Submission to the Parliamentary Inquiry into the handling of child abuse by religious and non government organizations.

Submitted by Ryan Carlisle Thomas Lawyers
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Ryan Carlisle Thomas is a plaintiff law firm with 21 offices and 140 employees across the Victoria. We have acted for over 1,000 former residents of children's homes and wards of the state who allege they were abused in care. We have also pursued claims on the Irish Residential Institutions Redress Fund and also Redress Funds set up in Western Australia, Queensland and Tasmania which were established to compensate children abused in care.

We act for both child and adult victims of clerical abuse and have investigated and pursued claims against the Catholic Church and its religious orders, the Salvation Army, the Anglican Church, the Uniting Church, the Mormon Church, the Lutheran Church etc.

We are currently investigating and pursuing claims on compensation funds set up in the Netherlands and Germany to compensate victims of Catholic clerical abuse.

We act for members of the Australian Defence forces who have been victims of sexual abuse. We also act for individuals who have been sexually abused by relatives and close associates.

We have made submissions to the Senate Inquiry into Forgotten Australians and Angela Sdrinis has appeared before the Senate Committee. Angela Sdrinis is a regular speaker and contributor on the topic of institutional and clerical abuse.

SUBMISSION PREPARED BY RYAN CARLISLE THOMAS LAWYERS
PART "A"

Ryan Carlisle Thomas has been consulted by over 1,000 former wards of the state who allege they were abused in care. The focus of this submission is on abuse experienced by children in religious and non government children's homes.

This submission is presented in three parts. Part A which deals with the legal and evidentiary issues relating to the handling of abuse allegations. Part B which is not for publication and contains a summary of allegations of abuse and complaints in homes run by religious and non government organisations, where we have been authorised by our clients to provide this information. Part C, which is also not for publication, consists of over 300 statutory declarations made by our clients, again where we have been authorised to provide these, outlining their experiences in care and their complaints of criminal physical and/or sexual assault.

It should be noted that we have prepared over 1,000 statutory declarations of people who allege they have been abused in care. Please also note that we have not included in this submission statements which contain allegations of abuse which do not involve religious and non government organisations or where we have not been authorised to use this material in government submissions.

Whilst the focus of this Inquiry is on how complaints of abuse have been dealt with and the systems that were in place for dealing with complaints, for many of our clients there was no point in complaining as it was understood by even the youngest of victims that complaints were unlikely to be acted upon. Indeed, the overwhelmingly common response to complaints of abuse was rather that the perpetrator was protected and the victim punished.

In other words, the problem with many of the religious institutions and non government organisations which ran homes is that there were no systems for receiving, investigating, and responding to complaints. Moreover, there was no apparent system of supervision by the State that was aimed at encouraging and dealing with complaints of abuse.

The allegations contained in the attached statements are illustrative of the need for the implementation of complaint handling systems that are comprehensive, accessible, and responsive to complainants' needs.

Whether changes to law or to practices, policies and protocols in such organisations are required to help prevent criminal abuse of children by personnel in religious and non-government organisations and to deal with allegations of such abuse and whether changes to law or to practices, policies and protocols in such organisations are required to help prevent criminal abuse of children by personnel in such organisations and to deal with allegations of such abuse.

We note that there have been 3 Senate reports into children abused in care[1] and that the vast majority of the recommendations in these reports have yet to be implemented[2]

We also note that the Government's response to complaints of abuse does not form part of the terms of reference of this Committee. This is a matter of concern. Whilst we note that the Cummins Report[3] has dealt with today's child protection system, a thorough investigation of past abuse allegations as against the State has not been undertaken. We submit that such a review is required. "Those who cannot learn from history are doomed to repeat it."

The reason why an independent inquiry into the handling of complaints of criminal abuse in children's homes is required is because current systems as referred to below have meant that despite the best efforts of individual claimants and their lawyers, perpetrators of abuse and those who concealed their activities are unlikely to be brought to justice unless Committees like this one and/or a Royal Commission are tasked to investigate the allegations in a comprehensive and holistic manner.

This is because the legal barriers to claimants pursuing claims for compensation and/or criminal prosecution are significant and contribute to the sense of rage and powerlessness that many victims experience when trying to deal with the crimes against them.

Barrier 1 - Limitation Periods

The nature of criminal abuse of children, particularly sex abuse, is that it occurs behind closed doors. Child victims of sexual and physical abuse at the hands of adult authority figures will normally take a long time to feel sufficiently "safe" to report the abuse and/or to have the emotional fortitude to do so. History, as documented in numerous investigations and reports both here and overseas, also shows us that child victims who do complain, particularly against a cleric or member of a Church, often find that the perpetrator is protected and the victim blamed.

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[1] Human Rights and Equal Opportunity Commission, Bringing Them Home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (April 1997), Reconciliation and Social Justice Library
http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc/stolen/prelim.html
Senate Community Affairs Reference Committee, Lost Innocents: Righting the Record - Report on Child Migration (30 August 2001), Parliament of Australia, Senate Website.
http://www.aph.gov.au/Senate/committee/clac_ctte/completed_inquiries/1999-02/child_migrat/report/index.htm .
Senate Community Affairs Committee, Forgotten Australians: A Report on Australians who experienced institutional or out-of-home care as children (30 August 2004), Parliament of Australia, Senate Website.
http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2004-07/inst_care/report/

[2] http://www.google.com.au/#hl=en&site=&source=hp&q=implemenation+of+senate+report+forgotten+australians&btnK=Google+Search&oq=implemenation+of+senate+report+forgotten+australians&gs_l=hp.12...954.16925.0.18480.73.63.8.1.1.1.464.7133.34j10j15j1j1.61.0.les%3B..0.0...1c.1.PpUPOAxw8u4&bav=on.2,or.r_gc.r_pw.&fp=f4486f8bd8f63c53&biw=1364&bih=671

[3] http://www.childprotectioninquiry.vic.gov.au/report-pvvc-inquiry.html

Unfortunately, delay can mean that claims for compensation are unlikely to be able to proceed. This is because limitation periods apply in relation to all civil legal causes of action.[4] In general, a minor who suffers injury has 6 years from the date of injury in which to bring a claim for compensation. For people who were sexually abused as adults the limitation period is effectively 3 years from the date of the incident.

Recognition of the unique nature of the effects of childhood sexual abuse resulted in the introduction of amendments to the Limitations of Actions Act in 2003. Essentially, these changes apply where the claimant was injured as a minor by "close relatives or close associates", and generally extend the limitation period to the time the claimant turns 31 years of age. Further, where the claimant's injuries were not "discoverable" until after the claimant turned 25, the changes operate to extend the limitation period to 6 years from the date the claimant's injuries became "discoverable". Further, time from the usual 3 years from the date of the discoverability of the cause of action (s27 D) to up to 12 years from the date the claimant turned 25 (27I)

However, it remains unclear whether these 2003 amendments apply where the abuse occurred prior to 2003. In a matter of **AM v KB[5],** Kaye J, found that the extended limitation period applied, notwithstanding that the events had occurred prior to the introduction of the amended Act.

Kaye J referred to the Explanatory Memorandum to the Wrongs and Limitation of Actions Act (Insurance Reform) Act 2003 which stated:

"Section 27I protects the interests of minors where there is a close relationship that may prevent a parent or guardian from bringing legal proceedings on behalf of the minor. This section refers to a minor in this situation as the 'victim' for the sake of clarity. This section provides that –

- where a parent or guardian of a victim is the potential defendant; or
- where the potential defendant is a close associate of a parent or guardian;

The limitation period runs from the later of the following two events:

- the date the victim turns 25 years of age; or
- when the cause of action is actually discoverable by the victim.

The long-stop limitation period for the cause of action is 12 years from when the victim turns 25 years of age. It is considered that by the age of 25 years the plaintiff will have had a reasonable time to be free of the influence of the parent, guardian or potential defendant before having to commence the proceedings."

Kaye J went on to say, "in my view, properly construed, s 27I(1) provides that, in the circumstances therein prescribed, the cause of action is barred either, under sub-paragraph (a), within six years of when the victim turns 25 years of age, or within six years of when the cause of action is actually discoverable by the victim, whichever is the later. Section 27I(1)(b) has the effect that the final date of that period of limitation shall be 12 years from the date upon which the victim turns 25 years of age."

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[4] Limitations of Actions Act 1958
[5] AM v KB [2007] VSC 42

However, this reasoning was not followed by Osborne J, in a matter of GGG v YYY[6]. Osborne J discussed the current legislation in relation to a claim regarding events that had occurred prior to 21st May 2003 when the Limitations of Actions Act was amended and the current arrangements were introduced.

In particular, Osborne J referred to s 27(N)(4) which states:".....nothing in Division 2 operates to extend a period of limitation applicable to a cause of action in relation to an act or omission that occurred before 21 May 2003 to a period longer than the period of limitation that would have applied to the cause of action if this Part had not been enacted."

Osborne J, found that the effect of s 27N(4) was that the limitation period provided in s 27I is restricted to cases in which the abuse occurred after 2003, and that the plaintiff's action in that case was statute-barred from 3 April 1990.

We submit that it cannot have been the intention of Parliament to limit the amendments to the Limitation of Actions Act to events which occurred after 2003 given that the Act was amended specifically in recognition that an extended limitation period was generally appropriate in cases of childhood sexual assault.

The Senate in the Forgotten Australians report reviewed the barriers posed by Statutes of Limitation throughout Australia and recommended that State Governments review the effectiveness of the South Australian law and consider amending their own statutes of limitation legislation to achieve the positive outcomes for conducting legal proceedings that have resulted from the amendments in South Australia. [7]

Section 48 of the South Australian Limitations of Actions Act 1936, provides for an extension of time being granted if proceedings are issued within 12 months of the plaintiff becoming aware of a "material fact". The South Australian legislation is generally regarded as containing the most generous provisions to enable plaintiffs to proceed with their claims out of time.

Pursuant to subsection 3, a fact is not regarded as 'material" unless it forms an essential element of the Plaintiff's cause of action or unless it would have major significance on an assessment of the plaintiff's loss.

Recommendation 1:

a) That the Committee should make recommendations to Parliament that the transitional provision s 27N(4) of the Limitations of Actions Act 1958 are removed.

b) Further that the Limitations of Actions Act be reviewed generally as proposed by the Senate report with a view to assisting claimants in past sexual abuse claims in proceeding with claims out of time.

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[6] GGG v YYY [2011] VSC 429

[7] (http://www.cyf.vic.gov.au/__data/assets/pdf_file/0006/16728/forgotten_australians_report.pdf

Barrier 2 – Vicarious Liability

Churches and other entities who are sued for sexual assaults perpetrated by clergy and/or staff members can seek to avoid liability by arguing that they cannot be held liable for the intentional or illegal actions of employees.

Further, even though employers can be held vicariously liable for the negligent conduct of their employees, many churches argue that priests and religious are not "employees" and that the church cannot therefore be held to be vicariously liable for their actions. The High Court in Australia has considered the employment relationship between priests and churches. [8] The High Court did not in the end have to finally determine this point although it did say that a religious association did not preclude an employment relationship.

In a recent case in the UK, the Catholic Church argued it could not be held vicariously liable for the conduct of a priest who had been accused of sexual assault. There were two issues in this case, the first being whether the sexual assault could be said to have occurred within the scope of employment. The second issue was the actual relationship between the priest and the church and whether it could be said to be an employment relationship.[9] At first instance, it was found that the church had sufficient control over the priest so that it could be held vicariously liable for the priest's actions. The church appealed this decision and the Appeal was dismissed. The Court of Appeal said that the real test was whether the relationship of bishop and parish priest was so close in character to one of employer and employee so that it was just and fair to hold the employer vicariously liable.[10] The Portsmouth Diocese applied for leave to appeal to the Supreme Court but this was refused.

This UK decision is not binding on Australian courts and as referred to above, the High Court has left open the issue on whether priests can be regarded as employees.

On the other issue, namely whether an employer can be held liable for the intentional or illegal conduct of an employee, the High Court has considered the extent to which authorities could be liable in negligence where there was no allegation of fault by the authority but where injury had occurred as a result of the misconduct of an employee. The High Court found that a non delegable duty of care did not extend to illegal conduct or conduct where an employee was pursuing a "frolic of their own".[11]

However, the Court did leave open the question as to whether or not an employer could be held vicariously liable for intentional and/or illegal acts. Gaudron J held in the matter of Lepore, that where there is a close connection between what was done and what that person was engaged to do, vicarious liability might arise and an employer may be estopped from denying liability for the deliberate criminal acts of an employee. [12]

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[8] *Ermogenous v Greek Orthodox Community of SA Inc* [2002] HCA
[9] JGE v The Trustees of the Portsmouth Roman Catholic Diocesan Trust [2011] EWHC 2871 QB
[10] [2012] EWCA Civ 938
[11] *New South Wales v Lepore; Samin v Queensland; Rich v Queensland* [2003] HCA 4
[12] Dr A Morrison RFD SC paper on "Claims Against Religious Institutions" for Australian Laywers Allicance NSW State Conference, 23-24.3.12.

A recent Court of Appeal decision in Victoria, Blake v J R Perry Nominees,[13] is less helpful. In this case, an employee was injured by a fellow employee who whilst he was mucking around, struck another worker hard to the back of the knees. On the facts of this case, it was found that the employer was not liable for the intentional act of its employee.

The uncertainty regarding whether priests are employees and whether employers can be held vicariously liable in claims involving intentional acts and in particular, sexual abuse can only be resolved by legislative amendment so that priests and religious are "deemed' to be employees. Further a reverse onus of proof should be introduced whereby where a plaintiff proves facts from which a court could conclude that an employee has committed acts of sexual assault against a child, the employer should be deemed liable unless it can otherwise be shown that all appropriate steps were taken by the employer to protect the victim from the sexual assault. Reverse onus of proof provisions can be found in anti-discrimination and other legislation.[14]

Recommendation 2:

That the Wrongs Act 1958 be amended to provide:

a) That persons in religious orders notwithstanding any other law be deemed to be employees of the religious order with which they are associated for the purpose of the law of negligence insofar as the relevant claim in negligence relates to any matter arising in or in connection with the provision by a religious order of care, education, treatment, accommodation, religious observance, or social activity ("vulnerable circumstances") to a vulnerable person. That "vulnerable persons" be broadly defined to extend not only to the young or elderly or persons with disabilities but to persons being vulnerable by reason only of their religious beliefs.

b) That religious orders have a non-delegable duty to take reasonable and proportionate measures to ensure that so far as possible vulnerable persons in vulnerable circumstances are not subjected to abuse whether physical, sexual, mental or emotional.

c) That it is not a defence to a claim in negligence against a religious order that the religious order is not vicariously liable for the conduct of an employee, whether a deemed employee under 1. above or otherwise, in circumstances where the conduct alleged occurred in vulnerable circumstances unless it establishes that it has discharged the duty imposed by 2. above.

Barrier 3 – Religious Organisations and the "Ellis" Defence

In a case heard by the Court of Appeal in NSW, the Catholic Church argued that there was no legal entity that could be sued by Mr. Ellis in relation to his alleged sexual abuse at the hands of a

[13] Blake v J R Perry Nominees [2012] VSCA 122
[14] *Equal Opportunity Act s15 and ss 109 -110*

priest. [15]

The Catholic Church has organized its affairs so that the only legal entity that exists within the Church is the Roman Catholic Church Property Trust. The Church's argument was that, as this legal entity played no role in the oversight or appointment of priests, it could not be sued in a claim for clerical sexual abuse. The Church won these arguments in the Court of Appeal. Mr Ellis lodged an appeal with the High Court. Mr. Ellis' counsel put the following to the court:

> "If the Court of Appeal's decision is correct, then the Roman Catholic Church in NSW has so structured itself as to be immune from suit other than in respect of strictly property matters for all claims of abuse, neglect or negligence, including claims against teachers in parochial schools..... That immunity, they say, extends to the present day in respect of the parochial duties of priests. We say such an immunity would be an outrage to any reasonable sense of justice and we say it is wrong in law."[16]

Unfortunately, the High Court disagreed and refused Special Leave.

As pointed out by Mr Ellis' counsel, the "Ellis" defence, if relied on by a church, can mean that not only sexual abuse allegations can be defeated in the Courts but that claims for injuries occurring in school yard accidents and other school incidents can effectively be blocked.

Even though the Catholic Church has been most pilloried for the use of this defence, the Uniting Church in Victoria also routinely relies upon it. Until recently the Salvation Army in Victoria also relied on the defence but in about 2010 the Salvation Army decided that it would no longer rely on the "Ellis" defence in cases of past sexual abuse. However, it appears that the Salvation Army remains an exception and Parliament should ensure that churches and religious institutions cannot hide behind a "corporate veil."

In New South Wales, the Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2011 has been introduced as a Private Member's Bill by the Greens' David Shoebridge. This is an Act "to amend the Roman Catholic Church Trust Property Act 1936[17] to provide for the ability of victims of sexual abuse where the abuser is found to be a member of the Catholic clergy and/or another official and/or officer in the Church to satisfy judgments awarded against such abusers as a judgment debt payable from the assets of the Trust."

Recommendation 3:

a) That the Roman Catholic Trusts Act 1907, The Salvation Army (Victoria) Property Trust Act 1930, the Uniting Church in Australia Act 1977 and all other Acts which deal with the incorporation of churches and/or the establishment of church property trusts be reviewed with a view to establishing that these entities can be sued in all matters arising in or in

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[15] *The Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis & Anor* [2007] NSWCA 117

[16] *Ellis v The Trustees of the Roman Catholic Church for the Archdiocese of Sydney* [2007] HCA Trans 697.

[17] http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/d2117e6bba4ab3ebca256e68000a0ae2/73cc52b622faad69ca25790c0012c745?OpenDocument

connection with the provision by these institutions of care, education, treatment, accommodation, religious observance and/or social activity and not just in relation to property trust matters.

b) That in recognising the difficulty that applicants have in taking civil action against unincorporated religious or charitable organisations, the Government examine whether it would be either an appropriate or a feasible incentive to incorporation, to make the availability of tax concessions to charitable, religious and not-for-profit organisations dependent on, or alternatively linked to, them being incorporated under the corporations act or under state incorporated associations statutes.[18]

Barrier 4 – Absence of Mandatory Reporting Requirements

The mandatory reporting requirements are found in the Children, Youth & Families Act 2005. The following are classified as 'mandatory reporters' under s.182:

-registered medical practitioner
-nurses or midwives
-teachers and principals
-police officers
-child care, youth, social and welfare workers (with secondary qualifications)
-youth, justice or parole officers
-registered psychologists

Pursuant to ss 184 and 162, a report must be made if the mandatory reporter forms a "belief on reasonable grounds that a child is "in need of protection" which includes if the child has suffered, or is likely to suffer, significant physical, sexual, emotional and/or psychological harm and/or the child's physical development or health has been or is likely to be harmed.

Clergy are a noticeable exception to the class of people required to be "mandatory reporters." Much has been said about the sanctity of the confessional. It is our submission that the protection of children is of paramount importance.

The Cummins Inquiry recommended that the *Crimes Act 1958* (Vic) should be amended to create a separate mandatory 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 organization. The duties 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 organization that provides services to, or has regular contact with, children and young people.

[18] Recommendation 4-Senate Community Affairs Committee, Forgotten Australians: A Report on Australians who experienced institutional or out-of-home care as children (30 August 2004), Parliament of Australia, Senate Website. http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2004-07/inst_care/report/

Further, it is our submission that there is no reason why mandatory reporting requirements should not extend to clergy, particularly where disclosures are made outside of the confessional. Those cases which have been in the media where priests have made disclosures or where family members and others have complained to church hierarchies have not on the whole involved disclosures made in the confessional. There is no reason why, at the very least, priests, religious and staff members and volunteers of religious institutions should be exempt from the mandatory reporting requirements.

Recommendation 4:

a) That s. 182 of the Children, Youth and Families Act 2004 be amended to include members of clergy, religious, volunteers and/or staff members of religious institutions as "mandatory reporters".

b) That s. 128 of the Evidence Act be amended so that disclosures in the confessional relating to child sex abuse can be used as evidence in a court of law.

Barrier 5 – Crimes Act – Accessories Legislation

It has long been a crime to conceal serious criminal offences. The application of the relevant provisions will depend on the date upon which the alleged offence occurred.

Under s 311 of the Crimes Act 1928:

> Every accessory after the fact to any felony whether the same is a felony at common law or under any Act may be presented indicted informed against and convicted either as an accessory after the fact to the principal felony together with the principal felon or after the conviction of the principal felon, or may be presented indicted informed against and convicted of a substantive felony whether the principal felon has or has not been previously convicted or is or is not amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony if convicted as an accessory may be punished.

Under s 323 of the Crimes Act 1958:

> A person who aids, abets, counsels or procures the commission of an indictable offence may be tried or indicted and punished as a principal offender.

Under s 325(1) of the Crimes Act 1958 (as amended by the Crimes (Classification of Offences) Act 1981):

> Where a person (in this section called the principal offender) has committed a serious indictable offence (in this section called the principal offence), any other person who, knowing or believing the principal offender to be guilty of the principal offence or some other serious indictable offence without lawful authority or reasonable excuse does any act with the purpose of impeding the apprehension, prosecution, conviction or punishment of the principal offender shall be guilty of an indictable offence.

S. 326 of the Crimes Act 1958 refers to concealing offences for benefit. The maximum penalty is 1 year imprisonment.

S. 493 of the Children Youth and Families Act 2005 refers to a failure to protect a child where it appears likely that the child will suffer significant harm as a result of physical injury or sexual abuse. The maximum penalty is 50 penalty points or a term of imprisonment for a term of not more than 12 months.

It is not known whether any church official in this state has been found guilty of concealing child sex offences and indeed the extent to which the above sections could be relied upon in a successful prosecution. (see below for investigation of Bishop Mulkearns re "misprision of felony" charges)

However, on 30th August 2012, it was reported in the Newcastle Maitland Herald[19] that NSW police have charged Catholic priest Tom Brennan with sexually abusing a young male and concealing the child sex crimes of another priest. Father Brennan, 74, was charged with two counts of misprision of a felony – failing to disclose a serious crime – relating to alleged child sex offences by defrocked priest John Denham against two boys at St Pius X, Adamstown in the late 1970s. Father Brennan, the school principal, was also charged with assaulting the two boys by caning them after they allegedly reported being sexually assaulted by Father Denham, 70. Father Brennan has also been charged with 10 counts of sexually assaulting a young male in the early 1980s while he was parish priest at Waratah.

The newspaper report goes on to say that it is almost certainly the first time an Australian Catholic clergyman has been charged for failing to report the alleged child sex offences of another priest to police or authorities. The report also refers to the charge of misprision of a felony being replaced in the NSW Crimes Act in 1990 by a package of concealing serious crimes offences under section 316. Father Brennan was charged with misprision of a felony which was the relevant offence because the allegations relate to events which occurred in the late 1970s.

The Cummins Inquiry recommended that s 326 of the Crimes Act 1958 and s493 of the Children, Youth and Families Act 2005 be amended to provide for suitable penalties for a failure to report. (Recommendation 47)

Recommendation 5:

> That the Crimes Act 1958 and the Children Youth and Families Act 2005 be reviewed to ensure that appropriate offences and appropriate penalties apply for concealing criminal abuse of children.

Barrier 6 - Difficulties with police investigations of past sex crimes

The Cummins Inquiry found that there were critical gaps in data in relation to the prosecution of suspected child physical and sexual abuse in the criminal justice system. While suspected child

[19] http://www.theherald.com.au/story/280480/exclusive-police-charge-hunter-priest-with-sex-crime-cover-up/

physical abuse is under reported, under investigated and under prosecuted, the Inquiry considered that a full understanding of the reasons behind this require further investigation.[20]

Currently, sexual abuse allegations are referred to local SOCIT (sexual offenses and child abuse investigation teams). These units appear to be under resourced and overwhelmed. There also appears to be inadequate expertise in investigating and prosecuting historical sex crimes.

As discussed above, the nature of childhood sexual abuse is that victims will often take decades to be in a position where they have the emotional fortitude to report the crimes that were committed against them. This means that the sexual assault of children will often not be reported to the police until many years after the events have occurred.

Part B of this submission consists of some 200 pages which contain instances of alleged sexual abuse of children in religious and non government institutions and part C consists of several hundred pages of statutory declarations provided by alleged victims. The committee will note that particularly in relation to homes run by religious institutions there are allegations of sexual assault be clergy and staff members covering periods from the 1930's to the 1990's.

The Committee will also note that in particular homes, there were serial perpetrators, some of whom are alleged to have sexually assaulted dozens of children over decades and in relation to some homes, the Salvation Army Bayswater Boy's Home and the Christian Brothers St Vincent De Paul Boy's Home being two notable examples, it appears that at various times there was literally a nest of paedophiles working at these institutions.

Media reports also confirm that amongst certain religious groups, such as the Catholic Church the rate of recidivism is high. There is a pressing need to ensure that the perpetrators of these crimes are located and dealt with as many of them may still be a serious risk to the community.

In September 2009, the police received complaints from two clients of Ryan Carlisle Thomas who alleged that they had been sexually abused by convicted paedophile, Ken Trotter, whilst they were resident in the Lutheran Peace Memorial Children's Home. At that time, Trotter was serving an 18-year prison term over numerous charges, including rape and sexual assault of young boys. Trotter had been described by a Sentencing Judge as showing no remorse and likely to reoffend.

Between September 2009 and April 2012, the complainants and Ryan Carlisle Thomas contacted the police repeatedly regarding progress of the investigation. In August 2011, Ryan Carlisle Thomas wrote to the Police Minister, Peter Ryan, urging him to intervene as we had become aware that Trotter was due for release in 2012. In December 2011, Peter Ryan advised that the police investigation remained an "operational matter" and it would be inappropriate for him to intervene.

In July 2012, it was reported in the Age newspaper that Trotter had been released in June, stripped of his Australian citizenship and deported to the UK. The report goes on to say that on 23 June, Trotter was brought before the UK courts, having been arrested in Blackpool after a nationwide manhunt when British Police realised that Trotter had not stayed at the address in

[20] http://www.childprotectioninquiry.vic.gov.au/images/stories/inquiry/volume1/cpi%207649%20web-pdf%20volume%201%20protecting%20victoria_s%20vulnerable%20children_%20inquiry_bm.2.pdf(Finding 10-p450 of 836)

Blackpool that he had provided. It was reported that the Court heard that Trotter had gone to a Methodist Church Centre in Blackpool where he pretended to be from a job recruitment agency and attempted to "recruit" girls aged 14 and over. It was also alleged that Trotter had set up a door to door sewing machine repair business which the police claimed was a front for child grooming and the same method used on young boys in Melbourne.

The "Trotter" debacle shows that there are very large holes in the current capacity of Victoria Police to deal with past sex crimes.

In September 2010, Peter Ryan, who was then the Opposition spokesperson, said: "We need a specialist unit within Victoria Police dedicated to hunting down these people. That is something we as an Opposition would establish."

When asked about this pledge more recently, Peter Ryan referred to the establishment of the SOCIT units as being something which meant that the specialist crimes unit was no longer necessary.

The reality is that the SOCIT units seem very much to be run along the same lines as the SOCA units that they replaced and the focus seems to be understandably on current events. However there is a desperate need for victims of past abuse to see their perpetrators dealt with, as well as those who covered their crimes.

The "Trotter" allegation is one of a number of which this firm has referred to Victoria Police. Whilst there is no criticism of the individual police officers, it is apparent that either the resources or the specialist knowledge is not there for these investigations to be dealt with in a speedy and efficient manner. Again, to quote Peter Ryan, "Division Detectives do a great job but are required to do a bit of everything and therefore don't get the opportunity to gather that level of expertise and knowledge."[21]

The other aspect of current police arrangements is that for a police investigation to commence, the victim must be prepared to approach the police and make a police statement in the first instance.

Recent research shows that people who are sexually abused as a child are five times more likely than the general population to commit a criminal offence as an adult. The research also showed a strong link between childhood abuse and adult criminality.[22]

This means that many victims of child sexual assault will have had negative experiences with police and would therefore be less likely to trust the police and be prepared to come forward with their allegations in the usual way. Further, sexual abuse allegations are notoriously under reported, for obvious reasons, and it is important that victims be given the opportunity to make their disclosures in a safe environment.

This Inquiry offers such an environment and the Committee will receive information regarding many alleged incidents of criminal abuse. This submission contains hundreds of allegations of

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[21] See Channel 10 news 21st September 2012

[22] http://www.abc.net.au/news/2012-06-22/abused-children-more-likely-to-commit-crimes/4087292?section=act

sexual and physical abuse against specific perpetrators. The Committee will no doubt receive hundreds if not thousands more similar allegations. These allegations should be referred to police for investigation.

In Western Australia, Redress WA[23] was established to compensate people who were abused or neglected as children while in State care. People applying for compensation under the Redress WA scheme were given the option of asking for a police investigation into their case. Claimants did not need to report incidents to a police station as information from Redress WA could be used in the investigation.

A special police task force will now be established in WA to deal with the avalanche of complaints of criminal abuse received by Redress WA, many of which related to complaints of abuse in institutions run by churches and religious groups. The Western Australian government has also revealed that at least 15 people facing child abuse allegations still hold valid Working with Children cards.[24]

In 1993, Victoria Police implemented the "Law Enforcement Assistance Program (LEAP). The LEAP data base is meant to store particulars of all crimes brought to the notice of police. [25]

It is our understanding that, notwithstanding the existence of the data base, complaints regarding historical sexual abuse are not always entered into the data base, particularly if a formal investigation was never undertaken because of the delay in reporting the alleged offence and/or if the view was taken that the offence would be unlikely to be proved.

This means that there may still be no centralised database where all complaints of historical child sex abuse are collated. Cross checking of similar complaints is essential in the prosecution of historical sex crimes. It is essential that evidence of child sex abuse and cover up which is provided to this Committee, be referred to the police for further action.

We also note recommendation 6.91 of the Senate report into Forgotten Australians that the Ministerial Council for Police and Emergency Management (Police) develop and implement a national policy on the prosecution of, and data collection and sharing about, past crimes of sexual and physical abuse of children in care; and that the establishment or further development of specialist State police units be considered as part of this policy development process.[26]

Recommendation 6:

a) That the Committee call upon the Government to initiate the development of a national policy at a COAG meeting as outlined in recommendation 6.91 of the Senate Report.

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[23] http://www.communities.wa.gov.au/Services/Redress/Pages/default.aspx
[24] http://au.news.yahoo.com/thewest/a/-/breaking/14562485/extent-of-child-abuse-exposed/
[25] http://www.police.vic.gov.au/content.asp?Document_ID=781
[26] Senate Community Affairs Committee, Forgotten Australians: A Report on Australians who experienced institutional or out-of-home care as children (30 August 2004), Parliament of Australia, Senate Website. http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2004-07/inst_care/report/

b) That the Committee call upon the Government to implement its promise made in Opposition to set up a specialised crimes unit to investigate past sex crimes.

c) That all evidence of criminal conduct submitted to the Committee, subject to the authorisation of the person making the submission, be provided to this specialist crimes unit for further investigation and prosecution.

d) That a thorough review of the management of the Victoria Police database be undertaken with a view to ensuring that all complaints of child sex abuse, whether these have resulted in charges being laid or not, are documented and available for future investigations.

Barrier 7 – Document Destruction

One of the issues faced by victims of past abuse is the destruction or loss of documentary evidence. In the case of wards of the state and/or residents of children's homes, it is apparent that the Government and various institutions are failing in their duty to preserve documentation which may be crucial in establishing that a claimant has been a victim of criminal abuse and/or in the prosecution of the alleged perpetrator.

The State through the Department of Human Services (DHS) holds extensive documentation which relates to the operation of children's homes run by religious and non government organisations. We also know that this documentation is at risk of being destroyed and indeed much of the relevant documentation may have already been destroyed.

This view is confirmed by the Victorian Ombudsman in his report, *Investigation into the storage and management of ward records by the Department of Human Services, March 2012,*[27] which established that policies and procedures within the DHS amount to a rendering of many of these documents incapable of identification, and create a very real risk of destruction. We further note that the Victorian Ombudsman concluded at paragraph 149 of his report that "the department has not yet fully appraised and audited all records held in its collection." Moreover (at paragraph 150), "the department does not have a thorough appreciation of the number of persons whose personal history is contained in its archives, nor where to find all the records relevant to these people."

Also at paragrpah152:

> "At present the department can never be confident that it has located all records held in its archives relating to a former ward's time in the care of the State of Victoria. I therefore consider that the department is failing to meet its obligations to former wards and their families in this regard."

The current practices of DHS are likely to place them in breach of a number of Victorian Acts and Regulations. Similarly, religious organisations which hold records which are at risk are also likely to be in breach. This is particularly so where there may be litigation where these documents are likely to be relevant. The relevant Acts and Regulations are as follows:

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[27] http://www.ombudsman.vic.gov.au/resources/documents/REPORT__Investigation_into_the_storage_and_management_of_ward_records_by_DHS_-_Mar_2012.pdf

- Public Records Act 1973
- Crimes Act 1958
- Evidence Act 2008
- Supreme Court (General Civil Procedure) Rules 2005

(i) Public Records Act 1973

Under Section 12 of the Public Records Act 1973, the Officer in charge of the DHS "shall be responsible...for the carrying out within the office of a programme of records management in accordance with the standards established under section 12 by the Keeper of Public Records."

Section 13 of the Public Records Act 1973 holds the Officer in charge to be responsible "for the carrying out within the office of a programme of records management in accordance with the standards established under section 12 by the Keeper of Public Records."

Accordingly, the Officer in charge must comply with the standards established by the Keeper of Public Records.

Under Storage Standard PROS 11/01, "Public records must be stored using systems that enable the records to be retrievable."

In particular, pursuant to PROS 11/01, "systems for the physical control of public records within storage areas and facilities have been implemented to track the locations and movements of records." Further, "procedures for retrieval, handling and returning of records within storage areas or facilities have been developed and communicated to those authorised to access the records."

(ii) Crimes Act 1958

Section 254(1) of the Crimes Act 1958 provides as follows:

> A person who-
>
> (a) knows that a document or other thing of any kind is, or is reasonably likely to be, required in evidence in a legal proceeding; and
>
> (b) either-
>
> (i) destroys or conceals it or renders it illegible, undecipherable or incapable of identification; or
>
> (ii) expressly, tacitly or impliedly authorises or permits another person to destroy or conceal it or render it illegible, undecipherable or incapable of identification and that other person does so; and
>
> (c) acts as described in paragraph (b) with the intention of preventing it from being used in evidence in a legal proceeding-

is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum) or a level 6 fine or both.

Under Section 254(2), "legal proceeding" includes a proceeding that "is to be, or may be, commenced in the future."

(iii) Evidence Act 2008

Under Section 169 of the Evidence Act 2008, if a party fails to comply with a request to produce documents without reasonable cause, the court may make one or more of the following orders:

(a) an order directing the party to comply with the request;

(b) an order that the party produce a specified document or thing, or call as a witness a specified person, as mentioned in section 166;

(c) an order that the evidence in relation to which the request was made is not to be admitted in evidence;

(d) such order with respect to adjournment or costs as is just.

(iv) Supreme Court (General Civil Procedure) Rules 2005

Under Rule 24.02 of the Supreme Court (General Civil Procedure) Rules 2005, where a defendant fails to comply with an order for the discovery of documents, the Court may order that its Defence be struck out.

For many years, various religious institutions and non government organisations have been a party to litigation brought by claimants who allege negligence on the part of the State and its agencies in the care it provided to them while in State care. A number of these proceedings are currently on foot in Victorian courts. Further, new claimants whose instructions would form the basis of negligence claims of this kind continue to emerge.

In these circumstances, there can be no question that various religious and non government organisations are on notice of these claims. Moreover, there can be no question that, given the extent of the systemic abuse alleged by a vast number of claimants, future claims are extremely likely.

Accordingly, documents held by the DHS (or held on their behalf by the PROV and other agencies) and by religious and non government organisations concerning wards and children's homes, are "reasonably likely to be required in evidence", both in current and in prospective proceedings.

Further, given the widespread knowledge of these claims within the DHS, religious and non government organisations (and indeed among the public at large), it would not be difficult to impute that the actions of the DHS may form the basis for an "intention to prevent the documents being used in evidence..."

Accordingly, it is our submission that current DHS practices and policies may amount to an offence under Section 254 of the Crimes Act 1958.

Similarly, any religious and non government organisation that has failed to maintain and/or destroy documents that may be required in litigation may also be guilty of an offence.

This Committee argues that under the *Parliamentary Committees Act* 2003, it has the legal power to compel the attendance of persons and the production of documents and other things.[28] The community at large is cynical about the capacity of leaders of religious organisations in particular to voluntarily come forward and disclose information which may result in self incrimination.

Recommendation 7:

That the Department of Humans Services be required to:

a) Indentify each and every consignment that may contain documents concerning former wards, children's homes, and supervision and inspection of same, and all consignments that may contain documents that are reasonably likely to become required in evidence in any legal proceeding, including any proceeding that may be commenced in the future ("the relevant consignments").

b) Earmark the relevant consignments to ensure they are not relocated, destroyed or rendered unidentifiable and/or unsearchable.

c) Digitise the relevant consignments in a manner that ensures they are identifiable and searchable.

d) Provide to the Inquiry, any and all documentation relating to complaints of criminal abuse (both sexual and physical) in homes or residential units run by religious and non government organisations..

Recommendation 8:

That all religious and non government organisations involved in the care and supervision of children be required to identify and maintain all documentation in a hard copy or digitised form relating to the care and supervision of children and in particular to maintain documents which contain complaints or evidence of criminal abuse of children.

Recommendation 9:

a) That the Committee require all charitable and church-run institutions and out-of-home care facilities to open their files and premises and provide full cooperation to authorities to investigate the nature and extent within these institutions of criminal physical assault,

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http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Final_FCDC_CAinROs_Submission_Guide.pdf

including assault leading to death, and criminal sexual assault, and to establish and report on concealment of past criminal practices or of persons known, suspected or alleged to have committed crimes against children by non government organisations and/or religious organisations;[29] and

b) That, if the requisite full cooperation is not received, and failing full access and investigation as required, that the Victorian Government establish a Royal Commission into State, charitable, and church-run institutions, provided that the Royal Commission □be of a short duration not exceeding 18 months, and be designed to bring closure to this issue, as far as that is possible; and be narrowly conceived so as to focus within these institutions, on the nature and extent of criminal physical assault of children and young persons, including assault leading to death; criminal sexual assault of children and young persons and any concealment of past criminal practices or of persons known, suspected or alleged to have committed crimes against children by non government and/or religious organisations.[30]

c) That the Churches and agencies publish comprehensive data on all abuse complaints received to date, and then subsequently on an annual basis, and that this information include:
   • numbers of complainants and type of complaints received;
   • numbers of Church/agency personnel involved in complaint allegations; and
   • amounts of compensation paid to complainants.[31]

Children's Homes run by Religious and Non Government organisations

The focus of this Committee is on complaints of criminal abuse and how they have been handled by religious and non government organisations. The issue in relation to institutionalised children is that many did not complain because they were well aware that complaints were unlikely to result in the perpetrator being punished but more likely would result in the victim being punished, often with brutal force.

We invite the Committee to look at the systemic issues raised by the summary of incidents that we attach in Part B of our submission. We say that these allegations are substantiated by the Statutory Declarations provided in Part C of our submission.

As Parts B and C of our submission are not for publication, we include a brief summary of some of the allegations against the worst of the institutions where children were placed.

(i) The Catholic Church

A significant focus of attention in relation to this Inquiry, and in the lead up to the Inquiry being established, has been the Catholic Church and its response to sexual abuse allegations.

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[29] http://www.cyf.vic.gov.au/__data/assets/pdf_file/0006/16728/forgotten_australians_report.pdf Recommendation 11

[30] ibid

[31] ibid Recommendation 9

Victims of alleged sexual assault at the hands of Catholic clergy have become angry, frustrated and disappointed in their dealings with the Church and its religious orders.

Claimants have accepted offers of settlement from the Church which have reflected the legal risks faced by them (referred to above) if they had chosen not to settle. For example, the cases brought against the Christian Brothers in the 90's for horrific abuse experienced by children in Homes run by the Brothers is a case in point. Even though the actual settlement amounts were kept confidential, Senator Andrew Murray in a speech in Parliament in 2001[32] referred to the following:

"One journalist wrote in the Western Australian Sunday Times on 11 December 1994:
While the Brothers have a technical right to play by the legal book to prevent possible massive compensation payments, they must know that what they are doing in the courts now is morally bankrupt. The men were essentially forced to accept an out of court settlement. For those men thought to have been raped and brutally assaulted, they received only $25,000. But the majority received a paltry $4,000 for years of abuse and exploitation as vulnerable children."

The Catholic Church (the Church) trumpets its initiatives in setting up compensation processes such as the Melbourne Response and Towards Healing as evidence of the Church's compassion and understanding of the scourge of child sex abuse within its ranks
However, the Church faces real credibility issues regarding these processes with many victims feeling that the deeds do not match the rhetoric.

The fundamental problem faced by the Church with these processes is that victims feel that they have no choice but to participate in a process which is controlled by the Church. The Church's reliance on the "Ellis" defence means that even if victims are unhappy with the process, they are effectively locked out of applying to an independent umpire, namely the State's court system.

The Catholic leadership also has a credibility issue. The leading Catholic in Australia, the Archbishop of Sydney, is forever tainted by his association with the "Ellis" decision. It was not the Church's lawyers who chose to pursue this defence. It was the client for whom they acted, namely Archbishop George Pell who was a defendant in the original trial and who would have instructed his lawyers as to how to defend the claim.

To add insult to injury Church leaders continue to try to deny the impact or the reality of the defence.

In an article in the Australian, Pell responded to arguments put forth by victims and plaintiff lawyers regarding the "Ellis" defence. In that article, Pell referred to a case brought by a victim of alleged assault at a school run by the Patrician Brothers.[33]

Archbishop Pell said, "The Archdiocese of Sydney always tries to assist in identifying the church party or entity which may have had responsibility in any particular case. In this case, lawyers for the victims were told repeatedly that the property trust was not the responsible

[32] http://www.democrats.org.au/speeches/index.htm?speech_id=1511&display=1
[33] http://www.theaustralian.com.au/statement-from-cardinal-pell/story-fn6j9bny-1226184952064

entity, but for reasons unknown they continued on this course."

What Pell continues to ignore is that plaintiff lawyers join the Property Trust in sexual assault cases because of the difficulty involved in finding any other entity that can actually be sued. If the Catholic Church is so intent on assisting parties in identifying the appropriate entity that can be sued, why did the Catholic Church appeal when the trial judge in the Ellis case found in fact that the Property Trust could be sued and why didn't the Catholic Church advise as to which entity was actually responsible for the supervision of the priest in that case?

On 29 October 2009 in a story on ABC radio about the "Ellis" defence, Rev Brian Lucas, General Secretary of the Australian Bishops' Conference (who recently also figured in the Four Corners program regarding the botched investigation into a priest who confessed to sexually abusing children) said "The suggestion that the Church can't be sued is simply not correct."

Lucas well knows that no one is suggesting that the Church can't be sued at all, but that it is the case, particularly in relation to claims of historical abuse that the Church seems to have a water tight defence as formulated in the Ellis' case. It is also the case that the Church has a choice as to whether or not it will rely on the defence.

On 2 November 2009, Ryan Carlisle Thomas wrote to Rev Lucas asking him to confirm that the Church would accept service of a writ in a claim of alleged sexual abuse by the notorious paedophile priest, Gerard Ridsdale, and he was asked to confirm that the Church would not rely on the defence that there was no legal entity that could be sued. The silence has been deafening.

Archbishop Pell has further credibility issues. In 1993, he made the mistake of 'supporting" Ridsdale at one of his earlier trials. (see attached report from the Age newspaper dated 2nd June 2002.)

Pell also made the mistake of appointing Prof Richard Ball as the first chair of Carelink which was set up by the Church in 1996 to facilitate free counselling for victims and other support services. Prof Ball had in the past been retained by Ridsdale's defence team to provide medico legal assessment. Ball had also apparently treated paedophile priests, no doubt at the Church's expense. (also referred to in the attached report)

The funding by the Church of the defences of priests charged with sexual offences against children also weighs heavily on victims and yet the Church leadership continues to appear to believe that if they publish glossy brochures and repeated apologies, somehow victims and indeed the Australian population will accept that the Church has finally introduced processes which will protect victims and assist in their healing.

Indeed, the Church has a credibility problem not just in Australia but throughout the world where similar revelations of systemic abuse, cover up and resistance to intervention by the state have been observed.

The Church internationally does everything in its power to conceal its conduct by avoiding the searing light of litigation. This approach is exemplified by the Church's conduct in relation to the case of JGE v The Trustees of the Portsmouth Roman Catholic Diocesan Trust (referred to above). Instead of accepting the umpire's decision in the first instance, the Church attempted

successive appeals until such time as the appeals were blocked by the Courts. In other words, the Church did everything in its power to resist the finding that it could be held vicariously liable for the conduct of a priest, notwithstanding that every other employer in the land accepts and adheres to the concept of vicariously liability.

Similarly, attempts to bring the Pope to justice and to establish what he or other members of the Holy See knew about the sexual abuse of children have been vigorously resisted. The argument put forth on the Pope's behalf is that as the Holy See is a "State" and the Pope is the head of that "State", he is immune personally from liability.[34]

Other members of the Catholic hierarchy also invoke diplomatic immunity. A newspaper report of 9th July 2012 in the Sydney Morning Herald[35] refers to Archbishop Giuseppe Lazzarotto invoking diplomatic immunity in response to a claim for damages brought against him (as the Vatican's representative in Ireland) and the Dublin Archdiocese, by a former Irish Senator who alleged that he had been repeatedly raped by a well known peadophile priest. The claim against the Vatican was dropped in 2003 after Archbishop Lazzarotto's lawyers obtained a certificate of diplomatic immunity.

The newspaper report also refers to Lazarotto refusing to comply with the Irish Inquiry into child sexual abuse. The report indicates that Lazzarotto served as the Vatican's ambassador in Ireland but he left before the Government there released its report into the sexual abuse in the Dublin Archdiocese (the 2009 Murphy Report). The report criticized Archbishop Lazzarotto for not responding to a 2007 request to provide the inquiry with evidence of abuse.

Archbishop Lazzarotto has served as the Vatican's ambassador in Australia since 2008 and no doubt he will resist any attempt to involve the Vatican in claims brought in this country in the same way he did when Irish victims attempted to pursue the Holy See.

The unavoidable conclusion is that the Catholic Church will use its armoury of money, power and influence to avoid being held accountable by the State. This Committee has an opportunity to redress the imbalance between the might of the Catholic Church and other religious institutions and the individuals who seek justice, firstly by proposing legislative amendments but also in ensuring that the evidence collected and produced before this Committee will be referred appropriately to the police and other state bodies to ensure that there are no more cover ups.

Below are some examples of instances of abuse at some of the "worst" of the Homes where children were placed (in relation to the Catholic Church and other religious organisations) and of how complaints of abuse were dealt with.

(a) Sisters of Nazareth

The Sisters of Nazareth ran Nazareth House which was an orphanage for girls and boys in Ballarat from 1888 to 1976.[36]

Complaints at Nazareth House largely involve physical abuse and neglect. We have been

[34] See generally: Geoffrey Robertson QC, "The Case of the Pope" (Penguin Group 2010)
[35] http://www.smh.com.au/world/archbishop-used-immunity-in-civil-suit-20120708-21pkh.html
[36] http://www.findandconnect.gov.au/vic/biogs/E000168b.htm

consulted by 15 victims of alleged physical and/or sexual abuse.

Three women who have consulted Ryan Carlisle Thomas have alleged that the Sisters procured children for the sexual gratification of convicted paedophile priest, Gerard Ridsdale. One claimant, Jennifer Tiffen, alleges that she would be taken to a room at night by one of the Nuns and she would be told to "be nice" and she would be left with Ridsdale. On these occasions, Ms Tiffen alleges that she was sexually abused by Ridsdale, initially by way of fondling and oral sex. Gradually, the alleged abuse consisted of rape, both vaginal and anal. The abuse is alleged to have occurred approximately twice a week from towards the end of 1962 to about November 1963.

On 19th October 2009, Ryan Carlisle Thomas wrote to every Catholic Parish in Victoria regarding our client's allegations and regarding what is known of Gerard Ridsdale and asked that this letter be read to the congregation. Ryan Carlisle Thomas was anonymously faxed the Church's only response, which was a letter sent to parish priests from Archbishop Dennis Hart advising that the letter was not to be read out.

Attached are documents obtained through the Freedom of Information Act 1982 regarding the police investigation of allegations against Ridsdale and what the Church knew of his activities. It appears from these documents that the police considered charging the Bishop of Ballarat, Bishop Ronald Mulkearns with the common law offence, misprision of felony (see above) but charges were never laid.

b) St Vincent De Paul's Boy's Home

St Vincent De Paul's Boy's Home was established in 1885 and run by the Christian Brothers until 1997 providing residential care to wards of the state and private placements.[37]

We have documented complaints of serious physical and sexual abuse occurring at St Vincent De Paul's from 1950 to 1992. Many of the complaints refer to serial sexual and physical abuse by a number of perpetrators.

Br Elmer, Br Eastmuir, Br Nalty, Br Walshe, Br Alford, Br McGee, Br Coswello and Br Duckworth and others have all been identified as serial perpetrators involving physical and/or sexual abuse of a serious nature.

Br Coswello was convicted of offences relating to former residents of St Vincent De Paul in 2009. The convictions were quashed on appeal.[38]

In April of 2011James Steele, a worker employed in what were by then residential units, was convicted of sexual offences against 5 former residents of St Vincent De Paul's Boy's Home in relation to events that had occurred in the early 90's.

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[37] http://www.findandconnect.gov.au/vic/biogs/E000383b.htm

[38] R v Coswello [2009] VSCA 300 (17 December 2009)

In all we have had complaints from 46 former residents regarding alleged physical and sexual abuse in this institution over a period of some 50 years.

(c) St Augustine's Boy's Home

St Augustine's Boys Home was established in Geelong in 1966 by the Christian Brothers. The Home closed in 1988. Allegations of systemic abuse stem from 1942 to 1985. [39]

Br Webster, Br Nalty, Br McGee, Br Duckworth, Br Edmunds, Br Eastmuir, Br Alford, Br Houston and Br Fogarty have all been identified as serial perpetrators involving serious physical and/or sexual abuse.

It will be noted that a number of Brothers who are alleged to have sexually and physically assaulted boys in St Vincent De Paul Boy's Home also allegedly sexually abused boys at St Augustine's Boy's Home.

In all, Ryan Carlisle Thomas has been consulted by 29 victims of alleged sexual and/or physical abuse at St Augustine's Boy's Home.

(d) Good Shepherd Sisters

The Good Shepherd Sisters ran the Abbotsford Convent from 1863 until 1971. Wards of the state and girls considered to be in "moral danger" were placed in the convent which was largely self sufficient through its farming, industrial school and laundry activities.[40]

Ryan Carlisle Thomas has been consulted by 14 victims of alleged abuse at Abbotsford Convent. Many of the girls who worked in the laundries there have complained about Dickensian conditions where their labour was exploited.

In June 2011, the United Nations Committee Against Torture called on the Irish Government to set up an independent inquiry on the Magdalene laundries which were run on similar lines to the laundries of the Good Shepherd Sisters[41]. It criticized the Irish government for refusing to acknowledge the pain and abuse suffered by women incarcerated in the laundries, the last of which closed in 1996, and called for a thorough investigation and compensation scheme.

(ii) The Salvation Army

The Salvation Army ran several homes for wards of the state and private placements. Box Hill Boys Home and the Bayswater Boys Homes (1 & 2) were notorious for the abuse suffered by children in these homes.

(a) Box Hill Boy's Home

Box Hill Boy's Home was established in Box Hill in 1913 and closed in 1984. We have had

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[39] http://www.findandconnect.gov.au/vic/biogs/E000063b.htm
[40] http://www.findandconnect.gov.au/vic/biogs/E000143b.htm
[41] http://www.irishcentral.com/news/UN-Torture-Committee-asks-for-inquiry-into-Magdalen-laundries-123216183.html

complaints of abuse from as early as 1933 and up to 1980.[42]

We have been consulted by over 100 victims of alleged abuse at the Box Hill Boy's Home. Serial abusers in the Box Hill Boy's Home include Sangster, Ferguson, Sumsion, Roley and Willemsen. Sangster alone has been identified by 28 victims as having sexually assaulted them in incidents which span from 1948 to 1963.

In the 90's, Willemsen was convicted of offences against a former resident of Box Hill Boy's Home. Police have undertaken investigations of Sangster but no charges have been laid.

(b) Bayswater Boys' Homes

The Salvation Army ran the Bayswater Boy's Homes which were located in the Basin from 1897 to 1986. [43]

The No 1 Home was essentially a youth detention centre. The No 2 Home was a children's home. Ryan Carlisle Thomas has been consulted by 137 victims who allege they were sexually and/or physically assaulted whilst in the Bayswater Boy's Homes.

Complaints span the period 1934 to the early 80's. Serial perpetrators include Envoy Collins who is alleged to have sexually assaulted 33 boys from the late 40's to the early 70's.

In the late 70's a number of alleged perpetrators were employed at the Salvation Army Bayswater Boy's Home no 2 where many boys allege they were assaulted by one or more of these men. These alleged perpetrators include Des Elms, John Beyer and others who cannot be named as they are currently under police investigation.

Des Elms was charged by police in relation to sex offences against children resident in Bayswater Boy's Home but died before the charges went to trial.

John Beyer was a "volunteer" at the Bayswater Boy's Home during this period. In 2008, Beyer appeared in the County Court having been charged with child sex offences involving 12 separate victims, 11 male and one female. At the time of the offences, the victim's ages varied between four and thirteen years. The offences occurred between 1973 and 1985. A group of the victims were neighbouring children. Another group were from a junior basketball club that Beyer was involved in, the "Montrose Hawks." Another group of 5 victims came from the Bayswater Boy's Home.

Judge Allen made the following comments:

> "In relation to the counts which involved those victims who were wards of the state residing at boy's homes, in the relevant summaries the accused is described as a volunteer who assisted in caring for wards of the state and then in each case, he's later described as having the custody of these children, presumably in that context as a volunteer pursuant to some program or arrangement.

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[42] http://www.findandconnect.gov.au/vic/biogs/E000258b.htm
[43] http://www.findandconnect.gov.au/vic/biogs/E000256b.htm

"I assume the operators of those institutions didn't just allow adults willy-nilly to come and take boys away either for the afternoon or in some cases as is the case here, for weekends or weeks on holidays and there must have been some formal arrangement, some formal status that had as a volunteer under which program, which in my view, if that be the case, is a relevant matter I must take into account as an aggravating feature because he was effectively in loco parentis at the time when these offences occurred.

"I don't know if in 1973, anyone could wander in and say, "I'm taking this kid away for the weekend or for holidays to Port Arlington.

"Maybe even some paperwork had to be signed. I mean this is just a remarkable state of affairs. I mean these children were wards of the state, the state had responsibility for their care and they handed over that care on occasion to the prisoner....

"It is beyond grooming, to hold oneself as a volunteer and to take children, as I say, in loco parentis, wards of the state, away from where they've been cared for under the guise of helping them for the purpose of abusing them, is clearly a serious aggravating feature in my view."

The point in relation to the Beyer assaults is that at the time that Beyer removed boys "willy-nilly". Bayswater Boy's Home was effectively staffed by a nest of paedophiles who, no doubt, turned a blind eye to Beyer's activities.

Bayswater Boys Home No. 1, which was also known as the Youth Training Centre, was run by a group of violent Salvation Army Officers and men who were employed to manage the inmates apparently by brute force. Alleged serial perpetrators of physical and/or sexual abuse include Colonel Leggett, Boss Harry, Boss Wayne and Boss Poulter.

Charges were laid against Norman Poulter in relation to sexual offences against 4 former residents of the Bayswater Boy's Home. These matters were listed for trial in the County Court on 1st February 2010. The Trial Judge ordered that the charges in relation to all four victims be heard together. Poulter appealed this decision to the Court of Appeal which ordered that the charges be heard separately. After the Jury returned "Not Guilty" verdicts in the first two trials, the Office of Public Prosecutions made the decision to not proceed with the charges in relation to the other alleged victims.

Victims have alleged dreadful physical abuse akin to torture including being required to run around the quadrangle to be whacked at every turn with a cricket bat by the officer in charge. Other alleged punishments include being required to stand in the quadrangle on a box with arms raised at shoulder height for hours at a time in searing heat and pouring rain. We also have numerous complaints of solitary confinement for days at a time as a form of punishment sometimes coupled with brutal rapes.

Other allegations that have been investigated by police but not proven are that children were killed at the Bayswater facilities or allowed to die as a result of physical abuse and deprivation.

(c) East Camberwell Girl's Home

The East Camberwell Girl's Home was established in 1912 and closed in 1972. We have had 12 complaints of abuse at East Camberwell Girl's Home and in particular in relation to Brig Tait who was the Superintendent of the Home.[44]

Allegations against Brig Tait span from 1959 to 1971. One girl after she left the Home in 1968 wrote to the Department to complain of being molested by Tait and she expressed concern for her sister who was still in the Home. Notwithstanding this complaint, Tait continued to abuse the girls in his care. After the Home was closed in 1972, Tait transferred to Hayville where further allegations have been made against him.

(iii) Uniting Church Institutions

The Uniting Church ran a number of institutions and family group homes which cared for children in a more residential environment.

(a) Orana Chidlren's Home

Orana was run by the Uniting Church and situated in Burwood. Complaints of former residents span the period 1952 to 1993. We have been consulted by 15 former residents who allege physical and/or sexual abuse.[45]

Des Elms who was formerly employed at Bayswater Boy's Home is alleged to have sexually abused children at both the Bayswater Boy's Home and at the Orana Children's Home where he was subsequently employed.

(b) Family Group Home Horsham

In the mid 80's in a family group home in Horsham run by the Uniting Church, a carer allegedly sexually assaulted 3 children who were in his wife's care. We are unable to name the carer because of criminal proceedings currently on foot.

One victim complained to his Grandmother that he was being sexually assaulted and his grandmother arranged for a police statement to be taken. The carer was interviewed as was another resident. The carer made partial admissions and was charged with offences in relation to our client. The carer then absconded to Queensland. A warrant to apprehend was issued but the warrant was never executed. The alleged victim recalls he was told that "it was too expensive to send two police officers to Queensland".

In 2009 we located the carer who was still living in Queensland and we wrote to the police requesting his immediate apprehension and return to this state to face charges. Our request was only acted on after we complained to the then Police Minister, Bob Cameron in January of 2010. The carer was extradited to Victoria to face charges. Following the police investigation charges were laid in relation to our client and in relation to two other former residents. Subsequently our client was advised by Prosecutors that notwithstanding the partial admissions made by the carer,

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[44] http://www.findandconnect.gov.au/vic/biogs/E000261b.htm
[45] http://www.findandconnect.gov.au/vic/biogs/E000020b.htm

they did not believe that the charges of rape could succeed and the lesser offences of indecent assault were now statute barred so the charges were dropped. Charges in relation to offences against the other two victims were proceeded with. The carer was committed to trial. A trial date which had been set for earlier this year was adjourned to allow for medical assessments to take place as the carer's lawyers argued he had no capacity. One of the victims took her own life after the criminal trial was adjourned. The prosecution in relation to the last victim is now in doubt.

(d) The Anglican Church

The Anglican Church ran several Homes and Family Group Homes including the Andrew Kerr Memorial Home, St Lukes, St Johns, St Cuthberts and St Pauls. Allegations of abuse span the period 1949 to 1979.

Ryan Carlisle Thomas has complaints from 18 victims of alleged abuse at St Cuthbert's Children's Home. Allegations include physical and/or sexual assault both by workers and at the hands of other residents.

The above examples are just a snap shot of the abuse that occurred in many children's homes throughout the last century. People may say but these are past cases, what relevance can they have today. Some of these examples show that the perpetrators are still alive and in some cases have continued to abuse children.

Further, Ryan Carlisle Thomas is not at liberty to provide all of the evidence that has been gathered either because we are not authorized to do so by our clients or because we are unable to use subpoenaed documents for any purpose other than for the case in which the documents were subpoenaed.

There is also no doubt that children in care continue to be subject to higher levels of abuse than the normal population.

The Cummins Report into Vulnerable Children[46] found that 55,000 reports were made to the Victorian Department of Human Services in 2010 to 2011 and that nearly 14,000.00 were considered sufficiently serious by the Department of Human Services that they were formally investigated. These investigations found that in 7600 of these cases, the concerns about the safety or welfare of these children were well founded.

Churches and non Government organizations are still very much involved in out of home care for children. The Catholic Church provides these services through Mackillop Family Services, the Uniting Church provides services through Uniting Care Victoria and the Salvation Army through Eastcare. Non Government organizations still involved in the care of children include CAFS Ballarat, Glastonbury Child and Family Services Geelong, Berry Street, OzChild and others.

In other words there is still a pressing need for the operations and processes of these religious organizations to provide comprehensive policies and notification procedures. However, more importantly, these organizations need to know that if their processes fall short that there will be repercussions.

[46] http://www.childprotectioninquiry.vic.gov.au/report-pvvc-inquiry.html)

One of the most powerful tools to change organizational behavior is litigation and financial penalties. The other is criminal prosecution, not only of the perpetrators themselves but also of those in authority who hid their crimes.

This Committee has an historic opportunity to ensure that perpetrators and those who dealt with them are brought to account. This Inquiry is also an opportunity to remove the legal and other barriers which have meant that victims have either suffered in silence or have been re-traumatized by the process of coming forward.

This Committee should also recommend that a similar inquiry is held into the response of State authorities into complaints of criminal abuse by children. There is no reason why State authorities should be exempt. We know from our investigations into our clients' matters and from reading hundreds of ward files that State authorities have been just as culpable as some religious organizations in their handling of child abuse allegations.

Recommendation 12:

> That following the completion of this Inquiry, a further inquiry be held into whether changes to law or to practices, policies and protocols are required to help prevent criminal abuse of children under the supervision of the State.

Finally, unless the legal barriers referred to above are removed, victims will continue to be unable to access justice. Indeed, even without the legal barriers many victims of institutional abuse will be unable to pursue claims simply because of the difficulties of proving allegations so many years after the events.

The Senate Report into Forgotten Australians recommended that a reparation scheme be set up funded by Government and churches and agencies proportionately (recommendation 6). We believe there is still a pressing need for such a fund to be set up.

Recommendation 13:

> That a Redress Fund be set up to compensate children abused in care to be funded jointly by the Victorian Government, churches and agencies.

ANGELA SDRINIS
PARTNER
21st September 2012

VICTORIA POLICE

CHILD EXPLOITATION SQUAD

"OPERATION ARCADIA"

FINAL REPORT

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October 12, 1995

Inspector D Maloney
C/ Rape Squad
Police Complex
412 St Kilda Road
MELBOURNE 3000

Dear Inspector Maloney,

I have been advised that the Victorian Police have conducted an enquiry into alleged criminal activity on my part arising from charges against Gerald Ridsdale who was formerly a priest of the Ballarat Diocese.

I have not received any details of specific allegations made against me but I categorically deny any suggestion of criminal activity on my part.

I personally, and indeed the whole of the Ballarat diocese, have been devastated by the revelations of the nature and extent of the activities of Gerald Ridsdale. The Diocese has taken steps to try to repair the damage as far as possible by offering counselling to those affected, many of whom have taken advantage of this opportunity.

We have also set in place clear directives to try to ensure that any complaints of a similar nature which may be made against any agent of the Diocesan Church in the future will be dealt with appropriately.

We have been responsible for the establishment of Counselling and Support Services (CASS) which is a professional and independent service funded by the Church and commissioned to provide counselling, therapy and related services to victims of sexual abuse either at the hands of agents of the Diocesan Church or for victims who live within the Diocese who have been victims of agents of the Church at large.

I sincerely hope that these steps will provide some assistance to victims of sexual abuse, or criminal activity on behalf of clergy or other agents of the Church in the future, and that the experience of Gerald Ridsdale will enable us to ensure that the sad history of his victims is never repeated.

Yours sincerely,

+ [signature]

Bishop of Ballarat

Legislation

14. I have contacted the Victoria Police Detective Training School and have perused literature pertaining to the offences of 'Misprison of a Felony' which was repealed on 01-SEP-81, and 'Compounding' which replaced 'Misprison'. The 1958 Crimes Act No. 6231 Section 68 (3) states the following:

> Whosoever attempts to commit either with mankind or with any animal the abominable crime of buggery, or is guilty of any assault with intent to commit the same or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and shall be liable to imprisonment for a term of not more than ten years.

Section 55 (1) of the 1958 Crimes Act No. 6231 relates to the indecent assault of females and again the offence is a misdemeanour.

Section 69 (4) of the 1958 Crimes Act No. 6231 relates to the gross indeceny of a male under the age of 16 years. This offence is listed as being a misdemeanour.

Section 68 (1) of the 1958 Crimes Act No. 6231 states the following:

> Whosoever commits the abominable crime of buggery either with any person under the age of fourteen years or with or upon any person with violence and without the consent of such person shall be guilty of felony and upon conviction thereof shall be liable to imprisonment for a term of not more than twenty years.

The offence of Misprison of a Felony is a Common Law offence which had been repealed. Sykes .V. DPP (1961) 3 W.L.R. 371 and R. .V. Crimmins (1959) V.R. 270 state that the prosecution have to prove the following:

a) That a felony has been committed by somebody else.

b) That the prisoner knew the felony had been committed.

c) Knowing the felony had been committed, the prisoner concealed the facts in relation thereto. Must nominate the offender if he knows him.

9. A number of letters and replies to newspaper articles written by MULKEARNS are in our possession. These letters basically state that he first became aware of problems associated with RIDSDALE; when a complaint was made at [redacted] This would date the complaint around 1975. MULKEARNS then states the next time he became aware of complaints about RIDSDALE was when allegations were made at Mortlake (around 1981). On each occasion he immediately removed RIDSDALE and sent him for counselling.

I have been unable to locate any evidence to suggest that RIDSDALE attended any formal counselling.

10. The statement made by [redacted] suggests that the assertions made by MULKEARNS that his first knowledge of offences occurred at [redacted] are infact incorrect.

11. On the 11th day of September, 1995 I attended at the family home of the [redacted] family. The [redacted] family are referred to in the statement supplied by [redacted] I there spoke to [redacted] who stated that two of her sons had been indecently assaulted by RIDSDALE but had chosen not to come forward and had never notified Police of the occurrence.

[redacted] stated that she did attend with the [redacted] family and personally spoke to MULKEARNS. [redacted] stated that she did not inform MULKEARNS of any incidents other than indecent assaults. [redacted] stated that her boys are not aware that she has spoken to MULKEARNS about the matter. [redacted] does not want to take this matter any further for fear of upsetting the family unit.

12. On the 12th day of September, 1995 I attended at St James Catholic School Sebastapol. I there spoke to Sister Kate MC GRATH who had been principle of the Mortlake School when offences were committed by RIDSDALE. Mc GRATH stated that she did not personally notify MULKEARNS of any offences, but that she had spoken to him about the matters after RIDSDALE had left the Parish. Mc GRATH stated she was not aware of offences committed other than indecent assaults.

13. On the 11th day of September 1995, Detective Inspector MOLONEY contacted the diocese of Ballarat in an attempt to speak to MULKEARNS. Later that morning we were notified by the diocese to contact solicitor Paul GAMBLE who is representing MULKEARNS. GAMBLE has been notified that MULKEARNS may answer the allegations made in folio 1 if he wishes. MULKEARNS has supplied a letter dated 12th October, 1995 (See Folio 2.) Paragraph two of that letter states,

"I have not received any details of specific allegations made against me but I categorically deny any suggestion of criminal activity on my part."

a) [redacted]

States that she attempted to complain to Bishop MULKEARNS in 1987 but was informed by Father Mc DERMOTT that he handled those matters.
They then met in Melbourne where she was told that her son encouraged RIDSDALE and that the Bishop would not be told what to do.

b) [redacted]

Stated in the early 80's that he rang to complain to the Bishop but was informed that he was not available. Then spoke to Father NOLAN (Bishop's secretary), NOLAN stated the offence was just a one off due to the death of RIDSDALE's brother. RIDSDALE was moved from Mortlake shortly after [redacted] complained.

c) [redacted]

Stated between 1981 - 1982, she and her husband attended at Ballarat with another couple [redacted] family) who have never come forward. [redacted] stated that MULKEARNS was very cold and non committal. MULKEARNS was visibly shocked when informed that the Police may be contacted. RIDSDALE was moved from Mortlake shortly after the complaint was lodged. No disclosures were made by the [redacted] family to MULKEARNS concerning any felony offence committed on their children.

d) [redacted]

Stated he was In Charge Bendigo CIB approximately 1976 When [redacted] informed him of an indecent assault on his son committed by RIDSDALE. [redacted] believes the assault was of a fondling of the childs penis on the outside of the victims clothing, a statement was supplied to [redacted] by [redacted] which had been taken from his son. Stated [redacted] did not wish to take the matter further because he had to remain in the town and thought the locals would be against him.

[redacted] attempted to locate RIDSDALE but was told he was not available.
[redacted] was then advised by his direct superior, Superintendent O'SULLIVAN, to approach MULKEARNS and inform him of the complaint. This was done the following day.
MULKEARNS Was handed the statement to read and stated he would put RIDSDALE in hospital for counselling. [redacted] did not see RIDSDALE after this.
O'SULLIVAN has stated recently to [redacted] that he does not recall the incident. [redacted] states that the contents of the statements supplied by [redacted] did not constituté a felony offence.

e) [redacted]

[redacted] states he was a victim of RIDSDALE from 1971 whilst attending [redacted] Catholic Boys School. During this time [redacted] was an altar boy on RIDSDALE's 7 am Mass and was fondled and masturbated before and after masses as well as during confessional. [redacted] complained to MULKEARNS personally in 1971 whilst MULKEARNS was walking between the church and school grounds. [redacted] detailed the indecent assaults and gross indecency committed by RIDSDALE to which MULKEARNS replied, "It will be all right, son." [redacted] states he was then moved from RIDSDALE's roster and placed onto MULKEARNS' roster or onto the roster of two other Priests. [redacted] states he has no doubts that he personally spoke to MULKEARNS about this matter.
The disclosures to MULKEARNS by [redacted] did not constitute a felony offence.

8. Witnesses [redacted] and [redacted] of [redacted] were not aware that each other had complained. The assault mentioned to MULKEARNS by the [redacted] was of an indecent assault nature only.

RIDSDALE in the [redacted] area, which may include [redacted] two boys. [redacted] sons [redacted] who was eleven years of age and [redacted] who was nine years of age both complained of being indecently assaulted by RIDSDALE. MOONEY attended at the [redacted] Police Station and obtained statements from both boys. [redacted] states that this was the last he heard of the matter, other than the fact that RIDSDALE was moved shortly thereafter. [redacted] stated that he was quite willing to have RIDSDALE charged at the time. Nominated Sgt Robert REDWOOD as commencing enquiry by MOONEY.

D2)	[redacted]	Victim	Unable to assist
E2)	[redacted]	Victim	Unable to assist
F2)	[redacted]	Reporter	Assisting with general information and supplying copies of letters from MULKEARNS and copies of newspaper articles. (No evidentiary value.)
G2)	[redacted]	Solicitor	Unable to assist.
I2)	[redacted]	Victim	Unable to assist.

7. Statements have been obtained from the following:

U1)	[redacted]	Victim	Unable to assist
V1	RIDSDALE Gerrard	Offender	Spoken to at Pentridge Prison 01-AUG-95, refused to be spoken to by Police.
W1)	RIDSDALE Chris	Brother of Offender	Unable to assist
X1)	[redacted]	Victim	Unable to assist.
Y1)	[redacted]	Teacher of Victims	Local from Mortlake who wrote to MULKEARNS on numerous occasions, letters in reply from MULKEARNS filed in folder. No evidentiary value.
Z1)	[redacted]	Mother of victim	Mother of two unreported victims, did not wish to be involved with enquiry due to the possible effect on family unit. Unable to assist.
A2)	[redacted]	Mother of victim	Unable to assist
B2)	[redacted]	Victim	Unable to assist
C2)	[redacted]	Ex Policeman	[redacted] is a retired Policeman who was Officer In Charge of [redacted] Police Station. [redacted] recollection of events differs greatly from the account given by MOONEY. MOONEY was the investigating detective re assaults committed on [redacted] two sons in or around 1976. [redacted] states that MOONEY contacted him and informed him that some boys had been assaulted by

v)	[redacted]	Victim	Unable to assist.
w)	[redacted]	Victim	Produced copies of letters from his mother to MULKEARNS and letter from MULKEARNS to his mother, no evidentiary value.
x)	[redacted]		Mother of Victim Statement taken on 12-Jul-95 and has supplied letters to and from MULKEARNS. No evidentiary value.
y)	[redacted]	Victim (Unrep.)	Brother of victim [redacted] stated that he had been indecently assaulted by RIDSDALE but had never reported the fact. Statement obtained by [redacted] Police.
z)	[redacted]	Victim	Unable to assist
A1)	[redacted]	Mother of victim	Unable to assist.
B1)	[redacted]	Victim	Unable to assist
C1)	[redacted]	Victim	Unable to assist
D1)	[redacted]	Victim	Unable to assist
E1)	[redacted]e	Sister	Sister of the Catholic faith who was principle of Mortlake School at time of offences. Unable to assist.
F1)	[redacted]	Victim	Unable to assist
G1)	[redacted]	Sister of offender RIDSDALE	Unable to assist

			would attend at some time. This area was a "house of Prayer" and not a formal treatment area. This premises was known as "Laverna" situated in Sackville St Kew. Approx. 6 Priests would conduct retreats and that no records were kept as to who attended, it was just a "drop in centre."
m)	[redacted]	Father of victim	Statement made Re indecent assault which was reported to Father NOLAN (Bishop's Secretary) via telephone in early 80's.
n)	[redacted]	Priest	Deceased.
0)	[redacted]	Victim	Unable to assist.
p)	[redacted]	Victim	Unable to assist
q)	[redacted]	Mother of victim	Unable to assist
r)	[redacted]	Victim	Unable to assist
s)	[redacted]	Psychologist	Meeting held 07-AUG-95 observed notes from a conversation with RIDSDALE which suggests that RIDSDALE saw a psychologist at Mortlake in early 1970 Obtained court report re RIDSDALE.
t)	[redacted]	Sister in law of RIDSDALE	Unable to assist.
u)	[redacted]	Father of Victim	Unable to assist.

6. Numerous victims and witnesses have been interviewed and statements have been taken where necessary.

The following is a list of persons spoken to as part of Operation ARCADIA.

a)	[redacted]	Broken rights	Unable to assist
	[redacted]	Victim	Unable to locate and wasn't located at origional trial, name obtained on admissions by RIDSDALE.
c)	[redacted]	Solicitor	Unable to assist.
d)	[redacted]	Priest	Deceased.
e)	[redacted]	Alleged Victim	Unable to assist
f)	[redacted]	Victim	Unable to assist.
g)	[redacted]	Victim	Complained to Father BROPHY (Deceased).
h)	[redacted]	Sister of victim	Unable to assist.
i)	[redacted]	Victim	Statement taken.
j)	[redacted]	Victim	Unable to assist
k)	[redacted]	Policeman	Unable to assist.
l)	EVANS [redacted]	Psychiatrist	Stated he did not treat RIDSDALE in a professional capacity. Stated the Catholic church had no formal area to send a priest for legitimate psychiatric counselling. Stated any formal treatment would require a referral from a qualified medical practitioner. RIDSDALE may have been sent to a "Retreat" which most Priests

Pell's man helped pedophile priests

By Fia Cumming, Sun Herald Political Correspondent
June 2 2002
The Sun-Herald

A new row broke out yesterday over the way Catholic Archbishop George Pell handled child-sex abuse cases, with claims his appointment of a psychiatry professor to deal with victims was "insensitive".


George Pell, right, then an auxilliary bishop in Melbourne accompanied by pedophile priest Gerald Ridsdale when the latter was facing charges in 1993.

Dr Pell, when he was archbishop of Melbourne in 1996, set up Carelink, a free counselling and support service for victims of clergy, in response to scandals plaguing the Catholic Church.

The man he chose to chair Carelink was Richard Ball, the former chair of psychiatry at St Vincents Hospital, Melbourne.

Professor Ball provided independent expert psychiatric reports which have been used in court for the defence of Catholic clergy. He had also helped treat priests accused of sexual abuse.

Chris MacIsaac of Broken Rites, a lobby group for sex victims of people in all churches, said Professor Ball's appointment was highly insensitive.

"For the church to appoint Professor Ball, who is the treating doctor to perpetrators, is an insult to the victims," Ms MacIsaac said.

"He is in charge of a service that is supposed to provide counselling and care to the victims."

She said that in four criminal cases involving Catholic clergy, Professor Ball had provided a psychiatric report which had been used by the defence.

Among the trials at which Professor Ball gave independent expert evidence was that of one of Australia's most notorious serial pedophiles, Father Gerald Ridsdale - a long-term associate of George Pell and the priest at the centre of a controversy over claims that Dr Pell tried to buy the silence of one of Ridsdale's victims.

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In July 1999, after joining Carelink, Professor Ball provided independent expert evidence in the trial of Father Ray Deal, the former private secretary to Dr Pell's predecessor as archbishop of Melbourne, Frank Little.

Deal pleaded guilty to three charges of indecent assault against a 26-year-old man who had been placed under his supervision.

Professor Ball told the court that Deal was homosexual but usually expressed this with consenting adults who were usually not connected to his clerical role.

In 1997, shortly after Carelink was set up, Professor Ball said that priests who committed sex crimes did so deliberately and often over long periods of time.

"All who transgress are culpable and responsible, but priests and ministers may be regarded as most so," Professor Ball said.

Yesterday, Professor Ball said he had treated Deal for his psycho-sexual problems in the lead-up to his trial in July 1999, even though he was the head of Carelink at the time.

Professor Ball said he believed Deal was the only member of the clergy about whom he had provided independent expert evidence while also treating them.

But he had in no way exonerated them.

"I have treated all sorts of psychiatric problems over the years, for clergy and other persons, including psycho-sexual problems," he said.

Professor Ball said he had also given evidence for the prosecution in some matters, although none of those cases involved the clergy.

But he denied that there was any conflict between his work in defending priests and his Carelink role.

"In fact the opinion throughout the world is it is useful to have experience on both sides of the fence so you understand the problem," he said.

A spokesman for Dr Pell said he was not available for comment.

The criticism of Professor Ball's role is likely to add to public disquiet over Dr Pell's association with and treatment of sexual offenders within the church.

Several of the pedophiles for whom Professor Ball provided expert defence were well known to the Archbishop.

Dr Pell was a priest in Ballarat from 1971 and vicar in charge of the Catholic education system in the Ballarat Diocese, covering western Victoria, from 1973 to 1984.

Three Christian Brothers teachers from that era - Edward Dowlan, Robert Best and Stephen Farrell - have been convicted of sex offences against students at St Alipius Primary and St Patrick's College in the early 1970s.

At the same time, the school chaplain and parish priest was Gerald Ridsdale.

For a year from early 1973, Ridsdale shared a house with Dr Pell at the St Alipius Presbytery, next door to the primary school.

When Ridsdale faced pedophile charges in May 1993, Dr Pell accompanied him to court to give him moral support.

Dr Pell, then an auxiliary bishop of Melbourne, said at the time that Ridsdale "had made terrible mistakes". He said: "It was simply a gesture on my part."

Three years later, on the eve of his swearing-in as archbishop of Melbourne, Dr Pell said he had had "no idea" about Ridsdale's activities when they lived together.

"I lived there with him and there was not even a whisper," Dr Pell said then. "It was a different age, it was never mentioned."

However, Ridsdale's 1994 trial heard evidence that the church had sent him to a psychologist as early as 1971, and that before arriving at Ballarat he had been shunted from parish to parish because of complaints.

Bishop Ronald Mulkearns, Dr Pell's superior and close associate at the time, was certainly aware of the problems with Ridsdale, having been alerted by one of his victims.

In 1996, police considered whether Bishop Mulkearns, who has now retired, should be charged for concealing serious offences. Police concluded: "Bishop Mulkearns was, at various times, advised of the alleged commission of summary and misdemeanour offences having been committed by Ridsdale."

Because there was no proof that Bishop Mulkearns knew about more serious sexual assaults, no charges were laid.

Ridsdale continued his pattern of abuse until he was sent to a clinic for pedophiles in Jemez Springs, New Mexico, in 1986.

When he returned in late 1990 he was appointed chaplain to the StJohn of God Hospital in Sydney.

Ridsdale's nephew, David Ridsdale, who says he was abused by his uncle, phoned a police hotline in 1992 and brought his trail of destruction to an end.

David Ridsdale alleges that, before phoning police, he raised the matter with Dr Pell, a family friend and then the auxiliary bishop of Melbourne. He claims Dr Pell became angry and asked how much it would take to keep him quiet.

Mr Ridsdale's allegations were published in *Outrage* magazine in April 1997 and repeated to *60 Minutes*, which will air the story tonight.

Dr Pell has vigorously denied the claims.

Gerald Ridsdale was sentenced to 18 years in prison in 1994 after pleading guilty to 46 counts of indecent assault, including buggery, against 21 children. Among hundreds of victims, those who laid charges were mainly altar boys aged 11 to 14 from the Ballaret Diocese.

Catholic insiders have questioned how Dr Pell, as Bishop Mulkearns's head of education and a close associate of the offending priest, could have been blind to what was going on.

Shortly before being sworn in as archbishop of Melbourne in August 1996 - after Ridsdale and Best had been convicted - Dr Pell said his first priority was to restore the credibility of the church after the sex scandals.

He said: "A big priority of mine is to try to strengthen priesthood morale and protect priests who are innocent."

A number of victims of one pedophile priest, Ron Pickering, received cash payments and two also received written apologies from Dr Pell when he was archbishop of Melbourne. Pickering was allegedly part of Dr Pell's circle.