

21 September 2012

Family and Community Development Committee  
Parliament House, Spring Street  
EAST MELBOURNE VIC 3002

Attention: Committee Chair, Ms Georgie Crozier, MP

Sent by post and email to: [fcdc@parliament.vic.gov.au](mailto:fcdc@parliament.vic.gov.au)

Dear Ms Crozier

**Re: Inquiry into Handling of Child Abuse by Religious and Other Non-Government Organisations**

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I refer to the above and thank the Committee for the opportunity to make a written submission in response to the Terms of Reference for your Inquiry.

Please find enclosed, my submission prepared on behalf of Waller Legal.

If you wish to contact the writer, please do not hesitate to phone my office on (03) 9480 2173.

Yours faithfully,



Dr. Vivian Waller  
**WALLER LEGAL**

## 1. About the Writer

I am the principal solicitor of Waller Legal, a law practice dedicated to the legal representation of those who have suffered injury as a result of being the victim of a crime, particularly those who have been subject to sexual assault and/or other forms of child abuse. Waller Legal aims to provide legal advice and representation to those who have endured child abuse, sexual assault and psychiatric injury. The practice offers a No Win No Charge arrangement so lack of funds will never be a reason for lack of access to justice.

I have been representing victims of sexual assault since I was admitted to the practice of law in 1995. I was articled at Slater & Gordon in 1994 and as an articled clerk and junior solicitor worked, in part, on sexual assault matters against the St John of God Brothers and the Christian Brothers. In 1997 I commenced employment with Maurice Blackburn where I represented sexual abuse victims for 10 years. Whilst at Maurice Blackburn I set up Australia's first dedicated legal practice unit for the representation of those who have been sexually assaulted, the Sexual Assault Unit. Also while at Maurice Blackburn I acted for Carol Stingel in her successful High Court Appeal against Geoff Clark.<sup>1</sup> The key issue in that matter was the statute of limitations periods as applicable to delayed onset post traumatic stress disorder consequent upon a sexual assault. I have completed a PhD on Limitation Periods in Child Sexual Assault Litigation in Victoria at the University of Melbourne.

Waller Legal was established in February 2007. Our practice areas include making applications to the Victim of Crimes Assistance Tribunal, making Applications for compensation under the provisions of the Sentencing Act, and conducting County and Supreme Court civil litigation. I have represented

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<sup>1</sup> Stingel v Clark [2006] HCA 37 (20 July 2006)

many complainants under the "Towards Healing Protocol." I have represented many complainants under "The Melbourne Response".

I currently represent 50 men who allege that they were physically and/or sexually abused by various Christian Brothers. I currently represent a further 25 clients who allege that they were physically and/or sexually abused by Catholic Clergy other than Christian Brothers. Over the years that I have been in practice I would estimate that I have represented hundreds of sexual assault victims who allege abuse by religious clergy. I feel that I am suitably experienced to comment upon the practices, policies and protocols employed by Catholic organisations in response to allegations of sexual abuse.

## 2. Complaints Against Catholic Clergy

There is no doubt that sexual abuse occurs across our community in all family, cultural, religious and organisational settings. There is, however, an acute concentration of complaints against Catholic clergy. Catholic personnel, entrusted with the care or education of our young, orphaned and vulnerable, were in a unique position to abuse the trust placed upon them. Under a mantle of religious authority, protected by the utter trust of well meaning and devout parents, Catholic personnel were unlikely to be challenged about their abusive behaviours. If a complaint did arise, Catholic clergy were afforded the protection of the institution of the Church and were often moved to another Parish<sup>2</sup> or to another country.<sup>3</sup>

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<sup>2</sup> Father Ridsdale had been moved from parish to Parish by the Diocese of Ballarat. There is evidence that the Diocese knew of his sexual impropriety by the early 1970's. Ridsdale was charged with 93 sexual offences against children in three separate criminal proceedings occurring in 1993, 1994 and 2006. He is serving a long prison sentence for multiple counts of buggery and indecent assault upon children. His offences spanned a 26 year period. These are just the offences we know about.

<sup>3</sup> Father Frank Klep of the Salesians of Don Bosco was convicted of child sex offences in 1994. Following further complaints to the police in 1998, Klep was moved to Samoa, with whom Australia has no extradition treaty. Ultimately Samoa deported Klep for failing to disclose his 1994 conviction. He was arrested upon his return to Australia and was charged with sexual offences against children. He was convicted of a number of charges involving 11 victims.

### 3. Devastating Impact of Catholic Clergy Abuse - Reporting Difficult for the Victim

Paedophiles ingratiate themselves into environments where they have access to children. The innocence of children, possessed with no intellectual framework within which to understand (let alone explain or report the carefully planned grooming and abuse), further minimises any chance of apprehension. We know that this means paedophiles continue unabated, working from victim to victim with impunity, sometimes targeting children in the same family. Child sex offenders routinely use their position of power and authority to insinuate their perverse version of reality into the child's perception of the world, making them feel complicit, when in fact the child is not complicit at all.

As a solicitor representing sexual assault victims for the last 18 years, I am all too familiar with the cavalcade of trauma, misery and intergenerational harm caused by childhood sexual abuse. The scars remain because children, suffering attacks such as these from persons in positions of trust and authority over them, are usually left to deal with the burning sense of trauma and frightened bewilderment on their own. Most often attempts are made to bury the memories but sadly the nightmare re-emerges later in life once the coping mechanisms fail. Statements of impact from victims and numerous studies into the psychology of those affected often tell a story of catastrophic psychological destabilisation.

There is something uniquely disturbing about Catholic Clergy abuse that often renders the victim powerless to complain. If a complaint is made, it often is ignored. It's not that I rank any kind of sexual abuse as more damaging or deserving of our attention than others, but there are trends and generalisations I have observed in relation to Catholic Clergy abuse that are worth exploring to give us all a better understanding of how responses could be improved.

The power, mystique and unquestioned authority of the Church and of 'God's representatives' here on earth sets up a phenomenal power imbalance between the abuser and the abused. It is not just the usual power imbalance - the cunning and intelligence of an adult pitted against the innocence and trust of a child – clergy abuse is delivered with the mantle of the authority of God (as well as the mantle of authority of the teacher, priest, principal, and Christian Brother).

The abuser is also a figure who is likely to loom large in the life of the family. Perhaps the abuser administered the last rites to a loved one, married an older sibling, buried grandma, or supported a parent through a troubled time. In short, the abuser is often dearly loved and revered by the victim's family members.

Convicted child sex offender Father Ridsdale, as the family priest, had inside information he used to target the vulnerable – he knew whose Mum was sick, whose Dad was a drinker, which kids were being raised in single parent families – and which kids would never tell or never be believed. I have known of Catholic Clergy who planted pornography in the boys' toilets to then "catch out" teenage boys masturbating. The boy was then threatened with disclosure to his parents and raped. What child can come home from school to seek the help of his parents when the narrative must commence with "I got caught masturbating in the toilets by the family priest"?

Christian Brother Robert Charles Best<sup>4</sup> would prey on any injured boy who copped a knock to his testicles during cricket or football, or who had an upset stomach. The boy would be called for a medical examination or a rub down and sexually abused. Often Best abused boys under the pretext of administering punishment – caning boys on the backside, or pulling their shorts up into the crack of their behind and belting them with a metre long wooden compass, used for drawing circles on the board in chalk. Children

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<sup>4</sup> Christian Brother Robert Charles Best was convicted of multiple sexual offences, including rape, involving 11 victims in September 2011. Best was a teacher and the principal at St Alipius in Ballarat, and subsequently a teacher at St Leo's in Box Hill and St Joseph's in Geelong.

might be inclined to misunderstand the abuse – thinking it was legitimate punishment or legitimate medical intervention.

Parents then, and even still, find it incomprehensible that Catholic Clergy could commit such atrocities. On many occasions, a child has attempted to disclose without having the language or understanding to describe what has occurred, and the parent has misunderstood. The child has been dismissed, or counselled to behave so as to avoid copping a belting from a Christian Brother. The message that, “You deserved it” is inadvertently reinforced.

It is not just the trauma of actual sexual assault and the insult to the physical integrity and dignity of the body that affects victims. Clergy sexual abuse assails the mind of the young person to whom the abuse is utterly incomprehensible. The religious figure, who speaks with authority upon the sins of masturbation and the evils of homosexuality, is engaging in both practices with the child in the commission of a criminal offence. I have heard many histories in which the victim reports being questioned, at a sensitive age for adolescent boys, about erections and masturbation. The boy is trapped between the horror of confessing masturbation to a priest or brother, or alternatively committing the sin of lying to deny it. Caught off guard, agitated and finally in tears the boy admits to masturbation, is drawn on to the lap of the offender and comforted. He is told there may be a way to avoid disclosure to his parents, if he just shows the Brother what he does, and in this way they can work it out together, in secret. The Brother then corrects the boy’s “technique”. The act of making the boy feel complicit and ensuring his secrecy is complete and the Brother can proceed to abuse the child with impunity. As the acts of the offenders are incomprehensible to the child as criminal offences, the child will erroneously feel complicit, and erroneously blame themselves. Such a burden of self blame and secrecy can be carried throughout adult life.

These factors contribute to our understanding of a number of matters;

1. That abuse by catholic clergy can persist for a long time without report;

2. That the victims, as children, may not understand the abuse or be able to name it as abuse;
3. That if the victims do understand the nature of the abuse, they are reluctant to report it as they feel they could not possibly be believed;
4. That if they do report, the primary response of the church authority is to protect the abuser.
5. The disclosure of the abuse is likely to be delayed until much later in life.

The power imbalance between the victim and the abuser who misuses the mantle of religious authority plagues the victims throughout their life. Ultimately when the victims come forward to make a complaint about the abuse to the relevant church authority they are traumatised again by the way in which the church authority responds to the complaint. It is critical, therefore, to the wellbeing of the victim and for principles of natural justice, that there is a complaints process independent of the institution that failed the victim in the first place – the Church.

#### 4. The Impediments to Civil Litigation: Limitation Periods and Identification of the Defendant.

There are significant legal impediments to the commencement of civil proceedings for compensation in relation to historical child sexual abuse by Catholic Clergy. It is not uncommon for children to delay the reporting of sexual abuse. The phenomenon of delayed disclosure of sexual assault is well documented<sup>5</sup> and understood in the medical and psychiatric literature. Often medical and legal assistance is not sought until much later in adult life. One of the most significant difficulties facing a plaintiff who wishes to litigate in

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<sup>5</sup> R L Sjoberg and F Lindblad, 'Delayed Disclosure and Disrupted Communication During Forensic Investigation of Child Sexual Abuse: A Study of 47 Corroborated Cases' (2002) 91 *Acta Paediatr* 1391; M L Paine and D J Hansen 'Factors Influencing Children to Self-Disclose Sexual Abuse' (2002) *Clinical Psychology Review* 271; M Mian, et al, 'Review of 125 Children of 6 Years of Age and Under Who Were Sexually Abused' (1986) 10 *Child Abuse Neglect* 223.

relation to sexual abuse is the limitation period that bars the action after a specified period of time.

In Victoria the time within which civil litigation must be commenced by a plaintiff is prescribed by the *Limitation of Actions Act 1958 (Vic)*. Without delving into the complexities of the assessment of limitation periods in differing circumstances it is suffice to note for present purposes that the latest time a person can possibly commence civil litigation for childhood sexual abuse is by the date of their 37<sup>th</sup> birthday.

The terms of reference do not extend to a critique of the laws of limitation and their disproportionate and prejudicial impact upon sexual assault victims. A full analysis of that issue is therefore not elaborated upon here. I would be happy to provide further submissions on this issue if it would be of assistance to the Committee.

For present purposes it is sufficient to note that I have acted in a number of civil proceedings against Catholic entities. Those Catholic entities have taken strict technical legal defences based on the expiration of the limitation period to force the Plaintiff to abandon civil litigation.

The other significant legal impediment to civil litigation, even for a claim within time, is the issue of the correct identification of the Catholic entity Defendant and whether that Defendant is capable of being sued. These issues of corporation sole have been extensively canvassed elsewhere. The effect of the decision in *The Trustees of the Roman Catholic Church v Ellis and Anor* [2007] NSWCA 117 means that the Catholic Church in is immune from litigation in many cases of past sexual abuse even in circumstances where it is clear that the church knew or should have known that children in its care were being abused and failed to act. The Church's argument was that as the various legal entities of the church played no role in the oversight or appointment of priests, it could not be sued in a claim for clerical sexual abuse. The Church also argued that as there was no other legal entity that could be sued. Mr. Ellis's claim was dismissed.



In many matters the only viable alternative is a complaint under the Toward Healing Protocol rather than pursuing common law damages. The difficulties and shortcomings of the Towards Healing process are discussed later in this submission. Most notably, the Towards Healing process results in financial compensation which is only a fraction of what may have been achieved if the Plaintiff had been able to pursue civil litigation.

#### 5. Case Study: St Alipius and Christian Brother Best

St Alipius, a Christian Brothers School teaching Grades 3–6 in Ballarat, has the tragic distinction of being a school whose male Catholic Clergy staff included a significant proportion of child sex offenders.

The teachers at the school were Christian Brother Robert Best (the Principal), Brother Edward Dowlan, and Brother Stephen Farrell - all of whom have been convicted of child sex offences later in life. The School's Chaplain was Father Gerald Ridsdale, (jailed in 1994) - also a convicted child sex offender. There are also many sexual assault allegations against Brother Fitzgerald, now deceased. Victims of Brother Fitzgerald have not reported matters to the police as no prosecution can now take place.

Complaints had been made about Best to the Christian Brothers but he continued to teach. His convicted offences span three decades. We know also that, on one occasion, Best was interrupted by another Christian Brother, who, in a gross act of indifference to the suffering of a child, simply smiled and closed the door.

In 2011 Best was convicted of 27 sexual offences against 11 victims, including two rape convictions. The victims were all small school boys at St Alipius where Best was the principal and the two schools that Best subsequently taught at, St Leo's in Box Hill and St Joseph's in Geelong.

Victoria Police are investigating 50 suicides in the graduate student body of St Alipius – all thought to be linked to sexual offences by Best and Ridsdale who operated in the St Alipius Parish.

It is clear that the Catholic Church can no longer regard clergy sexual abuse as the isolated and random criminal acts of rogue priests and brothers. The Church has presided over and often facilitated systemic child abuse perpetrated over decades.

#### 6. Case Study "Victim 2"

I would like to refer to one example that demonstrates the response of Catholic Clergy to one victim who was sexually assaulted by Best. It also demonstrates the legal difficulties encountered by complainants. I shall refer to him as "Victim 2." This is the pseudonym allocated to him by the County Court of Victoria.

Victim 2 was a grade 3 student at St Alipius. Victim 2 was a deaf child and particularly vulnerable. He was raped by Christian Brother Robert Charles Best. At that time, Best was the school principal and the grade 6 teacher. Following the rape Victim 2 returned to his class. He was distressed. Upon arrival at his classroom his class teacher, Christian Brother Fitzgerald, detained him at the door and asked him what was wrong. Victim 2 disclosed the sexual assault and described the rape in graphic terms. Brother Fitzgerald forcibly and repeatedly struck Victim 2 until he retracted the statement. This is how the Christian Brothers responded to Victim 2's first complaint of sexual abuse.

Subsequently, in search of support and assistance, and believing that a priest would help him, Victim 2 attended the Presbytery at St. Alipius and asked to speak to George Pell. I am instructed that George Pell refused to speak with him, but that George Pell was present when Victim 2 described to another priest what had happened to him. During this conversation, yet another Priest, convicted child sex offender Father Ridsdale, entered and offered to "Deal

with the situation” or words to that effect. The priest speaking with Victim 2 declined the offer. I am instructed that the priest then repeatedly struck and pushed victim 2 out of the presbytery. When Victim 2 was thus forcibly ejected and found himself back outside the front door shocked and bewildered, the priest said to him “And if you tell anyone I will fucking kill you.” This is Victim 2’s description of how the priests of the Diocese of Ballarat responded to his second attempt to report the abuse and seek assistance. The victim, a naive frightened grade three boy with a disability, genuinely believed that the priest had the power to kill him.

Later in life Victim 2 became my client. In 2003 legal proceedings were issued against Brother Robert Charles Best, the Bishop for the Diocese of Ballarat, the Bishop Emeritus of the Diocese of Ballarat, the Provincial Superior for the Congregation of the Christian Brothers St Patrick’s Province, The Trustees of the Christian Brothers and the Roman Catholic Trusts Corporation for the Diocese of Ballarat; (collectively I shall refer to these Defendants as “the Catholic Clergy Defendants.”) The Christian Brothers denied that the rape occurred. The Catholic Clergy Defendants took every technical legal defence available, including that the matter was out of time and that it was not possible to sue the named Defendants – the issue of corporation sole. In 2004 the Catholic Clergy Defendants threatened to strike out the Plaintiff’s statement of claim due to these technical difficulties. I advised Victim 2 of the technical vulnerabilities of his case, and that he was at risk of an adverse costs order if he lost the case. That is, the Court might order him to pay the legal costs of the Catholic Defendants in the event of an unsuccessful claim. He was also told that both myself, and counsel retained on his behalf, were prepared to run the case if he wished to. Ultimately, worn down and in need of assistance, Victim 2 elected to resolve his claim. He was required by the Catholic Clergy Defendants to sign a stringent confidentiality clause. Whilst I am unable to disclose the terms of the settlement I can provide a general observation that in circumstances such as these matters often resolve for a fraction of what a jury might assess as appropriate common law damages in circumstances where a claim proceeds to trial.

This is how the Catholic Clergy Defendants responded to Victim 2's third attempt for a just and compassionate response - via the exercise of muscle in a spirited technical legal defence and the imposition of a stringent confidentiality clause.

By the time that Victim 2's civil claim was on foot Best had already been convicted of child sexual offences in 1996 and 1998 in relation to other victims. Also, by the time of Victim 2's civil claim for compensation, other former teachers at St Alipius had been convicted of child sex offences. Christian Brother Dowlan was convicted in 1996. Dowlan was initially charged with 64 offences against 23 boys (including 2 charges of buggery) but negotiated a plea bargain that saw him enter a guilty plea to 16 counts of indecent assault in relation to 11 victims. Two of these boys were from St Alipius, three from St Thomas More, four were from St Patrick's and two were from Cathedral College.

Victim 2's case, together with the criminal convictions of Best, Dowlan and Christian Brother Farrel (also a Christian Brother teacher at St Alipius) should have precipitated a thorough investigation of a possible paedophile ring operating within the ranks of the Christian Brothers. It cannot be said that the Christian Brothers and the Church more broadly were not on notice of significant and disturbing allegations. As far as I can ascertain, the Christian Brothers did not refer matters to the police, nor did they conduct an internal investigation. I can't be certain of these matters, but if they did conduct any kind of investigation it did not uncover the cavalcade of other victims of Robert Charles Best that the Victoria Police would subsequently identify. Nor did it uncover the avalanche of victims that would come forward in the wake of media publicity in 2011 following Best's 27 convictions in relation to 11 school boy victims. Uncovering these heinous crimes would have been as simple as approaching Victim 2's other class members, other students of St Alipius in that time period, and students of Best's in the schools he subsequently taught at. These men are now my clients. It is contended that the Christian Brothers should have proactively looked into these matters; used old school and parish records to identify potentially affected families, written to parishes,

encouraged people to report and referred the issue to the Victoria Police for independent investigation. They could have thrown open their school and parish records to assist police with their inquiries.

Victim 2 reported matters to the police in 2008. Following a thorough and lengthy investigation by the Victoria Police, Best was ultimately charged with 40 sexual offences against 14 boys, including 4 charges of buggery. One victim tragically took his own life after giving a police statement. The charges against Best in relation to this victim were withdrawn. Ultimately, after several years of separate criminal trials Christian Brother Robert Charles Best was convicted of 27 sexual offences against 11 young boys including two counts of buggery. Victim 2 gave evidence at the criminal trial and Best was convicted of raping him. It had now been established beyond all reasonable doubt that Best had raped Victim 2 in 1969.

How did the Christian Brothers respond to Victim 2's criminal complaint? By extensively funding the defence of the accused. Best was, at the time of the 2011 trials, already a convicted child sex offender having been convicted in 1996 and 1998. That did not preclude the Christian Brothers again coming to his defence. In fact, the Christian Brothers have funded Best's criminal defences from 1996 – 2011.

Whilst I believe that every accused person should have the benefit of legal representation I find it extraordinary, in the context of all the circumstances of this victim, the Christian Brothers funded a legal team to protect Best and, as a part of the criminal defence process, that funding was used in an attempt discredit each witness - including Victim 2. Best was entitled to be legally represented. I raise this point only to demonstrate the utter disparity in resourcing and assistance provided to a Christian Brother convicted child sex offender on the one hand, and the long suffering victim on the other. This was the Christian Brother's response to Victim 2's third report of the rape.

Subsequent to the conviction of Brother Best for rape in 2011, Victim 2 again instructed my office to act on his behalf. A Sentencing Act Application for

compensation was issued for Victim 2 against Christian Brother Robert Charles Best. This is part of the criminal trial, bears the same court number, and comes back before the same Judge of the County Court that presided over the criminal case. It is part of the same proceeding. That Application is not yet concluded. Any order for compensation that may be obtained via this process would only be enforceable against Best himself. It is likely that Best is impecunious. Legal representatives for the Christian Brothers have indicated their position – that they do not intend to indemnify a convicted child sex offender. This position is rather curious. Best was a convicted child sex offender in 1996. And again in 1998. He was a convicted child sex offender by the time the Christian Brothers funded his criminal defence in the 2011 trials (estimated to be a sum in excess of a million dollars.) It would seem unchristian and breathtakingly callous for the Christian Brothers to fund all of Best's expenses relating to the criminal trials except for a compensation order – the only expense that would benefit Best's victims. This is the response (to date) of the Christian Brothers to Victim 2's fourth initiative to seek a just and compassionate outcome.

In addition to the Sentencing Act Application Victim 2 has instructed my office to investigate and commence a civil claim for compensation against the Christian Brothers. The rape, previously denied, has been proven. The response of the Christian Brothers and their insurers has been to rely on the release executed by Victim 2 in 2004 to preclude any claim and deny any liability. This is Victim 2's fifth attempt at justice.

For the sake of clarity, let's recap the chronology. Victim 2 was brutally raped in 1969. Victim 2 reported the rape to another Christian Brother on the day it occurred and was violently and repeatedly beaten until he retracted his complaint. He reported the rape to 3 priests in the diocese of Ballarat thereafter and was beaten and his life was threatened if he told anyone. In 2004 the Christian Brothers disbelieved he was raped and every technical legal defence was thrown at his civil claim, forcing him to elect not to proceed. Victim 2's allegations of rape were proven beyond all reasonable doubt in the criminal case in 2011. In a subsequent application for compensation against

Best the Christian Brothers have indicated they won't indemnify Best as he is a convicted child sex offender. Having paid all Best's legal expenses arising from the criminal trials the solicitors for the Christian Brothers have indicated they won't pay the one expense arising in the criminal trial that would benefit the victim. Currently, the Christian Brothers deny any liability to Victim 2, even following Best's conviction for raping him, as Victim 2 signed a release in 2004. This is the response of the Christian Brothers to my client's ongoing requests for a just and compassionate result.

#### 6. "Towards Healing"

Towards Healing is the Catholic Church's internal complaints process. It applies to complaints against Catholic personnel across Australia except for those who fall within the responsibility of the Archdiocese of Melbourne. Those matters are dealt with by the Melbourne Response. "Towards Healing" is somewhat euphemistically named and is deeply flawed. It creates the pretence of independence but falls far short of impartiality and integrity. There is no proper separation of the roles of mediator, treating psychologist and/or church authority. Complainants often think someone has been appointed by Towards Healing to independently look after their interests but this is not the case. Complainants are often encouraged not to enlist the assistance of a lawyer, and the process is described as "pastoral." There have been many instances where complainants have had to sign legal releases in order to receive some small financial assistance without the benefit of any legal advice at all. In the vast majority of Towards Healing complaints I have been involved in the Church Authority does not pay any contribution to the complainant so that independent legal advice could be obtained. Most Church Authorities have a self imposed "cap" that they put on their responses to Towards Healing complaints. For some orders it is as low as \$5,000.00. Where I am representing a complainant in the Towards Healing process, on the instruction of my clients who distrust the process or wish to avoid distress, I request that all communication be directed to my office and that the complainant not be contacted directly. This request is routinely ignored by Professional Standards and/or the church authority involved.

Towards Healing purports to conduct an investigation into the allegations. "Assessors" are appointed for this purpose. In my experience the investigations have been inadequate. The assessors have failed, for example, to approach even other students in the same class. Assessment reports do not seem to disclose any other allegations about the alleged offender, nor do they seem to contain details of any convictions against the alleged offender. The Complainant is not entitled to a copy of the Assessor's report but only the summary. If a complainant succeeds in getting a copy of the full report it can be so heavily edited "for privacy reasons" that it cannot be coherently read. There is no substitute for independent investigation. Letting the Church deal internally with allegations of sexual abuse is like taking a complaint about the sexual misconduct of a star full forward to the footy coach during the finals. It's just not going to be handled without the smear of self-interest staining every aspect of the process.

#### 7. Case Study Mr Heffernan: St Augustine's Boys Home Geelong.

Mr Heffernan reports that he was physically and/or sexually abused by six different Christian Brothers while he was a state ward and a resident at St Augustine's Boy's Home in Geelong. I have received many such reports and abuse of this kind was widespread at St Augustine's Boys' Home, an Orphanage run by the Christian Brothers. I acted for Mr Heffernan in a Towards Healing complaint in 2007. The matter proceeded to a facilitation after inadequate investigation. At that time, Mr Heffernan resided in Queensland and the Christian Brothers agreed to cover the cost of his flight to Melbourne. Mr Heffernan wanted his wife to accompany him for moral support, and also he did not wish to be separated from her as at this time as she was suffering breast cancer. The Christian Brothers refused to cover the cost of Mrs Heffernan's travel to Melbourne to accompany her husband to the facilitation. Mr Heffernan then declined to attend the facilitation, as he did not wish to leave his wife alone. The facilitation proceeded without him. It's hard to imagine how a process could deliver any healing or natural justice in these circumstances.



Mr Heffernan felt strongly that the Christian Brothers lacked compassion. For this reason, and also because he felt that the result of the facilitation was manifestly unjust and insulting, he made his instructions clear to me that he did not wish Brother Brandon from the Christian Brothers to make personal contact with him. Brother Brandon wished to make contact with Mr Heffernan for "pastoral healing." I communicated the request to Brother Brandon clearly and asked him to respect the wishes of my client not to be contacted. Brother Brandon refused to agree. Mr Heffernan was so distressed by this lack of respect and compassion that he subsequently contacted me and asked me to prepare an intervention order against Brother Brandon and the Christian Brothers. I wrote to both the Brother Brandon and Professional Standards reiterating Mr Heffernan's wishes once more, and stating that an intervention order would be sought if necessary. Fortunately, the threat of the intervention order finally commanded some consideration of Mr Heffernan's wishes.

It has been my experience of Towards Healing that Professional Standards and the relevant Church Authority predominantly;

- (a) Resent and resist complainants being legally represented;
- (b) Refuse to make any financial allowance to ensure a complainant receives independent advice before being asked to sign a release;
- (c) Ignore requests to deal with a legal representative but continue to contact the complainant directly and against the complainant's wishes;
- (d) Make inadequate investigation of the allegations;
- (e) Refuse to release all relevant information to the complainant;
- (f) Breach principles of natural justice;
- (g) Are not independent nor transparent; and
- (h) Produce inconsistent results which vary from Order to Order.

If a person has the misfortune to be harmed by Catholic Clergy from three different orders they must endure three different Towards Healing processes, each with a different church authority. Requests to have one facilitation

dealing with allegations against multiple church authorities have been refused. This is very distressing for victims.

In my experience the Towards Healing process re-traumatises the victim and is a repeat of the power imbalance that allowed the sexual abuse to occur in the first place. I find the Towards Healing process disturbing and disrespectful to victims. The process is so utterly unsatisfactory and distressing for clients that I am loath to recommend this avenue to any client except as an option of absolute last resort.

### 8. The Melbourne Process

This is the Church's internal complaints process that applies to complaints where the alleged abuser falls within the responsibility of the Archdiocese of Melbourne.

In matters I have been involved in I can say that my client, on each occasion, has been treated kindly and with respect by the Commissioner and by the Panel engaged in the Melbourne Response. This is more than can be said for matters proceeding under Towards Healing where treatment of the complainant can vary vastly depending on which church authority is involved. The Melbourne process respects a client's wish to be legally represented, and although legal fees are rarely paid, communications are directed to the complainant's legal representative. Ex gratia payments are capped at \$75,000. Whilst this may be significantly less than damages that might be awarded under common law, two matters are noted. Firstly, payments tend to be significantly more than paltry sums offered under Towards Healing. Secondly, payments are made even though a claim may be statute barred or a correct Defendant cannot be identified. Complainants do not have to run the gauntlet of technical legal defences. In some respects the Melbourne Process is to be appreciated and operates more compassionately than Towards Healing.

The Melbourne Process, however, has attracted significant criticism. It can hardly be said to be high praise to trump Towards Healing in the provision of compassion and financial assistance to clergy abuse victims.

In a pastoral letter dated 1 July 2010 Archbishop Denis Hart said that 300 complaints had been dealt with in the Melbourne Archdiocese Response process, an in-house sexual abuse complaints process. It seems that not one of these was referred to the police. I know this because recently the Victoria Police have criticised the Archdiocese of Melbourne for not eliciting the assistance of the police or referring allegations of sexual abuse for investigation, despite requests by the police to do so. Denis Hart has said that the 300 complaints related to 60 priests in the Melbourne Archdioceses.

Think about that for a moment: Sixty different priests in Melbourne are alleged to have committed sexual offences. There are at least 300 people who report being victims - these are just the matters that have been reported within the Archdiocese of Melbourne. Some individual victims have reported to the police, but the Church has not taken this initiative.

I know of no other community group, school, business, company, government agency or volunteer organisation who could preside over such astonishing and horrifying statistics and yet consider themselves to be above the law or somehow separate to it. Any responsible CEO of a company, the president of a football or social club or the manager of a community group would seek the assistance of the police to investigate known or suspected criminal activity of such a scale.

The media has reported that on at least two occasions the "Melbourne Response" as it is sometimes called has inadvertently undermined the integrity of an active police investigation by tipping off the alleged abuser to the existence of the police investigation.

## 9. Conclusions

The Church, including religious congregations, has had fifty years to demonstrate that it can respond to the sexual abuse crisis with integrity. The Church has failed. The Church has presided over the widespread and systemic criminal abuse of children and turned a blind eye to the significant suffering of the victims and their families. Despite the good work performed by many Catholic agencies the lack of authenticity in the Church's response to the child sexual abuse crisis deems their assertions of compassion and contrition empty and hypocritical. All Christian Brother files in my legal office are filed under "U" for "Un-Christian".

What's important now is to ensure that the committee overseeing the Inquiry is appropriately resourced to deal with the institutionalised power of the Catholic Church, its insurers and its lawyers – the very same organisations that have exerted their power and influence to make each individual victim feel like they are the only one and to keep matters from the police.

#### 10. Recommendations.

1. That a Royal Commission be conducted into Catholic Clergy sexual abuse.
2. That the Victoria Police investigate allegations of sexual abuse arising at Christian Brother schools and orphanages in Victoria, especially schools in Ballarat (St Alipius and St Patrick's in particular) and St Vincent's Boys Home in South Melbourne and St Augustine's Boys Home in Geelong.
3. That "Towards Healing" and any Church Authority make available to the Victoria Police and/or the Coroner all complaints received about sexual abuse by Christian Brothers and any documents or information generated in relation to the investigation of such allegations.

4. That the coroner investigate high rates of suicide in graduate student bodies of Christian Brothers Schools or parishes where Catholic Clergy sexual offenders were known to be operating.
5. That the Victoria Police investigate other concentrations of sexual abuse in religious organisations.
6. That Towards Healing and the Melbourne Response release all data about the number of complaints of sexual abuse made to each of them.
7. That the state government commission research into past criminal convictions for sexual offences against children in the State of Victoria recording the occupation and circumstances of the offender. The purpose of which would be to ascertain any pattern or clusters of sexual abuse by members of religious organisations.
8. That the occupation and circumstances of convicted child sex offenders be recorded for the purpose of monitoring patterns or clusters of sexual abuse in religious and other organisations over time.
9. That an independent transparent compensation process be established to receive complaints about sexual abuse by Catholic Clergy, and that the Catholic Church contribute financially to that scheme. One model that might be considered is the statutory compensation scheme established in Ireland following the Royal Commission. The Residential Institutions Redress Board was established for this purpose. The establishment of a scheme of this kind would circumvent difficulties associated with civil litigation – being time limitation problems and issues of corporation sole, and would provide an independent process.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

**Dr Vivian Waller**  
**WALLER LEGAL**