

They just didn't care

**“They just didn't care.
I want all this to go public.”**

These were almost the final words to me by my brother Gavan John Boyle¹ (5 May 1948 – 20 November 2005) as he lay dying from a combination of lung cancer, for which he had not sought treatment, self neglect, and acute alcoholism.

He was explicitly and unambiguously referring to the *Catholic Archdiocese of Melbourne* and the staff of the “*Melbourne Response*” from whom he had sought help after finally admitting that, in his youth, he had been sexually abused by *The Very Reverend Penn Jones, Prelate of Honour of His Holiness the Pope* and one-time Chancellor of the Archdiocese of Melbourne.

A submission by James Lindsay (Jim) Boyle
to the
**INQUIRY INTO THE HANDLING OF CHILD ABUSE
BY RELIGIOUS AND OTHER ORGANISATIONS 2012-13**
Family and Community Development Committee,
Parliament of Victoria

¹ Statement by Gavan Boyle to Jim & Libby Boyle, Williamstown Hospital, 18 or 19 November 2005
C:_Inquiry-Vic\Submission4.doc

Part 1. Introduction.....	3
Background:	3
Part 2. The Melbourne Response	5
[REDACTED]	
Melbourne Response: Deficiencies in structure	8
Melbourne Response: Degradation of structures and staffing	9
Melbourne Response: Prevention procedures	9
Melbourne Response: Treatment procedures	9
Melbourne Response: Reactions to feedback	9
Part 3. Gavan's treatment by the Archdiocese.....	10
Disclosure.....	10
What the "Melbourne Response" missed	11
Gavan's last days	12
Consequences of Gavan's abuse by Monsignor Jones.....	13
Consequences of treatment by the Melbourne Response.....	13
Gavan's death: [REDACTED]	
Part 4. How I was treated by the Archdiocese	15
My Initial contacts with Carelink (Jim Boyle).....	15
Refusal of further contact	15
Archbishop Hart.....	16
Complaints against Dr Ball and Ms Sharkey	17
Effects on Gavan's family	18
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
Part 6. Parliamentary actions	21
Investigation	21
Prevention	21
Crimes are state issues	22
Victims of crime support & compensation.....	23
Vicarious liability and the "Ellis defense"	23
Part 7. Supplementary materials.....	25
Conference: Sexual Abuse in Religious Contexts	25
"Code-blue" A near-death experience	25
Part 8. Conclusion.....	26

Part 1. Introduction

Background:

I, James Lindsay Boyle make this submission to the Family and Community Development Committee of the Victorian Parliament personally, and on behalf of my late brother Gavan John Boyle (1948 – 2005) and of my sister, Jillian Rita Mather (nee Boyle) and of our families. I was the executor for my brother's estate.

I do not require that this submission be kept confidential. I understand and agree that this submission may be published by the Committee and I would welcome an opportunity to discuss it before the Committee.

My late brother Gavan John Boyle (1948 – 2005) was the victim of clerical sexual abuse by a Catholic priest, Monsignor Penn Jones on several occasions in the early 1960's during holiday camps for altar boys of St Patrick's Cathedral Melbourne.

Gavan died in November 2005 from a combination of lung cancer, for which he had never sought treatment, chronic alcoholism, and prolonged self-neglect including malnutrition (starvation).

This submission includes

- Introductory comments on the Archdiocese's "*Melbourne Response*"
- Regarding the consequences² of Gavan's abuse I provide:
 - An account of the Melbourne Archdiocese's response to Gavan Boyle's revelation that he had been sexually abused by the late Monsignor Penn Harold Jones and
 - An account of the Melbourne Archdiocese's response to my inquiries into their treatment of Gavan.
 - [REDACTED]
- Comments on the adequacy³ of prevention measures within the Archdiocese.
- Comments on the adequacy of the Archdiocese's response to reports of abuse.
- Comments on the adequacy of the Archdiocese's response to feedback regarding their processes and procedures.
- Suggestions for reform
 - State Government to accept its responsibilities;
 - Establishment of truly independent organisations, processes and procedures;
 - Establishment of effective preventative measures including systematic state-wide preventative education;
 - Adequate legal reforms to proscribe failures to disclose known abuses and the endangerment of children;
 - Legal reform to remove the protection of church assets by the "Ellis defense."

² Re Submission Guide, Part 2.

³ Again refer Submission Guide Part 2.

- Family involvement given history of Gavan’s abuse, the effects on all our family before and after his disclosure to POC;
- The Archdiocese’s response to Gavan;
 - The family’s dissatisfaction when we reviewed the situation
- The Archdiocese’s response to me and to my sister
- Actions taken after Gavan’s death
 - Cleanup of Gavan’s home;
 - Personal review of Gavan’s documentation;
 - Contact to Carelink and subsequent refusal to continue contact;
 - Refusal of meaningful response by Archbishop Hart;
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Part 2. The Melbourne Response

In 1996 (then) Archbishop Pell announced an in-house process to manage the hundreds of clerical sexual abuse cases active at that time.

I contend that the announced mechanisms and staffing were seriously deficient.

Even those deficient structures were not staffed or implemented as announced.

Since 1996 the structures and staffing have been substantially degraded without comment by the Archdiocese, other than statements of support by Archbishop Hart and other officials of the Archdiocese including the "Independent Commissioner".

[REDACTED]

Melbourne Response: Deficiencies in structure

I submit to the Inquiry that a number of severe deficiencies are recognisable in the legalistic structure of the Melbourne Response:

- No preventative measures within the Response
- Total dependence on the Archdiocese
- A complete lack of independence of staffing
- Police interfaces non existent - no interface to report all incidents potentially recognisable as crimes to police
- No professionally trained investigative capabilities
- No Supervisory Board for Carelink
- No requirement for “Working with children” certificates until 2011
- No pastoral support for victims
- No advocacy support for victims
- Apology only after acceptance of compensation
- Release letters absolve Archdiocese from all further responsibility – anything given is by goodwill and decisions cannot be appealed.

A Code of Conduct

There was no requirement for Melbourne Archdiocesan clergy to obtain “Working with Children” certification until very recently.

The 1996 Melbourne Response did not include any Code of Conduct. None was published until November 2011 and even that Code does not include any requirement for reports to be passed to police nor for any non-church investigation of alleged instances of abuse.

The 2011 Code states: “*Sexual and other abuse by Church personnel should be reported to the Independent Commissioner*” which avoids any police involvement.

For those church and school staff who are “mandated reporters” under Victorian *Children, Youth and Families Act 2005*, this would not fulfil their obligations.

In this environment, reports or allegations of abuse are not investigated by trained professional investigators responsible for the maintenance of law and prosecution of crimes, but by a lawyer who is effectively an employee of the Archdiocese who would presumably have obligations toward his employer.

Melbourne Response: Degradation of structures and staffing

[REDACTED], Carelink has never functioned with the promised staff of professionals providing support to clients but acts as an outsourcing management organisation and a gatekeeper for funding external providers.

No "Director"

Since the original staff appointments at Carelink, the position of "Director" has vanished.

Dr Ball resigned his position in 2006 and it was apparently not filled again as Carelink is now led by Ms S Sharkey acting as "Co-ordinator." Psychiatric functions have been performed by various part-time consultants – [REDACTED] I believe that her solo part-time role is the entire professional staff of Carelink today.

Melbourne Response: Prevention procedures

There were no discernable prevention procedures in the original announcements or implementation of the Melbourne Response.

There are no preventative education programs in place for children, parents or staff.

Quite recently (late 2011) there was a new function established in the Melbourne Archdiocese - *The executive manager of the Office of Professional Conduct, Ethics and Investigation*.

The Archdiocesan Code of conduct was published in late 2011 but is laughably inadequate.

For the first time, all clergy were required to have "Working with Children" certification, but the Code is seriously deficient in many areas, especially as it does not mandate reporting to police or police involvement in handling any reported problems nor does it include preventative education for children, parents and staff.

Melbourne Response: Treatment procedures

Gavan Boyle's response says all that is needed to say:

- "They just didn't care."

In Gavan's case, I admit he would have been a very difficult client but I note again that he asked for "Good Counselling" and none was offered. His report of extreme trauma after one meeting with Carelink was completely ignored.

Melbourne Response: Reactions to feedback

I certainly felt that from the moment I commenced asking questions regarding how Gavan had been treated, I was handled by the Archdiocese as a dangerous enemy whom they wished to "freeze out" and whose input they did not wish to consider.

I fel that the clear message from the Archdiocese solicitor was "GO AWAY" [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Part 3. Gavan's treatment by the Archdiocese

I include for the Committee's information a history of the treatment by the Melbourne Response. It is, I believe, a fairly typical case that indicates that the care given to him was of a very poor standard. The interviews with Richard Ball and Susan Sharkey were undoubtedly extremely stressful, but he was given absolutely no support in handling that stress nor were his obvious needs addressed.

Disclosure

As is common in sexual abuse cases, Gavan did not disclose the abusive events until nearly four decades after they occurred and ten years after Jones' death. Gavan disclosed the abuses to Mr P O'Callaghan QC, the "Independent Commissioner" in February 2005.

Monsignor Penn Harold Jones

Gavan's abuser was Monsignor Penn Jones.

Monsignor Jones (1915-1995) had been chancellor of the Melbourne archdiocese and secretary to the Roman Catholic Trust Corporation (nominal controllers of the church's property and assets). Paradoxically, this corporation and the related Catholic Church Insurances is the body that fights any sex-abuse victims who try to sue the archdiocese for damages.

At various times, Jones was

- Chancellor of the Melbourne archdiocese;
- Chaplain to Catholic Scouts of Melbourne;
- Chaplain to the choir-boys of St Patrick's Cathedral,
- Chaplain to the altar-boys at St Patrick's Cathedral;
- Chaplain to Parade College, (later Cathedral College), boys' schools in East Melbourne.

Jones also became a director (and later the chairman) of the church's insurance company, Catholic Church Insurances Limited. This, too, is a body that fights any sex-abuse victims that sue the church for damages and is understood to be responsible for much of the funding of Towards Healing and the Melbourne Response.

Jones was given the distinguished title of "Monsignor" and was referred to as the "Very Reverend Penn Jones." He also became a "Prelate of Honour of His Holiness the Pope". After his death Jones was buried with full honours from St Patrick's cathedral and eulogised warmly by Archbishop Little.

[REDACTED]

To my knowledge, at least one other victim of Penn Jones has been accepted as a victim by the Archdiocese and I have little doubt that he abused many others given his various roles involving youth in the Archdiocese.

[REDACTED]

Evaluation by P O'Callaghan QC

In early 2005 Gavan visited the "Independent Commissioner," Mr O'Callaghan, after several phone conversations. Mr O'Callaghan accepted Gavan's allegation that he had been abused and later he, Mr O'Callaghan, told me he had no doubt whatever about the veracity of Gavan's recollections. [REDACTED]

[REDACTED]

Gavan expressed three requests of the Archdiocese via Mr O'Callaghan:

1. Good counselling;
2. Removal of Penn Jones' name from an honor list on a plaque in St Patrick's cathedral;
3. Removal of Penn Jones' honorific rank and titles (" Very Reverend Monsignor", "Prelate of Honour of His Holiness the Pope").

Gavan made no request for a compensation payment at that time. We know of no action taken in response any of those requests via Mr O'Callaghan.

Referral to Carelink

Gavan was referred to Associate Professor Richard Ball (psychiatrist) and Ms S Sharkey (psychologist) of the Archdiocese's "*Carelink Counseling Services*." They conducted two extended interviews or evaluation sessions with him in April 2005.

They wrote an assessment of his situation that was sent to the Archdiocese's *Compensation Panel* to evaluate a compensation offer and, for some unknown reason, copied to Mr O'Callaghan.

[REDACTED]

Carelink then took responsibility for psychiatric and psychological care of the issues arising in Gavan's life from the abuse.

Counselling

During those interviews and an associated questionnaire Gavan specifically requested "*good counselling*" and Dr [REDACTED] to whom he was further referred for evaluation, specifically recommended treatment that "*more comprehensively addresses the underlying reasons for alcohol use.*"

To my knowledge, no counselling was ever offered to Gavan. I was told "*We offered him treatment for his alcoholism and that would have included counselling.*" Nothing in the transcripts or phone records I have seen documents any support offered to Gavan to address the underlying reasons for his alcohol abuse as recommended by Dr [REDACTED]. The word "counselling" does not appear in those transcripts.

Gavan declined offers for admission to an alcohol rehabilitation program. That refusal ought be understood in the context that he was offered a program that appeared to address only alcoholism apparently without mentioning any contextual support as recommended by Dr [REDACTED]. Such a program would have been similar to previously unsuccessful programs Gavan had undergone in 1999 and 2001.

Gavan died in November 2005 from a combination of lung cancer, for which he had never sought treatment, chronic alcoholism, and prolonged self-neglect including malnutrition (starvation).

What the "Melbourne Response" missed

There are many items and processes regarding Gavan's situation that were missing from the Melbourne Response that are incorporated in other better planned processes and better managed systems.

At no point within the Melbourne Response was Gavan provided with or encouraged to get any advocacy or companionship during the various processes. So, a very hurt and damaged client was dealing alone [REDACTED]

In every other sort of situation, family involvement is routinely invoked, not merely an offhand remark "is there anyone in your family we should tell?"

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Carelink missed -

Carelink did not ask for or review previous psychiatric or other assessments that included major diagnoses pointing to Gavan's suicidality, his lack of will to live and overall psychological ill-health. They did not identify many previously diagnosed illnesses, including his advanced alcoholic neuropathy that had effectively crippled him.

Gavan's suicidal tendencies were not helped at all by Carelink and as best we can now judge, his mental state deteriorated markedly after talking to Mr O'Callaghan, Dr Ball and Ms Sharkey.

Carelink did not attempt at all to engage Gavan's family in his care.

Carelink missed or ignored his specific written request for "good counselling."

Compensation Panel missed -

The *Melbourne Response* Compensation Panel did not ask for, or request access to, the many available psychiatric, psychological and other medical reports on Gavan's state of health to assess properly the damage done in his life.

They were, as far as I know, totally unaware of the circumstances of Gavan's retirement. He was actually effectively forced to retire for ill-health, with one specific health issue: chronic alcoholism.

No family support

The Melbourne Response does not provide any support whatever to secondary victims such as the family of abused victims who would always be affected by the responses the original victim takes to assuage his own hurts. Such responses typically include the misuse of alcohol or other drugs to dull their stresses and pains, irrational anger and other behavioural disorders.

In my case, they agreed to provide a little support only after I contacted Carelink myself and requested it.

I am puzzled as to what reasoning could have been used by Carelink, but they have recently denied that I am a secondary victim!

Gavan's last days

In October-November 2005 all attempts I made to visit Gavan were blocked by him. Eventually, by deceit, I gained access to find him lying on a stinking mattress almost incoherent and obviously in severe distress. I invoked help from a social worker who convinced him to accept urgent hospitalisation.

In [REDACTED] Hospital, terminal, untreatable lung cancer and acute malnutrition were diagnosed, and he finally accepted a "Do not resuscitate" notice after suffering a nearly fatal myocardial infarction (heart attack).

Towards the end of that time. Gavan said to my wife and I "*They just didn't care. I want all this to go public*" and told me where to collect his documentation.

He died after a few traumatic days, which I spent at his bedside, night and day.

I still have nightmares recalling those last days of Gavan's life.

In cleaning his house, we found scores of empty wine casks and only a few scraps of mouldy food.

Consequences of Gavan's abuse by Monsignor Jones

Gavan undoubtedly suffered many symptoms that are recognised by competent professionals [REDACTED] as typical of people who have endured sexual abuse in their formative years. Explicit professional documentation by psychiatrists and psychologists [REDACTED] on Gavan's case included notes identifying explicit diagnoses of such symptoms as:

Emotional lability,	Major depression,	Suicidal ideation,
Anxiety,	Obsessive personality characteristics,	
Tearfulness,	Low self esteem and self confidence,	
Lack of concentration,	Daily nausea & vomiting,	Anorexia,
Lack of motivation,	Side effects of various medications,	Hypertension,
Gastritis,	Cirrhosis	Cerebellar dysfunction,
Memory loss,	Confabulation,	Pronounced obsessional personality,
Affect problems,	Flash backs,	Memory denial.

Permanent disablement

His professional career was truncated in 1999 at age 51 by permanent disablement for a chronic illness, alcoholism.

Whether that, and the symptoms listed above are the direct consequences of his abuse is arguable, but most professionals in the field recognise the correlation between sexual abuse as a minor and development of symptoms similar to that list noted above.

Consequences of treatment by the Melbourne Response

[REDACTED]

There appears to have been no consideration or further assessment planned with regard to issues of borderline personality disorder, other dissociative disorders and PTSD that commonly arise among victims of child or teenager sexual abuse and particularly among victims of clerical sexual abuse:

The only treatment offered Gavan was specifically for his alcoholism, and he obviously had no confidence in that offer as he'd already tried such treatments three times.

Gavan did withdraw from family and other contacts very much more markedly after visiting Carelink, and became especially aggressive when drunk, which was obviously almost continuous. I, and my family discussed using a "silent" phone to avoid the prolonged distressing midnight calls.

Gavan's death: [REDACTED]

I am certain that Gavan's long history of personal troubles, his alcoholism, the forced termination of his career and his premature death are all directly related to the abuse he suffered

Several people, including senior educators, a social worker and a priest, have confirmed to me that they perceived that Gavan had lost any will to live long before his death in 2005.

Knowing now the diagnoses of suicidality that had been reported by psychiatrists many years prior to 2005, and putting that together with Gavan's attitudes in 2005 along with his final remarks regarding the Archdiocese's people – "They just didn't care," I would regard the extraordinary self-neglect throughout 2005, the failure to obtain care for his lung cancer, and his final self-starvation as indistinguishable from suicide.

[REDACTED]

Part 4. How I was treated by the Archdiocese

My Initial contacts with Carelink (Jim Boyle)

I contacted Carelink in December 2005, after Gavan's death. Ms Sharkey was astounded to hear the news of Gavan's death and agreed to meet with me.

When my wife and I attended Carelink's office for that meeting, we were kept waiting nearly half an hour and then Professor Ball invited himself into the discussion that he then dominated. Ms Sharkey took little part.

I paraphrase a few items that struck me with particular force:

- "Everything that happens here is totally confidential" (NOTE "EVERYTHING")
- Particular emphasis was made of independence from the Archdiocese.
- "Gavan didn't ask us to involve his family in his care" (NOTE - "he didn't ask...!")
- "He didn't ask for pastoral support"
- "He refused the treatment we'd arranged"
- "We aren't social workers so we couldn't do anything"
- "Some victims just get over it, others succumb to alcohol et cetera". That's a direct quotation: "Some victims just get over it, others succumb to alcohol etc." That is a response that shocked me at the time. I saw as an elaborated expression of "Blame the victim."
- "I can't remember what he asked for as his most important need"
- it was an explicit request for good counselling.
- "I can't remember what he said was the most traumatic issue for him at that time"
- it was the effort of responding to Carelink's questionnaire that refreshed all his memories of the abuse.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

At the conclusion of my meeting with Dr Ball and Ms Sharkey, I was offered the opportunity for a further meeting to discuss any further questions I had. I did intend to do that as the initial conversation had raised many issues of concern that I wished to evaluate and then discuss in detail with them in case I was misjudging their professional behaviour in my distress.

Refusal of further contact

As Gavan's executor and operating on his expressed wishes that he wanted "all this to go public" found that the practices of Melbourne Response in the handling of his case were most unsatisfactory. I attempted, on his behalf, to review my conclusions with the Archdiocese to stimulate improvements and thereby to improve treatment of other victims

After several unsuccessful attempts to arrange the further meeting with Carelink as I'd been promised, I received an email from the Archdiocese's legal representative that included:

- I understand that you have now requested a further meeting with Carelink. It is their view that they have provided you with all of the information that they are able to provide. In view of the matters referred to above, and their other commitments they would need an indication of what else it is that you wish to discuss before they can decide whether a further meeting would be appropriate.

Understandably I was stunned by this:

- I was stunned that the promised confidentiality had been seriously violated by communication to the Archdiocese's legal representative that I had been making inquiries of Carelink;
- I read Mr Leder's message as a refusal by Dr Ball and Ms Sharkey to fulfil their offer;
- I was seriously traumatised by the betrayal of confidentiality and felt bullied by this process.

[REDACTED]

[REDACTED]

For the first and only time in my life I needed medication to suppress my nightmares and to sleep.

My GP recommended that I immediately defer all contact with Carelink [REDACTED]

Archbishop Hart

Since I was refused contact with Dr Ball and Ms Sharkey to discuss my concerns at how they had treated Gavan, some time later I next attempted to contact the only person superior to Dr Ball and Ms Sharkey - Archbishop Hart.

I did this in the context of the statement within the original announcement of the Melbourne Response: "*Archbishop Pell welcomes comments from anyone in the community about the initiatives covered in this Plan.*" I expected Archbishop Hart to fulfil that statement but was disappointed in his response.

All attempts to arrange a meeting with the Archbishop were refused.

After Papal Nuncio's intervention

After my sister had contacted the Papal Nuncio on another related matter, Archbishop Hart finally agreed to a meeting with me. He said nothing of consequence during that meeting – responding to every issue I raised with a simple mantra: "*I'll have to take advice on that*" and refusing to commit to a reply after getting whatever advice he needed.

My recommendations to Archbishop Hart

- a) Provision of pastoral care to all victims from time of first contact;
- b) Provision of advocacy to victims from time of first contact;
- c) Automatic provision of pastoral and other support to secondary victims (family), also from time of first contact;
- d) The designation of a responsible and authoritative contact person within the Archdiocese to continue discussion in more detail than was possible in our meetings;

e) We suggest that consideration be given to a timely review of the "Melbourne Response" including consideration of the experiences of all victims, (primary secondary and tertiary). The Cumberlege Commission established by the Catholic Bishops of the UK is one excellent model for such an enquiry.

I have never received any further response.

Follow-up correspondence has never been answered.

[REDACTED]



Effects on Gavan's family

All members of Gavan's family suffered during his life, and since his death, we've been further traumatised to discover the detailed history of how he was treated once he came forward to Mr O'Callaghan and to Carelink.

Obviously I and my sister Jill Mather have been deeply affected – for me the effects led to a heart attack that nearly took my life. Our faith in the church as a supposedly Christian organisation has been destroyed and any leadership respect for Archbishops Pell and Hart and their hierarchical colleagues has been utterly destroyed.

Our respect for the professional bodies nominally maintaining professional standards of the medical and other health professions has likewise been destroyed.

[REDACTED]

○

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]

Part 6. Parliamentary actions

There is a very fundamental issue that has rarely been addressed in the context of the child abuse issues in churches and other organisations, that welfare of children is a community issue that the community expects civil government to manage.

That management process includes the establishment and maintenance of standards and organisations responsible for:

- The best available techniques for preventing abuse;
- Continuing education of children teachers etc in prevention and recognition of dangerous situations, as is done for first-aid issues;
- Real investigation of alleged cases by independent professional investigators – specialist police trained in handling of sexual abuse issues;
- Care and assistance to victims when they come forward;
- Compensation for victims along the lines of today's Victims of Crime support.

Funding by the Catholic Church

Given the systemic problems of the toleration of abuse by priests and others of the Catholic church, I suggest and would feel it appropriate that the Inquiry investigate a system like that in Ireland where the church provides funding for items such as listed above proportionate to its direct responsibilities for so many cases.

It is also quite iniquitous that the church puts onto Medicare, costs for medical treatment of victims where that might reasonably be considered its own responsibility.

Investigation

I believe it would be appropriate for the Inquiry to accept that Archbishop Hart's offer of full cooperation and to request that he authorise disclosure of all Archdiocesan files including those held by the "Independent Commissioner" regarding a small sample of acknowledged offenders to demonstrate that the Archdiocese has never concealed reports of abuse.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Prevention

There are many aspects regarding the prevention of child sexual abuse relevant to this Inquiry, and I can only suggest some pertinent topics for further investigation with qualified specialists in each area. These suggestions are pertinent across all religious organisations and similar communities.

- "Working with Children" certification is an obvious minimal requirement.
- Every organisation working with children ought have a designated support individual who is alert and responsive to trouble situations and who will coordinate response to police for all situations that potentially involve crimes. That should be a local person, not a nominee in a headquarters staff.
- Regular and systematic education of all children and all adults dealing with children on the warning signs of trouble, grooming, acceptable and unacceptable norms of behaviour, the contact persons who can help when questions arise, reporting obligations and similar matters. Parents of all children at all schools should also be offered this education.

- This education needs to be properly developed and refreshed regularly and participants working on behalf of any religious organisation certified as for first-aid education in the workplace.
- There is always a requirement for responding to situations that are potentially dangerous to children, such as the avoidance of a single adult working alone with children.
- “Grooming” is usually a recognisable situation that needs a definite response and almost certainly, extraordinary measures to prevent progression of bad behaviour.
- Any reported incidents that are potentially criminal must not be kept “in house” but reported to and investigated by fully trained police investigators. That may require substantial upgrading of those staffs.
- Once an abuser is identified as such, especial responses are appropriate.

Crimes are state issues

Rapes and other sexual abuses of minors are serious indictable crimes under Victorian law. The practice of concealing crimes under the Catholic Church’s international policies (sometimes referenced as the policies of “canonical secrecy” enunciated in Crimen Solicitationis) has undoubtedly prevented many investigations and allowed many abusers free rein to continue damaging multiple victims long after the first reports of their crimes.

A previous Victorian government took no specific action when serious crises of clerical sexual abuse became public knowledge in the 1980’s and 1990’s. This allowed the Catholic Church to create local processes that served to suppress almost all news of these crimes, possibly to protect predators and to allow them continued access to more victims with minimal authoritative intervention and minimal support for recognized victims.

However, the Catholic church in Victoria, as in other Australian states and many overseas countries, has demonstrated a consistent and sustained inability to treat these problems appropriately as it appears that crimes have frequently been hidden and offenders tolerated as for example in cases like those of Baker, ████████, Haines, O’Donnell, Pickering, Ridsdale, Best, Gannon, Rubeo, Glennon, Searson and Day. This list is a small sample of the more than 100 known abusers active in the Catholic church in Victoria in the recent past. Catholic church investigations in Victoria have never, to my knowledge, initiated disclosure to police and resultant prosecutions.

So, investigation of all crimes is the responsibility of state and for just results, must not be derogated to private organisations like an “Independent Commissioner” working on behalf of the church.

Victorian law currently does little to ensure all possible cases of sexual abuse are reported to police – the only current legal proscriptions apply only to cases where someone conceals a crime for his or her own provable profit or explicitly impedes an ongoing investigation.

I recommend two particular changes that should assist the prevention of systemic concealment of crimes or even potential criminal behaviour as has been reported by Catholic church history in many countries.

Withholding of information

All reports that involve allegations that could involve crimes ought be reported to specialist police units for investigation.

I recommend strongly a law along the lines of the Irish statute:

- **Criminal Justice (Withholding of information on offences against children and vulnerable persons) Act 2012:-**
- 2.— (1) Subject to this section, a person shall be guilty of an offence if—

- (a) he or she knows or believes that an offence, that is a Schedule 1 offence, has been committed by another person against a child, and
 - (b) he or she has information which he or she knows or believes might be of material assistance in securing the apprehension, prosecution or conviction of that other person for that offence, and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.
- (Penalties ...) on conviction on indictment, to a fine or imprisonment or both according to the gravity of the undisclosed offence – imprisonment for between 3 and 10 years.

Endangerment of children

Most people would accept that once anyone recognises that someone under their control poses a direct danger to children, or that a child under their control is endangered, that person ought take all possible steps to remedy that situation.

I recommend that this be a legal obligation along the lines of another Irish statute:-

- **Criminal Justice Act 2006 Reckless endangerment of children.**
- 176.— (2) A person, having authority or control over a child or abuser, who intentionally or recklessly endangers a child by—
 - (a) causing or permitting any child to be placed or left in a situation which creates a substantial risk to the child of being a victim of serious harm or sexual abuse, or
 - (b) failing to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation, is guilty of an offence.
 (Penalties ...) A person guilty of an offence under this section is liable on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or both.

Victims of crime support & compensation

In general, the costs of support for victims of crime is accepted state responsibility, but where there is vicarious liability, a victim can sue for compensation for damages involved.

It would be a just policy for the state to insist that as a good corporate citizen, the church fund that support where appropriate

Vicarious liability and the “Ellis defense”

The current legal structure of the Catholic church organisation separates the financial activities and assets from the management of church affairs like the appointment and authorisation of clergy.

The Ellis case

- In the Ellis case it was argued that the Catholic Church did not exist in New South Wales as a legal entity. The Roman Catholic Church Trust told the court that although it holds all of the Church’s property—and had held it at the time that Mr Ellis’ alleged he was abused—that it was not responsible for the conduct of any member of the clergy.
- The trust submitted that, in effect, the church could not be sued as, in law, it did not exist.
- Cardinal Pell maintained his position that he was not appointed at the time of the abuse. The cardinal who had been appointed at the time of the alleged abuse had since died, as had the alleged abusive clergy member. Cardinal Pell claimed Mr Ellis could not hold him responsible for the abuse.

The Catholic Church has organised its legal affairs so that, in effect, it is almost entirely insulated from legal claims by victims of abuse. Certainly it is well protected in the typical case where a victim doesn’t disclose the abuse ‘till many years afterward.

Despite the fact that the appointment of an abusive priest would be done as a function of leadership of the Archdiocese, the resources of the Archdiocese (its Trust funds) would be protected as found in the Ellis case.

Where persons or organisations may have vicarious liability, most people would expect that the organisation properly accept that liability and not argue that the liability was a personal one that died with the then incumbent leader, unlike the ongoing responsibility for leadership in any corporate entity. A legal fiction, such as this “Ellis defense” would be unacceptable for any commercial business, and is not acceptable for a church that preaches a high moral standard.

Negation of the Ellis Defense

I request that the Inquiry recommend legislative change to negate the Ellis defence in Victorian law as is done in many other jurisdictions.

Part 7. Supplementary materials

Conference: Sexual Abuse in Religious Contexts

I include, for the information of the Committee, a paper I gave in June 2008 at the University of NSW Conference on *Sexual Abuse in Religious Contexts* documenting some thoughts on the possibilities of better outcomes for abuse victims by involving families and partners in the care of their abuse-related issues. That paper is attached as an appendix.

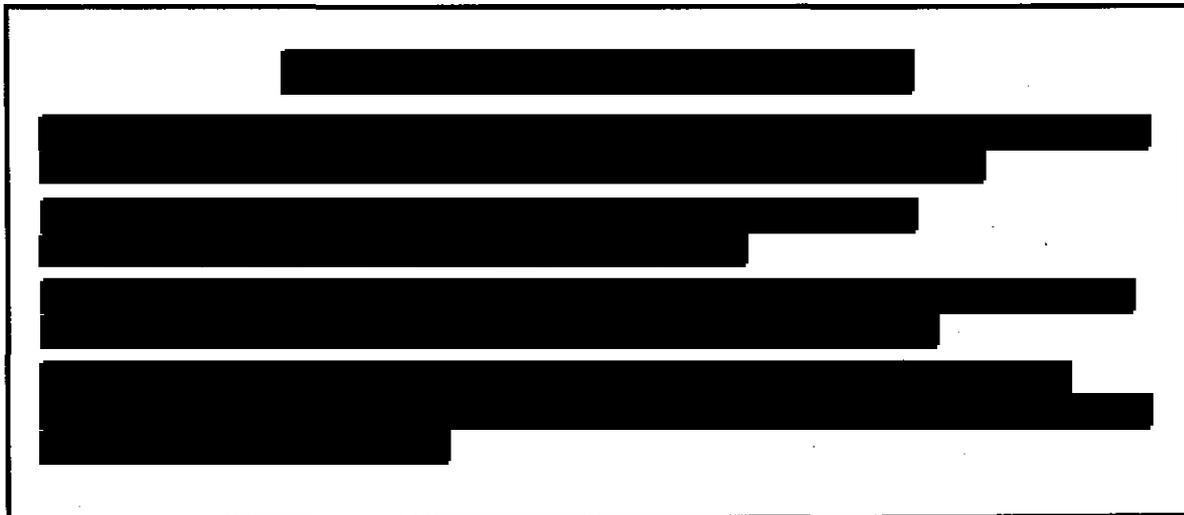
Non-participation by the Catholic Church

I note that no representative of the Catholic Church participated actively in the Conference or presented a paper.

Conference Conclusions

Among the conclusions presented in the press releases following the Conference was a statement of conclusion that is pertinent to the Inquiry:-

- **Much damage has been done by the Churches using 'in house' approaches to sexual offenders.**
- **Investigation of allegations must be referred to an independent body**
- **The Churches need to create accountability and penalties for those in administrative authority who cover up offences.**



Part 8. Conclusion

In this submission I have commenced with some details of the Melbourne Response and identified aspects of its implementation that differ markedly from the announcements of Archbishop Pell.

I continue to relate one real experience of a victim of sexual abuse who approached the Melbourne Catholic Archdiocese to report that abuse.

I have related his experience and the critical information about the end of his life.

My submission continues with my experiences since raising issues about my brother's case according to Archbishop Pell's invitation and the response I received from the medical profession in defence of their colleague.

I have included some thoughts on actions and changes that I recommend to the Inquiry.

James L (Jim) Boyle

[REDACTED]

20 September 2012.

Attachments:

1. JLB-2012-09-20B.pdf

Second abuse and secondary victims J Boyle
Paper given at "Sexual Abuse in Religious Contexts Sydney,
June 20-21, 2008

[REDACTED]

[REDACTED]