaluation processes also include consultation with a variety of people involved in the student's formation.

In the event of any sexual abuse committed by a candidate, the appropriate legal steps would be taken. The candidate would also be removed from the seminary.²⁴⁶

All candidates for priesthood or religious life residing in Victoria are required to hold a valid Working with Children Check card throughout their formation. In addition to this, prior to making a formal commitment to the priesthood or religious life, a candidate is required to sign a statement declaring that they are unaware of any conduct of theirs that would lead to a valid complaint of criminal assault or sexual harassment.²⁴⁷

12.5 Formation for *Integrity in Ministry*

In 2004, the publication of *Integrity in Ministry* prompted seminaries to review and develop the content and processes of their programs to ensure that the protection and care of children was explicitly treated as part of the formation of future priests and religious.

As a consequence, all seminaries now seek to form their students according to the protocols outlined in *Integrity in Ministry*. This involves both an explicit study of the *Integrity in Ministry* document, as well as implicit study in the course of many other talks, conferences, individual conversations with seminary staff and small group discussions.

Particular attention is given to the appropriate conduct of clergy and religious in regard to children. This involves formation in expected behavioural standards and respect for boundaries.

Seminarians are also encouraged to avail themselves of educational opportunities offered by Diocesan agencies and other bodies, so as to develop their skills in conducting children and youth ministry in ways that reduce the risk of child abuse occurring.

²⁴⁵ For instance, all Diocesan seminarians in Victoria participate in annual week-long seminars for formation in chastity and celibacy, conducted by Father Tim Costello SM, of the Gregorian University, Rome. The work is built on year by year.

²⁴⁶ See, for example, *Towards Healing*, paragraph 45.9.

²⁴⁷ *Ibid*, paragraph 45.8.

In addition to courses and programs developed by each seminary, academic courses in pastoral studies at different theological institutions educate students in professional issues and appropriate ministerial and personal conduct. For example, in one of the units taught at Catholic Theological College (which provides academic formation for all Victorian Diocesan seminarians and most religious seminarians), the following topics are addressed:

- Codes of ethics and codes of conduct;
- *Integrity in Ministry*;
- Responding to allegations of misconduct;
- Maintaining personal boundaries; and
- Supervision, accreditation, professional development, peer support, self-care, and structures of accountability.

The unit also examines various kinds of abuse and the appropriate manner in which to address those issues. Other units covering moral theology and the sacrament of penance (confession) also address relevant issues.

Seminarians are also inducted into the particular Code of Conduct that applies to their congregation or Diocese, and undertake regular inservice reminding them of these protocols. The National and Victorian Offices for Professional Standards regularly provide such inservice to different seminaries.

12.6 Pastoral care of victims and the reporting of sexual abuse

As part of their formation, especially in the area of pastoral studies, future priests and religious are educated about the impact of sexual abuse and of the necessity for an appropriate and pastorally sensitive response to victims of abuse. Candidates are taught that the welfare of victims is paramount, and they are equipped to respond compassionately to victims. Candidates are trained to encourage victims to take further steps towards healing as required and desired.

Candidates are told that they should encourage victims to report abuse to the police. Candidates are informed of the processes for reporting sexual and other abuse set out in the *Melbourne Response* and *Towards Healing* documents, and are expected to comply with those processes.

Further, as part of their academic formation, candidates are taught about the seal of the confessional and also consider other ministerial contexts in which a person may disclose an experience of being harmed. Candidates are educated to recognise that while they must respect the seal of the confessional, they should also encourage someone to report abuse if it is disclosed to them within the context of a sacramental confession. They are also taught that information about instances of abuse disclosed to them in non-confessional contexts may need to be reported to the appropriate authorities.

12.7 Compliance with civil authorities

Both *Integrity in Ministry* and *Towards Healing* require that candidates are made aware of any relevant state legislation regarding mandatory reporting.

Candidates are informed of the civil legislation regarding child pornography and understand that accessing child pornography is a crime.

As set out in Section 12.4, all candidates for priesthood and religious life residing in Victoria must complete Working with Children Checks.

13 Catholic Education Sector

13.1 Introduction

At the heart of all of the endeavours of Catholic education is the student. Catholic education is committed to building communities of learning that provide a safe, nurturing and academically stimulating environment for all children. Catholic schools are vibrant communities of learning, faith and life, dedicated to academic excellence and fostering quality interpersonal relationships, with a strong sense of belonging and safety.

Within Victoria, Catholic Education Offices (**CEOs**) represent the Archdiocese of Melbourne and the Dioceses of Ballarat, Sale and Sandhurst.

Catholic Education in the Archdiocese of Melbourne (**CEOM**) is a leading provider of school education. It represents the sixth-largest education system in Australia, operating in the third-largest Catholic diocese in the world. In 2012, about 146,400 students are enrolled in 328 Catholic schools in the Archdiocese, supported by more than 16,700 teaching and non-teaching staff.

In a message on the website of the CEOM, Archbishop Hart states:

Catholic schools make a vibrant and vital contribution to the life of the Church, to the community at large, to families and individuals. Founded on Jesus Christ and inspired by the Holy Spirit, they assist students to come to know God and to grow as human beings in the knowledge of God's love. Catholic schools provide an excellent holistic education centred on the student and engaging them in authentic, purposeful learning.²⁴⁸

Catholic Education in the Diocese of Ballarat serves staff, students and parents in the 53 primary schools and 11 secondary colleges within its borders.

Catholic Education in the Diocese of Sale serves staff, students and parents in the 34 primary schools and seven secondary colleges within its borders. In a message on the website of the Diocese of Sale, Bishop Prowse states:

One of the great contributions the Catholic Church has made to humanity over the centuries has been in the area of education. We see it as an essential part of our contribution to society. Our hope is to be servants of the transmission of the Catholic Faith in all its depth and richness. The central aspect of all we teach is the encounter of Jesus Christ, alive in His Church. There is a great partnership established between the parish and school community with families in a given area.²⁴⁹

Catholic Education in the Diocese of Sandhurst serves staff, students and parents in the 43 primary schools, 12 secondary colleges and three specialist schools within its borders.

13.2 National police checks

Regular national criminal history record checks are conducted for all teachers in Victoria, including all teachers working within Catholic education, as a requirement for registration.

13.3 Mandatory reporting

Section 182(1) of the *Children Youth and Families Act 2005* (Vic) (**CYF Act**) includes the following as mandatory reporters:

- (a) A person who is registered as a teacher under the *Education and Training Reform Act 2006* or who has been granted permission to teach under that Act;

²⁴⁸ Archbishop's Message, Most Rev Denis J Hart DD, Archbishop of Melbourne, Catholic Education Office Melbourne, www.ceomelb.catholic.edu.au.

²⁴⁹ A Message From Our Bishop, Bishop Christopher Prowse DD, Catholic Education Office - Diocese of Sale, www.ceosale.catholic.edu.au.

- (b) *The principal of a Government school or a non-Government school within the meaning of the Education and Training Reform Act 2006.*

Accordingly, all teachers working in the Catholic education system are mandated to report child abuse.

In Catholic schools in Victoria, statutory mandatory reporting obligations are supported by policies which assist the CEOs and schools to comply with the mandatory reporting requirements under the CYF Act and to fulfil their responsibilities regarding the welfare and protection of children at risk.²⁵⁰ The policies complement guidelines provided by the Department of Human Services (DHS) to all Victorian schools.

Regular professional learning and development programs and training and support related to child protection and mandatory reporting are also provided to staff working in the Catholic education system.

13.4 The Australian Government's National Safe Schools Framework

In January 2012, the COAG announced the launch of the Standing Council on School Education and Early Childhood. The Standing Council replaced the Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA) with immediate effect.

In 1997, at the sixth meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs, predecessor to the MCEEDYA, a national strategy had been formulated to prevent paedophilia and other forms of child abuse in schooling.

While most States had implemented these strategies well before 1997, the adoption of this strategy at a national level bound all schools to its implementation and required reporting of its implementation on an annual basis at the systems level.

In 2003, the MCEEDYA also introduced the "National Safe Schools Framework" (**Framework**), under which all schools in Australia were obliged to report annually on strategies being implemented to address bullying, harassment, violence and child abuse and neglect.

The Australian Government has worked with all State and Territory Governments to continue to revise the Framework. The Framework provides Australian schools with a vision and a set of guiding principles that assist school communities to take a proactive whole-school approach to developing effective student safety and wellbeing policies.

The Framework is based on the following overarching vision:

All Australian schools are safe, supportive and respectful teaching and learning communities that promote student wellbeing.

The vision is underpinned by the below guiding principles that represent fundamental beliefs about safe, supportive and respectful school communities and emphasise the importance of student safety and wellbeing as a pre-requisite for effective learning in all school settings.

Australian schools:

- *Affirm the rights of all members of the school community to feel safe and be safe at school;*
- *Acknowledge that being safe and supported at school is essential for student wellbeing and effective learning;*
- *Accept responsibility for developing and sustaining safe and supportive learning and teaching communities that also fulfill the school's child protection responsibilities;*
- *Encourage the active participation of all school community members in developing and maintaining a safe school community where diversity is valued;*

²⁵⁰ CEO Melbourne - "Policy 2.19, Mandatory Reporting of Child Physical and Sexual Abuse", 2008; CEO Sale - "Policy 2.4, Guidelines and Procedures for Mandatory Reporting of Child Physical and Sexual Abuse", August 2002; CEO Ballarat - "Protecting Students: Maintaining Relationships - Process for Managing Allegations of Abuse of Students by Employees in Catholic Education in The Diocese of Ballarat"; CEO Sandhurst - "Guidelines for employers regarding allegations of Misconduct and/or Incompetence", June 2010.

- *Actively support young people to develop understanding and skills to keep themselves and others safe; and*
- *Commit to developing a safe school community through a whole-school and evidence-based approach.*

In December 2010, the Framework was endorsed by all Ministers for Education, through the MCEECDYA.

On 18 March 2011, the Framework was officially launched by the Hon Peter Garrett, MP, Minister for School Education, Early Childhood and Youth to coincide with the inaugural National Day of Action Against Bullying and Violence.

The Catholic education sector in Victoria continues to comply with the Framework.

13.5 Catholic Education Commission of Victoria

In addition to the Framework, the Catholic Education Commission of Victoria (**CECV**) is a signatory to and collaborative partner with the DHS, Department of Education and Early Childhood Development (**DEECD**) and Independent Schools Victoria, to a joint protocol "*Protecting the Safety and Wellbeing of Children and Young People*".

The protocol details current policy and practice to promote and support the safety and wellbeing of children and young people in Victorian schools and licensed children's services. It defines the respective roles and responsibilities of the DHS Child Protection, DEECD, licensed children's services and Victorian schools in working together to protect children and young people from abuse and neglect.

The protocol provides information for licensed children's services and Victorian schools to take appropriate action when it is believed that a child has suffered harm, or is likely to suffer harm, through abuse or neglect.

In order to support and build the capacity of staff in Catholic schools to respond to the protocol and achieve better health, safety and wellbeing outcomes for all children, the Catholic Education Office Melbourne facilitates an annual professional learning seminar to address the roles and responsibilities of staff who are mandated to report. Professional learning opportunities are advertised through the CECV Integrated Professional Learning System (**IPLS**), a training and professional learning database that is accessible to all staff in Victorian Catholic schools. In addition, professional learning opportunities are discussed through CEOM Student Wellbeing Leader Cluster meetings and via meetings with CEOM Regional Managers and Principal Consultants.

During 2011 and 2012, professional learning seminars have been developed and co-presented in partnership with staff from the DHS.

In 2012 the mandatory reporting professional learning seminar was scheduled and advertised on IPLS for 4 September 2012. As an alternative, DHS provided staff in Victorian schools an opportunity to attend similar sessions throughout the year.

13.6 Compliance and complaints procedures - Catholic Education Office

Within the Catholic education structure, the CEOs also have a range of compliance and complaints procedures. These procedures support, guide intervention, provide advice and make recommendations on a range of issues including but not limited to matters of harassment, bullying, child protection, mandatory reporting and industrial relations.

Compliance checking is undertaken by the Victorian Registration and Qualifications Authority. The compliance checks for Catholic schools are the same as those for government schools. The minimum standards required include standards relating to:

- student welfare (the care safety and welfare of students, student discipline policies and procedures, monitoring of attendance and the attendance register); and

- employment of staff (teachers' requirements and compliance with the *Children, Youth and Families Act 2005* (Vic)).

Compliance with the above-stated minimum standards is supported by a monitoring and reporting mechanism whereby schools are obliged to report showing evidence that the school is compliant.

Further, pursuant to the "*Guide for a Registered School – Minimum standards and other requirements for school registration*", published by the Victorian Registration and Qualification Authority:

*A school must ensure that the care, safety and welfare of students is in accordance with any applicable State and Commonwealth laws and staff are advised of their obligations under those laws.*²⁵¹

The intent of the requirement is stated as:

To ensure that a school has policies and procedures to provide students with a safe environment where the risk of harm is minimised and students feel physically and emotionally secure.

The VRQA requires schools to provide evidence of their policies and procedures regarding, amongst other things:

- managing complaints or grievances; and
- mandatory reporting procedures.

The evidence guide includes the requirement to produce evidence of student welfare policies and procedures with respect to student welfare, bullying and harassment and managing complaints and grievances along with additional evidence of the school's mandatory reporting procedures. Other evidence required includes an outline of how the school ensures that staff are made aware of their legal responsibilities for the care, safety and welfare of students.

13.7 Office for Professional Conduct, Ethics and Investigations

The Catholic Education Offices of Melbourne, Ballarat and Sale have set up an Office for Professional Conduct, Ethics and Investigations, with links to the Victorian Institute of Teaching (**VIT**), for investigation of complaints against teachers in Catholic schools.

The CECV has developed a strategic working relationship with the VIT. Quarterly meetings are held between senior VIT personnel and senior CECV representatives on a range of significant issues including, but not exclusively related to professional conduct issues in Catholic schools, registration of teachers, and disciplinary matters.

The establishment of a Memorandum of Understanding between VIT and the Catholic Education Offices of Melbourne, Ballarat and Sale resulted from the regular meetings. The Memorandum is an indicator of the confidence in the protocols and policies already in place within the Catholic system.

The Catholic Education Office, Sandhurst has a senior officer on its staff responsible for the investigation of complaints against teachers in Catholic schools in the Diocese of Sandhurst.

²⁵¹ Victorian Registration and Qualifications Authority, "*Guide for a Registered School – Minimum standards and other requirements for school registration*", Revised 2011, page 9.

14 Proactive and Preventative Measures

14.1 Introduction

There are very significant proactive and preventative elements in the *Melbourne Response*,²⁵² *Towards Healing*²⁵³ and *Integrity*²⁵⁴ documents referred to in previous chapters, and in the specific measures taken in the formation of clergy and religious²⁵⁵ and in Catholic education.²⁵⁶ In addition to these, clergy, religious and lay workers are subject to a range of legislative provisions, policies and codes of practice directed towards the protection of children, which are summarised in this Chapter.

14.2 Working with Children Checks

The Archdiocese of Melbourne and the Dioceses of Ballarat, Sandhurst and Sale all require Working with Children Checks for:

- All clergy and other religious who are in active ministry involving children; and
- All persons over 18 years of age who are engaged as workers (whether employees, contractors or volunteers), associated with a parish, school or various other activities that bring them into contact with children.

The only exception to this is where a worker is expressly excluded by legislation from the requirement, for example if they hold Victorian Institute of Teaching registration.

14.3 National criminal history record checks

Within the Archdiocese of Melbourne a national police records check is required for every:

- Priest;
- Seminarian;
- Member of a religious order holding a diocesan appointment;
- Priests from another diocese undertaking religious duties for a period in excess of three months or where the anticipated period is likely to be in excess of three months; and
- Employee, contractor, volunteer and religious working in a parish setting who occupies a position of leadership or stays overnight with children.

14.4 The Catholic welfare sector – Diocesan agencies

Starting in Melbourne more than 75 years ago, Diocesan welfare and community services in Victoria have worked on behalf of the Church to offer professionally delivered programs and services to the community in response to the needs of the most vulnerable and disadvantaged, including, in particular, children.

Named CatholicCare or Centacare in the various Dioceses, these agencies employ specialists in the areas of psychology, social work, counselling, mediation, conciliation and education. Their range of programs and services continues to grow in scope and detail to address the current issues faced by families and society in general, and include community, family and pastoral services, targeted at families and communities most in need. The services particularly address needs in the areas of disability, employment, asylum seeker and refugee settlement, mental health, homelessness and housing, school counselling, family relationship support, pre-marriage education and employee assistance.

²⁵² See Chapter 8.

²⁵³ See Chapter 9.

²⁵⁴ See Chapter 11.

²⁵⁵ See Chapter 12.

²⁵⁶ See Chapter 13.

The Church does not refer those who have suffered sexual abuse by clergy and religious to either CatholicCare or Centacare. Rather victims are referred to specialised agencies such as Carelink, or to agencies not connected with the Church, for counselling and support.

These Diocesan agencies are committed to providing a safe environment for all children, young people and families. This includes an environment where harm to children is prevented and, if it does occur, is addressed effectively.

This commitment is underpinned by the values of the organisations and by the policies and procedures that they have in place, which include:

- Working With Children Checks;
- Codes of conduct which prohibit unethical conduct and impose disclosure obligations;
- Standards set by government as contract requirements, including DHS Policies and Guidelines;
- Procedures for screening, training and monitoring of staff and volunteers;
- Incident reporting requirements, and mandatory reporting of abuse;
- Employment policies and procedures;
- Grievance and feedback policies; and
- Risk management policies and frameworks.

Pursuant to the various codes of conduct, standards, policies and procedures, all employees working with children are required to:

- Demonstrate the utmost respect for the child;
- Create a safe and positive environment for children;
- Not engage in any form of inappropriate interaction or conduct with children;
- Not do anything that would directly or indirectly harm or otherwise disadvantage the child; and
- Hold a valid Working With Children card.

All allegations of illegal activity and breaches of the law must ultimately be referred to a designated executive, who determines the appropriate actions to be taken.

If the complaint appears to be of a criminal nature, it will be referred to police and will not be investigated internally.

All reports of concern related to DHS funded out-of-home care need to be directed immediately to DHS Child Protection who then manage the investigation process.

In the Melbourne Archdiocese, staff and volunteers are also required to familiarise themselves with "*May our children flourish - Code of Conduct for Caring for Children*".

14.5 Code of Conduct for Caring for Children - Archdiocese of Melbourne

In November 2011, the Archdiocese of Melbourne released a Code of Conduct for Caring for Children: "*May our children flourish*" (**Code**).²⁵⁷ A copy of the Code is at **Annexure 12**.

The Code was the subject of extensive consultation with priests and legal, medical, nursing and education specialists during its development. The Code is designed to:

- Promote the wellbeing of children involved in Church activities;
- Assist people who arrange and participate in children's activities (and those who engage them), to plan and carry out their work with confidence; and
- Provide a framework for parents and guardians by which they may have confidence in the conduct of their children's activities.

²⁵⁷ Catholic Archdiocese of Melbourne, "*Code of Conduct for Caring for Children: May our children flourish*", November 2011.

The Code is drafted to reflect the principles and standards set out in "*Integrity in Ministry*", "*Integrity in the Service of the Church*" and codes of conduct which may apply to employees, contractors or volunteers.

The principles of the Code are intended to support and underpin the pastoral care role of parish priests, religious brothers and sisters, pastoral associates, pastoral workers, contractors and the invaluable contribution of parishioners and other volunteers. They aim to address perceptions of risk in interactions between children and adults and to provide guidance as to behaviours and practices that are beyond reproach. The principles are intended to promote an open and accountable environment in which the dignity and safety of adults and children alike is paramount.

The Code was developed for agencies and parishes of the Archdiocese of Melbourne to complement the existing suite of policies for the protection of children. The Code applies throughout the Archdiocese to all persons who have, or may be expected to have, contact with children in the course of any parish or diocesan activities. This may include parishioners, parents, volunteers, visitors, employees, contractors, religious brothers and sisters, and clergy.

The Code does not apply to the Catholic education system in the Archdiocese of Melbourne where the policies with particular application to education apply. CatholicCare, whilst subject to the Code, also has in place its own range of policies as noted above.

The Archdiocese has conducted training sessions on the application of the Code for priests, parish leaders and agency heads and staff of the Archdiocese.

A number of parishes supplement the Code with additional policies to address their specific circumstances.

14.6 Professional standards training and professional development

The National Committee for Professional Standards (NCPS) established under *Towards Healing*²⁵⁸ oversees the development of professional standards among clergy and religious. Under the auspices of the NCPS, a wide range of initiatives are undertaken to support professional development, community education, and awareness-raising throughout the Catholic Church:

- Two national training days are provided each year for Bishops, Congregational Leaders and other senior Church leaders. The program covers all aspects of *Towards Healing*, particularly around the response to victims and the accused as well as preventative measures.
- The Directors of Professional Standards meet three times a year with the personnel from the National Office and the emphasis is on national consistency, support and sharing best practice.
- Training days are conducted for Assessors and Facilitators periodically and especially when there is a revision of *Towards Healing*. These provide an opportunity for explaining changes, improving skills and sharing best practice. Training for Contact Persons is conducted in regular state-based training days.
- Education and training days are also held in each state frequently, with presentations from experts on understanding abuse and its effects, on the *Towards Healing* program, *Integrity in Ministry* and *Integrity in the Service of the Church*.
- Professional development days are provided to legal practitioners who act for the Dioceses and Congregations.
- Personnel from the National Office attend meetings of the State Professional Standards Resource Groups in each state at least every two years and especially when there are revisions of the *Towards Healing* program.
- Presentations by personnel from the National Office are made in Dioceses and Congregations as requested, to seminaries and to groups such as the National Council of Priests, Catholic Women's League, Knights of the Southern Cross and Centacare.

²⁵⁸ See Chapter 9.

Facing the Truth

- State Directors also make presentations to Dioceses, Congregations, seminaries and Church groups, as requested.
- Presentations are made to a wide variety of groups, including youth ministers, deaneries, Congregational schools and Centacare, on *Integrity in Ministry*, *Integrity in the Service of the Church*, preventative measures generally, and awareness and understanding of the effects of abuse.
- Assistance is provided in preparing and reviewing codes of conduct for specific groups.
- In 2011 and 2012 gatherings of risk management and protection and prevention personnel were and are being held to establish networks, share best practice and hear speakers from the wider community.
- Materials are provided to parishes and schools to mark *Child Protection Sunday* to take place each year on the second Sunday in September at the conclusion of National Child Protection Week.
- Speakers are arranged on specific areas and expertise, for example psychotherapists Dr Geraldine Taylor and Dr Tony Robinson and psychologist Dr Monica Applewhite.
- Collaboration is pursued with other faith denominations through the National Council of Churches Australia and the Safe Church Network and their biannual conferences.
- Annual presentations are made on *Integrity in Ministry* to the combined group of trainees from Religious Congregations at the national Kairos program in NSW.
- Presentations are given by the National Office personnel and State Directors to various groups of newly-arrived clergy and religious from overseas.
- Materials and insights are gained from other countries through attendance at the Anglophone Conference on Safeguarding, and then shared locally.

In addition, many Congregations, Dioceses and groups have provided ongoing training, education and awareness-raising sessions to their own personnel.

The National Office also provides regular articles to the members of the National Committee for information.

The professional development of Church personnel reflects the commitment of the Church to education on the seriousness of abuse and its adverse effects, and to a program of community education and awareness in recognising and responding to abuse.²⁵⁹

²⁵⁹ *Towards Healing*, paragraph 32.

15 Mandatory Reporting

15.1 Introduction of mandatory reporting in Victoria

The introduction of mandatory reporting was recommended by the Victorian Law Reform Commission in 1988, in relation to sexual offences against children.²⁶⁰ In 1989, a review of child protection services²⁶¹ stressed the need to develop a welfare based child protection service prior to consideration of the introduction of mandatory reporting.²⁶²

Mandatory reporting was first introduced in Victoria in 1993, by the *Children and Young Persons (Further Amendment) Act 1993* (Vic) (**CYPFA Act**).²⁶³ Victoria was the last Australian state to introduce legislation requiring the mandatory reporting of child abuse.

The impetus for the introduction of mandatory reporting in Victoria was the intense community outrage following the violent death of toddler, Daniel Valerio, at the hands of his stepfather, who was later convicted of murder. It has been stated that what outraged members of the community and many professionals was that the shocking abuse suffered by Daniel was known to many child and family welfare professionals. Despite this knowledge, there was no serious intervention by social welfare, medical practitioners or police, and certainly none intervened in a meaningful way to prevent the violent death of this abused and vulnerable child.²⁶⁴

The CYPFA Act introduced mandatory reporting for professional groups that were identified as the groups with the most significant contact with children and the most likely to become aware of child abuse.²⁶⁵

In 1993, when introducing the CYPFA Act into the Legislative Assembly, the Minister for Community Services, Mr Michael John MP, commented:

Overwhelming community support for the introduction of mandatory reporting is evident.

Although in recent years Victoria has coped with overall increases in child abuse reporting rates comparable to the situation in other States, these reports have largely centred on emotional abuse and neglect concerns. By contrast, sexual abuse reports, and to a lesser extent physical abuse reports, have not increased under the present voluntary reporting system at the same rate as they have in other States that have mandatory reporting.

As sexual abuse is a hidden problem and is therefore hard to detect, a legal requirement to report such abuse is essential. Indeed the purpose of the proposed amendment is to uncover hidden but serious abuse and to underline the criminal nature of sexual abuse and severe physical abuse.

Society has to deal with the impact of child abuse, particularly sexual abuse, at some stage in the life span of its victims. This is evident from the fact that approximately 60 to 70 per cent of women who are receiving services at centres against sexual assault are being treated in relation to childhood sexual abuse. Apart from the need to stop current abuse as soon as possible, it is clearly more effective that treatment occur as early as possible.

The abuse of children cannot be tolerated by our society. It is documented in the Forced Exit and Burdekin reports as a major factor leading to young women leaving home.²⁶⁶

²⁶⁰ Law Reform Commission of Victoria, "Sexual Offences Against Children", Report No 18, 1988.

²⁶¹ The review was undertaken by the Honourable Justice John Fogarty, inaugural Chairperson of the Victorian Family and Children's Services Council, and Ms Delys Sargeant AM, Deputy Chairperson of the Council.

²⁶² Justice John Fogarty and Ms Delys Sargeant, "Protective Services for Children in Victoria: An Interim Report", 1989.

²⁶³ This amended the *Children and Young Persons Act 1989* (Vic).

²⁶⁴ Dr Shannon-Caroline Taylor and Dr Dough Llyod, "Mandatory Reporting and Child Sexual Abuse: Contextualising Beliefs and Attitudes", School of Education, University of Ballarat, Victoria, 2001.

²⁶⁵ Reports are made to the Secretary of Department of Human Services (**DHS**) and mandated reporters are afforded protection from liability.

²⁶⁶ Parliament of Victoria, Hansard, Mr Michael John MLA, *Children and Young Persons (Further Amendment) Bill*, Second Reading, 21 April 1993 Assembly, page 1005.

A staged introduction of mandatory reporting was provided in Victoria to ensure that adequate professional education was provided before each mandated professional group was required to report child abuse. This meant that only certain categories of reporters were actually mandated reporters at the commencement of the scheme. Those in the remaining categories were to become mandated reporters from a date that would be fixed by order published in the Government Gazette.

In 2005, the introduction of the *Children Youth and Families Act 2005* (Vic) (**CYF Act**) extended the number of professional groups to be mandated to report. However, as discussed in Section 15.2, none of those groups are yet to be gazetted.

15.2 Current mandatory reporting obligations in Victoria

In Victoria, pursuant to section 182(1) of the CYF Act, the following persons are mandatory reporters:

- (a) A registered medical practitioner;
- (b) A nurse;
- (ba) A midwife;
- (c) A person who is registered as a teacher under the Education and Training Reform Act 2006 or who has been granted permission to teach under that Act;
- (d) The principal of a Government school or a non-Government school within the meaning of the Education and Training Reform Act 2006;
- (e) A member of the police force;
- (f) On and from the relevant date, the proprietor of, or a person with a post-secondary qualification in the care, education or minding of children who is employed by a children's service to which the Children's Services Act 1996 applies or a person nominated under section 16(2)(b)(iii) of that Act;
- (g) On and from the relevant date, a person with a post-secondary qualification in youth, social or welfare work who works in the health, education or community or welfare services field and who is not referred to in paragraph (h);
- (h) On and from the relevant date, a person employed under Part 3 of the Public Administration Act 2004 to perform the duties of a youth and child welfare worker;
- (i) On and from the relevant date, a registered psychologist;
- (j) On and from the relevant date, a youth justice officer;
- (k) On and from the relevant date, a youth parole officer; and
- (l) On and from the relevant date, a member of a prescribed class of persons.

In the 18 years that the mandatory reporting scheme has been in force in Victoria, no professional groups other than those originally mandated in sub-sections 182(1)(a) to (e) have been gazetted.

Pursuant to section 184(1) of the CYF Act:

A mandatory reporter who, in the course of practising his or her profession or carrying out the duties of his or her office, position or employment as set out in section 182, forms the belief on reasonable grounds that a child is in need of protection on a ground referred to in section 162(c) or 162(d) (physical or sexual abuse) must report to the Secretary to the Department of Human Services that belief and the reasonable grounds for it as soon as practicable -

- *After forming the belief; and*
- *After each occasion on which he or she becomes aware of any further reasonable grounds for the belief.*

In Victoria, approximately 230,000 people are currently mandated to report. This includes the following reporting professions within the Church:

- Doctors and nurses in Catholic hospitals; and
- Teachers in the Catholic education system.

The Centre for Excellence in Child and Family Welfare has reported that if all the professional groups listed in section 182(1) of the CYF Act were to be gazetted, a further 26,280 people would be required to report. If priests, ministers and church workers of all denominations were mandated to report, it is said that approximately 6,000 additional people would be required to report.²⁶⁷

15.3 Recommendation of the Protecting Victoria's Vulnerable Children Inquiry

The Protecting Victoria's Vulnerable Children Inquiry (**PVVC Inquiry**) stated:

The Inquiry considers that in the absence of:

- *research into: the diversity of religious faiths and practices; the number of ordained and appointed ministers; and expertise and capacity of ministers of religion to report suspected cases of child physical and sexual abuse; and*
- *input from all religious and spiritual faiths across Victoria,*

*any proposal to extend the mandatory reporting duty under the Children, Youth and Families Act 2005 (Vic) to ministers of religion may not achieve the desired aim of facilitating an effective systematic state wide practice of reporting accurate protective concerns to the Department of Human Services.*²⁶⁸

Having said that, the PVVC Inquiry went on to recommend an amendment to the *Crimes Act 1958 (Vic)* (**Crimes Act**) that imposed a reporting obligation on clergy and Church persons, but only in circumstances where the suspected offender was another Church person. The Inquiry considered whether this obligation should be extended to information obtained during confession, and decided that it should not.

Recommendation 47 of the PVVC Inquiry states:

The Crimes Act 1958 (Vic) should be amended to create a separate reporting duty where there is a reasonable suspicion a child or young person who is under 18 is being, or has been, physically or sexually abused by an individual within a religious or spiritual organisation. The duty should extend to:

- *A minister of religion; and*
- *A person who holds an office within, is employed by, is a member of, or a volunteer of a religious or spiritual organisation that provides services to, or has regular contact with, children and young people.*

An exemption for information received during the rite of confession should be made.

*A failure to report should attract a suitable penalty having regard to section 326 of the Crimes Act 1958 and section 493 of the Children, Youth and Families Act 2005.*²⁶⁹

The PVVC Report stated:

*The Inquiry agrees that mandatory reporting should be contemporaneous with reports of suspected physical or sexual abuse of children and young people and not of historical events where the child is now an adult.*²⁷⁰

...

The reporting provision should be crafted so that the duty operates prospectively. That is, the requirement to report should only cover reasonably suspected instances of physical and sexual abuse of

²⁶⁷ Centre for Excellence in Child and Family Welfare, "Fact sheet - Mandatory Reporting Victoria", 2012.

²⁶⁸ Report of the Protecting Victoria's Vulnerable Children Inquiry, January 2012, The Honourable Philip Cummins (Chair), Emeritus Professor Dorothy Scott OAM, Mr Bill Scales AO, Executive Summary, Volume 2, 352.

²⁶⁹ *Ibid*, Chapter 14, page 355.

²⁷⁰ *Ibid*, page 351.

*a person who is under the age of 18 at the time a minister of religion or member of a religious or spiritual organisation forms the suspicion of such abuse.*²⁷¹

In its submission to the PVVC Inquiry, the Church had opposed including clergy among those mandated to report child abuse. However, the Church accepts that the PVVC Inquiry carefully considered all of the submissions made to it, and that it was charged by the community with making a recommendation on this issue.

Therefore, the Church now accepts that the requirement of mandatory reporting of cases of suspected child abuse under the CYF Act should be extended to ministers of religion and other religious personnel, provided that the sanctity of the confessional is maintained.

The Church submits that including clergy in the existing mandatory reporting regime is a far more effective and practical way of achieving the outcome desired by the PVVC Inquiry, rather than creating a new offence under the Crimes Act. This is discussed further below.²⁷²

15.4 Sanctity of Confession

The absolute sanctity of confession is enshrined within Catholicism. The confession is understood as being made to God. The priest to whom the confession is made is representing the person of Christ. Consequently, admissions made to God through the priest are not the priest's to reveal.

Canon 983 §1 states:

The sacramental seal is inviolable.²⁷³ Accordingly, it is absolutely wrong for a confessor in any way to betray the penitent, for any reason whatsoever, whether by word or in any other fashion.

Canon 1388 §1 further states:

A confessor who directly violates the sacramental seal incurs a latae sententiae [automatic] excommunication reserved to the Apostolic See; he who does so only indirectly is to be punished according to the gravity of the offence.

Accordingly, a confessor who directly violates the sacramental seal is subjected to the most extreme penalty available under Canon Law - excommunication. As such, compliance is not optional for priests.

The sanctity and confidentiality of the confessional is reflected in the 1994 address to the Apostolic Penitentiary by Pope John Paul II who stated: "*The priest who hears sacramental confessions is forbidden, without exception, to reveal the penitent's identity or sins.*"

The Catechism (i.e. teachings) of the Catholic Church provides as follows:

§ 1467: Given the delicacy and greatness of this ministry and the respect due to persons, the Church declares that every priest who hears confessions is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him. He can make no use of knowledge that confession gives him about penitents' lives (Canon 1388 §1). This secret, which admits of no exceptions, is called the "sacramental seal", because what the penitent has made known to the priest remains "sealed" by the sacrament.

§ 2490: The secret of the sacrament of reconciliation is sacred, and cannot be violated under any pretext. "The sacramental seal is inviolable; therefore, it is a crime for a confessor in any way to betray a penitent by word or in any other manner or for any reason (Canon 983 §1).

The sanctity of confession is respected in all Australian jurisdictions as well as in most other locations around the world. Further, legislation throughout Australia provides a specific privilege in respect of religious confessions.

In Victoria, section 127(1) of the *Evidence Act 2008* (Vic) (**Evidence Act**) states:

²⁷¹ *Ibid*, page 355

²⁷² See Section 15.5.

²⁷³ The confessor may never, for any reason, divulge what he has learned in the course of celebrating the sacrament. Should he do so, he commits a most serious offence. See Canon 1388 §1.

Mandatory Reporting

A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy.

Religious confession is defined in the Evidence Act as:

A confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the church or religious denomination concerned.

In addition to being inconsistent with the Evidence Act, legislation purporting to override the sanctity of the sacramental confession would conflict with freedom of religion as recognised by the *Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic) (Charter)*.

Section 14(2) of the Charter, concerning freedom of religion, provides that:

A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Any legislative amendment that purported to require priests to violate the sacramental seal of confession will be ineffective as priests will simply be unable and unwilling to comply.

In democratic societies, it has historically been extremely rare for Canon Law and domestic or civil law to contain inconsistent provisions. However, Canon Law is clear that a priest's Canonical obligations override inconsistent obligations purportedly imposed by civil law.

The desire to do everything possible to protect children from abuse is certainly compelling. Mandatory reporting of child abuse is an important part of this vital task. However, if the sanctity of confession could not be assured, it becomes unlikely that anyone would confess to the terrible sin and crime of the abuse of children.

An important dimension of confession is that it gives the penitent a chance, and perhaps the only chance they are open to, to confront the terrible nature of their behaviour. The imposition of mandatory reporting, and the subsequent removal of the confidentiality of confession, would remove any hope that this outcome might eventuate. Abusers will not take the risk of revealing their crimes in this forum.

However, if an offender discloses information about any crime to a priest, it is wrong to assume that the priest would do nothing. On the contrary, the priest has a clear and unquestionable moral obligation to seek to ensure that justice is done. One primary response of a priest in such circumstances is to encourage the penitent to confess to civil authorities. In the absence of such confession, or such other steps as are appropriate to ensure that justice is done, absolution that is, forgiveness sought by the penitent may be withheld.

Accordingly, the destruction of the confidentiality of confession would result in the loss of the opportunity for the offender to be encouraged to go to the police, to obtain assistance for the victim, to seek help to cease offending, or to take other appropriate action.

It is also important to note that it is extremely unlikely that a confession of child abuse would contain sufficient information to be useful in a mandatory report. The penitent would be free to choose anonymity, and could confess a sin without disclosing locations, times or the names of victims.

As set out in Chapter 7, the Victorian Parliamentary Crime Prevention Committee expressly stated in its Report to the Inquiry into Sexual Offences against Children and Adults, that it:

[D]id not wish to question the sanctity of the confessional and the confidentiality offered to those who choose to cleanse their souls in such a way.²⁷⁴

During a media conference on 18 July 2012, the Victorian Premier, The Hon Ted Baillieu MP, commented on the Report of the Protecting Victoria's Vulnerable Children Inquiry and stated:

The Cummins report addressed this issue and ... concluded that the sanctity of the confessional should

²⁷⁴ Parliamentary Crime Prevention Committee, *Combating Child Sexual Assault - An Integrated Model*, page 308.

*remain, and I think that's a powerful argument.*²⁷⁵

In August 2011, the Victorian Attorney-General, The Hon Robert Clark MP, stated that the Victorian Government had no plans to introduce mandatory reporting for information divulged during confession and that, in any event:

*It would face a range of difficulties, because if churchgoers thought a priest would report what was said in the confessional, they would either not confess to crimes or would ensure their confession was anonymous.*²⁷⁶

The Church notes that in South Australia, section 11(4) of the *Children's Protection Act 1993 (SA)* exempts "a priest or other minister of religion" from the mandatory reporting obligations imposed under the Act in relation to "information communicated in the course of a confession made in accordance with the rules and usages of the relevant religion".

15.5 Submission of the Church regarding mandatory reporting

Having carefully considered Recommendation 47 of the PVVC Report, the Church accepts that legislative amendment is appropriate in order to enhance the protection of children. However, the Church does not agree with the recommendation that a separate offence be created in the *Crimes Act 1958 (Vic)* and respectfully submits that the proposed amendment is misconceived.

Recommendation 47 proposed that a priest or religious who has "*a reasonable suspicion a child ... is being, or has been, physically or sexually abused by an individual within a religious or spiritual organisation*" is required to report that suspicion.

Accordingly, a priest who was aware that a child was being abused by another priest would be obliged to report that, but a priest who was aware that a child was being abused by a family member such as a father or uncle would be under no obligation to report.

Accepting, as the Church does, the important role of mandatory reporting in the protection of children, it is misconceived to suggest that a child who is abused by a priest is in need of protection but that a child who is abused by a family member is not. Nevertheless, this would be the consequence of implementing recommendation 47. Accordingly, the Church does not support the way in which Recommendation 47 proposes for clergy and Church persons to be given a duty of mandatory reporting.

Another difficulty with Recommendation 47 is in defining, and proving, who is "a member" of a religious or spiritual organisation.

However, Recommendation 47 of the PVVC Inquiry also proposed:

- An exemption for information received during the rite of confession; and
- That the duty to report only operates prospectively so that the knowledge required must only relate to situations where there is concern about current danger to a child, not to knowledge obtained at any time during an individual's life.

The Church supports these aspects of Recommendation 47.

The Church submits that the most effective way of achieving the outcome desired by the PVVC Inquiry is for the current requirements relating to mandatory reporting under the CYF Act to be extended to ministers of religion and other religious personnel, with an exemption for information received during the rite of confession.

The Church further submits that the requirement of mandatory reporting should operate prospectively, as recommended by the PVVC Inquiry, so that it only covers reasonably suspected instances of physical and sexual abuse of a person who is under the age of 18 at the time the reporter forms the suspicion of

²⁷⁵ Transcript of media conference by Premier Ted Baillieu, 18 July 2012, www.premier.vic.gov.au/.../4512-full-transcript-of-media-conference-by-premier-ted-baillieu-18-july-2012.html; ninemsn, "Keep confessions confidential: Baillieu", 18 July 2012.

²⁷⁶ Anna Prytz, "*Lower Templestowe priest speaks out on confidence breach*", *Manningham Leader*, 10 August 2011.

Mandatory Reporting

such abuse. Such a provision would otherwise be impractical and unworkable.

Extending the current requirements relating to mandatory reporting under the CYF Act in this way would take advantage of the existing framework, structure and expertise in Victoria's child protection system. Further, it would mean that all of those mandated to report are reporting under the same regime and to the same authorities.

The Church notes that when mandatory reporting was introduced in Victoria, a staged introduction was provided to ensure that adequate professional education was provided before each mandated professional group was required to report child abuse. The Church commends this approach as applicable to any amendment, as a reasonable opportunity must be given to those mandated to report to be adequately briefed on their legal obligation and the operation of the legislation.

16 Reporting to Victoria Police

16.1 Introduction

The Church has developed its responses to child sexual abuse as complaints have come forward and its understanding of the complexities and impact of such abuse has evolved. The Church is focused on the needs of those who have been abused. It has taken, and continues to take, action to prevent further abuse and has changed how it deals with offending clergy, religious and other Church personnel.

The practice that the Church in Victoria has followed, at least since the introduction of the *Melbourne Response* and *Towards Healing*, is to actively encourage victims to go to the police where there may have been criminal conduct.

The Church in Victoria believes that the most appropriate avenue for the investigation of criminal conduct is the police. As such, the Church encourages complainants to report such conduct to the police. As noted elsewhere in this submission, neither the *Melbourne Response* nor *Towards Healing* will investigate a complaint unless and until the complainant declines to go to the police, despite having been encouraged to do so.

The Church recognises that not all victims want to report matters to the police. The overwhelming majority of allegations of abuse of children in the Church in Victoria are first reported many years after the event and at a time when the alleged victim has become an adult.²⁷⁷ The Church believes that these victims should have ultimate control over the decision whether or not to report, and respects their decision whatever that may be.

If the complainant is still a child, different considerations apply. The *Melbourne Response* and *Towards Healing* have only very rarely received complaints made by children and when this has occurred, the most strenuous efforts are made to convince the child and their parents that they should report the matter to the police.

The events that form the basis of the great majority of allegations of abuse of children in the Church in Victoria took place before the Church implemented its current procedures, processes and practices, which provide safeguards for the reporting of child abuse and before the introduction of Working with Children Checks and mandatory reporting legislation.

As noted below, Victorian law does not require crimes to be reported to the police. This sets the legal context in which the Church believes that victims should be empowered to make this important choice for themselves.

The Church is committed to striving for healing for victims, dealing justly and effectively with those who are guilty of abuse, and preventing further abuse. The Church's approach respects the privacy of those involved, and at the same time, takes a clear and public stance against the sexual abuse of children.

The Church acknowledges that the sexual abuse of a child was, is and always will be a crime, and a profound contradiction of all that the Church believes in.

16.2 The law in Australia - Misprision of felony

Failing to report knowledge of a felony to the appropriate authorities constituted the offence of misprision of felony under English common law.

It was abolished in Victoria by statute in 1981.²⁷⁸

In all other Australian jurisdictions except for NSW, and in England, the situation is now governed by provisions that make it an offence to accept a benefit in return for agreeing not to disclose knowledge of the offence.²⁷⁹

²⁷⁷ Most complaints made to the *Melbourne Response* and *Towards Healing* relate to incidents from 30 and even up to 80 years ago.

²⁷⁸ *Crimes (Classification of Offences) Act 1981* (Vic).

²⁷⁹ *Crimes Act 1958* (Vic) s 326.

There are three elements of the common law offence of misprision:

- A felony was committed by somebody;
- The accused knew that a felony had been committed;
- Knowing that a felony had been committed, the accused concealed the facts from the police.²⁸⁰

Misprision, and the notion of a legal duty to report knowledge of a felony to the police, has long been viewed as an archaic vestige of common law rather than a functioning criminal law provision. The December 1931 issue of the Australian Law Journal noted that “prosecutions for it are now unknown...” and referred to it as a “virtually obsolete offence”.

In *R. v Aberg*,²⁸¹ Lord Goddard CJ stated that where a defendant is charged with the offence it is typically met with expressions of surprise from the bench:

Misprision of felony is an offence which is described in the books, but it is an offence which has been generally regarded nowadays as obsolete or fallen into desuetude.

In *R v Crimmins*, it was described as a “very unusual charge to be laid”, although it was recognised as a prosecution that remained available to the Crown.²⁸²

16.2.1 Victoria

Section 326(1), introduced in 1981 by the *Crimes Act 1958* (Vic), replaced the old common law offence of misprision, and provides:

Concealing offences for benefit

Where a person has committed a serious indictable offence, any other person who, knowing or believing that the offence, or some other serious indictable offence, has been committed and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts any benefit for not disclosing that information shall be guilty of a summary offence ...

16.2.2 England

In 1967, the *Criminal Law Act 1967* (UK) abolished the offence of misprision under English law.

16.2.3 Queensland, Western Australia and Northern Territory

Queensland, Western Australia and the Northern Territory have all adopted a similar formulation as Victoria for the offence of concealing crimes, and require a benefit of some kind for the concealment to be punishable.

16.2.4 New South Wales

NSW is the only Australian jurisdiction where a failure to disclose knowledge of a serious offence is of itself still a crime. While the common law offence of misprision was abolished,²⁸³ it has been replaced by an equivalent statutory offence.

Section 316 of the *Crimes Act 1900* (NSW) provides:

- (1) *If a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate*

²⁸⁰ *R v Crimmins* [1959] VR 270.

²⁸¹ *R. v Aberg* [1948] 2 K.B. 173.

²⁸² *R v Crimmins* [1959] VR 270.

²⁸³ *Crimes Act 1900* (NSW), section 341.

authority, that other person is liable to imprisonment for 2 years.

...

- (4) *A prosecution for an offence against subsection (1) is not to be commenced against a person without the approval of the Attorney General if the knowledge or belief that an offence has been committed was formed or the information referred to in the subsection was obtained by the person in the course of practising or following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection.*
- (5) *The Governor may make regulations, not inconsistent with this Act, prescribing a profession, calling or vocation as referred to in subsection (4).*

Relevantly, clergy have been prescribed as such a vocation under section 316(5).

Section 4 of the *Crimes Act 1900* (NSW) defines a serious indictable offence as “an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more.”

16.3 Tension between respect for victims and the desirability of reporting all allegations of criminal conduct to the police

The tension between the wishes of victims who do not want their allegations of abuse reported to the police, and the view that all allegations of criminal conduct should be reported to and investigated by the police (even when victims have expressly stated that they do not want to report to the police), will undoubtedly be an important matter for this Inquiry to consider.

At its heart, this difficult matter requires a balance to be struck between:

- The right of a victim to privacy;
- The responsibility of society to protect its citizens and punish offenders; and
- The right of the presumption of innocence.

The Church agrees that it should encourage the reporting of crimes to the police, and it does. It strongly encourages complainants to make such a report, and offers to assist them in doing so. However, it is the Church’s view in Victoria that if an adult makes a complaint under the *Melbourne Response* or *Towards Healing* in relation to allegations of abuse that occurred when they were a child, and that adult requests privacy, the Church should respect that right. In the absence of a legal obligation to report, the Church believes that the decision to report or not to report an allegation to the police is a matter of choice for the individual victim.

Many victims of sexual abuse decide to go to the police, and it is through the courage of these victims that offenders are convicted and imprisoned. Conversely, many victims approach the Church seeking healing and an assurance of anonymity, and are clear that they do not wish to report offences to the police.

Any legislative change mandating that all crimes must be reported to the police is a decision for Parliament to make, informed by the outcome of this Inquiry. It is not a decision for the police or for any particular group in the community, including the Church. If Parliament decides that all crimes should be reported to the police, and reintroduces the common law offence of misprision into Victoria, the Church will respect the law, subject to preserving the sanctity of the confessional.²⁸⁴

Without such legislative change, the Church submits that the reporting of offences to the police is a matter of choice for the individual victim.

It is the Church’s experience that some victims do wish to report offences to the police. Through both the *Melbourne Response* and *Towards Healing*, the Church supports those victims in reporting the offences and during any criminal process that results.

²⁸⁴ See Chapter 15.

As discussed elsewhere in this submission, Church processes are invoked only if a complainant declines, in writing, to go to the police.²⁸⁵ If a complainant does go to the police, Church processes, if underway, are suspended until any police investigation and resulting proceedings are completed.

If it is decided that there should be legislative change, the Church notes that careful consideration will need to be given to the level of suspicion or certainty that is required in order to trigger reporting requirements.

16.4 The Wood Royal Commission in NSW

The tension between the wishes of victims to not have the matter reported to the police and the view that all matters should be reported to police was recognised in the Final Report of the Royal Commission into the NSW Police Service:

- 11.29 *Difficulties arise when the complainant does not wish police to be notified. If the complainant's wishes are respected, then children/adults could continue to be at risk and the Church could be accused of inaction. On the other hand, if the Church does not act according to the wishes of the victim, it risks putting that victim through the trauma of a court case.*
- 11.30 *The law of NSW in this regard, requires mention:*
- *the common law religious confessional privilege is now recognised and preserved under section 127 of the Evidence Act 1995, unless the communication involved in the confession was made for a criminal purpose;*
 - *otherwise, no common law privilege attaches to communications to a person in religious vows; and*
 - *the mandatory reporting provisions arising under ss. 22(2) and (3) of the Children (Care & Protection) Act 1987 exclude ministers of religion from those requirements, although there is no prohibition on them reporting under the permissive provisions of that Section, with the protection afforded under section 22(8) of the Act.*
- 11.31 *The dilemma which arises for clergy with reporting complaints, particularly when the informant expressed a desire that the matter not be notified to police, was identified by Brother McDonald, and by Father Lucas, in their evidence to the Commission. In summary, they noted:*
- *the general expectation of the community, particularly the Church community that if people confide in a priest or minister, that the confidence will be kept;*
 - *there is a public interest in persons feeling able to discuss freely and in confidence personal matters with a minister of religion or a member of a religious order;*
 - *in the absence of confidentiality, some complainants may prefer not to bring allegations of this kind to light, thereby risking perpetuation of the abuse;*
 - *similarly, there is an interest in helping a truly penitent offender who wishes to secure assistance with his problem – he may have a real resistance to approaching a superior, or making full disclosure of any past pattern of misbehaviour, again risking an imperfect response and perpetuation of the abuse, if he knows that his disclosure will be reported.*
- 11.32 *Balanced against these matters Brother McDonald and Father Lucas noted the existence of a public interest in:*
- *the investigation and prosecution of serious offences of a sexual nature by a member of a religious order; and*
 - *the relevant investigation and prosecutorial authorities receiving any information that would promote the protection of children and the welfare of the community.²⁸⁶*

²⁸⁵ A written acknowledgment is not always required in circumstances where it would serve no purpose (e.g. where the complainant has previously taken the complaint to the police).

²⁸⁶ Royal Commission into the New South Wales Police Service, "Final Report, Volume V: The Paedophile Inquiry", August 1997, page 997.

16.5 Striking the balance

In considering these issues, this Inquiry needs to strike the appropriate balance between the rights of the individual and the rights of the community. In striking the right balance, the privacy of an individual should not be ignored. The Victorian Charter of Human Rights and Responsibilities gives legal protection to 20 fundamental human rights, including the right to privacy and reputation.

The importance of the right to privacy and reputation is recognised by section 13 of the Charter, which states:

A person has the right-

- (a) *not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and*
- (b) *not to have his or her reputation unlawfully attacked.*

The Church acknowledges that in some circumstances it is important for the police to be aware that allegations of criminal conduct have been made. This information can help with the investigation of other crimes and the support given to other victims. It is also true that sometimes victims who decline to go to the police will reconsider their position when they learn that the police are already investigating other complaints against the accused. In some circumstances, reporting abuse can help prevent further offences being committed.

The Church in Victoria would support a situation in which all allegations of serious crimes are reported to the police in a way that avoids infringing the confidentiality and privacy of victims who have come forward on that basis.

This balance would be achieved via a regime in which details of an allegation, other than those that could identify the complainant, are reported to the police on the basis that the police are not at liberty to use their powers of compulsion to discover the identity of the complainant from the source of the report. The sanctity of the confessional must also remain protected.

The Archdiocese of Melbourne has sought to reach agreement with Victoria Police on a protocol to establish such a procedure.²⁸⁷ Although Victoria Police has previously declined to agree to such a protocol, the Church in Victoria would welcome either a protocol or legislative reform that appropriately balances the right of an adult victim to seek confidential assistance from the Church, with the investigative and prosecutorial functions of Victoria Police.

The Church is particularly interested to hear any proposal as to how the prosecution of an alleged offender could occur without intruding on the expressed desire of a victim for their privacy and confidentiality to be maintained. The Church would strongly welcome such prosecutions if they are possible.

If adult victims have specifically declined to take their complaint to the police, the Church, in the absence of a legal requirement enacted by the Parliament, does not accept that it should nevertheless report the allegation to the police unless there is a corresponding obligation on the police to ensure that the information reported cannot be used in a way that infringes the victim's privacy.

Without provisions to protect the privacy of an individual who does not wish to go to the police, a requirement that the Church nevertheless report the complaint would prevent victims of abuse from seeking assistance unless and until they have reported the matter to the police. This might prevent them from seeking assistance at all and could in turn mean that offenders are not identified and dealt with.

If Parliament should so legislate, the Church will comply with such legislation. However, the Church would continue to express its concern and regret for the many victims who will find that the police and the law offer them no remedy and no form of practical assistance.

²⁸⁷ See section 8.13.

16.6 Non-reporting to the police

The Church acknowledges that prior to the introduction of the *Melbourne Response* and *Towards Healing*, it did not respond appropriately to some allegations of criminal conduct. This was a mistake. The mistake was compounded because the manner in which the Church dealt with the allegations was sometimes ineffective.

With great regret, the Church acknowledges that there have been instances in the past where further abuse could have been prevented by more effective action against offenders, and where inadequate support was given to victims.

In making these acknowledgements, the Church does not accept that all future cases can or should be dealt with by referral to the police, rather than by the two Church investigatory processes.

The concern is expressed that by applying its own processes, the Church is “judging its own”. This is a misunderstanding of the purpose of *Towards Healing*²⁸⁸ and the *Melbourne Response*.

Again, it is the Church’s view that the most appropriate avenue for the investigation of criminal conduct is the police and that, wherever possible, matters that involve alleged criminal offences should be reported to the police. The *Melbourne Response* and *Towards Healing* both emphasise that complainants who allege criminal offences should go to the police and urge them to do so.

However, the *Melbourne Response* and *Towards Healing* fill an important gap when a police investigation is not possible. This occurs in circumstances including:

- Where the victim does not want to go through the process of a public trial. As Professor Patrick Parkinson said when reviewing *Towards Healing*: “Some complainants may be fearful of having to give evidence in a criminal trial and to be cross-examined at length on all the details of the complaint. The practical operation of the criminal justice system has long deterred rape victims and victims of child sexual assault from coming forward.”;²⁸⁹
- Where the victim has already been to the police;
- Where the accused is deceased and there therefore can be no police investigation;
- Where the allegations are very old and the prospects of establishing a crime beyond reasonable doubt are difficult;
- Where the victim is unable to identify the alleged offender by name;
- Where the victim is fearful of the police, perhaps because of a prior criminal record; and
- Where the allegations do not involve criminal conduct. Some concern the standard of care in children’s homes. Others involve apparently consensual sexual relations between adults where the abuse lies in the exploitation of the pastoral relationship.

Many complaints are upheld by the *Melbourne Response* and *Towards Healing* in circumstances that could not give rise to a conviction through the criminal courts, for the reasons set out above.

It is also the Church’s experience that when confronted during a Church process with allegations of wrongdoing, an accused Church person may admit such wrongdoing more readily than they might during a criminal process where they risk conviction and imprisonment. This then allows prompt action to be taken to assist the victim and to deal with the offender, who might otherwise continue to deny wrongdoing.

On 9 September 2012, an article in the Sunday Herald Sun entitled “Lack of trust in the legal system keeps sex assault victims silent in Victoria”,²⁹⁰ stated:

More than half of sex assault victims in Victoria don’t report the crime because they fear the legal

²⁸⁸ Professor Patrick Parkinson AM, “Final Report: Towards Healing Review”, April 2009, page 5.

²⁸⁹ Professor Patrick Parkinson AM, “Final Report: Towards Healing Review”, April 2009, page 5.

²⁹⁰ Katie Bice, “Lack of trust in the legal system keeps sex assault victims silent in Victoria”, Sunday Herald Sun, 9 September 2012.

system, a new study reveals.

The research examined why up to 65 per cent of incidents go unreported.

The survey of Victorian victims found 66 per cent worried about not being believed and 52 per cent said they lacked confidence in the legal system.

The research comes as:

- *FIGURES* reveal that on average for every sex offender convicted at trial, another accused is cleared;
- *PROSECUTORS* ask the Court of Appeal for an increase in sentences for rape, declaring the five-year average to be inadequate; and
- *EXPERTS* want juries given more information to help them understand the psyche of victims.

Professor Caroline Taylor, from Edith Cowan University in WA, said her study showed victims still feared encountering stigma and stereotypes both from the community and the justice system.

She said sex offences were marked by low conviction rates.

"Sexual offences are the least likely of cases to result in conviction than any other crime," she said.

"Those accused of a sexual offence are, I think, four times more likely to be acquitted than any other person accused of a non-sexual offence."

Statistics from the Office of Public Prosecutions show it continues to struggle to keep the conviction rate at trial above 50 per cent.

In 2009/10 it dipped as low as 38.5 per cent, despite the number of cases being resolved at trial increasing. The rate climbed back up to 56 per cent in the most recent financial year, the highest figure in almost a decade...

16.7 Confidentiality

The great majority of complainants express an explicit and considered desire for their complaints to remain confidential. These are people who typically have told no one, except perhaps their spouse, of the abuse they have suffered.

As stated by Professor Parkinson:

Even if the matter is investigated by the police, such investigations do not resolve all of the issues from the Church's point of view. The fact that the police do not consider there is enough evidence to press charges, or the case is not pursued by the Director of Public Prosecutions because there is insufficient likelihood of conviction, does not necessarily mean that there are no concerns to be addressed...

Those who consider that the Church should only rely on police investigations, so that if the case does not end up in a criminal conviction, no action at all should be taken in relation to the employment status of someone working with children, are arguing that the Church should place a very low priority on children's safety. Far from usurping the role of the police, Towards Healing is part of the Church's response to the need to give a very high priority indeed to the protection of children and vulnerable adults...

A further reason why Towards Healing needs to exist is that a police investigation is only concerned with whether the accused person should be punished in the criminal courts. It does not help the complainant. Towards Healing was designed first and foremost as a pastoral response to the needs of victims of abuse. The Church took the view that whether or not it had any legal obligation, it should do something to address those needs. The fact that a case has gone through the criminal justice system does not mean that no further response is required from the Church. There is still at least a moral obligation to respond to the needs of the victim.

For these reasons, many cases in which criminal conduct is alleged will need to be investigated under Towards Healing. The Church considers that it has a responsibility towards complainants to do so and, if

*an accused person represents a risk to children or vulnerable adults, the Church has a duty to investigate the matter even if the complainant does not report the matter to the police.*²⁹¹

The Church notes that the points that Professor Parkinson makes above in relation to *Towards Healing* apply equally to the *Melbourne Response*.

The overwhelming majority of complainants who come forward to both the *Melbourne Response* and *Towards Healing* report abuse that was committed decades earlier. Further, almost all complainants are adults who complain of abuse that was committed when they were children.

In his submission to the Protecting Victoria's Vulnerable Children Inquiry, the Independent Commissioner, Mr Peter O'Callaghan QC, stated:

*Typically the complainant has over a number of years before seeing me, given the closest consideration to reporting the offence to the police. Their reasons for not having reported to the police, are many and varied, but one thing is prevalent, namely the desire for the preservation of their privacy. Thus despite my informing them of their continuing and unfettered right to report to the police (of which they have usually been long aware) and encouraging them to do so, only in a limited number of cases do they change their mind.*²⁹²

By way of an example, a man who is now in his 60s lodged a complaint of sexual assault as a child by a priest with *Towards Healing* in Victoria. At the time of the abuse, the victim was told that if he complained, the priest would ensure his parents would lose their employment in a small country town. The victim's first marriage broke down and there are children born of the marriage. He is now retired after a lifetime of gainful employment.

During the facilitation meeting held as part of the *Towards Healing* process, the man pleaded with the Church Authority not to make known to any person that he was a victim of sexual assault as a child. He informed the Church Authority that he was pleased with the outcome of the *Towards Healing* process and that he was grateful for the offer of professional counselling.

It is the Church's view that a blanket requirement for it to report such a complaint to the police would inappropriately breach such a victim's legitimate right to privacy.

The Church is confident that the role of Victoria Police to investigate crimes is well known to all citizens. Accordingly, the Church expects that if a victim wished to have their complaint investigated by the police, it is more likely that they would contact the police, rather than the Church.

From time to time since the establishment of the *Melbourne Response* and *Towards Healing*, a victim who has contacted the Church and been encouraged to go to the police, has accepted that encouragement. In every circumstance in which a victim reports a potential crime to the Church and indicates that they are prepared to report the matter to the police, the victim is given all possible encouragement and support to do so. Liaison arrangements are in place, particularly with the Sexual Crimes Squad, to ensure the report is made to sympathetic, supportive and experienced investigators.

If a report is made, the Church does not interfere with, and co-operates with, the police investigation.

16.8 The Archdiocese of Melbourne and reporting to police

In recent times the Archdiocese of Melbourne has been criticised for not reporting matters to the police. This reflects a misunderstanding of the *Melbourne Response*.

For example, between 1 July 2011 and 30 June 2012, the Independent Commissioner received 15 complaints:

- 12 of those complaints are relevant to the Terms of Reference of this Inquiry;
- 11 concerned allegations of child sexual abuse;

²⁹¹ Professor Patrick Parkinson AM, "Final Report: Towards Healing Review", April 2009, pages 5 to 8.

²⁹² Protecting Victoria's Vulnerable Children Inquiry, Submission of Peter O'Callaghan QC (Independent Commissioner), page 11.

- 1 concerned allegations of child physical abuse;
- 2 of the complaints were not within the Independent Commissioner's jurisdiction; and
- 1 of the complaints was withdrawn.

Of the 12 complaints that are relevant to the Terms of Reference of this Inquiry, the Independent Commissioner has upheld 11 of the complaints. At the time of writing this submission, one complaint is outstanding.

The 12 relevant complaints concerned the following abuse:

- None of the complaints concerned current abuse or related to victims who are still children;
- 1 complaint concerned abuse in the 1960s;
- 5 complaints concerned abuse in the 1970s;
- 6 complaints concerned abuse in the 1980s;
- 8 complaints concerned child sexual abuse by clergy;
- 1 complaint concerned child sexual abuse by a seminarian;
- 2 complaints concerned child sexual abuse by a teacher; and
- 1 complaint concerned child physical abuse by clergy.

Below are some statistics in relation to reporting to Victoria Police and the 12 relevant complaints:

- 4 of the complaints were reported to the police by the victim. All 4 had been reported to the police before the victim contacted the Independent Commissioner. Of the 4 complaints reported to the police:
 - 3 of the offenders were dead at the time of reporting. Therefore, the police were unable to investigate; and
 - 1 complaint was investigated, and the offender pleaded guilty, was convicted and imprisoned.
- 5 further complaints concerned allegations in relation to offenders who were deceased at the time of the complaint to the Independent Commissioner. They were not reported to police. Had they been, there would have been no police investigation;
- 2 victims signed forms acknowledging that the Independent Commissioner had encouraged them to report the matter to police and confirming that they did not wish to report the matter at that time and that they were aware they could refer their complaints to the police at any time; and
- 1 victim resides overseas and advised the Independent Commissioner the victim did not intend to return to Australia. The victim informed the Independent Commissioner that the victim did not propose to report the complaint to the police having no wish to be involved in Court proceedings in Australia.

Criticism of the Church for failing to report any alleged offences to the police is based on the misplaced assumption that there have been cases that could have been reported.

16.9 Liaison with Victoria Police

The Church in Victoria has informal liaison arrangements in place with Victoria Police. When *Towards Healing* was introduced in Victoria, one of the original members of the Professional Standards Resource Group was a serving senior police member. He was appointed by Victoria Police to liaise with *Towards Healing*. Following his retirement from the force, a replacement was appointed by Victoria Police.

Similarly, the Independent Commissioners under the *Melbourne Response* liaise with the head of the Sexual Crimes Squad.

16.10 Reports to police in NSW

As noted above, the legislation regarding the reporting of offences to the police in NSW is different from that in Victoria. In New South Wales, where a complainant comes to *Towards Healing* and indicates that they do not wish to take their complaint to the police, a report of the complaint is made to the Child Protection and Sex Crimes Squad of the NSW police by the Professional Standards Office of *Towards Healing*. Information disclosing the identity of the victim is not provided to the police. Pursuant to a long-standing understanding between the Church and NSW Police, the police do not act on the information provided in a way that infringes the privacy of victims.

16.11 Ireland

On 18 July 2012, the Irish *Criminal Justice Act* came into operation.²⁹³ The Act provides for defences against a charge of withholding information where:

- A child or vulnerable person against whom the offence concerned was committed requests that details of the offence not be disclosed; or
- A parent or guardian of a child or vulnerable person against whom the offence concerned was committed (who lacks capacity) requests that details of the offence not be disclosed,

and the person who is accused of withholding information knew of and relied on that request.

16.12 Conclusion

The balance to be struck in regard to this difficult and sensitive issue will undoubtedly be an important question for this Inquiry. This Inquiry needs to weigh carefully the rights of the individual to privacy and choice and the rights of the community to punish criminal conduct.

As discussed throughout this Chapter, requiring all complaints to be reported to Victoria Police will neither address the needs of all victims nor respect their fundamental right to privacy.

It is through the courage of victims who come forward to the police, that offenders are convicted and imprisoned. Equally, however, many victims seek healing and anonymity. The Church in Victoria should, and does, encourage the reporting of crimes to the police. However, it is also the Church's view in Victoria that the decision to report or not to report an allegation to the police is a matter of choice for the individual victim.

The *Melbourne Response* and *Towards Healing* fill an important gap that a police investigation cannot, in circumstances including where the accused is deceased and there can therefore be no police investigation, and where the victim does not want to go through the process of a public trial or has already been to the police.

It is the Church's view that any legislative change must strike the appropriate balance between the important role of Victoria Police and the fundamental rights of victims.

²⁹³ As set out in Section 5.6.5.

Glossary

Abbreviation	Description
ACBC	Australian Catholic Bishops Conference
ACLRI	Australian Conference of Leaders of Religious Institutes
ANZATSA	Australia and New Zealand Association for the Treatment of Sex Abusers
Badgley Report	Christopher Badgley and Kathleen King, "Child Sexual Abuse: The Search for Healing"
BCEW	Bishops' Conference of England and Wales
CASA	Centre Against Sexual Assault
CDF	Congregation for the Doctrine of the Faith
CCCB	Canadian Conference of Catholic Bishops
CEOs	Catholic Education Offices
CEOM	Catholic Education Office Melbourne
CECV	Catholic Education Commission of Victoria
Charter	Charter of Human Rights and Responsibilities Act 2006 (Vic)
CICA	Commission to Inquire into Child Abuse (Ireland)
COPCA	Catholic Office for the Protection of Children and Vulnerable Adults (England and Wales)
CRA	Catholic Religious Australia
Crimes Act	Crimes Act 1958 (Vic)
CRV	Catholic Religious Victoria
Criminal Justice Act	Criminal Justice (withholding of information on offences against children and vulnerable persons) Act 2012 (Ireland)
CYPFA Act	Children and Young Persons (Further Amendment) Act 1993 (Vic)
CYF Act	Children Youth and Families Act 2005 (Vic)
DACI	Dublin Archdiocese Commission of Investigation
DEECD	Department of Education and Early Childhood Development
DHS	Department of Human Resources
Director	Director of Professional Standards (<i>Towards Healing</i>)
draft Children First Bill	Heads of the Children First Bill 2012 (Ireland)
Evidence Act	Evidence Act 2008 (Vic)
Framework	National Safe Schools Framework
Inquiry	Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations
Integrity in Ministry	Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia
IPLS	Integrated Professional Learning System
ISV	Independent Schools Victoria
LEAP	Law Enforcement Assistance Package
MCEETYA	Ministerial Council on Education, Employment, Training and Youth Affairs
NBCPCC	National Board for Child Protection in the Catholic Church in Ireland
NCPS	National Committee for Professional Standards
NOPS	National Office for Professional Standards (Ireland)
NRB	National Review Board (United States)

Glossary

Abbreviation	Description
OCYP	Office of Child and Youth Protection (United States)
PCP Committee	Victorian Parliamentary Crime Prevention Committee
PSRG	Professional Standards Resource Group
PVVC Inquiry	Protecting Victoria's Vulnerable Children Inquiry
PVVC Report	Report of the Protecting Victoria's Vulnerable Children Inquiry
Rogers Report	Rix Rogers, "Report of the Special Advisor to the Ministry of National Health and Welfare on Child Sex Abuse in Canada, Reaching for Solutions", June 1990
SARTs	Sexual Assault Response Teams
SST	Motu Proporio Sacramentorum sanctitatis tutela
John Jay Study	John Jay Study of the Nature and Scope of Sexual Abuse of Minors (United States)
VIT	Victorian Institute of Teaching
VLRC	Victorian Law Reform Commission
VOCAT	Victims of Crime Assistance Tribunal
VRQA	Victorian Registration and Qualifications Authority

Appendix 1

List of Orders, Congregations,
Societies operating in Victoria

Religious Institutes, Orders & Societies Victoria

Clerical Religious

Augustinian Fathers OSA
 Benedictine Fathers OSB
 Blessed Sacrament Fathers SSS
 Capuchin Franciscan Friars OFM
 Carmelite Friars O Carm
 Cistercian Monks OCSO
 Confraternity of Christ the Priest CCS
 Divine Word Missionaries SVD
 Dominican Friars OP
 Franciscan Friars OFM
 Missionaries of God's Love MGL
 Missionaries of the Sacred Heart MSC
 Missionary Society of St Columban SSC
 Missionary Society of St Paul & St James
 Order of Friars Minor Conventual OFM Conv
 Order of the Servants of Mary OSM
 Pallottines SAC
 Passionist Congregation CP
 Pauline Fathers OSPPE
 Paulists MSSP
 Redemptionist Congregation CSSR
 Resurrection Fathers CR
 Salesians of Don Bosco SDB
 Scalabrinian Fathers CS
 Society of Jesus SJ
 Society of St Paul SSP
 The Spiritans CSSp
 Vincentian Fathers CM

Religious Sisters

Antonine Sisters AS
 Augustinian Sisters ASMJ
 Basilian Chouerite Sisters
 Basilian Nuns OSBM
 Blessed Sacrament Sisters SSS
 Carmelite Nuns OCDM
 Congregation of St Brigid CSB
 Daughters of Charity DC
 Daughters of Divine Zeal FDZ
 Daughters of Our Lady of the Sacred Heart FDNCS
 Daughters of St Paul FSP
 Discalced Carmelite Nuns OCDM
 Dominican Sisters of Eastern Australia OP
 Dominican Sisters of Malta OP
 Dominican Sisters of Rose of Lima OP
 Faithful Companions of Jesus FCJ

Family Care Sisters FCS
 Franciscan Missionaries of Divine Motherhood FMDM
 Franciscan Missionaries of Mary FMM
 Holy Spirit Missionary Sisters SSpS
 Institute of the Blessed Virgin Mary IBVM
 Little Company of Mary LCM
 Little Sisters of the Poor LSP
 Missionaries of Charity MC
 Missionaries of Christ the King MChR
 Missionaries of God's Love MGL
 Missionary Franciscan Sisters MFIC
 Missionary Oblates of Mary Immaculate OMI
 Missionary Sisters Mary Queen of the World CMR
 Missionary Sisters of the Sacred Heart (Cabrini) MSC
 Missionary Sisters of the Sacred Heart MSC
 Missionary Sisters of Service MSS
 Missionary Sisters of St Anthony Mary Claret MC
 Missionary Sisters of St Peter Claver SSPC
 Passionist Sisters CP
 Poor Clare Colettines PCC
 Poor Sisters of Nazareth CSN
 Presentation Sisters PBVM
 Salesian Sisters FMA
 Sister Servants of Mary Immaculate SSMI
 Sisters of Charity RSC
 Sisters of Jesus Good Shepherd "Pastorelle" SJBP
 Sisters of Mercy RSM
 Sisters of Nazareth SON
 Sisters of Our Lady of Sion NDS
 Sisters of Our Lady of the Missions RNDM
 Sisters of St Joseph of Cluny SJC
 Sisters of St Paul de Chartres SPC
 Sisters of the Good Samaritan SGS
 Sisters of the Good Shepherd RGS
 Sisters of the Holy Angels CHA
 Sisters of the Holy Cross SHC
 Sisters of the Nativity SON
 Sisters of the Resurrection CR
 Society of the Sacred Heart RSCJ
 St. John of God Sisters SJG

Religious Brothers

Brothers of St John of God OH
 Christian Brothers CFC
 De La Salle Brothers FSC
 Marist Brothers FMS
 Oblate Apostles of the Two Hearts OATH

Appendix 2

List of Catholic Social Service providers

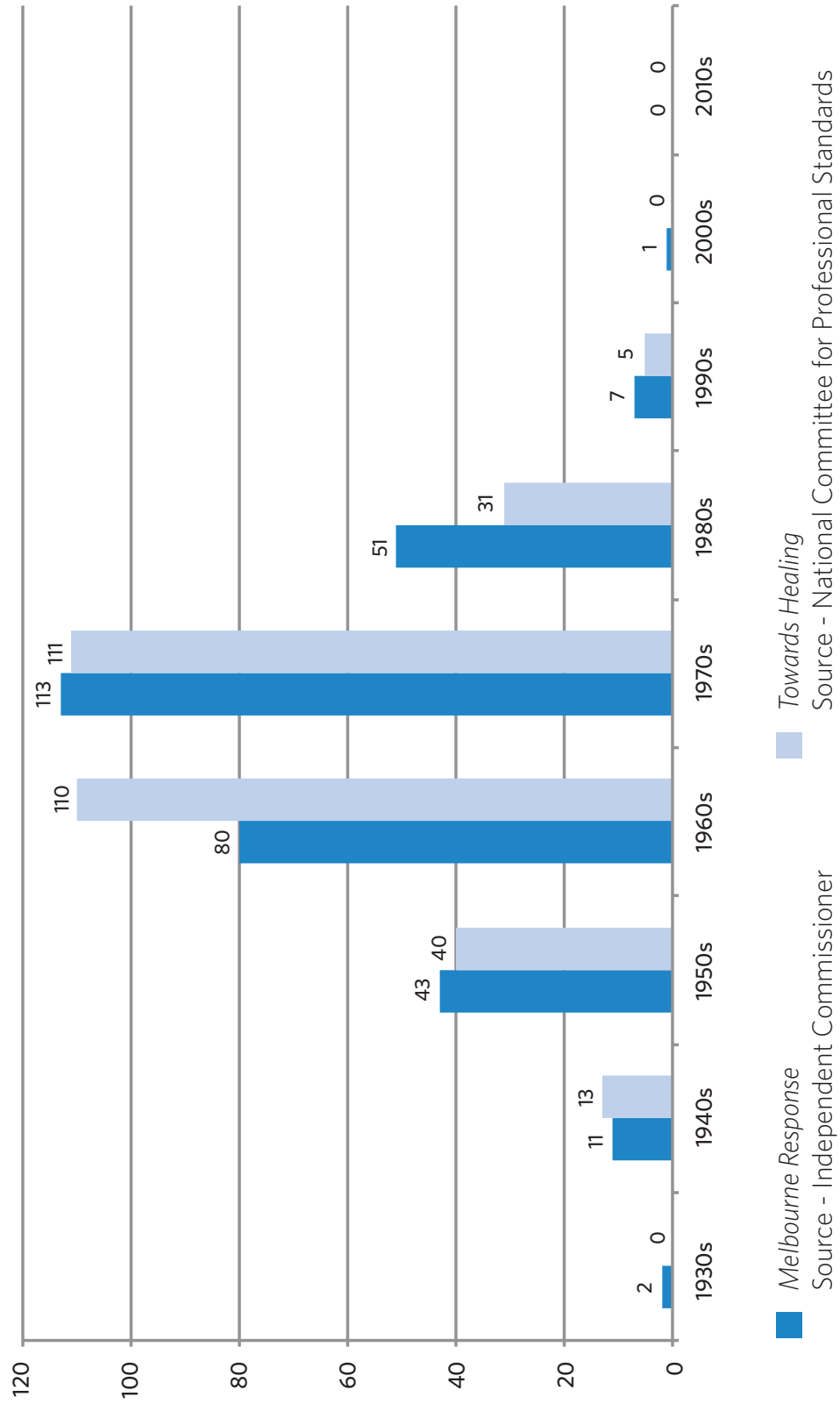
Catholic Social Services Victoria Organisations engaged in children's services

- CatholicCare Melbourne (Archdiocese of Melbourne)
- Centacare Ballarat (Diocese of Ballarat)
- Centacare Gippsland (Diocese of Sale)
- CentaCare Sandhurst (Diocese of Sandhurst)
- Don Bosco Youth Centre & Hostel (Salesians)
- Early Education Program for Hearing Impaired Children (lay organisation)
- Edmund Rice Camps (Christian Brothers)
- Edmund Rice Refugee & Community Services (Christian Brothers)
- Good Samaritan Inn (Good Samaritan Sisters)
- Good Shepherd Youth and Family Services (Good Shepherd Sisters)
- Jesuit Social Services (Jesuits)
- Larmenier Child and Family Centre (Sisters of Nazareth)
- MacKillop Family Services (Christian Brothers, Mercy Sisters and Sisters of St Joseph)
- Marillac (Daughters of Charity)
- McAuley Community Services for Women (Mercy Sisters)
- Rosies Oblate Youth Mission (Oblate Fathers)
- St Vincent de Paul Society (Lay organisation)
- Villa Maria (Lay organisation)

Appendix 3

Complaints by Decade of Incident Upheld Under the
Melbourne Response and Towards Healing

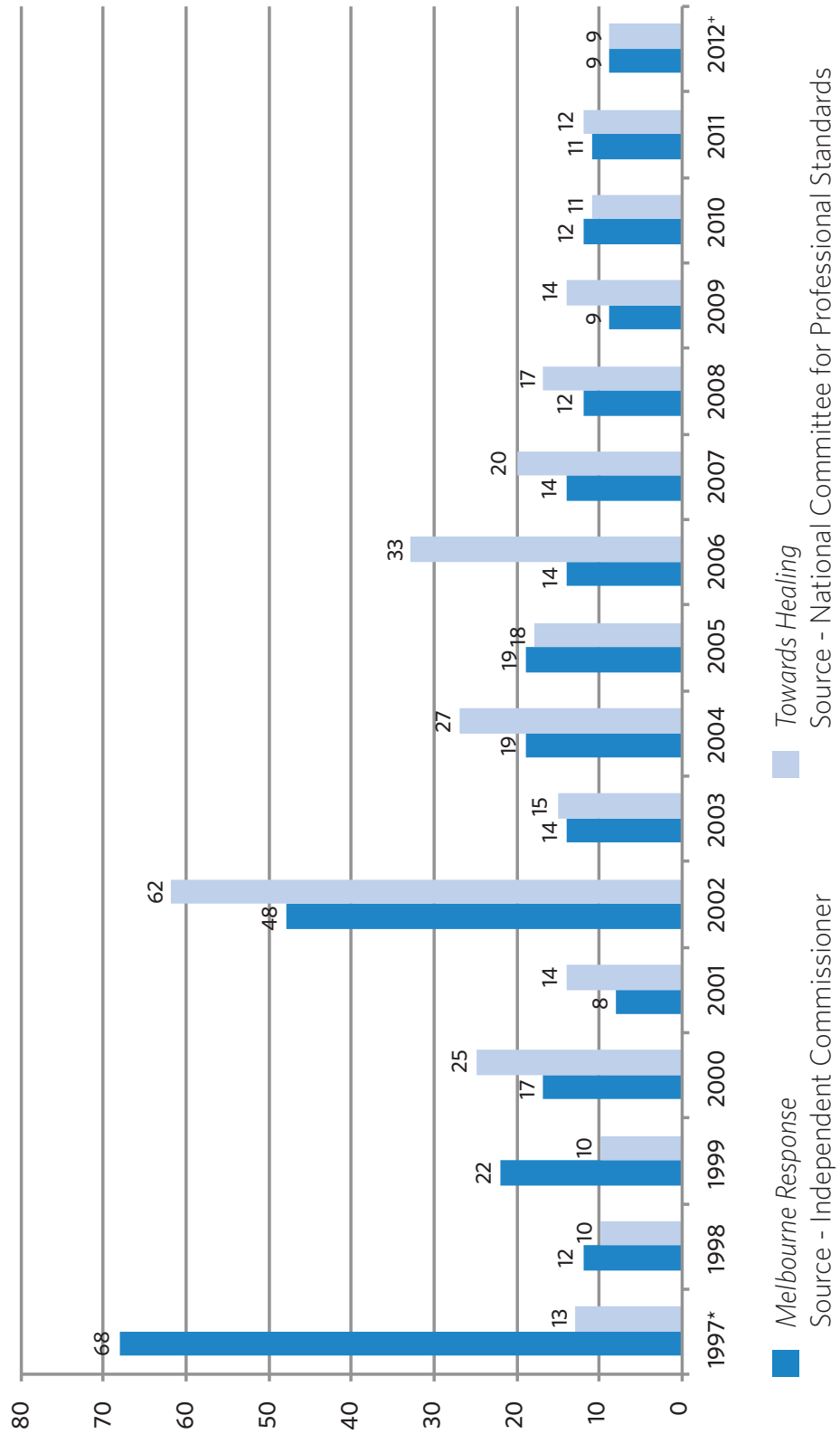
Upheld complaints of criminal abuse against children by decade of incident
(As at July 2012)



Appendix 4

Complaints Upheld by the *Melbourne Response* and
Towards Healing by Year of Complaint Made

Upheld complaints of criminal abuse against children
by year the complaint was made



* From October 1996 + To July 2012

Appendix 5

Chronology

Chronology of significant developments internationally and in Australia both in the Church and in civil society

Year	Country	Society	Catholic Church
1961	USA	"Battered child syndrome" identified by Dr. H. Kempe.	
1974	USA	<i>Child Abuse Prevention and Treatment Act.</i> State Mandatory reporting legislation introduced	
1975		International Women's Year.	
1979		International Year of the Child.	
1980	Canada	Committee on Sexual Offences against Children and Youth established.	
1981	Australia WA	Department of Community Welfare published " <i>Children in Limbo.</i> "	
1982	Australia VIC	Carney Committee review of the Victorian child welfare system commenced.	
1983	Ireland	Irish Association of Social Workers Conference on Incest. Department of Health published " <i>Non-Accidental Injury Guidelines.</i> "	
1984	Canada	" <i>Report of the Committee on Sexual Offences Against Children and Youths</i> " (Badgley Report).	
1984	USA		National Council of Catholic Bishops (NCCB) Resource, " <i>The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive Manner.</i> "
1984	Australia SA	South Australian Child Sexual Abuse Task Force established.	
1984	Australia NSW	NSW Child Sexual Assault Task Force established.	
1984	Australia VIC	Conclusion of the Carney Committee review of the Victorian child welfare system (commenced in 1982).	
1985	USA		The National Catholic Reporter published articles on clergy who had been accused of child sexual abuse.
1985	USA		NCCB meeting regarding clergy sexual abuse.
1985	Australia NSW	NSW Child Protection Council established.	
1985	Australia QLD	"Sturgess Report" into child abuse and neglect published.	
1986	Australia NSW	Media campaign, " <i>Child Sexual Assault: It's Often Closer to Home Than You Think.</i> "	

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Year	Country	Society	Catholic Church
1986	Australia SA	South Australian Government Task Force "Report on Child Sexual Abuse" published. South Australian Child Protection Council established.	
1986	Australia VIC	<i>Children's Court (Amendment) Act 1986.</i>	
1986	USA	<i>Children's Justice and Assistance Act.</i>	
1987	UK	The Cleveland Inquiry established.	
1987	Ireland	Department of Health published "Procedures for the Identification, Investigation and Management of Child Abuse."	
1987	Canada		Canadian Conference of Catholic Bishops (CCCCB) published "Policies and Procedures Regarding Complaints of Sexual Abuse."
1987	Australia NSW	<i>Child (Care and Protection) Act 1987.</i>	
1987	Australia WA	Exposé of child migration and child abuse.	
1988	UK	"Report of the Inquiry into Child Abuse in Cleveland 1987" published.	
1988	USA		Statement on child abuse by spokesperson for United States Catholic Conference (USCC).
1988	Canada	Amendments made to child sexual abuse provisions in the <i>Criminal Code</i> .	
1988	New Zealand	National Advisory Committee on the Investigation, Detection and Prosecution of Offences against Children, "A Private or Public Nightmare?"	
1988	Australia		Australian Catholic Bishops Conference (ACBC) established the Australian Catholic Bishops Conference Special Issues Committee Relating to Priests and Religious (Special Issues Committee).
1988	Australia VIC	Victorian Law Reform Commission "Report on Sexual Offences Against Children" concludes.	
1989	UK	<i>The Children Act 1989.</i> "Working Together under the Children Act 1989: A Guide to Arrangements for Inter-Agency Co-operation for the Protection of Children from Abuse" published.	
1989	Australia	Screening of documentary "Lost Children of the Empire."	Chairman of the Special Issues Committee distributed "Protocol for Dealing with Allegations of Criminal Behaviour."

Appendix 5

Year	Country	Society	Catholic Church
1989	Australia VIC	<i>Children and Young Persons Act 1989.</i>	
1989	Canada		CCCB Ad hoc Committee on Child Sexual Abuse established. Most Rev. James Hayes published "An open Letter to Canadian Catholics."
1989	United Nations	<i>Convention on the Rights of the Child</i> opened for signature and ratification.	
1990	Canada	" <i>Reaching for Solutions: The Report of the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada</i> " (Rogers Report). Media coverage concerning abuse at Mount Cashel orphanage in Newfoundland.	" <i>The Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy</i> " (Winter Report), St. Archdiocese of St. John's, Newfoundland.
1990	Australia		ACBC released " <i>Protocol for Dealing with Allegations of Criminal Behaviour.</i> "
1991	UK	" <i>The Pindown Experience and the Protection of Children: The Report of the Staffordshire Child Care Inquiry.</i> " " <i>Children in the Public Care: A Review of Residential Child Care</i> " (Sir William Utting). Inter-agency Guidelines published: " <i>Working Together Under the Children Act 1989.</i> "	
1991	Canada	" <i>Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints</i> " (Hughes Inquiry).	
1991	Australia NSW	" <i>Interagency Guidelines for Child Protection Intervention</i> " published.	
1992	UK	" <i>Choosing With Care: The Report of the Committee of Inquiry into the Selection, Development and management of Staff in Children's Homes</i> " (Warner Report).	Bishops Conference of England and Wales (BCEW) approved " <i>The Sexual Abuse of Children</i> ".
1992	Canada		" <i>From Pain to Hope, Report from the CCCB Ad Hoc Committee on Child Sexual Abuse.</i> " " <i>Breach of Trust/Breach of Faith: Child Sexual Abuse in the Church and Society: Material for Discussion Groups.</i> "
1992	USA		NCCB released " <i>Draft of Special Norms for Administrative Removal of a Cleric from the Clerical State.</i> " NCCB published " <i>Statement of principles for dealing with sexual abuse by clergy.</i> "

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Year	Country	Society	Catholic Church
1992	Australia	Screening of documentary " <i>The Leaving of Liverpool.</i> "	ACBC approved publication of " <i>Pastoral Statement on Child Protection and Child Sexual Abuse.</i> "
1993	USA		NCCB Ad Hoc Committee on Sexual Abuse established. NCCB " <i>Proposed Guidelines on the Assessment of Clergy and Religious for Assignment.</i> "
1993	Holy See-USA		Joint committee of experts to study situation in USA.
1993	UK Wales	<i>Sexual Offences Act.</i>	" <i>The Sexual Abuse of Children</i> " Discussion Paper of the BCEW.
1993	New Zealand		Bishops of Aotearoa -NZ Provisional protocol for dealing with complaints of abuse.
1993	Australia VIC	<i>Children and Young Persons (Further Amendment) Act 1993.</i> Mandatory reporting introduced in Victoria.	
1993	Australia SA	<i>Children's Protection Act 1993.</i>	
1994	Australia		ACBC established the Bishops' Committee for Professional Standards to revise the 1990 Protocol and address allegations against lay employees of the Church.
1994	Australia NSW	NSW Child Protection Council, " <i>Systems Abuse: Problems and Solutions.</i> " Royal Commission of Inquiry into the NSW Police Service (Wood Royal Commission) established.	
1994	Australia VIC	Victorian Parliamentary Crime Prevention Committee (PCP) holds inquiry into sexual offences against children and adults.	
1994	UK Wales	" <i>Child Abuse: Pastoral and Procedural Guidelines</i> " published by the BCEW.	
1994	Ireland		ICBC established an advisory committee.
1994	USA		NCCB, " <i>Restoring Trust</i> " Volume 1.
1995	Australia SA	" <i>Breach of Duty: A New Paradigm for the Abuse of Children and Adolescents in Care.</i> "	
1995	Australia VIC	PCP Committee tabled its Report, " <i>Combating Child Sexual Assault - An Integrated Model.</i> "	
1995	UK Scotland	<i>Children (Scotland) Act.</i>	

Appendix 5

Year	Country	Society	Catholic Church
1996	UK Scotland		Bishops' Conference of Scotland established a working party to advise the bishops. Report, " <i>Child Sexual Abuse</i> ."
1996	Australia VIC		Introduction of the <i>Melbourne Response</i> by the Archdiocese of Melbourne (October 1996).
1996	Australia	Children's Commission established.	The ACBC and the ACLRI wrote a Pastoral Letter reflecting the learning that had occurred and the recognition of the need for further learning in relation to sexual abuse. " <i>Towards Healing: Principles and Procedures in Responding to the Complaints of Sexual Abuse against Personnel of the Catholic Church in Australia</i> " announced.
1996	Australia WA	Legislative Assembly Select Committee into Child Migration, Interim Report.	
1996	Ireland		Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse, " <i>Child Sexual Abuse: Framework for a Church Response</i> ."
1996	UK	<i>Sexual Offences (Conspiracy & Incitement) Act 1996</i> .	
1996	UK Wales	" <i>Lost in Care: Report of the Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynne and Clwyd</i> ."	BCEW published " <i>Healing the Wound of Child Sexual Abuse, A Church Response</i> ."
1997	Australia		" <i>Towards Healing: Principles and Procedures in Responding to the Complaints of Sexual Abuse against Personnel of the Catholic Church in Australia</i> " commenced operation (March 1997).
1997	Australia NSW	Final Report of the Wood Royal Commission.	
1997	Australia TAS	<i>Children, Young Persons and their Families Act 1997</i> .	
1997	Australia QLD	" <i>Paedophilia in Queensland</i> ," Report of the Children's Commission.	
1997	Australia		" <i>Integrity in Ministry: A Document of Ethical Standards for Catholic Clergy and Religious in Australia</i> ." ACBC and ACLRI established Encompass Australasia.
1997	UK	" <i>People Like Us: The Report of the Review of the Safeguards for Children Living Away From Home</i> ."	
1997	UK	<i>Sex Offenders Act 1997</i> .	

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Year	Country	Society	Catholic Church
1998	New Zealand		<i>"Te Houhanga Rongo A Path to Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse by Clergy and Religious of the Catholic Church in New Zealand."</i>
1998	UK Northern Ireland	<i>"Children Matter: a Review of Residential Child Care Services in Northern Ireland."</i>	
1998	Ireland	<i>Protection for Persons Reporting Child Abuse Act 1998.</i> <i>Child Trafficking and Pornography Act 1998.</i>	
1998	UK	<i>Public Interest Disclosure Act 1998.</i>	
1998	Canada	<i>"Canadian Incidence Study of Reported Child Abuse and Neglect"</i> published.	
1998	Australia QLD	<i>"Report of Inquiry into Allegations of Misconduct in the Investigation of Paedophilia in Queensland"</i> (Kimmins Report).	
1998	Australia NSW	<i>Commission for Children and Young People 1998.</i> <i>Child Protection (Prohibited Employment) Act 1998.</i> <i>Children and Young Persons (Care and Protection) Act 1998.</i>	
1999	Australia NSW	Commission for Children and Young people replaced the Child Protection Council.	
1999	Australia QLD	Forde Report into the current and past administration of orphanages, reformatories and detention centers presented. <i>Child Protection Act 1999.</i>	
1999	UK Wales	<i>"Lost in Care: The Report of the Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974."</i>	
1999	UK	<i>Protection of Children Act 1999.</i> <i>"Working Together to Safeguard Children"</i> published.	
1999	Ireland	Department of Health published <i>"Children First – National Guidelines for the Protection and Welfare of Children."</i>	
2000	Canada	<i>"Restoring Dignity, Responding to Child Abuse in Canadian Institutions"</i> , Report of the Law Commission of Canada.	
2000	New Zealand		<i>Integrity in Ministry</i> adopted.

Appendix 5

Year	Country	Society	Catholic Church
2000	Australia QLD	Commission for Children and Young People replaced the Children's Commission.	
2000	Australia VIC	<i>Children and Young Persons (Appointment of President) Act 2000.</i>	
2000	UK	<i>Sexual Offences (Amendment) Act 2000.</i> <i>The Criminal Justice and Courts Services Act 2000.</i>	
2000	UK Scotland	<i>Care Standards Act 2000.</i>	
2000	UK Wales		BCEW established Independent Review Committee (Nolan Committee).
2000	Holy See		Meeting of members of Conferences of Bishops in Vatican.
2000	UK Northern Ireland	<i>"Inquiry into Residential and Secure Accommodation for Children in Northern Ireland."</i>	
2000	Ireland	<i>Commission to Inquire into Child Abuse Act 2000 (Laffoy Commission).</i> <i>Statute of Limitations (Amendment) Act 2000.</i>	
2001	Ireland	<i>Sex Offenders Act 2001.</i>	
2001	UK Scotland	<i>Regulation of Care (Scotland) Act 2001.</i>	
2001	UK Wales		BCEW, <i>"A Programme for Action, Final Report of the Independent Review on Child Protection in the Catholic Church in England and Wales."</i> <i>Lord Nolan Recommendations.</i>
2001	Holy See		Pope John Paul II, <i>Sacramentorum sanctitatis tutela.</i>
2001	New Zealand		<i>"Te Houhanga Rongo A Path to Healing"</i> revised.
2001	Australia	Senate Report, <i>"Lost Innocents: Righting the Record, Report on Child Migration."</i>	
2002	Holy See		Definition of a minor under Canon Law amended from 16 to 18 years and the limitation period for prosecuting a priest extended from five to ten years after the victim had turned 18 years of age.
2002	Ireland	<i>Residential Institutions Redress Act 2002.</i> <i>"Sexual Abuse and Violence in Ireland,"</i> Report. <i>"Catholic Church Commission on Child Sexual Abuse" (Hussey Commission) - stood down.</i>	

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Year	Country	Society	Catholic Church
2002	Australia		The Archbishops of Melbourne and Sydney issued a joint public statement in which they expressed their shared goal of moving "towards healing".
2002	Australia VIC	"Child Protection Outcomes Project" review initiated.	
2002	USA		Meeting of Pope John Paul II with US Cardinals. "Charter for the Protection of Children and Young People" published. "Essential Norms for Diocesan/Eparchial Policies dealing with Allegations of Sexual Abuse of Minors by Priests, Deacons and Other Church Personnel" published.
2002	UK Wales		Catholic Office for the Protection of Children and Vulnerable Adults (COPCA) established.
2003	Holy See		Pope John Paul II granted faculties to CDF with respect to Norms of <i>Sacramentorum sanctitatis tutela</i> .
2003	Ireland		Working Group on Child protection established. "Working with Children and Young People in the Catholic Church in Ireland" published. "Time to Listen: Confronting Child Sexual Abuse by Catholic Clergy in Ireland" published.
2003	UK	Lord Laming's report following the <i>Climbié Inquiry</i> published.	
2003	Canada	"Canadian Incidence Study of Reported Child Abuse and Neglect" published.	
2004	UK	<i>Children Act 2004</i> .	
2004	UK Wales		COPCA published the "National Policy for Responding to Allegations of Child Abuse in the Catholic Community."
2004	USA		"The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States" – The "John Jay Report" commissioned by the US Conference of Catholic Bishops.
2004	Australia WA	<i>Children and Community Services Act 2004</i> .	
2004	Australia VIC	"Victorian Law Reform Commission Sexual Offences: Final Report," tabled in Parliament.	
2005	Australia VIC	<i>Children, Youth and Families Act 2005</i> .	

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Year	Country	Society	Catholic Church
2005	Australia VIC	<i>Child Wellbeing and Safety Act 2005.</i>	
2005	Ireland	" <i>The Ferns Report</i> " published – Official Irish government inquiry into clerical sexual abuse in the Roman Catholic Diocese of Ferns in County Wexford, Ireland.	" <i>Our Children, Our Church</i> " published.
2005	Holy See		" <i>Criteria for the Discernment of Vocation with regard to Persons with Homosexual Tendencies in view of their Admission to the Seminary and to Holy Orders</i> " published.
2005	Canada	Amendments to the sexual abuse provisions in the <i>Criminal Code and the Canada Evidence Act.</i>	
2005	UK Wales		COPCA published the " <i>National Policy for Creating a Safe Environment for Children and Young People in the Catholic Church</i> ".
2006	UK Wales		COPCA published " <i>Healing the Wound: National Policy for the Catholic Church in England and Wales for the Support of Those who Have Suffered Abuse and Those Accused of Abuse</i> ".
2006	Ireland		The National Board for Safeguarding Children in the Catholic Church (NBSCCC) established.
2006	Australia VIC	Ombudsman Report " <i>Improving responses to allegations involving sexual assault</i> " tabled. <i>Crimes (Sexual Offences) Act 2006.</i>	
2007	UK Wales		COPCA published the " <i>National Policy on Cross Boundary Placements within England & Wales from abroad; and the National Policy on Clergy Supply and Testimonial of Suitability.</i> "
2007	New Zealand		" <i>Te Houhanga Rongo A Path to Healing</i> " revised.
2007	Australia NT	<i>Care and Protection of Children Act 2007.</i>	
2007	Canada		CCCCB published " <i>Orientations for updating a Diocesan protocol for the prevention of sexual abuse of minors and the pastoral response to complaints regarding abuse.</i> "
2008	Canada	" <i>Canadian Incidence Study of Reported Child Abuse and Neglect</i> " published.	
2008	Australia ACT	<i>Children and Young People Act 2008.</i>	
2009	Australia	COAG: " <i>Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020.</i> "	

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Year	Country	Society	Catholic Church
2009	Australia VIC	Ombudsman Report " <i>Investigation into the Department of Human Services Protection Program</i> " tabled.	
2009	Ireland	"Ryan Report," the Commission to Inquire into Child Abuse published. "Murphy Report" into the sexual abuse scandal in the Catholic Archdiocese of Dublin published.	
2010	Australia VIC		Archbishop Hart issued a Pastoral Letter on sexual abuse to the people of the Catholic Archdiocese of Melbourne.
2010	Vatican		Published a revised set of guidelines to respond to clerical abuse.
2010	Belgium		<i>Adriaenssens Commission</i> published report into clerical child abuse in Belgium.
2010	Germany		Investigation into sexual abuse by clergy members in the Regensburg Diocese in Bavaria.
2010	Austria	" <i>Abused, Ignored, Slandered: Victims of Church-related violence</i> " – Report published based on information provided to a hotline available to victims.	
2010	Ireland		Irish Episcopal Conference met with Pope Benedict XVI and Roman Curia to discuss child abuse. CCSS Limited (Towards Healing) established in response to wrongs done to the victims of abuse in the Catholic Church.
2010	New Zealand		" <i>Te Houhanga Rongo A Path to Healing</i> " further revised.
2011	Vatican		Published new guidelines, drawn up by Cardinal William Levada, on dealing with clergy sexual abuse cases.
2011	Ireland	" <i>The Cloyne Inquiry</i> " published - Investigation of the Diocese of Cloyne by the Irish government.	" <i>Towards Healing and Renewal</i> " published by the Bishops' Conference.
2011	Australia VIC		The Archdiocese of Melbourne released " <i>May our children flourish - a Code of Conduct for Caring for Children</i> ".
2012	Australia VIC	Report of " <i>Protecting Victoria's Vulnerable Children Inquiry</i> " published.	
2012	USA		" <i>Ten Year Report</i> " published by the National Review Board, commissioned by the US Conference of Catholic Bishops.

Appendix 5

Year	Country	Society	Catholic Church
2012	Ireland	<i>Criminal Justice Act 2012.</i> <i>Heads of Children First Bill 2012 (draft Children First Bill).</i>	
2012	Australia VIC	Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations.	

Appendix 6

Questions 11-17 of the Submission Guide -
Cross References to the Church's Submission

Questions 11-17 of the Submission Guide Cross References to the Church's Submission

11.1 What policies, protocols, frameworks and/or charters are currently in place in Victorian religious and secular non-government organisations to address child abuse within those organisations?

In 1996 the *Melbourne Response* was introduced into the Archdiocese of Melbourne. This is described in detail in Chapter 8. Also in 1996, *Towards Healing* was adopted. This is described in detail in Chapter 9.

A number of other policy and like documents are also in force, including Integrity in Ministry and Integrity in Service of the Church. These are discussed in Chapter 11.

The formation of priests and religious play close regard to these issues; see Chapter 12. The Catholic education sector has a range of measures in place which are discussed in Chapter 13. A number of additional measures also applicable are described in Chapter 14.

See Annexures 1, 5, 10, 11 and 14 for copies of the relevant documents.

11.2 What is the nature of the policy?

11.2.1 Is it proactive/reactive?

The suite of policies in place in Victoria incorporate both reactive and proactive policies designed to prevent abuse occurring and to respond when an allegation of abuse is made. They are discussed in detail in Chapters 8 to 14.

11.2.2 Is it publicly available (if so, how)?

Yes. All of the key documents have been published and distributed and are available online. As set out in Section 8.1, the *Melbourne Response* brochure is at www.cam.org.au and in Chapter 9, *Towards Healing* is at www.catholic.org.au. See Chapters 8 to 14 and Annexures 1, 2, 4, 5, 10, 11 and 12.

11.2.3 Is it time limited?

No.

11.3 Who is responsible for the policy? Is the policy internal or external to the governing bodies of the religious or other organisation?

The *Melbourne Response* and *Towards Healing* are processes implemented by the Catholic Church in Victoria, and both utilise independent people in their implementation. As set out in the answer to 11.1, the *Melbourne Response* applies to the Archdiocese of Melbourne and *Towards Healing* applies to the rest of the Church in Victoria. See Chapters 8 to 14.

11.4 How are alleged and proven offenders dealt with?

In serious cases, offenders are stood aside pending investigation. See Section 5.9 for the measures that can be taken under Canon Law. For a specific discussion of the process under the *Melbourne Response*, see Sections 8.4 – 8.6 and under *Towards Healing*, see 9.4.4. See also Chapter 11.

11.5 What accountability mechanisms apply to the organisation's policy? Is it open to outside scrutiny or review?

The *Melbourne Response* is led by professionals who operate independently of the Archdiocese. As a process of the Archdiocese established by the Archbishop, the *Melbourne Response* is subject to ongoing review and monitoring by him. See also Section 8.5.

In relation to *Towards Healing*, reviews are discussed in Section 9.7, The various reviews by Professor Parkinson are summarised in Section 9.8. *Towards Healing* was also considered by the Wood Royal Commission as set out in Section 9.10.

11.6 Is there an appeal process or dispute resolution process for victims or offenders?

The *Melbourne Response* and *Towards Healing* are themselves alternative processes to the Courts, in which the complaints are independently investigated. Both victims and offenders are free at all times to pursue their complaints through the civil and criminal courts. Offenders who are clergy have rights of appeal under Canon Law. *Towards Healing* contains specific provisions for a review of process and findings, see Section 9.7.

11.7 What supports are available to victims and other family members or significant others?

The supports available through the *Melbourne Response* are summarised in Section 8.2. It provides free counselling, treatment and support as detailed in Section 8.11, ex gratia compensation as detailed in Section 8.7, pastoral support as detailed in Section 8.12 and an apology as described in Section 8.9.

The core elements of *Towards Healing* are summarised in Section 9.3. Counselling, reparation, pastoral care, an apology and other assistance is available as detailed in Sections 9.1, 9.4 and 9.6.

11.8 Can victims seek independent support?

Yes. Victims are entitled to be accompanied by support persons of their choosing throughout both processes and are entitled to legal representation.

11.9 What is the role of counsellors in religious and other organisations?

Free counselling and support is available through both the *Melbourne Response* and *Towards Healing*. See Section 8.11 in relation to Carelink. The Catholic welfare sector is described in Section 14.4.

11.10 Do systems for addressing abuse within the organisation allow for monetary or other forms of compensation?

Yes. See Sections 8.7 and 9.6.

11.11 How is the compensation system/procedure run? Is it independent from the operations of the organisation? Is it overseen by a panel?

Under the *Melbourne Response*, compensation is assessed by the independent Compensation Panel which is described in Section 8.7. In *Towards Healing*, there is an independent facilitator as described in Sections 9.4.3 and reparation is available, see Section 9.6. See also Professor Parkinson's discussion in Sections 10.4 and 10.5.

11.12 Does the acceptance of one form of compensation prevent victims pursuing other forms of compensation?

If a settlement is reached involving a deed of release, yes. See Sections 8.7, 8.8 and 8.10 in relation to the *Melbourne Response*, and Sections 9.4.3 and 9.6 to *Towards Healing*. Neither process prevents victims from pursuing compensation from other sources such as the Victims of Crime Compensation Scheme.

12.1 What processes for internal investigation exist in religious and other organisations?

The *Melbourne Response* as described in Chapter 8 and *Towards Healing* as described in Chapter 9 are independent investigation processes to which clergy and religious are subject. Employment processes specific to the Catholic education sector are described in Chapter 13. Additional processes including those in the welfare sector as set out in Chapter 14.

12.2 Have allegations of child abuse been reported to police when the organisation is made aware of them?

All complainants are encouraged to take their complaint to the police and are assisted in doing so. Where the complainant declines to go to the police their confidentiality is respected. See Sections 8.4, 8.13, 9.4.4, 9.5 and Chapter 16.

12.3 What processes are in place for reporting cases of alleged child abuse to the police?

All complainants are encouraged to take their complaint to the police and are assisted in doing so. Where the complainant declines to go to the police their confidentiality is respected. See Sections 8.4, 8.13, 9.4.4, 9.5 and Chapter 16.

12.4 In what circumstances, if any, would the alleged abuse not be reported?

Where the victim declines to do so despite having been encouraged to do so, where the abuse has previously been reported and where the alleged offender is deceased at the time the complaint of abuse is made. See Sections 8.4, 8.13, 9.5 and Chapter 16 and particularly Section 16.6.

13.1 In what ways are religious laws and procedures used to address abuse within the organisation?

When abuse is alleged, the Code of Canon Law is invoked to stand the accused aside where appropriate. Where criminal abuse is established, Canon Law is again invoked in removing the offender from Ministry. See Sections 4.2 and 5.9.

13.2 Have internal systems of investigation discouraged reporting of criminal acts to the police?

No. See Sections 8.4, 8.13, 9.4.4, 9.5 and Chapter 16.

13.3 Have internal systems of redress discouraged or prevented civil legal action being taken by victims?

No. The *Melbourne Response* and *Towards Healing* include alternative dispute resolution processes that give victims an opportunity to obtain compensation or reparation without going to court. If they wish to accept an out of court settlement then a Deed of Release is often signed. See Section 8.10 and 9.4.3. These settlements do not restrict any criminal legal process being taken.

13.4 Under what circumstances is it appropriate for religious organisations to apply internal sanctions to offenders, such as expulsion or laicisation [defrocking]?

See Section 5.9 for an explanation of the actions that can be taken under Canon Law. See also Sections 8.6 and 9.4.4.

13.5 Have the legal structures used by religious bodies to manage their affairs and their assets acted to discourage or prevent civil legal action being taken by victims against offenders?

No. See Section 10.6.

13.6 Should mandatory reporting of cases of alleged criminal abuse be extended to ministers of religion?

Yes, as set out in Chapter 15, the Church in Victoria supports the extension of mandatory reporting under the *Children, Youth and Families Act 2005* (Vic) to ministers of religion and other religious personnel, with an exemption for information received during the rite of confession.

13.7 To what extent should the reporting of suspicions of abuse be circumscribed by laws, customs and ethical codes of religions? (For example, should the sacrament of the Catholic confessional remain sacrosanct in these circumstances?)

There should be no interference with the rite of confession, for the reasons set out in Section 15.4.

13.8 What consequences may flow from the extension of mandatory reporting to ministers of religion?

See Chapter 15.

13.9 What procedures do religious and other organisations have in place to ensure the suitability of employing people in the organisation who work with children?

See Section 14.2.

13.10 Are these in addition to those required to be undertaken by state law?

See Chapters 13 and 14.

13.11 How is the Working with Children Act 2005 applied in the context of ministers of religion?

See Sections 14.2 and in relation to formation, 12.4 and 12.7.

13.12 Are new laws required to more effectively address the institutional abuse of children?

The Church sees this as a matter for the Inquiry to determine. The Church's submissions regarding reforms to mandatory reporting and the issue of reporting of offences to the police without consent of the victim are set out in Chapters 15 and 16.

- 13.13 Should officials in religious and other organisations be held criminally responsible for the actions of offenders of child abuse in their employ or for whom they have responsibility? Under what circumstances should this apply?**

Clergy are not employees. So called "officials" ought not be held responsible for matters about which they were unaware. Beyond that, the ordinary principles of vicarious liability should apply.

- 14.1 Are there formal or informal practices or guidelines for the personnel accused, suspected or convicted of criminal or other abuse?**

Yes. See Chapters 5 (in particular 5.9), 8, 9, 11, 13 and 14.

- 14.2 How should cases be dealt with when there is suspected abuse but insufficient evidence?**

In accordance with the *Melbourne Response, Towards Healing* and the principles of natural justice. See Chapters 8 and 9.

- 14.3 How do religious and other organisations protect victims when alleged offenders have not been charged or convicted of a criminal offence?**

In accordance with the *Melbourne Response* and *Towards Healing*. See Chapters 8 and 9.

- 15.1 Does the organisation maintain comprehensive records data on the incidence and prevalence of abuse against children in the organisation? If so, are such records publicly available?**

Each of the *Melbourne Response* and *Towards Healing* maintain records. Each Diocese, Order, Congregation, Society and employer maintain records in relation to individual incidents. These are not publicly available although the Church periodically publishes data regarding the incidence of abuse. See in particular Appendices 3 and 4.

- 15.2 Do organisations share information regarding proven or suspected cases of abuse to other agencies even in cases where it is not compelled to do so (for example, schools, Department of Human Services)? What confidentiality/privacy considerations flow from this?**

The Church complies with the law, including the obligations of the *Privacy Act*.

- 15.3 Do religious organisations inform the laity and other members of the religious or wider community about abuses committed by its members? Should it do so?**

This depends on the circumstances. In the case of a parish priest who is placed on administrative leave, a public announcement is made. Criminal convictions of clergy are commonly reported in the media.

- 15.4 How can the wider community be informed about child abuse/child protection issues or suspicions?**

The Church sees this as a matter for the Inquiry to determine. See Chapter 6.

- 16.1 Are there education or prevention programs/policies with regard to the abuse of children and other vulnerable people in religious and other organisations?**

Yes. In addition to the *Melbourne Response* (Chapter 8) and *Towards Healing* (Chapter 9), Integrity in Ministry and Integrity in the Service of the Church, as discussed in Chapter 11, the formation program for priests and religious (Chapter 12), the processes in place in the Catholic education sector (Chapter 13) and the additional proactive and preventative measures discussed in Chapter 14.

- 16.1.1 What type of programs? Are they one-off or ongoing?**

See above

- 16.1.2 Who is responsible for developing the programs?**

See above

- 16.1.3 Are these programs internally/ externally run? Or both?**

Both. See above

- 16.1.4 Who attends the education programs? Is it compulsory?**

See above

- 16.2 For organisations responsible for the accreditation of ministers of religion, do the curricula include training regarding sexual and other forms of abuse (for example, at seminaries)?**

Yes. See Chapter 12.

- 16.3 Have these programs been evaluated? To what extent have they been successful in addressing or raising awareness of these forms of criminal abuse?**

There have been various evaluations. The decline in the incidence of reported abuse since the 1980s as detailed in this submission hopefully indicates that the programs are succeeding.

- 16.4 Does the organisation's framework or policy have provisions or guidelines for proactively encouraging/facilitating the reporting of criminal (or other) abuse of children by people within the organisation? Are new laws required to more effectively address the institutional abuse of children?**

As to the provisions for proactively encouraging or facilitating the reporting of abuse, yes. See response to 12.2 above. On the question of new laws, refer to the submissions made in Chapters 15 and 16.

- 17.1 Do any formal/written protocols exist between religious/non-government organisations and Victoria Police?**

As detailed in Sections 8.13 and 16.9, such a protocol has been sought.

- 17.2 Are Victoria Police guidelines and procedures for investigating child abuse consistently applied across religious or other organisations? Are there any guidelines specific to the investigation of ministers of religion?**

The Church is unaware of any specific police guidelines relating to the investigation of ministers of religion.

- 17.3 Does Victoria Police have liaison officers that are dedicated to working with religious organisations on cases of criminal abuse? If not, should there be?**

See Section 8.13, 16.7 and 16.9. The Church is strongly supportive of such liaison arrangements.

- 17.4 Do religious and other organisations have any formal protocols with the Department of Human Services? If not, what form should they take?**

See Sections 13.3, 13.5 and 14.4.

- 17.5 Are there formal or informal protocols or relationships between religious and other organisations and non-government bodies, such as CASA? If not, what form should they take?**

Any such relationship would depend on the ability of the other party to provide a timely and effective response at no cost to victims.

- 17.6 Are there relationships or liaisons between religious and other organisations and victims advocacy groups?**

Some informal liaison exists, particularly in the context of some such groups referring victims to the *Melbourne Response and Towards Healing*.

- 17.7 Do the organisations network with religious and other organisations to address abuse? For example, interfaith bodies?**

Yes, see Section 14.6.

