

IN GOOD FAITH AND ASSOCIATES (1997 – ongoing)

Strategic consultation on clergy & religious sexual and systemic church abuse

Advocacy experience and expertise

IGFA's expertise in systemic advocacy has developed on the basis of casework for victims reporting their experiences of harm when engaging Church and State responses. Our advocacy capability includes victims' cases engaging with the Melbourne Catholic Church response; the Victorian and Australia wide *Towards Healing* and international Catholic Church cases in the United Kingdom, Ireland and Italy. In total IGFA has provided advocacy and facilitation services on over 150 individual cases since its formation in 1997.

Documenting individual clergy sexual assault and systemic abuse

We conduct research into similar international experiences and have developed a clear understanding of what needs to be reviewed and reformed across all areas of response to clergy victims.

Our research and reports include the production of the MVC's *Towards Justice Charter* (June 1998), summarising systemic abuses and calling on the national Catholic Church to reform the Melbourne Response. In November 2011, staff at IGFA collated and presented a submission to Justice Cummins' Inquiry into Protecting Victoria's Vulnerable Children. Our submission on behalf of the MVC detailed the systemic failure of the Melbourne Catholic Archdiocese to appropriately handle child sexual abuse.

In September 2011, IGFA produced and submitted a historic 87 page document to the Attorney-General of Victoria, Hon. Robert Clark, seeking an urgent response to the Melbourne Archdiocese and Victorian clergy sexual abuse crisis – again on behalf of the MVC. The submission sought a government Inquiry and testified to the mismanagement, inappropriate practices and inadequate handling of complaints when victims have reported child and vulnerable adult sexual assaults to the Melbourne Response and dioceses throughout the state of Victoria.

We have also observed the development of pervasive complex post trauma stress disorder among many of our clients over an extended period of stress and difficulty. IGFA is responding through assessment and seeking specialist treatment for these victims as part of our evaluation of the medical and mental health impacts needing to be understood.

The Melbourne Victims' Collective

IGFA's numerous restorative projects include the founding of the Melbourne Victims' Collective (MVC) in 2006. The 50 plus members include victims of sexual assaults by priests, nuns, brothers and lay workers within the Melbourne Catholic Archdiocese. Victims have recounted their experiences of going through the *Melbourne Response* since it began in 1996, through their need to gain understanding and get support for systemic impacts.

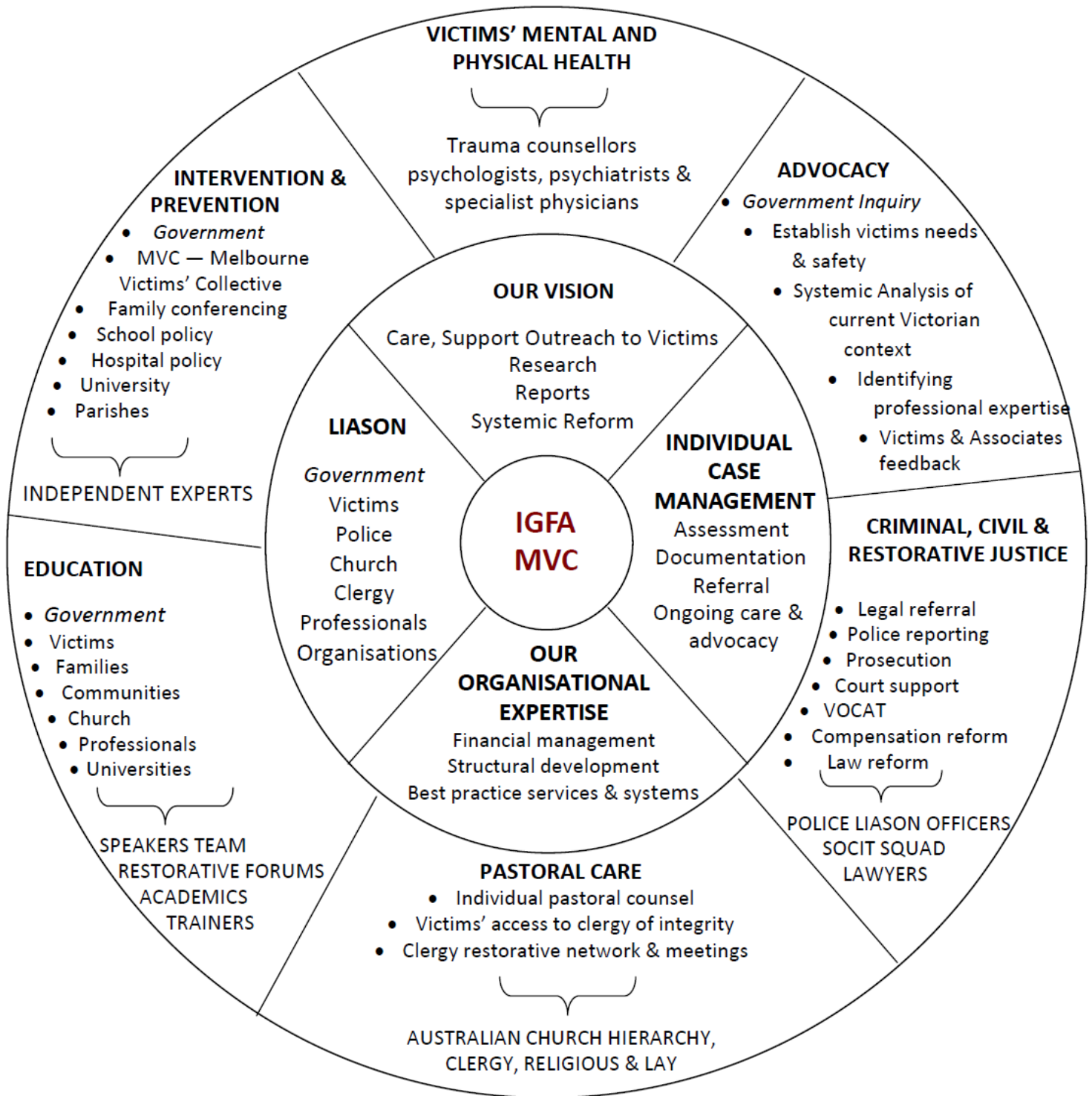
Specialist support network

We have intentionally developed an extended Victorian network of 100 plus victims of clergy sexual and church abuse, as well as their supporters and family members, clergy and religious, pastoral workers, counsellors, members of organisations and victims' self help groups. These people are representative of the many contacts made to IGFA who wish to be helped to understand the workings of the Inquiry and their potential submissions to it.

Restorative work with clergy

In 2010 IGFA initiated a restorative project with clergy of integrity from the Melbourne Archdiocese committed to developing an awareness of the priests' past assaults, the current survival issues and difficulties confronting victims and families. This program built commitment to the victims by the clergy through renewing their pastoral care and offering hope for the victims. Through this program, 60 clergy have formed supportive links.

The diagram below shows our commitment and areas of long-term work for survivors.



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TOWARDS JUSTICE

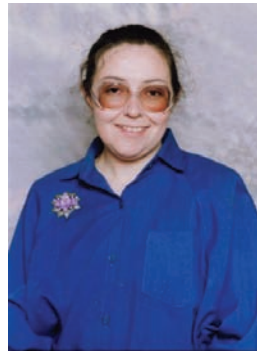
The Charter

of the Melbourne Victims' Collective, Australia



Acting against Abuses

**from Clergy, Religious and Lay Personnel
in the Melbourne Catholic Archdiocese**



INTRODUCTION

Towards Justice: The Charter is an initiative of the Melbourne Victims' Collective, comprising more than 30 people. Members of this Collective have experienced the consequences of primary, secondary, tertiary and/or systemic abuses by clergy, religious and lay personnel within the Melbourne Catholic Archdiocese. These abuses date from approximately 1948 to 2008, across the tenure of five Archbishops. The Collective includes independent practitioners with a combined 60 years of legal, pastoral, psychiatric and psychological expertise in their work with clients abused within religious settings. *Towards Justice: The Charter* expresses the opinion of the Melbourne Victims' Collective and is based on case materials from numerous victims.

Since *Sexual Abuse: The Melbourne Archdiocese Response*¹ was established in 1996 by Archbishop George Pell (later maintained by Archbishop Denis Hart), victims, their families and members of their parishes have repeatedly recounted to the Collective practitioners their experiences of disregard, disservice and disadvantage within the set of arrangements of *The Melbourne Response*. The similarity of independent accounts has led the Collective practitioners to form the view that there has been a disturbing pattern of abuse.

Our aims are to raise Church and public awareness about the mistreatment and ongoing trauma of victims, and to open avenues for dialogue, review and change through processes of restorative justice.²

DEFICIENCIES IN 'THE MELBOURNE RESPONSE'

The Melbourne Response was put into place with legal advice from a major Australian law firm and purports to follow the 15 'Principles for Dealing with Complaints of Abuse' as defined in Part 1 of *Towards Healing*.³ In contrast, many victims have found *The Melbourne Response* inherently deficient. Over 12 years since its inception, it has, in our view, not practised these principles and has reduced its response to a legalistic claims process.

Victims of sexual abuse by clergy, religious and lay personnel⁴ are profoundly disadvantaged and wounded. When they turn to an institution for assistance and receive an inadequate response which does not recognise their needs, victims' wounds are seriously compounded. This is a further layer of abuse, inflicted by the institution ostensibly offering help.

This dynamic is reported by victims in the Collective who turn to *The Melbourne Response*, only to find what in our opinion is an inequitable system that, from a victim's viewpoint, places the public, legal and financial interests of the Melbourne Catholic Archdiocese over those of the victims.

The Archdiocese's maintenance of a set of arrangements, in our opinion, appears to prioritise its livelihood above the needs of victims, and is diametrically opposed to the values and example of Christ. We believe it also contravenes the most recent directives of Pope Benedict XVI on this matter:

... we have to act on three levels, the first is at a political level to ensure justice is done. We will absolutely exclude paedophiles from the sacred ministry, they can never be priests and we will do all we can to help the victims who have been deeply affected by this, these are the two sides of justice. On a pastoral level we must ensure healing and reconciliation, this is a big pastoral engagement...⁵

In our view, the perpetuation of the current priorities of *The Melbourne Response* by its clerical leaders, also directly contradicts the national Code of Conduct for all clergy and religious in Australia, outlined in the booklet, *Integrity in Ministry*. This document holds all clergy accountable for prioritising the 'care and healing of those who have been harmed by ministers of their community' in situations 'when Communion is broken', as

1 See George Pell, *Sexual Abuse: The Melbourne Archdiocese Response* brochure (The Catholic Archdiocese of Melbourne: Melbourne, October 1996). Hereafter referred to as *The Melbourne Response*.

2 See Gerry Johnstone and Daniel W. Van Ness (eds), *Handbook of Restorative Justice* (Willan Publishing: Oregon, 2007) and Michael S. King, *Towards a More Comprehensive Resolution of Conflict: The Role of Restorative Justice* (Melbourne: May 2008).

3 See Australian Catholics Bishops' Conference, *Towards Healing: Principles and Procedures in Responding to Complaints of Abuse against Personnel of the Catholic Church in Australia* (National Committee for Professional Standards: Bondi Junction, 1996), 1, footnote 1.

4 Hereafter referred to as 'clerical sexual abuse' for brevity.

5 Benedict XVI, Press Conference, Alitalia 777 Boeing, 15 April 2008, as reported by Emer McCarthy.

well as 'the parents and family of those harmed and the community where the violation has occurred.'⁶

Primary and secondary victims in our Collective feel betrayed by the lack of clerical leadership within the Melbourne Catholic Archdiocese. They describe feeling powerless within *The Melbourne Response* set of arrangements, which are deficient in values and principles of justice, healing, safety, integrity, empathy and trust-building.

Hearing Victims Speak about *The Melbourne Response*

These deficiencies are heard in victims' descriptions of:

- mismanagement of complaints;
- neglecting to investigate and respond to ongoing risks of clerical abuse with appropriate interventions;
- impersonal, insensitive and untimely responses to victims, their families and wider communities;
- mismanagement of accused priests who continue to harass complainants and parish members after being stood down from parish and/or public ministry, pending investigation;
- the retaining of offenders as ordained priests, even after they have been found guilty in criminal court, and/or the Independent Commissioner for *The Melbourne Response* makes a finding that victims' complaints of sexual abuse by these priests have been established;
- the absence of promised pastoral support, which leaves victims feeling spiritually abandoned by and excluded from their Church community;
- receiving a response from the Archbishop's lawyers when victims question the personnel, practices or processes of *The Melbourne Response*;
- confusion of roles by those who respond to victims on behalf of the Melbourne Catholic Archdiocese;
- a lack of professional advocacy, resourcing and support for professionals working with children exposed to abusive clergy in Catholic schools, and appropriate intervention in situations of abuse; and
- a scarcity of information for family members and parishioners, and lack of recognition of and response to their needs as secondary victims.

Structural Flaws in *The Melbourne Response*

The experiences of the members of the Melbourne Victims' Collective reveal, in our opinion, the following flaws:

- In its Archdiocesan separation from the national set of procedures, it segregates victims, families and communities, and avoids external accountability.
- The lack of policy guiding *The Melbourne Response* leads to inconsistent and arbitrary decision-making from case to case.
- Victims are offered no practical independent support or advocacy to assist them with the processes of *The Melbourne Response*, evidencing a system that does not prioritise the needs of the victims.
- It lacks clearly defined organisational and spiritual leadership.
- The structure and role of Carelink differ markedly from the public announcements.
- There is no Pastoral Response Team 'to provide victims with spiritual support and counselling at a parish level'⁷. This team was eliminated with the implementation of *The Melbourne Response*, not up-graded as promised.⁸
- There are scant services available for secondary victims, despite the promise of provision of a 'forum for pastoral healing... as an essential part of the healing process for the wider Church community.'⁹

6 National Committee for Professional Standards, *Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy and Religious in Australia, June 2004* (National Committee for Professional Standards: Sydney, 2004), p. 19-20.

7 Melbourne Catholic Archdiocese Media Release, 'Catholic Church in Melbourne Apologises to Sexual Abuse Victims and Appoints an Independent Commissioner to Enquire into Allegations' (St Patrick's Cathedral: Melbourne, October 1996), p. 2.

8 *The Melbourne Archdiocese Response* brochure, panel 7.

9 *The Melbourne Archdiocese Response* brochure, panel 7. See also National Committee for Professional Standards, *Integrity in Ministry*, p. 19-20, where the importance of 'justice and the healing of the community of the Church' is

- Although the Independent Commissioner announced that 'it was hoped the commission would complete its work within six months, and hopefully a much shorter time than that'¹⁰, *The Melbourne Response* has filled a permanent role for more than a decade.
- The only public information available is inadequate, outdated and inaccurate.
- There is no transparency of process and outcomes within *The Melbourne Response* in part or whole.
- The rules and processes made by the Compensation Panel are not publicly disclosed, with monetary offers differing greatly between individual cases with reasons not given for variations.
- *The Melbourne Response's* combination of the terms 'ex gratia' and 'compensation' is misleading and unjust. Melbourne's \$55,000 ceiling is the only such limit within the Australian Catholic Church and is incommensurate with the extent of victims' injuries, whilst the 'ex gratia' nature of the offer precludes any further claims for comprehensive compensation against any entity of the Melbourne Catholic Archdiocese.

International Church Responses and *The Melbourne Response*

Victims and practitioners believe that *The Melbourne Response* lacks key components that form the backbone of international Catholic Church responses to clerical abuse,¹¹ including:

- fair, consistent and truly independent procedures in response to victims and perpetrators of abuse;
- an accountability/audit process that includes regular external reviews of the system and structural revision;
- a procedure for victims to appeal processes, decisions and outcomes;
- comprehensive pastoral care to victims, their families and communities;
- clearly defined procedures for managing the accused or convicted clergy;
- educational programs and strategies to protect children, young people and vulnerable adults, and to prevent further abuse; and
- processes for rebuilding pastoral bridges between priests and people in the wake of clerical abuse.

INTRODUCING A PASTORAL FRAMEWORK

In 1996, in *The Melbourne Response* brochure, Archbishop George Pell publicly acknowledged the need to 'apologise sincerely and unreservedly... for [the] betrayal of trust'¹² of victims of clerical abuse. The inadequacy of *The Melbourne Response* in the 12 years since, undermines the credibility of this apology.

Making apologies, disconnected from relevant pastoral practice, is concerning. The misapplication of Catholic theology and misappropriation of sacramental resources – including the acts of confession, contrition, repentance, restitution and forgiveness – have long enabled those in power in the Church to hide and perpetuate clerical abuse.

If the Church were to anchor its pastoral ministry with the victims' viewpoint and draw on spiritual resources such as Catholic Social Teaching¹³, a greater breadth of healing and justice could be realised, including the following dimensions:

- **Confession:** recognition and acceptance of the original clerical abuses and the subsequent systemic abuse;
- **Contrition:** an expression of remorse towards all victims, including families and communities;
- **Repentance:** correcting the structures that have wounded, and acting in a new direction;

noted in situations of abuse by Church ministers.

10 Peter O'Callaghan QC, as quoted in 'Commissioner aims to act fairly', *Kairos*, 17-24 November 1996 (Melbourne Catholic Archdiocese: Melbourne, 1996), p. 7.

11 See e.g. United States Conference of Catholic Bishops, *Charter for the Protection of Children and Young People* (US Conference of Catholic Bishops: Washington DC, 2005), www.nccbuscc.org/ocyp/charter.shtml, and The Cumberlege Commission Report, *Safeguarding with Confidence: Keeping Children and Vulnerable Adults Safe in the Catholic Church* (Incorporated Catholic Truth Society: London, 2007).

12 *The Melbourne Archdiocese Response* brochure, panel 2.

13 See e.g. www.faithdoingjustice.com.au

- **Restitution:** improved support for and compensation to victims;
- **Forgiveness:** the Church asks victims for forgiveness, recognising that this may be a long-term individual and social process for those who experience the effects of abuse.

A CALL TO ACTION

It is crucial that the Church in Australia looks particularly to the Melbourne Catholic Archdiocese's history of responses to clerical abuse, with the following aims:

- Recognition and acknowledgement of systemic abuse encountered within *The Melbourne Response*.
- A process of comprehensive reform towards reconciliation and the shaping of a safe and aware Church.
- Establishing restorative justice, proportionate restitution and tangible healing for all victims, including the families and wider communities of victims of clerical abuse.

Practical Measures

The Melbourne Victims' Collective calls for the immediate and equitable resolution of its individual cases, as well as all other cases currently pending within *The Melbourne Response*, according to the principles espoused within *Towards Justice: The Charter*.

We also recommend immediate reform by replacing *The Melbourne Response* with a five-part response grounded in restorative justice that is non-adversarial and collaborative:

1. The establishment of a public enquiry into *The Melbourne Response*, led by a professional with relevant expertise and public standing. This should be a thorough, painstaking and independent review, similar to the Cumberlege Report in the UK¹⁴ and should draw on research about the nature and scope of clerical abuse, such as the findings by the John Jay College of Criminal Justice in the USA, as commissioned by the United States Conference of Catholic Bishops' National Review Board.¹⁵
2. Offering victims the opportunity to contribute their thoughts, needs and experiences to assist the review process and establish more comprehensive responses, so that the Church does more than pay 'lip service to the principle of the equal dignity of all members of the church.'¹⁶
3. The appointment of a manager for the revised system to take responsibility for the entire system.
4. The appointment of a *Vicar for Clerical Sexual Abuse Victims*, grounded in pastoral theology, with experience in working with victims of clerical sexual abuse, in recognition that spiritual aid is central to the renewal of spiritual life for victims, their families and communities.
5. Commitment of leadership, resources and the support of a continuous process of external review, similar to the US Bishops' Conference National Review Board mentioned above.

Putting these five pillars in place would immediately broaden the Melbourne Catholic Archdiocese's response from its current narrow legalistic stance. With a new system in place, the Melbourne Catholic Archdiocese could begin to address the structural causes and symptoms of clerical sexual abuse, and move towards justice and compassion for victims.

An Expression of Peace

We recognise these changes as a symbolic expression of *shalom*, which is 'more than the cessation of violence and conflict. It is the state in which the world is meant to be. It is the best description of what the reign of God will be like: a place of safety, justice, and truth... an experience of peace after so much suffering.'¹⁷

We believe that if the Melbourne Catholic Archdiocese fails to recognise the need for change and act appropriately, there will be a further loss of faith in the Church when the reality and scope of clerical abuse inevitably becomes publicly recognised, as has occurred in the USA, UK, Ireland and Canada.

¹⁴ The Cumberlege Commission Report, *Safeguarding with Confidence – Keeping Children and Vulnerable Adults Safe in the Catholic Church* (Incorporated Catholic Truth Society: London, 2007).

¹⁵ See various audit reports by United States Conference of Catholic Bishops National Review Board at www.usccb.org/nrb

¹⁶ Henry MacDonal, 'Pope could face protests in Ireland over abuse cases' in *The Guardian UK*, 10 March 2008.

¹⁷ Robert J. Schreiter C.P.P.S., *The Ministry of Reconciliation: Spirituality and Strategies* (Orbis Books: New York, 2004), p. 53.

Most importantly, if the Melbourne Catholic Archdiocese continues to respond as it has done to date, we fear that innocent children and vulnerable adults will continue to be assailed within the Archdiocese, both by clerical abusers and, crucially, by the very system put in place to respond to these sinful crimes.

Finley *McLafferty* *Boat* *Jan Lauther*

Carboyle *McDonnell* *Quay* *Plawster*

L. K. O'Rourke *Tossek-Tanus* *Maiston* *Jillanne Walker*

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The Melbourne Victims' Collective
Melbourne, Australia, June 2008

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OUR MISSION

'We are called together to be visionary.

*The Life of God can be brought closer to the minds, hearts and bodies
of all those suffering from the ongoing effects of misconduct and abuse
by clergy, religious and lay church members.*

*We appeal to people of good faith, including clerical leaders,
to recognise God's ongoing spiritual and practical work
in our quest for justice.*

*The Charter, our Collective and supporters
seek genuine restoration, reform and reconciliation.'*

'Towards Justice'

Melbourne Victims' Collective, Australia

June 2008

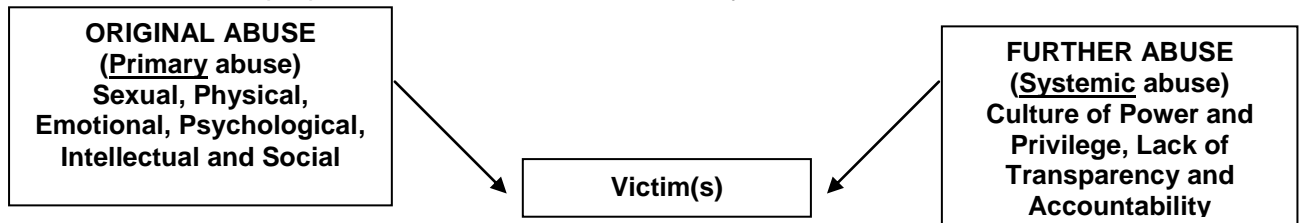
A CONTINUUM OF CLERICAL ABUSE

When talking about abuse, the terms ‘primary’, ‘secondary’ and ‘tertiary’ can be used in different ways. Typically, victims of clergy, religious and lay abuse experience multiple levels of victimisation and its wide-ranging effects.

Paradoxically, whilst most victims are abused in isolation without eye-witnesses, abuse itself always exists within broader contexts:

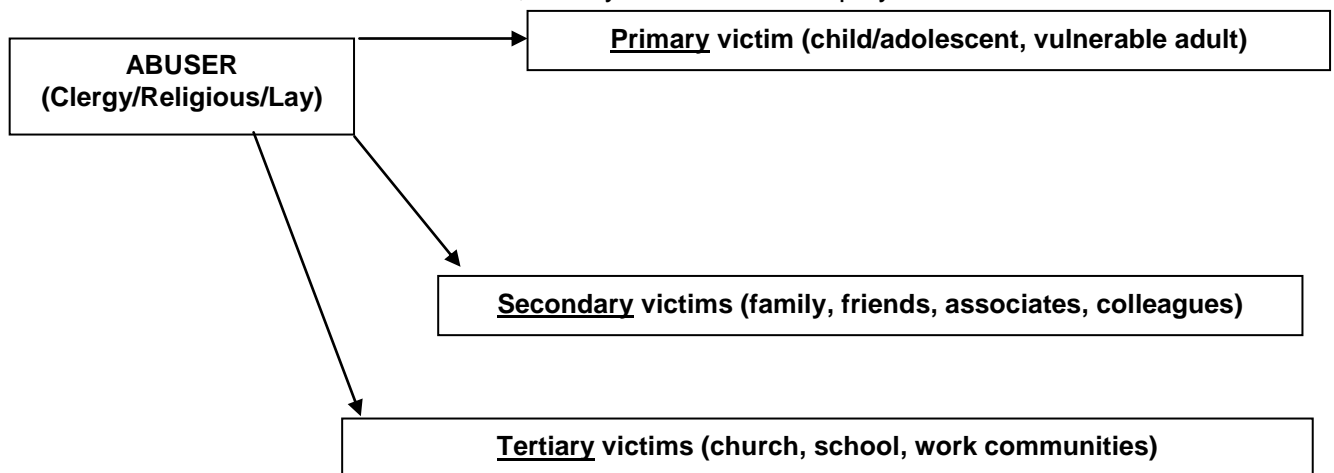
- (a) **abusers** always exist within broader structures or systems, which give them power over those who trust them (their victims). These systems enable (or do not prevent) the original abuse. Furthermore, the systems often also perpetuate abuse, when victims later unsuccessfully seek justice from those systems. Thus, victims face both primary and systemic abuse within organisational responses which are collusive to abuse.

When abuse is perpetrated within the church, this dynamic can be seen as follows:



- (b) **victims** also live and relate within broader structures or (social and religious) systems. Thus, the abuse they suffer also impacts across their most significant relationships and settings. In this way, family, friends, associates and colleagues can be secondary victims, and their communities can be tertiary victims.

When abuse occurs within the church, this dynamic can be displayed as follows:



NB: These secondary and tertiary victims may be seriously traumatised by the offending. Members of the community over which the abuser also has power, experience a critical relational betrayal by the leader they have trusted, when that person abuses *anyone*, within or related to that, community.

'The very best book on the relationship between sexual abuse and political power'
Susie Orbach, *Guardian*



TRAUMA AND RECOVERY

FROM DOMESTIC ABUSE TO POLITICAL TERROR

WITH A NEW AFTERWORD BY THE AUTHOR

JUDITH LEWIS HERMAN

may come to recognize ways in which the trauma experience has indirectly affected her children, and she may take steps to rectify the situation. If she does not have children, she may begin to take a new and broader interest in young people. She may even wish for the first time to bring children into the world.

Also for the first time the survivor may consider how best to share the trauma story with children, in a manner that is neither secretive nor imposing, and how to draw lessons from this story that will protect children from future dangers. The trauma story is part of the survivor's legacy; only when it is fully integrated can the survivor pass it on, in confidence that it will prove a source of strength and inspiration rather than a blight on the next generation. Michael Norman captures the image of survivorship as a legacy in describing the baptism of his newborn son, with his Vietnam War combat buddy, Craig, serving as godfather: "Standing in a crowded room watching Craig cradle the baby in his arms, I suddenly realized that there was more to the moment than even I had intended, for what was truly taking place . . . went well beyond the offering of a holy sacrament or the consecration of a private pact. In the middle of the ritual, I was overcome with a sense . . . of winning! . . . Here, at last, was victory worth having—my son in the arms of my comrade."¹⁷

FINDING A SURVIVOR MISSION

Most survivors seek the resolution of their traumatic experience within the confines of their personal lives. But a significant minority, as a result of the trauma, feel called upon to engage in a wider world. These survivors recognize a political or religious dimension in their misfortune and discover that they can transform the meaning of their personal tragedy by making it the basis for social action. While there is no way to compensate for an atrocity, there is a way to transcend it, by making it a gift to others. The trauma is redeemed only when it becomes the source of a survivor mission.

Social action offers the survivor a source of power that draws upon her own initiative, energy, and resourcefulness but that magnifies these qualities far beyond her own capacities. It offers her an alliance with others based on cooperation and shared purpose. Participation in organized, demanding social efforts calls upon the survivor's most mature and adaptive coping strategies of patience, anticipation, altruism, and humor. It brings out the best in her; in return, the survivor gains the sense of

connection with the best in other people. In this sense of reciprocal connection, the survivor can transcend the boundaries of her particular time and place. At times the survivor may even attain a feeling of participation in an order of creation that transcends ordinary reality. Natan Sharansky, a prisoner of conscience, describes this spiritual dimension of his survivor mission:

Back in Lefortovo [prison], Socrates and Don Quixote, Ulysses and Gargantua, Oedipus and Hamlet, had rushed to my aid. I felt a spiritual bond with these figures; their struggles reverberated with my own, their laughter with mine. They accompanied me through prisons and camps, through cells and transports. At some point I began to feel a curious reverse connection: not only was it important to me how these characters behaved in various circumstances, but it was also important to *them*, who had been created many centuries ago, to know how I was acting today. And just as they had influenced the conduct of individuals in many lands and over many centuries, so I, too, with my decisions and choices had the power to inspire or disenchant those who had existed in the past as well as those who would come in the future. This mystical feeling of the interconnection of human souls was forged in the gloomy prison-camp world when our zeks' solidarity was the one weapon we had to oppose the world of evil.¹⁸

Social action can take many forms, from concrete engagement with particular individuals to abstract intellectual pursuits. Survivors may focus their energies on helping others who have been similarly victimized, on educational, legal, or political efforts to prevent others from being victimized in the future, or on attempts to bring offenders to justice. Common to all these efforts is a dedication to raising public awareness. Survivors understand full well that the natural human response to horrible events is to put them out of mind. They may have done this themselves in the past. Survivors also understand that those who forget the past are condemned to repeat it. It is for this reason that public truth-telling is the common denominator of all social action.

Survivors undertake to speak about the unspeakable in public in the belief that this will help others. In so doing, they feel connected to a power larger than themselves. A graduate of an incest survivors' group describes how she felt after members of her group presented an educational program on sexual abuse for child protective workers: "That we could come to this point and do this at all is a miracle of major proportions. The power we all felt at reaching 40 people at once, each of whom will touch the lives of 40 children, was so exhilarating. It *almost* overcame

the fear.”¹⁹ Sarah Buel, once a battered woman and now a district attorney in charge of domestic violence prosecutions, describes the central importance of her own story as a gift to others: “I want women to have some sense of hope, because I can just remember how terrifying it was not to have any hope—the days I felt there was no way out. I feel very much like that’s part of my mission, part of why God didn’t allow me to die in that marriage, so that I could talk openly and publicly—and it’s taken me so many years to be able to do it—about having been battered.”²⁰

Although giving to others is the essence of the survivor mission, those who practice it recognize that they do so for their own healing. In taking care of others, survivors feel recognized, loved, and cared for themselves. Ken Smith, a Vietnam veteran who is now the director of a model shelter and rehabilitation program for homeless veterans, describes the sense of “interconnection of human souls” that sustains and inspires his work:

There are times when I am completely at odds with what I do here, because I am not by any shake of a stick any kind of a leader. Whenever the responsibility becomes heavy, I appeal to my brothers, and whatever the big heavy issue is at the moment, miraculously some form of solution is developed—most times not by me. If you follow it back, it’s someone who has been touched by Vietnam. I pretty much count on it now. That is the commonality of the experience, that thousands, hundreds of thousands, even millions of people were touched by this. Whether you’re a Vietnam vet or an antiwar protester, it doesn’t matter. This is about being an American, this is about what you learn in a fourth-grade civics class, this is about taking care of our own, this is about my brother. This feels very personal to me. That feeling of isolation, it’s gone. I’m so connected into it, it’s therapeutic to me.²¹

The survivor mission may also take the form of pursuing justice. In the third stage of recovery, the survivor comes to understand the issues of principle that transcend her personal grievance against the perpetrator. She recognizes that the trauma cannot be undone and that her wishes for compensation or revenge can never be truly fulfilled. She also recognizes, however, that holding the perpetrator accountable for his crimes is important not only for her personal well-being but also for the health of the larger society. She rediscovers an abstract principle of social justice that connects the fate of others to her own. When a crime has been committed, in the words of Hannah Arendt, “The wrongdoer is brought to justice because his act has disturbed and gravely endangered the community as a whole. . . . It is the body politic itself that stands in need of being

repaired, and it is the general public order that has been thrown out of gear and must be restored. . . . It is, in other words, the law, not the plaintiff, that must prevail."²²

Recognizing the impersonality of law, the survivor is to some degree relieved of the personal burden of battle. It is the law, not she, that must prevail. By making a public complaint or accusation, the survivor defies the perpetrator's attempt to silence and isolate her, and she opens the possibility of finding new allies. When others bear witness to the testimony of a crime, others share the responsibility for restoring justice. Furthermore, the survivor may come to understand her own legal battle as a contribution to a larger struggle, in which her actions may benefit others as well as herself. Sharon Simone, who with her three sisters filed suit for damages against her father for the crime of incest, describes the sense of connection with another child victim that spurred her to take action:

I read about a case in the newspaper. A man had admitted he raped a little girl twice. The child was brought to the sentencing hearing because the therapist thought it would be good for her to see the man led away; she would see that crimes do get punished. Instead, the judge allowed a parade of character witnesses. He said there really are two victims in this courtroom. I thought I was going to go berserk with the injustice. . . . That was such a turning point. The rage and the sense of holding someone accountable. I saw that it was a necessary thing. It wasn't that I needed a confession. I needed to do the action of holding someone accountable. I wanted to break the denial and the pretense. So I said, I *will* join that lawsuit. I'll do it for that little girl. I'll do it for my brothers and sisters. And I think a little voice said, "You should also do it for you."²³

The sense of participation in meaningful social action enables the survivor to engage in legal battle with the perpetrator from a position of strength. As in the case of private, family confrontations, the survivor draws power from her ability to stand up in public and speak the truth without fear of the consequences. She knows that truth is what the perpetrator most fears. The survivor also gains satisfaction from the public exercise of power in the service of herself and others. Buel describes her feeling of triumph in advocating for battered women: "I love court. There's some adrenaline rush about court. It feels so wonderful to have learned enough about the law and to care enough about this woman so I know the facts cold. It feels wonderful to walk into court and the judge has to listen to me. That's exactly what I've wanted to do for


fourteen years: to force the system to treat women respectfully. To make this system that victimized . . . so many women work for us, not being mean or corrupt about it, but playing by their rules and making it work: there's a sense of power."²⁴

The survivor who undertakes public action also needs to come to terms with the fact that not every battle will be won. Her particular battle becomes part of a larger, ongoing struggle to impose the rule of law on the arbitrary tyranny of the strong. This sense of participation is sometimes all that she has to sustain her. The sense of alliance with others who support her and believe in her cause can console her even in defeat. A rape survivor reports on the benefit of standing up in court: "I was raped by a neighbor, who got into my house on the pretext of helping me out. I went to the police and pressed charges, and I went to court twice. I had a rape crisis counselor, and the district attorneys were really nice and helpful, and they all believed me. The first time there was a hung jury, and the second time he was acquitted. I was disappointed in the verdict, but I can't control that. It didn't ruin my life. Going through the court was a kind of catharsis. I did everything I could to protect myself and stand up for myself, so it didn't fester."²⁵

The survivor who elects to engage in public battle cannot afford to delude herself about the inevitability of victory. She must be secure in the knowledge that simply in her willingness to confront the perpetrator she has overcome one of the most terrible consequences of the trauma. She has let him know he cannot rule her by fear, and she has exposed his crime to others. Her recovery is based not on the illusion that evil has been overcome, but rather on the knowledge that it has not entirely prevailed and on the hope that restorative love may still be found in the world.

RESOLVING THE TRAUMA

Resolution of the trauma is never final; recovery is never complete. The impact of a traumatic event continues to reverberate throughout the survivor's lifecycle. Issues that were sufficiently resolved at one stage of recovery may be reawakened as the survivor reaches new milestones in her development. Marriage or divorce, a birth or death in the family, illness or retirement, are frequent occasions for a resurgence of traumatic memories. For example, as the fighters and refugees of the Second World War encounter the losses of old age, they experience a revival of post-



Handbook on **JUSTICE** for **VICTIMS**

*On the use and application of the
Declaration of Basic Principles of Justice
for Victims of Crime and Abuse of Power*



United Nations Office
for Drug Control
and Crime Prevention

Centre for International Crime Prevention

Foreword

Crime takes an enormous physical, financial and emotional toll on its victims. On 29 November 1985, the General Assembly of the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex) based on the conviction that victims should be treated with compassion and respect for their dignity and that they are entitled to prompt redress for the harm that they have suffered, through access to the criminal justice system, reparation and services to assist their recovery. The Declaration recommends measures to be taken on behalf of victims of crime at the international, regional and national levels to improve access to justice and fair treatment, restitution, compensation and assistance. It also outlines the main steps to be taken to prevent victimization linked to abuse of power and to provide remedies for the victims.

In May 1996, the United Nations Commission on Crime Prevention and Criminal Justice, at its fifth session, adopted a resolution to develop a manual or manuals on the use and application of the Declaration (Economic and Social Council resolution 1996/14). The *Handbook on Justice for Victims* was developed in response to that resolution. A brief *Guide for Policymakers* has also been developed to highlight programmes and policies that have been put into effect in various jurisdictions to implement the Declaration and to ensure that the effectiveness and fairness of criminal justice, including related forms of support, are enhanced in such a way that the fundamental rights of victims of crime and abuse of power are respected.

In the Declaration "victims" are defined in the broad sense as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are violations of national criminal laws or of internationally recognized norms relating to human rights.

The experiences of many countries around the world have shown that one effective way to address the many needs of crime victims is to establish programmes that provide social, psychological, emotional and financial support, and effectively help victims within criminal justice and social institutions. The *Handbook* is designed as a tool for implementing victim service programmes and for developing victim-sensitive policies, procedures and protocols for criminal justice agencies and others who come into contact with victims. These may include police and other law enforcement personnel, prosecutors, legal and other victim advocates, judges, correctional personnel, health and mental health providers, social workers, ombudsmen, spiritual leaders, civil organizations, traditional leaders, human rights commissions, legislators and elected representatives, and others. It applies similarly to those to whom victims reach out in their immediate circle—to their family, friends and neighbours—and to various informal, spontaneous and indigenous support structures.

The *Handbook* outlines the basic steps in developing comprehensive assistance services for victims of crime. For example, the first step in the provision of victim services should always be to provide for the physical safety and immediate medical needs of victims. Many victims may also benefit from services such as crisis or long-term counselling, compensation, accompaniment to court and other advocacy services. Certain types of victims may require additional attention that cannot be fully covered in this *Handbook*. Additional manuals may be required on how to work with individuals who have suffered particular types of victimization such as child abuse, domestic violence, sexual assault or hate crime. Additional manuals may further explore responses to victims of torture or other mass victimization occurring where legal and social systems have collapsed or are substantially incapable of fulfilling their functions. Additional manuals may also focus on the work of particular professions.

This *Handbook* has been drafted recognizing that differences arise when its principles are applied in the context of different legal systems, social support structures and life situations. Not everything outlined in the *Handbook* will necessarily be appropriate or even possible in different situations. The *Handbook* is not meant to be prescriptive but to serve as a set of examples for jurisdictions to examine and test. The writers are aware of the difficulties faced throughout the world in identifying resources for victim services. Several of the programmes recommended in the *Handbook* require significant investments of time, personnel and financial resources; in addition, some recommendations may require legislative changes. In many jurisdictions, therefore, the recommendations may appear unrealistic. Nonetheless, these programmes and their underlying principles have been tested in many countries and found to be successful. They can contribute to meeting fundamental victim needs, speeding recovery, restoring community vitality and securing justice. This investment can provide significant short-term and long-term returns.

Experts from nearly 40 countries have participated in the development of this *Handbook*. The writers represent only some of the many diverse jurisdictions around the world, however, and only some of the professions helping victims. The viewpoints and experience of persons from particular countries may consequently receive perhaps excessive attention. It is hoped that in the months and years to come, practitioners, researchers and policy makers around the world will contribute information about their own experiences and programmes, tailor the information presented in this *Handbook* to meet their specific needs and legal systems and offer suggestions on how the *Handbook* can be improved. Its widest possible relevance will be a continuing aim in the quest to alleviate the plight of victims of crime and abuse of power around the world.

Core Restorative Justice Values

The vision and practice of restorative justice are shaped by a number of key values which distinguish restorative justice from other, more adversarial approaches to justice.¹ The most important of these values include:

- **Participation:** Those most affected by the incident of wrongdoing – those directly harmed, the person(s) responsible, and their communities of interest – ought to be the principal speakers and decision-makers in the process, rather than trained professionals representing the interests of the State. All present in a restorative justice process have something valuable to contribute to the goals of the process.
- **Respect:** All human beings have inherent and equal worth irrespective of their actions, good or bad, or of their race, culture, gender, sexual orientation, age, beliefs or status in society. All therefore deserve to be spoken to and treated with respect in restorative justice processes. Mutual respect engenders trust and good faith between the participants.
- **Honesty:** Truthful speech is essential if justice is to be done. In restorative justice, truth entails more than clarifying the facts and establishing guilt within strict legal parameters; it requires people to speak openly and honestly about their experience of offending, their feelings, and their moral responsibilities.
- **Humility:** Restorative justice accepts the common fallibility and vulnerability of all human beings. The humility to recognise this universal human condition enables both the person harmed and the person responsible to discover that they have more in common as flawed and frail human beings than what divides them. Humility also enables those who recommend restorative justice processes to allow for the possibility that unintended consequences may follow from their interventions. Empathy and mutual care are manifestations of humility.

¹ Adapted from "Statement of Restorative Justice Values and Processes," New Zealand Restorative Justice Network (March 2004).

- **Interconnectedness:** While stressing individual freedom and accountability, restorative justice recognises the communal bonds that unite the person harmed and the person responsible. Both are valued members of society, a society in which all people are interconnected by a web of relationships. Society shares responsibility for its members and for the existence of crime, and there is a shared responsibility to help restore those who have been harmed and reintegrate those responsible. In addition, the person harmed and the person responsible are uniquely bonded together by their shared participation in the offence, and in certain respects they hold the key to each other's recovery. The social character of an offence makes a community process the ideal setting to address the consequences (and causes) of the offence and to chart a restorative way forward.

- **Accountability:** When a person wrongs another, they have a moral obligation to accept responsibility for having done so and for mitigating the consequences that have ensued. They can demonstrate acceptance of this obligation by *clarifying* their motives and certain facts relating to the offence, by expressing *remorse* for their actions and by making *reparation* for the losses inflicted to those whom they have treated disrespectfully. This response may pave the way for reconciliation or mutual recovery and healing to occur.

- **Empowerment:** All human beings require a degree of self-determination and autonomy in their lives. Offences rob those who have been harmed of this power, since another person has exerted control over them without their consent. Restorative justice seeks to re-empower those who have been harmed by giving them an active role in determining what their needs are and how these should be met. It also empowers those who have committed the offence to take personal responsibility for their actions, to do what they can to remedy the harm they have inflicted, and to begin a rehabilitative and re-integrative process.

- **Hope:** No matter how severe the wrongdoing, it is always possible for the community to respond in ways that lend strength to those who are suffering and that promote healing and change. Because it seeks not simply to penalise past offences but to address present needs and equip for future life, restorative justice nurtures hope - the hope of healing for persons harmed, the hope of change for those responsible, and the hope of greater civility for society.

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Practice what you preach: using restorative justice as an alternative to clergy abuse

Peter Condliffe

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New applications for ADR principles

Practice what you preach: using restorative justice as an alternative to clergy abuse

Peter Condliffe

On Saturday 19 July 2008 Pope Benedict XVI raised the issue of sexual abuse before 3400 people invited to attend the consecration of the altar of St Mary's Cathedral in Sydney. The Pontiff had been participating in World Youth Day activities. He said in his homily that he was 'deeply sorry' for the suffering of people who had been sexually abused by members of the clergy in Australia. 'Here I would like to pause to acknowledge the shame

which we have all felt as a result of the sexual abuse of minors by some clergy and religious in this country.'

The pontiff then moved from his original text to make the apology. 'I am deeply sorry for the pain and suffering the victims have endured and I assure them that, as their pastor, I too share in their suffering.' Such abuses were a source of shame and deserving of condemnation, and the perpetrators must be brought to justice. He

described the acts as 'evil'.

'These misdeeds, which constitute so grave a betrayal of trust, deserve unequivocal condemnation. They have caused great pain; they have damaged the church's witness.'

The issue of sex abuse had been prominent in the lead up to the youth festival. Sydney Archbishop Cardinal George Pell, the leader of the Catholic Church in Australia, was forced to defend his handling of a number of



historic allegations. Hopes for an apology were boosted after the Pope's visit to the United States in April. There he said he was 'deeply ashamed' of sex abuse committed by clergy and pledged he would do whatever was possible 'so this cannot happen again in the future'.

There has been extensive research on this problem and the potential remedies for it. Yet recent reported events in Melbourne and around Australia show that the 'church's witness' is still being considerably damaged. A report released in May this year in Ireland, after a long running investigation (the *Ferns Report*), demonstrated that the supervisory and management structures of the Church remain inadequate in many ways. A report issued by the Anglican Church in Australia around the same time echoes the findings of earlier studies in other Churches. It found that:

Unlike the patterns of abuse in the general population, three quarters of complainants were male and most were between the ages of 10 to 15 at the time of abuse.

Most accused persons were either clergy or were involved in some form of voluntary or paid youth work.

There were 27 accused persons with more than one allegation in the sample. These 27 people accounted for 43% of all cases.

Ongoing abuse lasting three years or more was significantly more common among male complainants.

Most of the alleged abuse episodes occurred in the accused person's home or on church premises. Almost a quarter of the episodes of abuse of girls occurred in the girl's own home, compared with 7% of male cases.

There were long delays in reporting offences to the church by the complainants, with an average delay of 23 years.

Just over half of the cases were treated as substantiated by the church and a third as inconclusive, with erroneous allegations by child complainants being rare.

A substantial number of Catholic priests have been jailed for sexual molestation in the US. Such is the case for Australia as well. Broken Rites Australia, a support organisation for victims of sexual abuse in churches,

recently reported 112 cases known to the organisation of Catholic priests and religious brothers who have been sentenced in Australian courts. A recent comprehensive study commissioned by the US Conference of Catholic Bishops found that 4% of all priests from 1950 to 2002 had allegations of child sexual abuse against them.

The so-called 'Melbourne Response', which has recently been the subject of comment in the Melbourne Age, exemplifies inadequate institutional responses to this problem. The Melbourne Response was introduced in 1996 by then Archbishop George Pell as the local Catholic Church's official mechanism for investigating abuse complaints and offering counselling and compensation to victims. When Church and clergy fail to respond with an explanation and apology, victims typically consider legal proceedings. To avoid the heavy financial burdens these proceedings would impose, the Church becomes less cooperative and more defensive.

The Melbourne Response is different to that of the Catholic Church in the rest of Australia. It has involved capped costs and minimised payouts and to some extent has been able to avoid bad publicity. It has appeared to have worked in the short term at least in a limited sense. However, its inherent weaknesses are becoming more exposed as victims feel increasingly empowered to question the Church's response to their needs.

There is a way to break this cycle. It would involve the Church and offending priests meeting with victims and addressing issues outside the judicial system in a way which is less inquisitorial than the Melbourne Response. Though victims could use any of a range of procedures, restorative justice conferencing is perhaps the most useful model. It is the process advocated by the victims' advocacy group In Good Faith and Associates as an alternative to the Melbourne Response. The local Church hierarchy still seem reluctant to embrace these ideas. Yet restorative justice may be a way beyond the current cruel standoff.

Restorative justice approaches predate our current formalised legal



systems. Restorative justice focuses on responsibility, compassion and forgiveness rather than punishment and ostracism. Many prominent religious leaders have advocated this approach throughout history. Today, curiously, few seem willing to embrace it and seem instead enthralled by legalistic and formulaic responses.

Professor John Braithwaite, a renowned Australian scholar, has noted that the Roman Catholic Church, 'laid the foundations for shifting criminal law away from its restorative framework' through 12th century canon law. Perhaps it is time for the Church to re-examine its own history.

Restorative justice programs, which began in Canada in the mid 1970s, now operate in many jurisdictions across the western world. Every Australian State has legislated restorative justice programs, albeit that most are aimed solely at juvenile offenders. These programs involve offenders, victims and their communities of care in a collective response to the problems created by offending behaviour.

Restorative justice programs have a number of advantages. They motivate victims and others to be involved in, rather than alienated from, the response to social harm. They provide for specific and general deterrence whilst maintaining the traditional deterrence frameworks. They confront offenders with the effects of their wrongdoing,

such that they cannot neutralise or rationalise their behaviour.

Programs can be tailored to the particular context and problems faced by a community. Many Victorian school communities, including the Catholic system, have embraced a wide range of restorative practices. Archbishop Desmond Tutu of South Africa viewed his Truth and Reconciliation Commission as a restorative justice process. These systems involve communities bringing the processes of justice within a framework that community members can understand and engage with. If the Church prides itself on caring for its community, its flock, there is perhaps a good fit here.

Sexual offences — especially against children — involve special consideration. Offenders have used power to commit and cover up their crime. Mediation, which emphasises equality in bargaining, is often not appropriate in these instances. However, a restorative model of dialogue, with the appropriate safeguards, is now being used in a number of jurisdictions to address this sort of case.

Restorative justice processes allow the support networks for victim and offender to be brought together. This does not mean that traditional legal remedies should be done away with. Rather, we should seek a more flexible response and more positive outcomes

than are presently available.

Law Professor Marci Hamilton of Yeshiva University in the US argues that revelations of systemic and long-standing clergy abuse reveal problems not only in the churches but in the capacity of our system of justice to protect children. Until these issues are addressed, victims will continue to question the responses established by church hierarchies. These responses should supposedly help victims. More commonly, they leave them further aggrieved.

The traditional legal system provides enormous psychological, evidentiary and resource challenges to victims, offenders and the Church itself. However, the Church has considerable resources. It can bring great legal pressure upon victims who pursue legal claims. So could the Church, instead, cede power to a third party restorative program? It might then go some way to towards following its own teachings of forgiveness and reconciliation rather than confrontation and denial. As the Church lurches from crisis to crisis, it could try restorative justice. The best solutions often come when you practice what you preach. ●

Peter Condliffe is a Melbourne Barrister and President of the Victorian Association for Restorative Justice. He can be contacted at <pc@vicbar.com.au>.

Book Announcement

Dispute resolution in Australia

**David Spencer and
Samantha Hardy**

***Dispute resolution in Australia
Cases, commentary and
materials, 2nd Edition***

The second edition of *Dispute resolution in Australia: Cases, commentary and materials* reflects the dynamic growth of dispute resolution not only in Australia, but worldwide. In recent times, dispute resolution has undergone a considered analysis of

its role in society at the community, commercial, political and legal levels. Added to this is its increasing relevance to, and its impact on, other disciplines such as counselling, psychology and the law.

Taking account of these developments in dispute resolution, this new edition brings the law up to date and features:

- a new chapter, 'The future of dispute resolution';
- an expanded chapter, 'Ethics, standards and dispute resolution';

- insight into the new National Mediation Accreditation System;
- incorporation of recent family law developments;
- new material on recently emerged hybrid forms of dispute resolution, such as collaborative law; and
- commentary on the vanishing trial phenomenon.

Dispute resolution in Australia: Cases, commentary and materials, 2nd edition will be in valuable to both students and practitioners alike for its practical guidance and analysis of this ever-growing area of the law. ●

This book will be reviewed in a future edition of the ADR Bulletin.



ADR Diary • ADR Diary

- LEADR is holding a **Mediation Workshop** in Adelaide on 16–20 March; 31 August–4 September; in Alice Springs on 31 August–4 September; Brisbane on 9–13 March; Canberra on 4–8 May; Darwin on 11–15 May; Hobart on 25–29 May; Melbourne 19–23 April, 1–5 June and 11–15 October; Perth on 18–22 May and 26–30 October; and Sydney on 15–19 February, 19–23 April, 21–25 June, 16–20 August, and 18–22 October. They will also be running **CINERGY Conflict Coaching Workshops** in Sydney on 22–25 February and in Melbourne on 2–5 March. For further information go to <www.leadr.com.au/training.htm>.
- ACDC is offering **Mediation Training** in Sydney on 22–26 February, 24–28 May, 9–13 August, 18–22 October. **Accreditation** dates include 3 March, 3 June, 17 August and 27 October. For further information, visit <www.acdcltd.com.au>.
- **The 5th Asia-Pacific Mediation Forum Conference will be held in India** from 21–27 November 2010. For further information go to <www.apmec.unisa.edu.au/apmf>.
- **National Mediation Conference** will be held in Adelaide on 7–9 September 2010. For further information go to <www.mediationconference.com.au/>.
- **The Bond University Dispute Resolution Centre** has upcoming courses including **Basic Mediation** on 18–21 March on the Gold Coast; **Family Dispute Resolution (Legislation and Skills)** in Sydney from 20–24 April; **Mediator Assessment** course on Gold Coast 12–13 February; **Global Negotiation Course** in Lyon, France on 30 August to 4 September. For more information email <drc@bond.edu.au> or visit <www.bond.edu.au/law/centres>.
- **Non-Adversarial Justice: Implications for the Legal System and Society Conference**, Melbourne, 4–7 May 2010. Further information, including details about abstract submission can be found at <www.law.monash.edu.au/nonadvj>. The full conference flyer can be found at: <www.ajja.org.au/NAJ%202010/NAJ10%20Infolyer&Reg.pdf>.
- **Mediator Style Training** is running **Mediating Personality Workshops** on 29 August and 7 November in Perth; 8 August and 3 October in Sydney; 25 July and 17 October in Melbourne; 22 August in Adelaide; 12 September and 31 October in Brisbane; 28 November in Townsville; 19 September in Canberra.

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19th July 2008

Melbourne Victims' Collective
PO Box 324
ASHBURTON VIC 3147

Dear Friends,

Thank you for sending me a copy of your document *Towards Justice*.

You are probably aware that I was against the setting up of the *The Melbourne Response* in the first place because I believed that there should be one system in operation for the whole country. Even then I had seen some of the difficulties the church was getting itself into in the United States because of many different responses, and I did not wish to see that happen here. I believed then, and believe now, that it is much easier to have accountability if there is one system. I believed that the Melbourne decision harmed the whole country by denying us the possibility of one system.

I also believe that any system in any field needs periodic review. I have argued for this in many fields and made sure that any organisation of which I was the chairman had this review. I also organised a review of my own performance. After twelve years of operation, I would, therefore, see a thorough review of *The Melbourne Response* as most timely.

While I have not had direct dealings with this Response, I have over the years heard a number of reports of victims feeling intimidated by the system itself. These feelings need to be heard and addressed.

With every good wish,
Yours sincerely,

Bishop Geoffrey Robinson

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Friday, 26th September, 2008

Ms Helen Last
Director, Melbourne Victims' Collective
PO Box 324
ASHBURTON VIC 3147

Dear Helen,

Since receiving your July letter and a copy of "Towards Justice, The Charter of the Melbourne Victims' Collective", I have been very busy. World Youth Day was all consuming, but since then I have had some serious issues to manage in the Diocese.

I am very sorry that it has taken so long to get back to you.

You may have heard that the Maitland-Newcastle Diocese has experienced several serious sexual abuse cases over the last 12 years. Early in the piece I attempted to protect the reputation of the Church while trying to respond adequately to victims. I have since learnt that it is impossible to do both.

My approach in recent times is to do all I can to treat victims with respect, belief, justice and compassion. I will no longer make excuses for a heartless response from Church.

Therefore, I applaud your initiative very much. It is not easy to confront an organisation which refuses to listen or admit there is fault. When the Church adopts such a stance it is as far removed from Jesus Christ as one can get.

Be of good cheer! You are definitely on the right track. You may be crucified, but wasn't the good Lord?

With best wishes,

I remain,

Yours sincerely

Most Reverend Michael Malone
Bishop of Maitland-Newcastle

+MM/ed

File: Child Protection\Melbourne Victims Collective, Helen Last – applaud initiative (Sep 08)

**Commission into Sexual Abuse
Peter O'Callaghan Q.C**

**Owen Dixon Chambers West
18/15
205 William Street
Melbourne 3000**

30th June 2008

Tel: 9225 7979

Fax: 9225 7114

Private and Confidential

Attention Mr Paul Holdway
Lewis Holdway
Lawyers
20 Queen Street
MELBOURNE VIC 3000

Dear Sir

Re: Towards Justice: The Charter

I refer to my recent correspondence requesting the identity of the signatories to the Charter.

That request has apparently been ignored, and whilst I have recognized some of the signatures, I considered it important that I know who it is making complaints. I accordingly maintain that request but in the meantime I respond to the Charter. I do so in my capacity as Independent Commissioner, because much of the Charter expressly or impliedly criticises the role and the performance of the Independent Commissioner. Whilst I have not the slightest objection to constructive criticism, and will endeavour to accommodate to it, this cannot be said of a great deal of the Charter.

I am alarmed at the allegations and certainly if they could be validated appropriate remedial steps should be taken. The problem is that there is little particularity to the assertions made in the Charter, and until this occurs, it is difficult if not impossible to properly respond.

I set out hereunder extracts from the Charter and comment thereon in different type..

1. *"Since sexual abuse: the Melbourne Archdiocese's response was established in 1996 by Archbishop George Pell, (later maintained by Archbishop Denis Hart, victims, their families and members of their Parishes have repeatedly recounted to the collective practitioners their experiences of disregard, disservice and disadvantage within the set of arrangements of the Melbourne response. The similarity of independent accounts has led the collective practitioners to form the view that there has been a disturbing pattern of abuse."*

I assume that the victims there referred to are some of the several hundred who have complained to me in my capacity as Independent Commissioner. It is impossible to deal with this assertion unless there are particulars of who, when and in what circumstances victims have experienced disregard, disservice and disadvantage. Tell me who they are so that I can properly respond. I repeat I welcome constructive criticism, but not such which impugns reputation and competence.

2. *"Our aims are to raise Church and public awareness about the mistreatment and ongoing trauma of victims, and to open avenues for dialogue, review and change through processes of restorative justice."*

Please specify to whom, when, where and in what circumstances did mistreatment of victims occur. It is a fundamental principle of natural justice that in order to respond I must know the details of the complaint. With respect to ongoing trauma, naturally I have no difficulty in accepting that this occurs. I have repeatedly stated that no matter how considerately complaints are dealt with, how efficient and adequate the provision of counselling, how full the apology is given in respect of the abuse, and however adequate the amount of compensation awarded, there cannot be eradicated the hurt and effect which the sexual abuse has had upon the lives of these victims which is ongoing. I have always endeavoured to deal with complainants in a sympathetic and caring way, knowing only too well the stress and concern which many victims suffer, by recounting the details of the abuse typically suffered when they were children. Of course, no system is perfect, and I certainly do not profess to be.

3. *"Over 12 years since its inception it has, in our view, not practiced these principles and has reduced its response to a legalistic claims process."*

If meant by this, there is an undue adherence to law, this is not so. Obviously the first and essential step in dealing with complaints of sexual abuse is to ascertain when, where, by whom and in what circumstances the abuse has occurred. In the Melbourne Archdiocese, this is generally done by my meeting with the Complainant. I repeat my knowledge and awareness of the stress that this often imposes, and I do my best to alleviate this. I add that of the several hundred complaints I have received, the vast majority have been established.

4. *"Victims of sexual abuse by Clergy, Religious and lay personal are profoundly disadvantaged and wounded. When they turn to an institution for assistance and receive an inadequate response which does not recognize their needs, victim's wounds are seriously compounded. This is a further layer of abuse, inflicted by the institution ostensibly offering help."*

It is impossible to adequately respond to these general assertions. Who, when, where and in what circumstances has the Independent Commissioner inadequately responded to a complaint by a victim of sexual abuse.

5. *"This dynamic is reported by victims in the collective who turn to the Melbourne response, only to find what in our opinion is an inequitable system that, from a victim's view point, places the public legal and financial interests of the Melbourne Catholic Archdiocese over those of the victim."*

I consider that this opinion is misconceived, and wrong. Again, there is no particularity to it.

6. *"The Archdiocese maintenance of a set of arrangements, in our opinion, appears to prioritise its livelihood above the needs of victims, and is diametrically opposed to the values and examples of Christ. We believe it also contravenes the most recent directives of Pope Benedict XVI on this matter."*

Again I disagree. The Melbourne process enables a complainant to put forward his or her complaint to the Independent Commissioner, and if established (the vast majority of which are), that person can be referred to Carelink, and to the Compensation Panel, and if pastoral support is requested, this is provided. It must be said that many of the victims, sadly, have no wish for pastoral support, because they have abandoned any adherence to the church. In some instances they regard any proposal for further contact with the church with anathema.

7. *"In our view the perpetuation of the current priorities of the Melbourne response by its clerical leaders, also directly contradicts the National Code of Conduct for all Clergy and Religious in Australia, outlined in the booklet Integrity and Ministry. This document holds all Clergy accountable for prioritizing the care and healing of those who have been harmed by Ministers of their community "in situations" when communion is broken as well as "the parents and family of those harmed and the community where the violation has occurred"*

I do not see any contradiction either in principle or practice.

8. *"Primary and secondary victims in our collective feel betrayed by the lack of clerical leadership within the Melbourne Catholic Archdiocese. They describe feeling powerless within the Melbourne response set of arrangements, which are deficient in values and principles of justice, healing, safety, integrity, empathy and trust building."*

Once again these general assertions can only be responded to by the statement that is not my understanding or experience. It is necessary to provide chapter and verse of such serious allegations, if they are to be adequately responded to.

"Hearing Victims speak about the Melbourne response"

So that these deficiencies are heard in victim's description of:

9. *"Mismanagement of complaints"*

Specify whose complaints were mismanaged, and I will respond.

10. *"Neglecting to investigate and respond to ongoing risks of clerical abuse with appropriate interventions."*

Specify the instances of neglect, to investigate and respond.

11. *"Impersonal insensitive and untimely responses to victims, their families and wider communities."*

I must assume that this and the other criticisms apply (at least in part) to the Independent Commissioner, and I want to be told when and to whom, I have made impersonal, insensitive, and untimely responses to victims. It is axiomatic that complaints should be substantiated.

12. *"Mismanagement of accused priests who continue to harass complainants and Parish members after being stood down from Parish and/or public ministry pending investigation."*

I have and will continue to make recommendations to the Archbishop (who is of course the exclusive decision maker) in respect of offending priests. I necessarily repeat these serious allegations must be particularised, at least as to the identity of the priests, in order for an adequate response to be made.

13. *"The retaining of offenders as ordained Priests, even after they have been found guilty in Criminal Court, and/or the Independent Commissioner for the Melbourne response makes a finding that victims complaints of sexual abuse by these priests have been established; the absence of promises of pastoral support, which leaves victims feeling spiritually abandoned by and excluded from their church community."*

I am not sure what is meant by the "retaining of offenders as ordained priests. Generally, priests remain priests unless they are laicised on their application, or by papal decree. Apart from a very few, It is my experience that offending priests have had their faculties removed. Again I request the retained offenders be identified.

14. *"Receiving a response from the Archbishop's lawyers when victims question the personnel, practices or processes of the Melbourne response."*

If any such question were directed to me, I would regard it as mandatory in my role as Independent Commissioner to respond directly.

15. *"Confusion of roles by those who respond to victims on behalf of the Melbourne Catholic Archdiocese."*

What is the confusion, I do not believe I have misunderstood or confused my role. If you contend I have, specify how and when

16. *"A lack of professional advocate, resourcing and support for professionals working with children exposed to abusive clergy in Catholic schools and appropriate intervention in situations of abuse."*

Again, it is impossible to respond to this general assertion without having particulars of this "lack".

17. *"A scarcity of information for family members and parishioners and lack of recognition of and response to their needs as secondary victims."*

I repeat what I have said in 16. above.

Structural Flaws in the Melbourne response

18. *"Although the Independent Commissioner announced that "it was hoped the Commission would complete its work within six months, and hopefully a much shorter time than that", the Melbourne response has filled a permanent role for more than a decade."*

I did make that statement, and note that the Terms and Conditions of my appointment contained inter alia "The retainer of the Commissioner shall be for a period of six months Provided that if at the expiration of that period..... there are outstanding matters.....Archbishop shall extend the retainer for a further period of six months, or such other period as may be mutually agreed upon That was based upon a belief that consonant with the publicity given my appointment, that all or the great bulk of complaints would be made and dealt with in the period of six months. Instead, there has been a continuing series of complaints which are continuing at the present time. It would have been untenable to terminate my appointment, whilst this flow of complaints continued. Undoubtedly, had this been done the Archdiocese would have been spared very considerable expense, but an avenue for complaints would have been closed. Is it suggested that this should have been done. Surely not. Had it been, it could properly have been characterised as a lack of compassion by the Archdiocese.

Conclusion

I have not at this time responded to other matters in the letter under reply. This should not be taken in any way as acceptance thereof. When the particulars sought as above are provided, I will provide a further response dealing with all matters raised.

I request your reply no later than fourteen days from this date.

Yours sincerely,

PETER J. O'CALLAGHAN
INDEPENDENT COMMISSIONER