

This submission is in response to a request from the Family and Community Development Committee on 13 March 2013 to address specific questions. In it, I also seek to explain the role which Catholic Church Insurance has played in the complex area of child sexual abuse within the Catholic Church.

The Company

Catholic Church Insurance is an unlisted public company. Our shareholders are all the dioceses and a majority of religious institutes of the Catholic Church in Australia. Apart from a small portfolio of home building and contents, personal accident and motor insurance, the company is principally engaged in the insurance of the assets and liabilities of Catholic Church entities throughout Australia.

As with any commercial insurer, the Company is subject to the requirements of all financial, corporate and regulatory legislation applicable to the operation of insurance companies and reports to the Australian Prudential and Regulation Authority and other regulatory bodies. Having said that, there is much about the history and structure of CCI that sets the company apart from an ordinary commercial insurance company. Established in 1911 to provide insurance of Church property against fire and allied risks, the company has evolved into an insurer providing all classes of cover that protect the Church in all its activities, ranging from the spiritual needs of the faithful to education, healthcare and social welfare.

Before describing the company and the liability insurances it provides, I would like to recount the involvement of CCI in the development of the responses adopted by the Church in Australia, since the late 1980s, to create an effective response to allegations of sexual abuse by clergy and others.

CCI's History of Abuse Matters

In the latter part of the 1980s, disturbing news reached Australia of claims of the sexual abuse of children in the United States and Canada against dioceses and religious institutes. In 1988, following a visit to the US, two senior priests addressed the Australian Conference of Bishops held in November that year to alert them to the fact that the Church in Australia may well find itself facing similar problems to those encountered by Catholic Church entities in North America.

At that very time, Chris O'Malley, the then General Manager of CCI, took the opportunity to meet with insurers providing liability insurance cover to Church entities in the USA and he found the view generally expressed that insurance protection against claims relating to sexual abuse of minors was not available.

He proceeded to develop a means of assisting the Church financially, preferably by means of insurance cover.

Later, I shall outline the specific insurance which CCI provided. However, before doing so, it is important that I put into context the company's response to these developments.

From its first days in 1911 until today, CCI has thought of itself as a part of the community of the Catholic Church and has responded positively to any request for assistance from the Church's many entities. As you will read later, when Catholic schools became the target of vandals and arsonists in the early 1990s, CCI committed funds for the installation of fire detection equipment, at only a small cost to the Church. Currently, we have a program for the fitting of very sophisticated fire equipment in cathedrals.

This led naturally to participation by CCI in the measures undertaken by the Church at the end of 1980s and to the appointment of our then-General Manager to a Special Issues Committee (which evolved into the National Committee for Professional Standards), of which representatives of both Bishops and Religious Leaders were members.

Executives of the company were actively engaged in the development of the early protocols, codes of conduct, principles and procedures adopted in the endeavour to achieve the highest standards of response to the issues and we remain engaged in this work to this day. I am a member of the National Committee for Professional Standards, a joint Committee of the Australian Bishops Conference and Catholic Religious Australia, the body charged with the responsibility of administering the Towards Healing process that determines the Church's response nationally. Similarly the company is very familiar with, but not directly involved in, the operation the Melbourne Response.

As insurers, CCI is familiar with the identification of and appropriate response to risk factors. As the issue of sexual abuse began to emerge, we were able to contribute to the development of codes of conduct and protocols to reduce the risk of offending.

The Insurance CCI provides to Churches in Victoria

CCI provides the Church with a full suite of insurance policies usually sought by companies and individuals but it is, of course, the liability insurances made available to Church entities which are of particular relevance to the matters being considered by this Committee.

Despite its formation in 1911, it was not until 1st of July 1969 that the company first issued public liability insurance policies, and also workers' compensation policies. Prior to that date, the insurance covers offered related solely to fire and similar insurance for the physical assets of the Church. I believe that since inception, the wording of our public liability policy has been in line with that offered by other insurers and it is most likely that the wording was developed in line with those available in the market at that time.

In the early 1990s, the managers of CCI gave careful consideration to the question of whether such policies could respond to claims relating to the sexual abuse of children. Eventually, but not immediately, it was concluded that since the policy conditions did not exclude such events,

indemnity for claims arising from those events would be available under our standard public liability wording.

Our standard public liability policy has never been altered to specifically cover claims arising from the sexual abuse of children – we believe there was and is no need to do so. Reinsurers who supported our liability portfolio concurred and still do.

The four dioceses and many of the religious institutes in Victoria hold public liability insurance policies issued by CCI. These policies have been issued on the basis of an “accident occurring during the period of insurance”, irrespective of when the claim is made against the insured. Therefore, a claim made in 2013 in respect of an allegation of sexual abuse which occurred in 1972 will trigger a current response from the policy issued at that time, but only to the limit of the sum insured at that time. For CCI to respond to a claim for damages, it is necessary for the insured to establish that there is a potential legal liability to do so and that the event was, in fact, an “accident” within the meaning of the contract of insurance - that is say, the event was unintended and unexpected on the part of the insured. In the context of sexual abuse claims, this point is often misconstrued, the misconception arising from the fact that, from the point of view of the perpetrator, the act of sexual abuse is both deliberate and intended. The important distinction to be made that the test applies to the party insured under our policy. If the abuse is unintended and unexpected from the point of view of the bishop or leader, the “accident” test is satisfied. I will return to this point later.

The position then is that those church authorities insured with CCI are covered to the extent of the limit of liability stated in the relevant policy for claims relating to events which occurred after 1st July 1969, or the date they first obtained cover. I must stress that the policy provides indemnity only to the insured (i.e. the Church authority) against liability to pay compensation for injury sustained by the victim of abuse. No cover is provided for the offender whose conduct gave rise to a claim, in either civil or criminal matters.

How does the policy respond to known and unknown offenders?

I have been asked to comment on what liability insurance the company will provide in relation to the sexual abuse by known offenders and to first time offenders.

The answer to these questions lies in the application of the “accident test”, which I referred to earlier. CCI considered very carefully whether or not a liability arising from an act of sexual abuse by a member of the Church would be protected by a public liability policy we had issued previously. We satisfied ourselves and our reinsurers that our policy would respond. As I have said, the principle test is whether or not the act of abuse was unintended and unforeseen by our insured, by the Church authority. In short, if that act of abuse was unintended and unforeseen, it would be covered and if not, it would not be and our policy would not respond.

An important distinction is the difference between a liability which our clients might have and the indemnity which our policy might provide against that liability.

In our experience, there are three main circumstances where our public liability policy would not respond:

1. The first is where the act of abuse cannot be said to have been unintended or, more importantly, unforeseen by that bishop or leader. Generally, that is where the authority knew of the propensity of the person in their charge to commit such acts. Again, most commonly, where the authority has been notified of a prior act of abuse by that perpetrator, we do not consider that a subsequent act can be regarded as unforeseen by our insured and in those cases, our policy will not respond to any claims from acts which occur after that date of initial knowledge by the authority.

Allow me to give you an example to clarify. Say, in 2013, CCI is notified of an act of sexual abuse by a priest alleged to have occurred in 1980. In our investigation of that matter, we determine that the bishop was advised in 1978 of abuse by that offender. In that case, no protection would be available under the relevant liability policy after the date of original notification in 1978. We refer to this as 'prior knowledge'.

The broad principle is that no protection is available under the policy in circumstances where the Church authority has 'prior knowledge' of that offender, from the date of that prior knowledge.

2. The second is where the act of abuse occurred prior to 1969, when CCI first issued public liability cover.
3. The third and by far less common reason is when the abuse does not occur while the offender is "in the course of the business" of the insured. An example of this is where the offender might sexually abuse a member of his extended family in a familial setting – an uncle, who is a priest, abusing his nephew at a family function, for example.

In general terms, our policy protects the liability of a diocese or congregation as a result of the act of sexual abuse of a child by a first-time offender, or an offender who is previously not known to have offended.

I emphasise three important points:

1. The position and tests we apply to the application of our public liability policy were established only after careful and lengthy consideration. On those occasions when our position has been questioned by our reinsurers, they have always upheld the broad principles we engage;
2. CCI has never provided financial protection and/or assistance to any person who has committed an act of sexual abuse of a child, in either a civil or criminal context; and
3. While the company considers itself a part of the Catholic community, there is a clear requirement that only genuine claims are met. Principles to that end, including the

establishment of liability and the provision of indemnity, were established early and have been adhered to.

The Special Issues Policy

In or about 1990, Catholic Church Insurance faced a number of critical issues in this then largely unknown area:

1. At that time, there was uncertainty as to whether our public liability policies would respond to a claim, arising from sexual abuse. As I have explained, we came to the view that they would but it took some time to reach and articulate that conclusion;
2. It very quickly became apparent that a number of the reported events had occurred long before 1969, when we started issuing liability policies;
3. Further, for a period of several years after 1969, the public liability policies provided relatively low limits of indemnity and there was concern that these limits would be inadequate to meet those claims in full;
4. Many of our clients who had insured with other insurance companies since 1969 had poor records of those policies and many of those companies had ceased to exist. With the passage of time it might be difficult to prove the existence of their cover with other companies and in any event the limits of indemnity provided would be modest amounts; and
5. There was no information available to guide CCI as to the possible extent of this issue.

To resolve these difficulties, the company developed and issued in 1991 a Special Issues Liability policy (a copy of which has been provided to the Committee), which was designed to respond to claims arising specifically from criminal sexual abuse, regardless of when the abuse occurred.

Those clients who insured with other companies prior to that date were also protected to the extent necessary. This cover also took up the shortfall in the amount of cover available under a public liability policy or where no record of a liability policy could be found.

Under this policy, the Insured is indemnified against loss arising from a claim for reason of a wrongful act, defined as "actual or attempted sexual activity with a child or any other person that constitutes a criminal act".

Again, and importantly, the Special Issues Liability policy provides no cover for the offender.

The Special Issues policy will respond when, during the period of insurance, a claim is first made against the insured, irrespective of when the event giving rise to the claim occurred. It is a condition of the policy that the claim must be reported to CCI during the relevant period of

insurance and only those matters reported during the period of insurance will be protected by that policy. It is this notification (rather than the occurrence of the abuse) which triggers the policy and it is only those matters which are notified during the course of the policy which are covered by it. This type of trigger is common for professional indemnity and medical negligence type claims. The process involves the insured person giving notice of any matter that is likely to give rise to claim as soon as the circumstances arise. The insured was obliged to notify CCI of any matter likely to give rise to a claim.

The first Special Issues liability policies were issued for 12 months with effect from 1 July 1991 and were replaced by a new policy each year through to 30 June 1995.

In the first three years of their operation, the Special Issues policies covered all matters reported under them, irrespective of when the sexual abuse took place. In the fourth and final year, the cover was applicable only to claims from circumstances which occurred on or after 1 January 1976 and the excess payable on a claim was also calculated differently in that year.

Again, the company applied the test of prior knowledge. If, in the course of its investigations, the company was able to establish that the insured had knowledge prior to the date of the commencement of the policy of the person's propensity to offend, no claim would be paid in respect of an event after the date of that knowledge of that offender.

This was consistent with the company's position on the application of its public liability policies.

The company sought and received the support of two of the world's largest and most respected reinsurers for this cover and those companies have honoured their commitment to these policies.

The Committee will be aware of the various protocols that have been in place within the Catholic Church from the late 1980s. Of particular importance is Condition 1 of the Special Issues policy that requires insured entities to be subject to and comply with the "Protocol for Dealing with Allegations of Criminal Activity", to which the dioceses and religious institutes of the Catholic Church in Australia subscribed in April 1992. I understand the importance of this was to reinforce the work being undertaken by bishops and religious leaders at the time.

In closing this discussion on the Special Issues policy, I would like to reinforce two important points:

1. Absolutely no cover is available to offenders in civil or criminal matters; and
2. While this policy is unique to CCI, it is incorrect to assume it is an in-house arrangement for the Catholic Church. While the conditions of the policy are unusual, strict rules were applied to ensure that insurance principles were upheld.

The policy reflected a desire on the part of CCI to provide cover in respect of claims, the recognition of which was emerging at that time. As the extent of the issues became clearer, and the protocols implemented by the Church became more rigorous, the Special Issues cover was discontinued.

To summarise, all clients holding liability insurance policies with CCI are entities of the Catholic Church. From the outset, management insisted upon strict application of the policy conditions in all cases, firstly for the prudent protection of the company's assets, secondly, to ensure that an even-handed approach was adopted towards all clients and finally, because such an approach accorded fully with the wishes of our reinsurers.

Accordingly, for a claim to succeed, clients are required to demonstrate:

1. That a public liability or special issues policy was in force at the appropriate time, the onus of proof being upon the insured;
2. That there was no knowledge on the part of the insured of the propensity of the perpetrator to offend prior to the date of the abuse;
3. That the offender is a person for whose conduct the insured had authority and at the time of the abuse was engaged in the business or ministry of the insured; and
4. That the allegation of abuse has been investigated and an appropriate assessment made of the victim's claims.

The Company continues to respond to claims under both forms of policy.

The management of allegations of sexual abuse under both Towards Healing and the Melbourne Response is not customary to the treatment of liability-type claims by general insurers and it is important to understand why CCI accepts these practices in lieu of traditional claims protocols. Under both protocols, the principal elements adopted by insurers, particularly investigation and assessment, are present and CCI is satisfied not only that these elements exist but that they have rigor and integrity and are independent of our insured clients.

The basis on which the Archdiocese of Melbourne determines to settle matters is very different from that provided within the framework of a liability insurance policy. However, the conduct of investigation by the Independent Commissioners, the medical assessment and counselling provided by Carelink and the determination of awards by the Compensation Panel provide an acceptable framework for the decision whether reimbursement can be made to the Archdiocese.

Similarly, the various steps in the Towards Healing practice reflect those which insurers generally employ in liability type claims. CCI's involvement in this protocol since its inception provides a level of comfort that a proper process is engaged.

Much has been said and written about the Church's legal structure and its effect on the ability of victims to seek financial compensation. The trust arrangements of the Church were established many decades before allegations of sexual abuse came to the fore and it is not true to suggest that the Church has structured itself in response to this issue. In our experience, the Church has not used its structure to prevent the payment of compensation to victims. In fact, it has not used this defence to avoid paying compensation, even when it is available to it. All victims who have had an

allegation of abuse upheld under either Towards Healing or the Melbourne Response have received compensation.

CCI sponsored risk reduction and management strategies

CCI commenced its risk management division in the early 1990s, in a context which is completely unrelated to the matters before this Committee. At that stage, the company was experiencing an increase in the number of burglary and arson claims in Catholic schools and we developed strategies to reduce the number and/or magnitude of the resulting losses.

We continue that work to this day and have initiated other programs to protect the assets and liabilities of the various entities of the Catholic Church.

However, since the work of our risk management department covers the area of sexual abuse through the "Keeping your Parish safe" forums which I shall describe shortly, I will not expand on our general risk management work.

Advice provided by CCI on child safety to the Church

While CCI does not provide advice directly to the Church in the protection of children from sexual abuse, the company has made a strong commitment to child safety indirectly.

As the Committee is aware, the Church established the National Committee for Professional Standards in 1994, a joint undertaking of the bishops and religious leaders. As I have stated, CCI was involved in its formation and continues to be to this day. The company contributes financially and is a member of that Committee.

The initiatives of the Catholic Church through the Committee are well documented in the Church's submission to this Inquiry, Facing the Truth.

While the principal focus of the National Committee for Professional Standards has been the development, implementation and review of the Towards Healing protocol, the codes of conduct which the Committee has implemented are relevant to this question. The documents Integrity in Ministry and Integrity in the Service of the Church are initiatives of the Committee, again with the support of CCI. (The relevant areas of these documents are contained in section 11 and annexures 10 and 11 of Facing the Truth.)

In 2005, the National Committee for Professional Standards created the full-time position of Protection and Prevention Officer, whose role is to develop and implement risk management programs to address the area of sexual abuse in the Church. In view of our experience in the broader risk management field, CCI was involved in the establishment of this role and provides the funding for its activities.

Initially, the role was filled by an executive officer of the NCPS however, in 2010, a specialist with a background in risk minimisation in the education field was appointed.

Regular activities of the Protection and Prevention Officer include:

- Conducting training for Church leaders in dioceses and congregations on Towards Healing and Integrity in Ministry
- Conducting an annual national gathering of risk management and child protection experts from Church entities
- Running cultural training programs for priests and religious men and women who are newly arrived in Australia
- Conducting specific and tailored training for individual dioceses and congregations
- Raising awareness and promoting child protection through external and non-Catholic agencies such as
 - o Child Protection Sunday
 - o “Safe as Churches” conference through the National Council of Churches
 - o Workshops run by State Government departments
 - o Workshops run by national child protection groups such as Bravehearts and Child Wise, and
- o Promoting and organising international professional speakers in this field, such as Dr Monica Applewhite.

In 2010, the National Committee for Professional Standards, in conjunction with other Church agencies, developed a risk management program called “Keeping your Parish safe”. Experts from the National Committee for Professional Standards, the Church’s Office of Employment Relations and CCI conduct training programs at diocesan and parish level in the fields of child protection, protection of Church property and employment relations issues to groups of Church personnel, both religious and lay persons, and volunteers, including safe practices and codes of conduct.

Of course, the Protection and Prevention Officer has a number of projects in various stages of implementation, all of which concentrate on the protection of children in the Church community. Further details could be sought from the National Committee for Professional Standards.

The Melbourne Response's Compensation Panel

In the course of this Inquiry, I understand that testimony has been presented to the Committee claiming that CCI sits on the Compensation Panel of the Melbourne Response. This is, quite simply, not true. At no time since the establishment of that protocol, has CCI had any representative on the panel or any other aspect of the Melbourne Response.

Conclusion

As the Chief Executive Officer of CCI, I have been heavily involved in the Church's response to allegations of sexual abuse by its members since 1999, both as the senior officer of its insurer and through the work of the National Committee for Professional Standards. I have worked closely with the executive officers of the latter group and have witnessed first-hand the genuine efforts which those members and Church authorities have made to bring the victims of child sexual abuse towards a position of healing. Where this has involved the provision of financial assistance to victims, CCI has often provided that assistance, although there are also many instances where cover has not been available.

In Victoria, CCI has paid compensation and the cost of counselling to about 600 victims. We have done so in support of the Church's intent to assist victims and their families.

While some claims reach CCI following the issuance of a writ against our insured, generally matters dealt with have been initiated through the Towards Healing process or in the case of claims against the Archdiocese of Melbourne, through the Melbourne Response.

Where possible, we have performed our activities, sympathetically to the intent of both the Towards Healing process and the Melbourne Response. The marriage of a ministry in Church with the commercial realities of insurance is often uneasy however, the company and its reinsurers are satisfied that both processes are appropriate substitutes for accepted claims management procedures.

In all matters referred to Catholic Church Insurance, our officers remain independent of the Church processes. The various activities of director for professional standards, contact persons and assessors under Towards Healing and the independent commissioners, Carelink staff and the compensation panel in the Melbourne Response are totally independent of the company. We see our role is to support both protocols.

Peter Rush
Chief executive Officer
Catholic Church Insurance

30 April 2013