



**FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE**

# BETRAYAL OF TRUST

INQUIRY INTO THE HANDLING OF  
CHILD ABUSE BY RELIGIOUS AND OTHER  
NON-GOVERNMENT ORGANISATIONS

VOLUME 1 OF 2

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## Functions of the Committee

Extract from the *Parliamentary Committees Act 2003 (Vic)*:

**S.11** The functions of the Family and Community Development Committee are, if so required or permitted under this Act, to inquire into, consider and report to the Parliament on:

- (a) any proposal, matter or thing concerned with—
  - (i) the family or the welfare of the family
  - (ii) community development or the welfare of the community
- (b) the role of Government in community development and welfare, including the welfare of the family.

## Committee Membership

### Committee Members

Ms Georgie Crozier, MP (Chair)	Southern Metropolitan
Mr Frank McGuire, MP (Deputy Chair)	Broadmeadows
Mrs Andrea Coote, MP	Southern Metropolitan
Ms Bronwyn Halfpenny, MP	Thomastown
Mr David O'Brien, MP	Western Victoria
Mr Nick Wakeling, MP	Ferntree Gully

## Terms of reference

The Family and Community Development Committee is requested to inquire into, consider and report to the Parliament of Victoria on the processes by which religious and other non-government organisations respond to the criminal abuse of children by personnel within their organisations, including:

- 1) the practices, policies and protocols in such organisations for the handling of allegations of criminal abuse of children, including measures put in place by various organisations in response to concerns about such abuse within the organisation or the potential for such abuse to occur;
- 2) whether there are systemic practices in such organisations that operate to preclude or discourage the reporting of suspected criminal abuse of children to State authorities; and
- 3) whether changes to law or to practices, policies and protocols in such organisations are required to help prevent criminal abuse of children by personnel in such organisations and to deal with allegations of such abuse.

In undertaking the inquiry, the Committee should be mindful of not encroaching upon the responsibilities of investigatory agencies or the courts in relation to particular cases or prejudicing the conduct or outcome of investigations or court proceedings.

The Committee is requested to report to the Parliament no later than 30 April 2013.\*

\* The deadline for reporting was subsequently extended to 15 November 2013

## Chair's foreword

On receiving our terms of reference, it was immediately evident that our Committee had been tasked with a significant and historic Inquiry. It is the first of its kind in Victoria and it has been challenging on many levels—for the victims who re-lived their traumatic experiences, for the community hearing their accounts, and for trusted non-government organisations opening themselves to scrutiny and conceding wrongdoings.

The criminal abuse of children is unacceptable in any form. It symbolises a departure from morals that are the touchstone of our humanity and our society.

The community rightly expects that it should be able to trust non-government organisations that take children into their care to engage in activities for learning, development, enjoyment or for treatment or other care they may require.

Children cannot be expected to protect themselves against the crime of abuse in organisations. We as a community must take responsibility for upholding their rights.

Our Inquiry has resulted in recommendations that we trust will provide a foundation for the protection of our children into the future. They will require non-government organisations to adequately prevent and respond to the criminal abuse of children. We have also recommended avenues of justice for those children who are now adults and seek vindication for past wrongs.

In our deliberations, we discussed the best way to create a practical and cost-effective umbrella of protections to ensure that children participating in activities will be safe from predators as far as reasonably possible. Putting aside the complexities of their design and implementation, the nature of the reforms required in Victoria is relatively straightforward.

The criminal abuse of children involves extremely serious breaches of the laws of our community. Those who engage in it, or are in positions of authority and conceal such offences, should be dealt with under the criminal law. Non-government organisations must be expected to adequately protect children in their care and respond to any allegations of criminal offences by reporting to the police and relevant authorities. Victims should have access to appropriate avenues to pursue justice for the harm they have suffered. Our recommendations reflect these essential principles.

To inform our recommendations, we ensured we heard from individual victims and their families regarding their personal experiences, insights and suggestions for reform. We also wanted to provide a genuine opportunity for their experiences to be publicly acknowledged on behalf of the people of Victoria. While often confronting, it was a privilege to hear and read the hundreds of accounts of adult victims who courageously provided their evidence in hearings and submissions. These accounts contributed significantly to our understanding of the harm caused by the physical, emotional and sexual abuse of children.

We acknowledge those victims who were unable to participate in the Inquiry—who remain locked in silence, who found the re-telling of their experience too traumatic, or who have taken their lives as a consequence of their lifelong internal struggle and pain.

The evidence provided by parents and family members also helped us to gain greater insight into the wide-ranging effects of criminal child abuse in organisations. We heard how parents and others feel deeply responsible and naive for having placed their trust in individuals and organisations that ultimately betrayed them.

At all stages we pledged to conduct a thorough Inquiry, not a hasty one. We sought to ensure that our analysis of written, oral and documentary evidence was rigorous and that any inferences or conclusions we reached were soundly based.

We also promised not to impinge on the responsibilities of the police and the courts and at the outset established referral pathways to ensure that criminal allegations were responded to appropriately and that people received professional advice on pursuing criminal and civil options. Victoria Police and the Victims Support Agency provided tremendous support and expertise at every stage of the Inquiry. Having created these parallel processes, we worked collaboratively with the SANO Task Force that was established to investigate historic and new allegations that emanated from our Inquiry.

It is significant that this Inquiry has been conducted by a Parliamentary Committee. It is an important reminder of the special powers that our Parliament is privileged to hold. It has highlighted Parliament's capacity to consider and expose issues that may otherwise not be revealed.

The members of our Committee put aside party affiliations and worked cooperatively to hear the evidence, to deliberate on our findings and to determine the necessary recommendations. I thank them for their compassion, their dedication and for the collective sense of responsibility we all felt towards those affected by the crime of child abuse.

In undertaking this task, we were excellently supported by a team of expert advisers, a committed and skilled Secretariat, experienced Hansard reporters, and the professional counselling and de-briefing services of Carfi.

Our Inquiry marks the beginning. Having confronted and exposed hidden truths in trusted organisations, we look forward to seeing our recommendations implemented and non-government organisations actively reforming their approaches to protecting children and honouring their commitment in this Inquiry to participate in any new schemes or monitoring structures that may be established.

I am confident that members of the Victorian community would not want any reason for an inquiry of this nature to be repeated in the future. This is an opportunity to set a new benchmark for the protection of our children.

A handwritten signature in black ink, appearing to be 'Georgie Crozier', with a long horizontal flourish extending to the right.

**Georgie Crozier, MP**  
**Chair**



# Table of Contents

## VOLUME 1

Functions of the Committee	iii
Committee Membership	iv
Terms of reference	v
Chair’s foreword	vi
Glossary	xviii
Acronyms	xxiii
Executive summary	xxv
Inquiry recommendations	xliii
Inquiry findings	xlix
<b>PART A: INTRODUCTION AND PROCESS</b>	<b>1</b>
<b>Chapter 1: Introduction—confronting and exposing the truth</b>	<b>3</b>
1.1. Evidence to the Inquiry	6
1.2. The experience of victims	7
1.3. Organisational responses to abuse	10
1.3.1. Failure to respond	13
1.3.2. Unique nature of religious organisations	14
1.4. Evidence themes	16
1.5. Reforms—an umbrella of protections	17
1.6. Mechanisms for redress	19
1.6.1. Introduction of the Melbourne Response	22
1.7. Confronting and exposing the truth	25
<b>Chapter 2: Inquiry process</b>	<b>29</b>
2.1. Inquiry scope	29
2.1.1. Definitions and terminology	29
2.1.2. Inquiry timeframe	31
2.2. Parallel processes—allegations and investigations	31
2.2.1. Referrals to police	31
2.3. Parliamentary Committee powers	32
2.4. Support to participate in the Inquiry	32
2.5. Evidence gathering	34
2.5.1. Written submissions	34
2.5.2. Hearings	35
2.5.3. Additional information	36
2.5.4. Accessing files	37
2.5.5. Research	38
2.6. Treatment and analysis of evidence	38
2.6.1. Evidence from victims	39
2.6.2. Treatment of sensitive evidence	40
2.6.3. Analysis of evidence—systemic focus and evidence from individuals	41
2.7. Royal Commission	43

<b>PART B: VICTIMS' EXPERIENCES, IMPACTS AND THEIR PURSUIT OF JUSTICE</b>	<b>45</b>
<b>Chapter 3: Victims and their experience of criminal child abuse in organisations</b>	<b>49</b>
3.1. Common experiences	50
3.2. Delayed understanding and reporting	52
3.2.1. Delayed understanding	52
3.2.2. Concealing the abuse	52
3.3. Victims' experiences	53
3.3.1. Institutions—orphans, cottage homes and other institutional care	54
3.3.2. Boarding and parish schools	56
3.3.3. Parish activities	58
3.3.4. Regional experiences—Ballarat example	59
<b>Chapter 4: Victims and the impact of child abuse in organisations</b>	<b>63</b>
4.1. Awareness of criminal child abuse and its impacts	64
4.1.1. Emerging understanding of the effects of child abuse	65
4.2. Impacts on victims	65
4.2.1. Specific impacts of criminal child abuse in organisations	66
4.2.2. Mental health issues	70
4.2.3. Guilt and shame	72
4.2.4. Relationship difficulties	72
4.2.5. Addiction	74
4.2.6. Issues with anger	75
4.2.7. Sexual intimacy and development	76
4.2.8. Issues with authority	77
4.2.9. Life skills, education and employment	77
4.3. Impacts on families and secondary victims	78
4.4. Impacts on communities	80
4.5. Impacts on society	82
<b>Chapter 5: Achieving justice</b>	<b>87</b>
5.1. Need for justice	88
5.2. What does justice mean to victims?	89
5.3. Justice for damage to lives	90
5.3.1. Being believed—disclosure	91
5.3.2. Consequences for the perpetrator	92
5.3.3. Punishment and prevention	94
5.4. Justice for failing to uphold duty of care to children	95
5.4.1. Being heard—validation by the organisation	95
5.4.2. Remorse and acknowledgement	97
5.4.3. Support	99
5.4.4. Organisation processes for responding to reports of child abuse	101
5.4.5. Financial compensation for harms incurred from child abuse	102
5.5. Unfinished business	108
5.5.1. A second betrayal	108
5.5.2. Lack of accountability	111

5.6.	Other authorities	113
5.6.1.	Lack of monitoring	114
5.6.2.	Police response to allegations of child abuse	115
5.7.	Achieving justice—where next?	116
<b>PART C: CONTEXT</b>		<b>119</b>
<b>Chapter 6: Child abuse in organisational contexts</b>		<b>123</b>
6.1.	Evolving nature of organisations, services and activities	124
6.2.	Abuse in organisations—scale of the problem	124
6.2.1.	Extent of child abuse in the community	125
6.2.2.	Scale of criminal child abuse in organisations	129
6.3.	Risk—organisations and children	130
6.3.1.	Children—factors increasing vulnerability to abuse	132
6.4.	Offenders in organisations	133
6.4.1.	Characteristics of offenders	134
6.4.2.	Child sex offenders—religious personnel	136
6.4.3.	Recidivism—child sex offending	137
6.4.4.	Child sex offenders engaging in ‘grooming’ behaviour	138
6.5.	Religious and non-government organisations in Victoria	138
6.5.1.	Religious organisations	139
6.5.2.	Out-of-home care	144
6.5.3.	Early education and non-government schools	148
6.5.4.	Child care	148
6.5.5.	Youth groups and programs	149
6.5.6.	Recreational and sporting organisations	150
6.5.7.	Organisations and criminal child abuse	151
<b>Chapter 7: Past handling of allegations of criminal child abuse</b>		<b>153</b>
7.1.	The Catholic Church	155
7.2.	Salvation Army and Anglican Church	157
7.3.	How abuse was able to occur within organisations	157
7.3.1.	Trust—the role and reputation of religious organisations caring for children	158
7.3.2.	Culture of abuse?	160
7.3.3.	Structure and responsibility in the Catholic Church	162
7.3.4.	Power and culture in the Church	166
7.3.5.	Teachings of the Catholic Church—canon law	169
7.3.6.	Failure to report crimes and treatment of offenders	170
7.3.7.	Relocation and movement of priests	175
7.3.8.	Failure to act on complaint from an internal source	179
7.4.	Investigation by organisations into the extent of the problem	181
7.4.1.	Catholic Church	182
7.4.2.	Other religious organisations	183
7.4.3.	Historic nature of abuse and lack of records	184
7.5.	Initial response of the Catholic Church—‘Special Issues’	185
7.5.1.	Initial response of other organisations	186
7.5.2.	Continued failure to investigate allegations and notify potential victims	187
7.5.3.	Failure to notify police	188

7.5.4. Denial of legal liability	189
7.5.5. Counselling—pastoral support	191
7.5.6. Awareness over time of criminal child abuse in the Catholic Church	191
7.5.7. ‘Drastic measures’	193
7.6. Inadequate Response	194
<b>Chapter 8: Policy development—criminal child abuse in organisations</b>	<b>197</b>
8.1. Case for change—inquiries into criminal child abuse in organisations	198
8.2. International inquiries	199
8.3. Public inquiries in Australia	201
8.3.1. Care leavers	203
8.4. Victorian inquiries	204
8.5. Victoria—current system for child safety in organisations	205
8.5.1. Policy development—protecting children from criminal abuse in organisations	205
8.5.2. Legislative developments for protecting children from criminal abuse	207
8.5.3. Roles and responsibilities—current oversight	209
8.5.4. Other organisations—minimal oversight and regulation	213
<b>VOLUME 2</b>	
<b>PART D: PREVENTION—DUTY OF CARE TO CREATE CHILD-SAFE ORGANISATIONS</b>	<b>215</b>
<b>Chapter 9: Effective prevention of criminal child abuse in non-government organisations</b>	<b>221</b>
9.1. Prevention and duty of care to protect children	222
9.2. Non-government organisations and child-safe environments	223
9.2.1. Situational crime prevention	225
9.3. Core elements of prevention in non-government organisations	226
9.4. Prevention in practice—implementing policies and processes	227
<b>Chapter 10: Effective selection of suitable personnel</b>	<b>229</b>
10.1. Selection criteria and interviewing strategies	231
10.2. Pre-employment checks	233
10.2.1. Victoria and the Working with Children Checks	235
10.2.2. Other jurisdictions	235
10.2.3. Strengthening the Working with Children Check in Victoria	240
10.2.4. Exemptions—parents	244
10.2.5. Over-reliance on Working with Children Checks	245
10.3. Registration	246
10.3.1. Offender registers and databases	246
10.3.2. Professional registration	248
<b>Chapter 11: Managing situational risk and ensuring a child-safe culture</b>	<b>253</b>
11.1. Managing situational and environmental risks	254
11.1.1. Organisational risk assessment	255
11.1.2. Behavioural expectations	257
11.1.3. Education and training	258
11.1.4. Ongoing support and supervision	260
11.1.5. Physical environments	262

11.2. Child-safe organisational cultures	262
11.2.1. Changing organisational culture	263
11.2.2. Effective leadership and cultural change	264
<b>Chapter 12: Policies to protect children from criminal child abuse</b>	<b>267</b>
12.1. Key components of internal organisational policies to protect children	268
12.2. Establishment and implementation of policies by organisations for the protection of children	270
12.3. Existing policies to protect children from criminal child abuse	271
12.4. Standards—Government funded services	281
12.4.1. Standards for Victorian teachers	282
12.4.2. Standards in the early education sector	283
12.4.3. Standards in out-of-home care	284
12.4.4. Example of standards for funded agencies	286
<b>Chapter 13: Improving preventive systems and processes</b>	<b>289</b>
13.1. Accreditation—self-assessment and external oversight	290
13.1.1. <i>Safeguarding children</i> program—Australian Childhood Foundation	292
13.1.2. <i>Choose with care</i> program—Child Wise	293
13.2. Capacity building to create child safe organisations	293
13.2.1. Organisations—seeking support and guidance	293
13.2.2. Capacity building—strengthening the role of peak organisations	294
13.3. Awareness raising and behaviour change	298
13.3.1. Awareness in organisations	298
13.3.2. Children’s awareness	299
13.3.3. Community awareness	301
<b>PART E: RESPONDING TO REPORTS AND ALLEGATIONS OF CHILD ABUSE IN ORGANISATIONS</b>	<b>305</b>
<b>Chapter 14: The importance of effective processes for responding to allegations of criminal child abuse in organisations</b>	<b>309</b>
14.1. The importance of effective processes for responding to allegations of criminal child abuse	310
14.1.1. Regulatory processes in the non-government sector	310
14.2. What is an effective process for responding to allegations of child abuse?	311
14.3. Parallel processes	314
14.4. In practice, processes vary in scope and focus and involve complex decisions	314
14.5. Oversight and monitoring	315
<b>Chapter 15: Encouraging disclosure and an appropriate initial response</b>	<b>317</b>
15.1. Children and disclosure	318
15.2. Accessibility of procedures for reporting allegations and making disclosures	320
15.3. What should be notified?	322
15.4. Who should notify?	322
15.5. Who should be notified?	325
15.6. Initial response to notifications	327
15.6.1. Ensuring children’s safety	327
15.6.2. Validating a victims’ disclosure	328
15.6.3. Support for victims during the response process	330

<b><i>Chapter 16: Recognising criminal child abuse and reporting allegations to authorities</i></b>	<b>331</b>
16.1. Recognising criminal child abuse	332
16.1.1. Narrow approach to responding to criminal child abuse	334
16.2. Policies and practices for reporting allegations of criminal child abuse to police	335
16.2.1. Organisations that operate services in government-regulated sectors	335
16.2.2. Organisations that operate services in unregulated sectors	342
16.3. Reporting allegations of criminal child abuse to other authorities	346
16.3.1. Organisations that operate services in regulated sectors	347
16.4. Organisations that operate services in unregulated sectors—no guidelines for reporting to authorities	351
<b><i>Chapter 17: Internal processes and systemic review</i></b>	<b>353</b>
17.1. Disciplinary processes and suspending staff	354
17.2. Continuous learning and identifying systemic problems	356
17.3. Systemic oversight	358
<b><i>Chapter 18: Improving monitoring, oversight and capacity building regarding reports of child abuse</i></b>	<b>361</b>
18.1. Need for independent monitoring and oversight in Victoria	362
18.2. Organisations—guidance and scrutiny	364
18.3. Monitoring and scrutinising systems and processes—the NSW Ombudsman model	365
18.3.1. Operation of the scheme in NSW	366
18.3.2. Investigations	368
18.3.3. Additional features	370
18.3.4. Identified improvements in responses by organisations	371
18.3.5. Limitations of the model	371
18.4. Improving monitoring and scrutiny in Victoria	372
<b><i>PART F: RESPONDING TO REPORTS AND ALLEGATIONS OF PAST CHILD ABUSE IN ORGANISATIONS</i></b>	<b>375</b>
<b><i>Chapter 19: Processes for responding to allegations of past criminal child abuse</i></b>	<b>379</b>
<b><i>Chapter 20: Case studies—processes of religious and other non-government organisations for responding to allegations of past criminal child abuse</i></b>	<b>385</b>
20.1. Catholic Church processes	386
20.1.1. Melbourne Response and Towards Healing	387
20.2. The Anglican Church	392
20.3. Berry Street	394
20.4. The Salvation Army	395
20.5. Uniting Church	396
<b><i>Chapter 21: Analysis of processes for responding to allegations of past criminal child abuse</i></b>	<b>399</b>
21.1. Actual and perceived independence in the investigation phase	400
21.1.1. Independence—Melbourne Response and the Independent Commissioner	401
21.1.2. Independence—Towards Healing: contact, assessment phase	409
21.1.3. Independence—Anglican Church	411
21.1.4. Independence—the Salvation Army	412
21.2. Approach to secondary victims—Melbourne Response and Towards Healing	413

21.3. Confidentiality and police	416
21.4. Compensation	416
21.4.1. Compensation—Melbourne Response	417
21.4.2. Compensation—Towards Healing	427
21.4.3. Compensation—the Salvation Army	430
21.4.4. Compensation—Anglican Church	431
21.5. Counselling and therapy	432
21.5.1. Counselling—Melbourne Response	433
21.5.2. Counselling—Towards Healing	434
21.5.3. Counselling—the Anglican Church	436
21.6. Pastoral and other support	437
21.6.1. Pastoral support—Melbourne Response	437
21.6.2. Pastoral support—Towards Healing	439
21.6.3. Pastoral support—the Anglican Church	442
21.7. Review and/or appeal	442
21.7.1. Review/appeal—Melbourne Response	442
21.7.2. Review/appeal—Towards Healing	443
21.7.3. Review/appeal—Anglican Church	446
21.8. Scrutiny and monitoring of internal processes	446
21.9. Recommendations about perpetrators and Church treatment of perpetrators	448
21.9.1. Perpetrators—Melbourne Response	448
21.9.2. Perpetrators—Towards Healing	448
21.9.3. Perpetrators—the Anglican Church	448
21.10. The Catholic Church—outside the processes	449
21.10.1. The Christian Brothers	449
21.10.2. Catholic Archdiocese of Melbourne—Fr Desmond Gannon	453
21.10.3. Catholic Archdiocese of Melbourne—Fr Ronald Pickering	455
21.10.4. Catholic Archdiocese of Melbourne—Fr Kevin O'Donnell	456
21.10.5. Victim dissatisfaction	458
<b>PART G: LAW REFORM AND CRIMINAL JUSTICE</b>	<b>461</b>
<b>Chapter 22: The criminality of grooming</b>	<b>465</b>
22.1. The process of grooming the individual, family or organisation	467
22.1.1. Grooming victims	467
22.1.2. Grooming parents and families	469
22.2. Difficulty in drafting effective grooming legislation	470
22.2.1. Other grooming offences	471
22.2.2. NSW grooming provision	472
22.2.3. Applying existing grooming laws	473
22.2.4. Difficulties in defining grooming	473
<b>Chapter 23: Reporting abuse and the response of the criminal justice system</b>	<b>477</b>
23.1. Criminal justice system response to reports of criminal child abuse	478
23.2. The criminal justice system	479
23.3. Police investigation of criminal child abuse	481
23.3.1. Past approach by the police	481
23.3.2. Recent criminal justice reforms	482
23.3.3. Changes in police approach to investigating sexual offences	484
23.3.4. The value of reporting where there is no likelihood of prosecution	485

23.4. Reporting criminal child abuse to authorities	485
23.4.1. Mandatory reporting	485
23.4.2. ‘Welfare’ reporting versus ‘criminal’ reporting	486
23.4.3. Extending mandatory reporting to religious personnel	487
23.5. Compulsory criminal reporting	489
23.5.1. Compulsory criminal reporting and privacy concerns	490
23.5.2. Reporting child criminal abuse to police and Victoria Police criticism of the Melbourne Response	492
23.6. Universal responsibility to report a serious crime	496
23.6.1. Offence of failing to report a serious crime—concealment	497
23.6.2. Modification of Victorian law is required	498
23.6.3. Irish example of similar legislation	498
23.6.4. Seal of confessional	499
23.7. Child endangerment	502
23.8. Need for laws to protect those who report criminal child abuse in an organisation	504
<b>PART H: CIVIL JUSTICE REFORM</b>	<b>507</b>
<b>Chapter 24: What are the different forms of civil justice?</b>	<b>515</b>
24.1. Relevant justice approaches in Victoria	516
<b>Chapter 25: Why is access to civil litigation important?</b>	<b>519</b>
25.1. What does civil litigation achieve for victims of child abuse?	520
25.2. Civil litigation court judgements	523
25.3. Civil litigation settlements	524
25.4. Practical and evidentiary barriers to civil litigation	525
<b>Chapter 26: Legal barriers to claims against non-government organisations</b>	<b>527</b>
26.1. Legal structures of non-government organisations in Victoria	530
26.2. Addressing the legal identity of non-government organisations	531
26.3. Statute of limitations	537
26.3.1. Balancing the public interest of Statutes of limitations	540
26.3.2. The example of British Columbia’s Statute of limitations	542
26.4. Direct liability of non-government organisations and duty of care	543
26.5. Duty of care and vicarious liability	545
26.5.1. Non-delegable duty of care	545
26.5.2. Vicarious liability	546
<b>Chapter 27: An alternative to civil litigation—the Victims of Crime Assistance Tribunal</b>	<b>553</b>
27.1. VOCAT’s role and process	554
27.2. Independent acknowledgement of harm	555
27.3. Non-adversarial approach	555
27.4. Support for victims	556
27.5. Limitations of VOCAT	557
27.5.1. Application of limitation periods	557
27.5.2. Limited compensation	557
27.5.3. Lack of ongoing financial support of victims	558
27.5.4. Victims of crime schemes in other Australian jurisdictions	559

<b>Chapter 28: An independent alternative justice avenue for criminal child abuse victims</b>	<b>561</b>
28.1. What elements are needed for a successful alternative justice approach?	564
28.1.1. Independence and authority	565
28.1.2. Respect, engagement and support	565
28.1.3. The role of non-government organisations	566
28.1.4. Opportunity for repeal and review	566
28.2. Proposed models of alternative justice	567
28.2.1. Government-funded redress schemes	567
28.2.2. Compensation scheme funded by non-government organisations	568
28.2.3. Government compensation fund	570
28.3. The case for a new, independent alternative justice avenue	571
28.3.1. Utilising the expertise of VOCAT	571
28.3.2. Determining outcomes	572
28.4. Involving victims and organisations in the design of the alternative justice approach	573
28.5. Role of non-government organisations	573
<b><i>Beyond the Inquiry—responsibilities</i></b>	<b>575</b>
<b>APPENDICES</b>	<b>577</b>
Appendix 1—Submission guide	579
Appendix 2—Letter to organisations requesting information (5 September 2012)	589
Appendix 3—Penalties for sexual assault offences in Victoria	592
Appendix 4—Occupational categories and child-related work in Victoria	597
Appendix 5—Standards: <i>Safeguarding children</i> program and <i>Choose with care</i> program	600
Appendix 6—Organisation policies: Code of conduct and professional development	602
Appendix 7—Catholic Church structure	605
Appendix 8—Anglican Church structure	606
Appendix 9—Complaint files	607
Appendix 10—Files from Catholic organisations	634
Appendix 11—Examples of correspondence	638
Appendix 12—List of submissions	642
Appendix 13—Name withheld submissions requested by the Committee	656
Appendix 14—Public hearings	657
Appendix 15—Right of reply submissions	667
Appendix 16—Secretariat of the Family and Community Development Committee	668
<b>Bibliography</b>	<b>669</b>

## Glossary

**Alternative dispute resolution**—An umbrella term for processes other than judicial determination in which an impartial person assists those in a dispute to resolve the issues between them.

**Alternative justice**—Includes a spectrum of approaches that provide avenues for resolving cases and claims outside the traditional justice system. Victims of criminal child abuse can access alternative justice through the traditional justice system in the form of court ordered mediation, statutory bodies such as the Victims of Crime Assistance Tribunal (VOCAT) or through external avenues or non-government protocols.

**Canon law**—Canon law is the internal ecclesiastical law governing the Catholic Church (both Latin rite and Eastern Catholic churches). Canon law provides the structure and parameters for all governance in the Catholic Church.

**Care leaver**—Refers to a person who was in institutional care or other form of out-of-home care, including foster care, as a child or youth (or both) at some time during the 20th century. Care-leavers include Forgotten Australians, former child migrants and people from the Stolen Generations.<sup>1</sup> Institutions were operated either by the State or by non-government and religious organisations who received per head payments from the Government or parents for the care of children.

**Catholic Church**—All references in this Report to the Catholic Church, including the Catholic Church in Victoria, relate to the Roman Catholic Church.

**Child-related work**—Paid or unpaid work involving regular direct and unsupervised contact with a child when working with or caring for children in any of the occupational categories listed in the *Working with Children Act 2005* (Vic). See Appendix 4.

**Child-safe organisation**—An organisation that acknowledges that safety does not just happen. A child-safe organisation takes action to protect children from physical, sexual, emotional, psychological and cultural abuse and from neglect. In a child-safe organisation, this commitment to protecting children is embedded in the organisation's culture and responsibility for taking action is understood and accepted at all levels of the organisation.<sup>2</sup>

**Church authority**—Refers to the bishop or leader of a religious congregation. Priests and religious report to a church authority. For example, a priest is under the auspices of the bishop of their diocese whereas a member of a religious order is under the auspices of the leader of their specific religious order.

**Civil litigation**—A court process for victims of criminal child abuse to sue the perpetrator of the abuse (or possibly another party for failing to prevent the abuse e.g. the organisation for whom the perpetrator is a representative) for 'damages' or financial compensation for the harm suffered.

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1 As defined on the website of the Australian Government, Department of Health, *People who are care leavers*. Accessed on 30 October 2013 from <http://www.health.gov.au/internet/publications/publishing.nsf/Content/ageing-roaca-12-toc~ageing-roaca-12-07-support~support-7-7>.

2 Child Safety Commissioner (2006) *A guide for creating a child-safe organisation*. Melbourne, Child Safety Commissioner, p. 1.

**Commission for Children and Young People**—An agency independent of government, established under the *Children and Young People Act 2012* (Vic) that is able to table its annual report to Parliament along with the outcomes of any systemic reviews it initiates. The Commission commenced operation on 1 March 2013 and replaced the Office of the Child Safety Commissioner.

**Criminal child abuse**—Includes unlawful physical assaults, sexual abuse offences, such as rape or indecent assault under the *Crimes Act 1958* (Vic), criminal neglect and facilitating such offences by others.

**Cummins Inquiry**—The *Protecting Victoria's vulnerable children inquiry* was announced on 31 January 2011. The Inquiry was tasked to investigate systemic problems in Victoria's child protection system and to make recommendations to strengthen and improve the protection and support of vulnerable young Victorians. The Inquiry Panel comprised The Hon Philip D Cummins (Chair), Emeritus Professor Dorothy Scott OAM and Mr Bill Scales AO. It presented its report to the Victorian Minister for Community Services on 27 January 2012.

**Grooming**—The term 'grooming' refers to actions deliberately undertaken with the aim of befriending and influencing a child, and in some circumstances, members of the child's family. It is engaged in with the intention to achieve a criminal objective of sexual activity with children.

**Improper conduct**—Corrupt conduct or conduct that is not corrupt conduct but that, if proved, would constitute a criminal offence; or reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of the personnel in an organisation who was, or is, engaged in that conduct.

**Independent school**—Non-government schools but excluding Catholic Schools. Independent schools include, for example, schools affiliated with some Christian denominations such as Anglican, Lutheran, Presbyterian, non-denominational Christian schools, Islamic schools, Jewish schools, Montessori schools, Rudolf Steiner schools, Aboriginal community schools and schools that specialise in meeting the needs of students with disabilities. Most independent schools are set up and governed independently on an individual-school basis. However some independent schools with common aims and educational philosophies are governed and administered as small systems, for example the Lutheran system.<sup>3</sup>

**Law Enforcement Assistance program (LEAP)**—The database used by Victoria Police to store particulars of all crimes brought to the attention of police members.<sup>4</sup>

**Mandatory reporting**—Introduced in Victoria in 1993, mandatory reporting requires prescribed professionals to notify state child protection services in the Department of Human Services if they have any reasonable belief that a child is in need of protection because the child has suffered or likely to suffer significant harm as a result of physical injury, emotional, psychological or sexual abuse.<sup>5</sup> The

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3 Independent Schools Council of Australia *About Independent Schools*. Accessed on 21 October 2013 from <http://isca.edu.au/about-independent-schools/>.

4 Victorian Ombudsman (2009) *Own motion investigation into the Department of Human Services child protection program* Melbourne, VO, p. 139.

5 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*. Melbourne, Department of Premier and Cabinet, p. 68; *Children, Youth and Families Act 2005* (Vic) s.162.

legislative framework for mandatory reporting is now covered by the *Children Youth and Family Act 2005* (Vic) though it remains in a similar form to that introduced in 1993.

**Melbourne Response**—The Melbourne Archdiocese Response (also known as the ‘Melbourne Response’) was established by the Catholic Archdiocese of Melbourne in October 1996 to deal with complaints about priests, religious and lay workers under the direction of the Archbishop of Melbourne.

**Ministers of religion**—Those who perform spiritual functions associated with beliefs and practices of religious faiths and provide motivation, guidance and training in religious life for the people of congregations and parishes, and the wider community.

**Nominal defendant**—A term used by the Committee to refer to a defendant to a litigation trial that can stand in the shoes of an organisation that cannot be sued in its own name due to its legal structure.

**Non-delegable duty of care**—A duty that requires a party to take reasonable care to ensure the safety of individuals, which cannot be assigned to someone else. An example is the relationship between a school authority and its students. A school authority has a duty to take reasonable care to ensure that any act or omission by a teacher does not cause reasonably foreseeable injury to students.<sup>6</sup>

**Non-government school**—Schools that are not operated by the Victorian Government, including Catholic and independent schools.

**Non-government organisations**—Include secular, religious and community organisations. Organisations can be clubs, associations, agencies and any other entity or group of entities. The nature, size, purpose and scope of non-government organisations are diverse and their structure and operations are wide ranging. This includes:

- incorporated or unincorporated organisations not-for-profit or for profit organisations
- volunteer-based organisations
- unfunded or government funded organisations
- local, national and international organisations.

**Organisations**—This Report uses the term ‘organisation’ interchangeably with ‘non-government organisation’. See also ‘non-government organisations’.

**Out-of-home care**—Out-of-home care services provide care for children and young people aged up to 17 years who are placed away from their parents or family home for reasons of safety or family crisis. These reasons include abuse, neglect or harm, illness of a parent and/or the inability of parents to provide adequate care. Placements may be voluntary or made in conjunction with care and protection orders.

**Personnel**—Refers to paid employees, volunteers, contractors, ministers of religion, religious leaders, and others associated with a non-government organisation for the purposes of assisting it to carry out its purpose and functions.

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6 Fitzroy Legal Service *The Law Handbook Online*. Accessed on 29 May 2013 from [www.lawhandbook.org.au/](http://www.lawhandbook.org.au/). (Chapter 6, Section 3).

**Reasonable grounds for belief**—The nature of the facts required to be established to demonstrate reasonable grounds for a suspicion or belief are different, as facts sufficient to found a suspicion may be insufficient to ground a belief.

A belief is based on reasonable grounds that criminal child abuse has occurred when all known considerations or facts relevant to the formation of a belief are taken into account and these are objectively assessed. Circumstances or considerations may include the source of the allegation and how it was communicated, the nature of and details of the allegation, whether there are any other related matters known regarding the alleged perpetrator.

**Regulation**—Regulation is one of the key instruments available to government to achieve its social, economic and environment objectives and to respond to community needs. It is commonly held that government regulation involves an intentional measure or intervention by a government agency that seeks to influence the behaviour of individuals, businesses and not-for-profit organisations.<sup>7</sup>

**Relevant Authority**—Refers to a statutory authority or government department that requires non-government organisations to report critical incidents, misconduct or other matters. For example, the Victorian Institute of Teaching, the Department of Human Services and the Department of Education and Early Childhood Development.

**Religious**—In the context of the Catholic Church ‘religious’ refers to priests and to brothers or sisters of orders or congregations of the Catholic faith. For example, ‘religious were teachers in many Catholic schools’.

**SANO Task Force**—Established to investigate historic and new allegations that have emanated from this Inquiry. The Task Force will also coordinate investigations emerging from the Australian Government Royal Commission into Institutional Responses to Child Sexual Abuse.

**Secondary victims**—In the context of abuse that occurs outside the family, secondary victims include family members, partners, friends and children of victims/survivors who are affected by a victim’s criminal abuse and its consequences.

**Serious Indictable Crime**—Pursuant to s.325(6) of the *Crimes Act 1958* (Vic), a serious indictable offence means an indictable offence which is punishable on first conviction with imprisonment for life or for a term of five years or more.

**Sexual Offences and Child Abuse Investigation Team (SOCIT)**—A division of Victoria Police, the 27 SOCIT units handle reports of the sexual abuse of children across Victoria. Members of the police who work within a SOCIT unit receive specialised training on sexual offending and child abuse.

**Situational crime prevention**—Tackles specific crimes in specific locations where the crime event and not the offender is the object of interest. A primary objective of situational crime prevention is to reduce opportunities to offend by making the social and physical environment high risk for offending behaviour.

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<sup>7</sup> P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria’s Vulnerable Children Inquiry*, p. 491.

**Statute of limitations**—In contrast to criminal matters, the statute of limitations in Victoria (the *Limitation of Actions Act 1958* (Vic)) applies to restrict the time within which a party can issue a civil case for compensation.

**Survivor of child abuse**—Refers to a person who has survived criminal child abuse. Some people prefer to the term ‘survivor’ and others prefer ‘victim’. See also ‘victim’.

**Towards Healing**—Established by the Catholic Church in March 1997 to deal with complaints that arose in Catholic dioceses and religious institutes operating in Victoria and Australia other than the Catholic Archdiocese of Melbourne.

**Vicarious liability**—The legal liability of one person for the misconduct of another, despite the first person being free from fault. It has traditionally applied to employment of service and has been applied to some similar relationships such as contractors. However, vicarious liability does not apply in all types of relationships. At present vicarious liability generally applies only in employer–employee and contractor–principal relationships.

**Working with Children Check**—The *Working with Children Act 2005* (Vic) regulates how the government determines who is suitable to work with or care for children and young people. People who work with children on a regular basis must apply for a Working with Children check and employers, volunteer organisations and employment agencies must not engage anyone in child-related work without a current ‘positive assessment notice’ or Working with Children Check card.<sup>8</sup>

**Victim**—Refers to people who have experienced criminal child abuse. The Committee acknowledges victims have also survived their experience of abuse. For the purposes of its Inquiry, the Committee refers to ‘victims’, while recognising that victims are also survivors of criminal child abuse and that some people prefer to the term ‘survivor’ and others prefer ‘victim’.

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8 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria’s Vulnerable Children Inquiry*, p. 69.

## Acronyms

ABS	Australian Bureau of Statistics
ACA	Australian Camps Association
ACBC	Australian Catholic Bishops Conference
ACF	Australian Childhood Foundation
ACNC	Australian Charities and Not-for-profits Commission
ACT	Australian Capital Territory
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
AusAID	Australian Agency for International Development
CASA	Centre Against Sexual Assault
CCI	Catholic Church Insurance
CEO	Chief Executive Officer
CEOB	Catholic Education Office Ballarat
CEOM	Catholic Education Office Melbourne
CLAN	Care Leavers Australia Network
COAG	Council of Australian Governments
CSA	Child sexual abuse
CSOs	Community service organisations
CYF Act	<i>Children, Youth and Families Act 2005 (Vic)</i>
DEECD	Department of Education and Early Childhood Development
DHS	Department of Human Services
DOJ	Department of Justice
DPP	Director of Public Prosecutions
DPS	Director of Professional Standards
DVA	Department of Veterans Affairs
ETR Act	<i>Education and Training Reform Act 2006 (Vic)</i>
FAQ	Frequently asked questions
FCDC	Family and Community Development Committee
ISV	Independent Schools Victoria
JCCV	Jewish Community Council of Victoria

LEAP	Law Enforcement Assistance Program
LIV	Law Institute of Victoria
MRCC	Military Rehabilitation and Compensation Commission
NCPS	National Committee for Professional Standards
NSW	New South Wales
OPCEI	Office for Professional Conduct, Ethics and Investigations
PSB	Professional Standards Board
PSC	Professional Standards Committee
PSRB	Professional Standards Review Board
PTSD	Post-traumatic stress disorder
QARD	Quality Assessment and Regulation Division
QLD	Queensland
RIMPA	Records and Information Management Professionals Australasia
SA	South Australia
SNAP	Survivors Network of those Abused by Priests
SOCIT	Sexual Offences and Child Abuse Investigation Team
SOR Act	<i>Sex Offenders Registration Act 2004 (Vic)</i>
TAC	Victorian Transport Accident Commission
UNICEF	United Nations International Children’s Emergency Fund
UK	United Kingdom
UN	United Nations
USA	United States of America
VACP	Victims Assistance and Counselling Program
VAGO	Victoria Auditor-General’s Office
VCAT	Victorian Civil and Administrative Tribunal
VIT	Victorian Institute of Teaching
VLRC	Victorian Law Reform Commission
VOCAT	Victims of Crime Assistance Tribunal
VSA	Victims Support Agency
VVCS	Veterans and Veterans Families Counselling Service
WWC Act	<i>Working with Children Act 2005 (Vic)</i>
WWCC	Working with Children Check

## Executive summary

Each year hundreds of thousands of children and young people in Victoria spend time involved with religious and other non-government organisations. These organisations provide a broad range of valuable services and social programs including child care, education, social activities, spiritual guidance and sports and recreation programs. Some organisations also provide temporary or permanent residential care away from the family.

The overwhelming majority of children who participate in organisational activities or who are cared for by personnel in non-government organisations are safe and they gain great benefit from engaging in such activities and services.

Given children's vulnerability and dependence on adults, however, there will always be a degree of risk of them being criminally abused by employees or others associated with non-government organisations. The community now acknowledges the incidence of criminal abuse over many years in some of society's most trusted and respected institutions and organisations.

The criminal abuse of children represents a departure of the gravest kind from the standards of decency fundamental to any civilised society. Although our society has understood this for a long time, we have not given enough attention to the need to take adequate protective measures to prevent it.

The experience of criminal child abuse has profound and lifelong consequences for the physical, psychological and emotional wellbeing of victims. For parents of children abused in the care of trusted organisations, it is a betrayal beyond comprehension.

Community outrage at the occurrence of criminal child abuse in organisations has led to the establishment of public inquiries internationally, nationally and in Victoria. Notably in Australia, religious organisations have generally been overlooked in these inquiries. In addition, religious organisations in Victoria have generally not initiated internal reviews to determine the extent of criminal child abuse and how their systems and processes may have contributed to its occurrence.

Religious organisations are among the most revered and trusted institutions in society. Internationally, the exposure of systemic child abuse in religious organisations has called into question this trust and the integrity of some of these organisations. The Catholic Church, in particular, has been at the centre of a worldwide scandal.

The 2012 Cummins Inquiry<sup>1</sup> identified concerns regarding the handling of criminal child abuse in religious organisations in Victoria, and recommended that:

A formal investigation should be conducted into the processes by which religious organisations respond to the criminal abuse of children by religious personnel within their organisations.<sup>2</sup>

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1 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the protecting Victoria's vulnerable children inquiry*.

2 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the protecting Victoria's vulnerable children inquiry*, p. lvii.

In response to this recommendation and through the Governor in Council, the Victorian Government requested that the joint investigatory Family and Community Development Committee undertake an inquiry into these processes. Members of Parliament from multiple political parties and both Houses of Parliament comprise the Committee.

In establishing this Inquiry, the Government requested the Committee inquire into responses to criminal child abuse by all non-government organisations that interact directly with children. In addition to its primary focus on religious organisations, the Committee has considered recreational, sporting, childcare, education, community and other child-related services and activities operated by non-government organisations.

## Confronting and exposing the truth

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In undertaking its Inquiry, the Committee asked some obvious but fundamental questions about the occurrence of criminal child abuse in religious and other non-government organisations:

- what is the extent of criminal child abuse in organisations and how has it been able to occur
- why was it not addressed long ago
- is the abuse to be properly viewed as the activity of a relatively few aberrant individuals for which they alone could be held responsible
- are there others (including the leadership of organisations involved) that contributed through organisational cultures, structures and policies, and that should be held accountable
- what should we do now to secure justice for those who have suffered and continue to do so
- how do we, as a community, protect children in the future?

Non-government organisations cooperated at every stage of the Inquiry, assisting the Committee to find answers to these questions by giving evidence, providing additional information and enabling access to relevant files.

Evidence and information provided to the Inquiry showed that even today, leaders of some non-government organisations are reluctant to fully acknowledge that they adopted policies that gave first priority to protecting the interests of their organisation. It is beyond dispute that some trusted organisations made a deliberate choice not to follow processes for reporting and responding to allegations of criminal child abuse.

There has been a substantial body of credible evidence presented to the Inquiry and ultimately concessions made by senior representatives of religious bodies, including the Catholic Church, that they had taken steps with the direct objective of concealing wrongdoing.

The Committee welcomed the commitment made by many organisations during the course of the Inquiry to actively cooperate with any new schemes that the Victorian Government establishes in response to the Inquiry's recommendations. The CEO of the Catholic Church's Truth, Justice and Healing Council, Mr Francis Sullivan, recently stated that the community should 'judge us on our actions'.<sup>3</sup> It is reasonable for the community to expect that organisations will honour their undertakings.

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3 ABC National Radio, *Doubts over sincerity of Catholic Church reform*, 3 October 2013.

## Victims of criminal child abuse

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Central to the Inquiry has been the experiences of victims who were subjected to physical, sexual and emotional abuse in their childhood. The task of the Committee has been to focus on systemic issues, not to report on what occurred in individual cases. In order to understand the overall situation, however, it has examined hundreds of individual accounts.

In addition to its systemic focus, an important responsibility of the Committee has been to provide a genuine opportunity for the personal experiences, insights and recommendations of individual victims and their families to be publicly acknowledged on behalf of the people of Victoria. The community has also been able to hear the views of the various groups that have supported victims and their families.

The majority of evidence received by the Inquiry related to the criminal abuse of children within the Catholic Church in Victoria—in their parishes, schools and homes—and also within the Salvation Army. Most accounts were provided by adult victims who disclosed their experience a long time after the abuse occurred. For many it was the first time they had been given the opportunity and support to disclose their abuse. The Committee valued the courage of the hundreds of victims who shared their experiences. They contributed significantly to its knowledge and understanding of the crime of child abuse in non-government organisations.

### Experiences and impacts

The Committee heard graphic accounts that detailed horrendous and traumatic experiences of victims abused as children in the care of non-government organisations that spanned a period of decades through to more recent times.

Victims provided confronting accounts of their feelings of fear and helplessness when subjected to physical, emotional and sexual abuse by personnel in organisations. In circumstances of sexual abuse, many explained that as children they lacked the intellectual framework to understand their abuse. They spoke of subsequent feelings of guilt and embarrassment, and a belief that they needed to conceal what they felt was a deeply shameful secret.

Children not in the care of their families told of their experiences of criminal abuse in institutions and the feeling of losing their identities. Many absconded only to be returned and subjected to further abuse.

Sexual and other criminal offences committed against children are not a new phenomenon. The Committee challenged the assertion by some non-government organisations that child abuse had been poorly understood in the past:

- When was the commission of a sexual offence upon a child not a matter of great seriousness under our criminal law, against the principles of all of our various religious faiths, and abhorrent to our community?
- When was it not understood that children are vulnerable to physical and sexual abuse and that they need protection?
- How many complaints or established incidents of abuse would be necessary before it was acknowledged that a systemic problem existed within some organisations, and that their structures, processes and cultures required full investigation?

Conduct of this kind has been condemned by society for centuries. It has attracted severe penalties under our criminal law for a long time. Up until 1949 buggery of a child under the age of 14 and rape were offences that carried the death penalty.<sup>4</sup>

Expert knowledge of the effects of child abuse has been in the public domain since the 1960s.<sup>5</sup> It is widely recognised that children subjected to criminal abuse in organisations and institutions often experience lifelong impacts that include mental health problems, addiction issues, relationship difficulties, issues with anger and difficulties with life skills, education and employment.

In addition, the consequences of criminal abuse suffered by children in organisations and institutions can be intensified due to the often high moral standing of the perpetrator. More specifically, children abused by a minister of religion or a spiritual leader have been found to develop a sense of alienation from the world.<sup>6</sup> Abuse by a trusted religious figure can destroy a child's belief that the world is a safe place and can make the world seem chaotic and unstructured.<sup>7</sup> Like most people, victims want the opportunity to feel safe and to belong to their community.

The effects of criminal child abuse in organisations also extend to families. Parents explained to the Inquiry their feelings of profound guilt that they had not protected their child and had been drawn in by the grooming tactics of the perpetrator. Some victims of child abuse blamed their parents for not protecting them. Inquiry participants told the Committee of their families being fragmented and damaged as a consequence of the abuse a family member has experienced.

Some local communities, particularly religious communities, have been ruptured by the responses of organisations to criminal child abuse by their employees and other personnel. Community members spoke of a loss of trust in organisations they had previously held in high regard.

These impacts of the criminal abuse of children in the care of organisations have implications for society more broadly, including significant costs to the community in expenditure on health and education, as well as productivity loss.

### **Pursuit of justice—'unfinished business'**

Adult victims of criminal child abuse by personnel in trusted organisations told the Inquiry they were seeking justice for what they often felt to be the loss of their innocence as a child. They wanted to see consequences for perpetrators—to see them removed from their position in the organisation, reported to police and potentially punished through the criminal justice system.

Victims also had hopes and expectations that organisations they had trusted would acknowledge that they failed in their duty of care to protect them from the harm of criminal abuse. They hoped organisations would listen to their experiences

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4 See Appendix 3 for a list of penalties.

5 A. Lamont & L. Bromfield (2010) *History of child protection services NCPC Resource Sheet*. Melbourne, National Child Protection Clearinghouse, Australian Institute of Family Studies, p. 3.

6 D.A. Wolfe, P.G. Jaffe, J.L. Jette et al. (2001) 'Child Abuse in Community Institutions and Organizations: Improving Public and Professional Understanding'. *Law Commission of Canada*, p. 14.

7 D.A. Wolfe, P.G. Jaffe, J.L. Jette et al. (2001) 'Child Abuse in Community Institutions and Organizations: Improving Public and Professional Understanding', p. 14.

and validate them by providing an expression of remorse and a meaningful acknowledgement of wrongdoing.

The Committee heard, however, that many victims were not given the basic level of respect they expected and deserved. Organisations often did not assume responsibility for the harm victims had suffered, and sometimes even concealed the truth. Victims spoke of ‘unfinished business’ and resentment resulting from the inadequate response of the organisation to their disclosure of abuse.

Adding to victims’ sense of injustice was their feeling of betrayal by organisations, particularly the Catholic Church. This feeling resulted from the inconsistent approaches by organisations to victims versus offenders—that is, giving inadequate support to victims, while providing pastoral, legal and financial support to offenders. They spoke of unfulfilled promises by leaders in the organisation and the trivialising of their experiences.

In determining its recommendations, the Committee considered the suggestions for reform from victims and their families in addition to the evidence of other participants and experts. It identified the following important areas for reform:

- Stronger requirements for organisations to take responsibility to protect children in their care including taking reasonable steps to protect them from criminal abuse.
- Improved responses to allegations of criminal child abuse in non-government organisations, including oversight of these responses by an independent body and compulsory reporting to police.
- Reforms to the criminal law to improve the potential for perpetrators and those who conceal their crimes to be prosecuted and punished, and the introduction of grooming as separate offence.
- Reforms to civil laws to make it easier for victims to sue non-government organisations.
- An independent, alternative avenue of justice for those who cannot make a claim through the civil justice system.

These reforms are discussed in depth in this Report and briefly outlined here.

## **Context—criminal child abuse in organisations**

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In order to identify strategies to improve responses to the criminal abuse of children in non-government organisations, it is necessary to understand the scale of the problem, the nature of the organisations relevant to the Inquiry, and the risks of abuse occurring within them. To assist in improving processes into the future, it is equally important to understand how religious and non-government organisations have handled allegations of the criminal abuse of children in the past.

There is no way today that we can accurately count the total number of victims of criminal child abuse in non-government organisations. But based on what we do know, and recognising the reluctance of victims to report such offences, we can reasonably estimate that there have been several thousand victims criminally abused in non-government organisations in Victoria alone.

The internal structure and culture of organisations can influence the level of risk that personnel could criminally abuse children in their care, and organisations

must actively seek to address those risks. Notably, there is no ‘typical’ offender who criminally abuses children in organisations. Perpetrators of child sexual abuse, for example, range from those who are predatory, using grooming tactics to gain access to children, to those who are more opportunistic and take advantage of a situation or an opportunity to offend.

### **Non-government organisations—Inquiry focus**

The diversity of the non-government organisations that participated in the Inquiry reflected the broad range of activities and services these organisations engage in across Victoria. The purpose, size, available resources and structure of the organisations varied considerably.

The Committee identified that there are unique circumstances that victims of criminal child abuse experience in religious organisations. While the extent of abuse in these settings compared with other organisations is difficult to ascertain, the Committee heard that children subjected to criminal abuse have been less likely to be adequately protected in religious organisations than in any other group in society.<sup>8</sup> There are many reasons for this, including the policy of forgiveness, the self-protection of many religious organisations and their trusted, revered status in society.<sup>9</sup>

Non-government organisations and their interactions with children continually evolve and the nature of organisations 70 to 80 years ago is markedly different from organisations today. While the functions and activities of organisations may evolve over time, organisational culture is often more resistant to change. This has implications for the way in which organisations respond to the criminal abuse of children by personnel in their organisations.

### **Past handling of criminal child abuse by organisations**

The Committee noted that organisations have been handling criminal child abuse by people employed or associated with them for a long time, and the majority of the evidence from victims to the Inquiry indicated that between the 1950s and 1980s the response of specific organisations to such abuse was seriously inadequate and sometimes non-existent, particularly in religious organisations.

Reflecting on past responses to the criminal abuse of children can provide insights into how organisations have evolved in their systems and processes over time. It also assists in understanding the enduring nature of organisational culture and the extent to which organisations learn from past mistakes.

To better understand their past handling of this problem, the Committee focused particularly on the religious organisations that the majority of evidence and other information received concerned—that is, the Catholic Church in Victoria, the Salvation Army and the Anglican Diocese of Melbourne.

Evidence to the Inquiry revealed that historically these organisations were often motivated by self-interest and the protection of the organisation. This resulted in serious consequences for the safety and protection of children.

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8 *Transcript of evidence*, Professor Patrick Parkinson, University of Sydney, Melbourne, 19 October 2012, p. 3.

9 *Transcript of evidence*, Professor Patrick Parkinson, p. 3.

In regard to the Catholic Church specifically, the Committee found that rather than being instrumental in exposing the criminal abuse of children and the extent of the problem, senior leaders of the Church:

- trivialised the problem
- contributed to abuse not being disclosed or not being responded to at all prior to the 1990s
- ensured that the Victorian community remained uninformed of the abuse
- ensured that perpetrators were not held accountable, with the tragic result being that children continued to be abused by some religious personnel when it could have been avoided.

Analysis of the Catholic Church's past handling of this problem shows that as an organisation it had many of the internal features of an organisation at high risk of its personnel perpetrating criminal child abuse. These features include its:

- trusted role in caring for children
- culture and power
- complex hierarchy and structure
- teachings and beliefs
- processes for responding to allegations—including the failure to report abuse to the police
- response to alleged offenders—including the relocation and movement of offenders and failure to suspend them from their duties.

The Committee found that other organisations, particularly other religious organisations, share many of these features, which have continued to influence the responses of many organisations to allegations of criminal child abuse to the present day. The Committee considered that such features and consequent responses by organisations may help to explain why many victims remain aggrieved. Importantly, the way in which an organisation has handled reports of suspected criminal child abuse is inextricably linked to the desire of victims for justice.

### **Reforms—inquiries, policy and legislation**

In response to public inquiries, community outrage and media attention, governments have given greater attention to the protection of children from abuse over the past two decades.

The introduction of mandatory reporting in 1993 was a significant development for the protection of children from abuse in families. This made it mandatory for professionals in specific occupations that involve working with children to report suspected child abuse within families to child protection services in the Department of Human Services (DHS). It enabled the Victorian Government to more effectively identify children at risk in families and to intervene early to reduce the risk, and when necessary, remove children from the care of their parent/s or primary carer/s.

In Victoria, important policy and legislative developments relating to the protection of children in the context of organisations have been more recent and include the establishment of the Working with Children Check system in 2005 and the creation

of an independent Commission for Children and Young People in 2012, which is responsible for promoting child-safe organisations and for conducting inquiries into service provision relating to the safety and wellbeing of an individual or a group of vulnerable children. Yet the Inquiry revealed that there is still more to be done.

## **Prevention—organisations and their duty of care to protect children from criminal abuse**

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Victims of child abuse conveyed a strong message to the Inquiry that they should never have experienced abuse while in the care of personnel in a non-government organisation. The community also recognises that much of the offending committed against children could have been prevented if society in general had honoured its obligation to protect its vulnerable children and young people.

Non-government organisations have both a moral and legal responsibility to protect the children in their care. The Committee makes recommendations to strengthen the accountability of organisations and clarify their legal duty to take all necessary steps to prevent criminal child abuse.

### **Effectively selecting suitable personnel**

Non-government organisations need to actively ensure they appoint personnel who are suitable to work with children. This includes, but is not limited to, their staff, volunteers, contractors and ministers of religion. To do this, they need to use a combination of recruitment and selection strategies, and have rigorous screening tools and checking processes.

The Working with Children Check (WWCC) system in Victoria provides a useful screening tool, but the Committee identified some limitations with the system. These limits include a reliance on individuals to update their WWCC card, a lack of monitoring to ensure compliance and a lack of clarity regarding whether all ministers of religion need to undergo checks before their appointment.

The Committee recommends improvements to the operations of the *Working with Children Act 2005* (Vic) (WWC Act) to further strengthen the WWCC system by:

- requiring organisations to report any allegations of misconduct relating to children
- increasing monitoring of compliance
- clarifying the requirements for religious organisations to ensure all ministers of religion have a current WWCC.

The Committee found that the majority of organisations have WWCC processes in place, but do not always use them correctly and can unknowingly over-rely on them as a tool for preventing the appointment of unsuitable personnel.

### **Managing situational risk**

Managing the internal situational risks of children being exposed to criminal abuse by employees and others associated with organisations is just as important as preventing unsuitable people being appointed to positions. It involves assessing risks to the organisation, establishing behavioural expectations of their personnel,

providing ongoing support, supervision and training, and considering risks in the physical environment.

The Committee reviewed the systems and processes of non-government organisations and identified that there are considerable variations in the approaches adopted to manage the situational risks of personnel committing criminal offences against children. Organisations need leaders and managers with the ability to cultivate organisational cultures that protect children from criminal abuse. The Committee considered that there is scope for peak bodies to work more actively with their members to provide guidance for creating child-safe organisations.

The Committee recommends that an independent statutory authority assist peak organisations to provide their members with guidance for protecting children from criminal child abuse in their organisations and provide advice on the implementation of effective systems and processes.

### **Establishing child-safe policies**

A written child-safe policy demonstrates an organisation's commitment to its duty to reasonably protect children from criminal child abuse while in its care. It may be long or short depending on an organisation's purpose, size or the activities it undertakes. Ideally it should be simple and accessible, and contain:

- a statement of zero tolerance of criminal child abuse
- principles to guide decisions
- procedures on the employment of new personnel
- a risk management approach
- processes for reporting allegations of criminal child abuse.

In its review of the systems and processes used by organisations to prevent child abuse, the Committee identified that there is considerable variation in knowledge and the level of preventive action taken by organisations, ranging from proactive efforts by some organisations to others that are inactive and lacking in knowledge.

The Committee recommends that the Victorian Government review its contractual and funding arrangements with early education and community service organisations to require them to have a minimum standard for ensuring a child-safe environment and a zero tolerance approach to criminal child abuse. It also suggests that the Victorian Government explore which other organisations or sectors might benefit from the application of these minimum standards.

## **Responding to allegations of criminal child abuse in organisations**

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It is an unfortunate reality that despite preventive efforts there will be circumstances in which children in the care of non-government organisations are physically, emotionally or sexually abused. When an allegation of suspected criminal abuse of a child is made in an organisation, there need to be effective systems and processes in place to ensure the situation is handled immediately and appropriately, including reporting to the police and other relevant authorities. Organisations also need to

support the victim and ensure that all parties are treated fairly and consistently. They need to provide clarity regarding:

- what behaviour or conduct should trigger a notification
- who should make the notification of any concerns and the person in the organisation to be notified
- requirements for reporting to police and other authorities and the timing of reporting
- internal processes during and after an investigation
- internal reviews to assess and improve systems and processes.

In evidence provided to the Inquiry, very few organisations demonstrated that they have simple, transparent and easily accessible systems and processes for responding to an allegation or suspicion of criminal child abuse. In addition, many organisations do not appear to incorporate requirements to undertake internal systemic reviews to ensure ongoing learning and improvement.

The Committee determined that it is essential that following the notification of suspected child abuse to a person in authority, if that person reaches a reasonable belief that criminal conduct may have occurred, it should be immediately reported to police.

In its review of organisational processes, the Committee found that organisations and their personnel often find it challenging to determine how to appropriately assess an allegation of criminal child abuse and identify if there are reasonable grounds to believe criminal conduct has occurred. This difficulty has implications for the timely reporting of matters to police and other relevant authorities. Such decision making can be complex and it is usually the responsibility of personnel in authority, such as a CEO, senior manager or religious leader in the organisation, to make the decision to report.

The Committee identified that many of the organisations it heard from, and the personnel within them, did not appear to have the skills, knowledge or understanding required to confidently and appropriately respond to an allegation of suspected child abuse. In most situations, organisations want to do the right thing, but lack the knowledge to act decisively.

To improve responses by organisations to allegations of child abuse, there needs to be a coordinated system for monitoring existing processes. Such a system would include:

- independent scrutiny of organisations when concerns arise regarding the handling of reported child abuse
- building the knowledge, skills and ability of personnel in organisations to assess allegations and respond appropriately
- identification of patterns and trends of child abuse within organisations and sectors.

The Committee recommends that the Victorian Government authorises an independent statutory body with relevant powers and resources to oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations.

## Current responses to allegations of past criminal child abuse

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It is well established that victims of child abuse often delay disclosing their abuse for years or decades and, in some cases, never tell anyone. The Committee heard that many victims of past child abuse by personnel in organisations disclosed their abuse to an organisation and were then directed into an internal process to ‘settle’ their matter.

In the mid-1990s, the Catholic Church created two systems for responding to allegations of criminal child abuse, both of which are still currently operating—the Melbourne Response (applicable only to the Catholic Archdiocese of Melbourne) and Towards Healing. In addition, some other religious and non-government organisations have processes in place to respond to similar allegations of past criminal child abuse by their personnel. The Committee acknowledges that some approaches were designed by organisations to be an independent, alternative form of justice for victims, but victims told the Inquiry that they did not view them this way.

The Committee accessed many files relevant to the Anglican Diocese of Melbourne, the Salvation Army and the two systems used by the Catholic Church.<sup>10</sup> It also accessed internal complaint files regarding individuals within some orders and dioceses that form part of the Catholic Church in Victoria.<sup>11</sup>

In its review of the existing internal systems and processes adopted by these religious organisations, the Committee identified the following features:

- They are not truly independent of the organisations.
- They contain no existing recognition of or support for secondary victims of criminal child abuse.
- Their approach to financial compensation often does not provide a clear explanation of the basis on which an organisation makes a financial payment, how the amount awarded is determined and obligations regarding confidentiality.
- They rarely encourage participants in the process to seek independent legal advice before reaching an agreement that might affect their subsequent legal rights.
- They tend to provide generic apologies that do not focus on the specific circumstances of the individual and the role played by both the perpetrator and the organisation in regard to the damage suffered by the victim.
- Only some provide counselling support, and some of those that do tend to provide inadequate counselling for a number of reasons, including limited sessions offered, counselling services not tailored to individual needs or counselling services operated internally by the organisation responsible for the abuse.
- Some demonstrated a reluctance to implement effective disciplinary processes for offenders in their organisation, such as suspending them from their duties, removing their title or their membership with the organisation.

Whether considered individually or in combination, these features of the internal processes have contributed to the ongoing and increased dissatisfaction of victims and their families with the response of non-government organisations to allegations of criminal child abuse.

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<sup>10</sup> See Appendix 9.

<sup>11</sup> See Appendix 10.

While the Committee received evidence, largely from organisations, that some victims found the approaches satisfactory, the overwhelming message in both oral and written submissions to the Inquiry was that most organisational responses do not adequately meet the needs of victims in achieving justice and that an alternative system of justice, absolutely independent of the organisation, is needed.

## **Police investigations of child sexual abuse**

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In the past, police investigators had a limited understanding of the complexities of child sex offending and treated sexual offences like any other crime. Victoria Police acknowledged to the Inquiry that its past approach to investigating allegations of criminal child abuse had shortcomings. In 2009, a dedicated unit was established within Victoria Police to carry out investigation of sexual offences. The unit included investigators with specialised training about sexual offending and child abuse, and it adopted the ‘whole story’ approach.

Previously, victims were often required to repeat their account numerous times, with the risk of re-traumatisation. With the whole story approach, police investigators are now expected to understand more about the way people remember trauma and focus on eliciting a full, free and uninterrupted account.

In the past the priorities for police were to get a statement, obtain forensic evidence and gather corroborating evidence. But now police investigators are expected to focus on the entire relationship between a perpetrator and the victim to look at how the crime was crafted over a period of time.

The Committee found that the approach adopted by police in dealing with victims of child sexual abuse is of vital importance. A respectful and targeted investigation can increase the rate of reporting of sexual assault, increase the conviction rate, and also reduce the attrition rate throughout the prosecution process. The Committee determined that the Victoria Police approach to investigating sexual offences, particularly historical offences, has improved over the last decade. Despite this, the Committee considers that Victoria Police needs to ensure it adopts an approach of continual improvement.

## **Criminal law reform—responding to allegations of criminal child abuse**

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The law provides a critical avenue for protecting children from harm and appropriately responding to individuals who criminally abuse children or put them in danger.

The Committee identified a need to strengthen criminal laws to create greater responsibility for personnel in authority to report criminal child abuse and to deal appropriately with alleged and proven offenders. The legislative reforms it proposes also aim to ensure that a broader range of behaviour employed by child sex offenders is classified as criminal conduct.

If the Victorian Government implements the Committee’s recommendations for criminal law reform, it will be critical for organisations to ensure they have appropriate systems and processes in place. Relevant personnel in positions of authority will need to clearly understand their responsibilities.

### **Grooming—child sex offending**

The term ‘grooming’ refers to actions deliberately undertaken with the aim of befriending and influencing a child, and in some circumstances members of the child’s family, for the purpose of sexual activity with the child. These actions are designed to establish an emotional connection in order to lower the child’s inhibitions and gain access to the intended victim. In this respect grooming involves psychological manipulation that is usually very subtle, drawn out, calculated, controlling and premeditated.

The Committee identified that the conduct of grooming a child or a child’s parents or others with criminal intent to engage in sexual activity with a child is currently not a criminal offence. The existing law in Victoria and nationally relates to a course of action specific to various forms of communication between the perpetrator and the victim. The Committee is conscious that grooming can occur in many other contexts other than via telecommunications which are currently covered by legislation. It determined that the criminality of grooming behaviour through personal contact should be recognised in legislation.

Traditionally, the courts have treated conduct recognised as ‘grooming’ as an aggravating feature of the sexual offence committed against a child. The Committee found that treating grooming as an aggravating feature of a sexual offence does not sufficiently recognise the damage such conduct causes to those subject to grooming who are categorised as ‘secondary’ or ‘passive’ victims. It identified that these victims experience significant damage through the deliberate betrayal and manipulation of their trust often alongside a feeling that they ultimately and unknowingly contributed to the abuse occurring. The Committee determined that the grooming of a child victim and secondary victims should be classified as a separate criminal offence, not merely an aggravating feature.

The Committee recommends that the Victorian Government review the *Crimes Act 1958* (Vic) to create a criminal offence of grooming that would not require a substantive offence of child sexual abuse to have been committed and that would be available in response to the grooming of people other than the primary child victim, or intended child victim, of the sexual abuse.

### **Reporting to police**

Given that criminal child abuse involves extremely serious breaches of the laws of our community, the Committee considered the failure to report or the concealment of such offences is more appropriately dealt with under the criminal law than under the current welfare or child protection regime of mandatory reporting in Victoria. A number of witnesses to the Inquiry highlighted the importance of differentiating between:

- mandatory ‘welfare’ reporting—that is, reporting the risk of child abuse or neglect within a home or family setting to child protection services in DHS (and determining whether to intervene or remove the child from the care of their parent/s or primary carer/s), and
- compulsory ‘criminal’ reporting—that is, reporting a reasonable belief of criminal child abuse by personnel in an organisation to police.

The Committee determined that personnel in positions of authority in non-government organisations need to be responsible for reporting a reasonable belief

that criminal child abuse has occurred in their organisation. Children are often unable to disclose what is happening to them and the responsibility to protect them rests with adults who become aware of what may be happening.

Currently liability for the concealment of a crime only arises if the person receives a benefit from the concealment. The Committee considered whether there is a need to reform criminal laws to strengthen the potential for personnel in organisations who conceal such crimes or who are aware of the risks to children, to be prosecuted and punished. It determined that there is a need to introduce a criminal offence for a situation where a person fails to report to police material information about the criminal abuse of a child. The offence would be irrespective of whether the person receives any benefit for concealing or failing to report the information

The Committee recommends that the Victorian Government amends s.326 of the *Crimes Act 1958* (Vic) to remove the element of ‘gain’. If this element is removed, then a person who fails to report a serious indictable offence involving the abuse of a child will be guilty of an offence.

### **Child endangerment**

The Committee found that there are no criminal charges that can be brought against personnel in organisations in positions of authority, such as a CEO or religious leader, who relocates an alleged offender of criminal child abuse. It considered this is unacceptable both in terms of meeting community expectations of what standards should be imposed as well as identifying clear sanctions for those who do not uphold their obligations as members of society.

In order to provide an additional impetus for people to report a belief of criminal child abuse to police, the Committee found that consideration must be given to the introduction of a new criminal offence of child endangerment.

A child endangerment provision would make a significant contribution to Victoria’s legal framework to protect children at risk. The provision would ensure that where a person in authority intentionally or recklessly fails to take steps to protect a child from harm or abuse, that person can be found guilty of a criminal offence. People who know that a child is being abused and are in a position to do something about it would have a direct legal duty to intervene to protect the child.

The creation of the offence of child endangerment would impose criminal responsibility on those who act or fail to act, understanding that their conduct may pose a substantial and unjustifiable risk of harm to children. This would cover the situation where a person gives responsibility to another for the care of children aware that there is a risk of harm to children and who fails to take reasonable steps to protect children from that risk.

The Committee recommends that the Victorian Government introduces a criminal offence relating to child endangerment where:

- relevant wanton or reckless behaviour would occur when a person in authority is aware of and consciously disregards a substantial and unjustifiable risk that his or her acts or omissions place a child in a situation that might endanger the child’s life, health, welfare, morals, or emotional wellbeing.

- the risk is of such a nature and degree that disregarding the risk would constitute a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

## **Civil law reform—accessing the civil litigation system**

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For many victims of criminal child abuse, the option of pursuing a claim through civil litigation is central to their desire for justice. Many told the Inquiry that civil litigation is not only an avenue to seek compensation, but also a form of acknowledgement and accountability for the harm they have suffered.

The Committee is firmly of the view that victims have a fundamental right to sue non-government organisations for damage they have suffered at the hands of representatives of that organisation. Court judgements provide a valuable and practically available form of public condemnation for criminal child abuse, and create a powerful incentive for organisations to change their practices to prevent such abuse.

No civil claims of criminal child abuse made against religious organisations have been decided by the Victorian courts. Civil litigation in these cases is generally resolved through private settlements.

There are significant legal barriers that can prevent victims from successfully pursuing civil litigation against organisations. The Committee makes recommendations to improve the path to civil litigation for victims.

### **Addressing the legal identity of non-government organisations**

Victims of child abuse can find it difficult to find an entity to sue because of legal structures of some non-government organisations. In addition, the assets of some organisations can be difficult to access due to the use of complex structures, such as property trusts. In order to successfully establish a civil claim, a victim needs to identify a legal entity to sue for failing to take reasonable care to prevent their abuse. The Committee heard that for many victims the organisation they sought to sue was not a legal entity.

The Committee heard that some non-government organisations whose personnel had perpetrated criminal child abuse are not incorporated entities, and cannot be sued in their own name. This is more frequently the case with religious organisations. As a consequence (particularly when the abuse occurred many years ago and office bearers in the organisation have changed), a victim is left with no defendant to sue.

In view of these findings, the Committee recommends that the Victorian Government consider requiring organisations it funds or provides with tax exemptions and other entitlements to be incorporated and adequately insured. It also suggests that the Victorian Government work with the Australian Government to require religious and other non-government organisations that engage with children to adopt incorporated legal structures.

### **Removing limitations—claims arising from criminal child abuse**

Many victims of child abuse do not disclose their experiences or act on them until decades after the abuse occurred. This fact has implications for victims who wish to seek compensation or pursue common-law actions. These implications relate specifically to the statute of limitations.

The Committee identified that the application of Victoria's statute of limitations is currently at the discretion of the defence and judges. There is also evidence that non-government organisations have aggressively pursued the limitation defence in civil trials. The Committee heard that the limitation defence adversely affects the bargaining position of victims in settlement negotiations.

Statutes of limitations disadvantage victims of child sexual abuse because they typically take decades to act on the understanding of the harm arising from their abuse and to issue proceedings. The Committee therefore determined that it is necessary to amend the *Limitation of Actions Act 1958* (Vic) to allow victims sufficient time to initiate civil legal action. It recommends that the Victorian Government consider amending the Act to exclude criminal child abuse from the operation of the limitations periods contained within it.

### **Vicarious liability and duty of care**

Non-government organisations have a duty of care to take reasonable steps to prevent child abuse by members of their organisation through screening and monitoring systems.

The Committee identified that in the past non-government organisations have tended to take the approach that the responsibility for criminal child abuse in their organisation lies solely with the perpetrator of that abuse. While it accepts the attribution of responsibility to the perpetrator, the Committee nevertheless considers that organisations should also bear responsibility in these cases.

Non-government organisations are responsible for creating special relationships of trust between their personnel and individuals in the broader community. Organisations are aware of the vulnerability of children in their care and the fact that parents and others rely on the organisation and its personnel to look after the wellbeing of those children. The civil law in Victoria has not yet developed to recognise the liability of non-government organisations for the criminal abuse of children perpetrated by their personnel notwithstanding this development in international jurisdictions.

The Committee determined that these organisations should have a clear legal duty to take appropriate measures to minimise the risk of abuse that can arise because of the creation of relationships of trust for which they are responsible. They should be held vicariously liable for the acts of their personnel in the course of relationships they develop with individuals in the broader community.

The Committee recommends that the Victorian Government undertake a review of the *Wrongs Act 1958* (Vic) to identify amendments that would ensure organisations are held accountable for their legal duty to protect children from criminal abuse.

## Retrospectivity

There are difficulties in creating rights or obligations under the civil law retrospectively.<sup>12</sup> It is only in very rare circumstances that Parliament would retrospectively create enforceable rights and obligations. This approach is based on the fundamental proposition that in a democratic society behaviour that was lawful under the criminal law at the time at which it occurred should not be retrospectively declared criminal. Similarly, if there were no rights or obligations under the civil law at a point in time, if these rights or obligations were introduced today, they should not retrospectively become the subject of civil liability.

The Committee accepts the legal foundation that, apart from the most exceptional circumstances, citizens should not be held liable under the criminal or civil law for conduct which was not prohibited at an earlier time. In the case of criminal child abuse, undertakings were provided by organisational representatives in the Inquiry hearings that they would reconsider past compensation payments to victims of child abuse. The Committee has made recommendations for alternative forms of justice to be made available to victims who are not able to benefit from new legislative provisions recommended in this Report. It trusts that the legislative changes proposed will assist future victims of criminal child abuse in achieving justice.

## Creating an independent, alternative avenue for justice

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There are a number of evidentiary, legal and practical barriers to challenging an organisation in court on matters of past criminal child abuse. Some of the practical barriers to litigation for victims include the lack of financial means and emotional resources to manage the typically lengthy delay in bringing cases to court. The emotional impact of an adversarial battle often acts as a deterrent to litigation for already suffering victims and their families.

Victims and their advocates requested that the Inquiry consider alternative forms of achieving justice. There is currently no alternative justice avenue for victims of child abuse in organisational settings that is paid for by non-government organisations and independently administered by the Victorian Government.

The Committee considers that it is important to develop such an approach alongside existing traditional civil justice avenues. It identified that Victoria needs an independent, alternative avenue of justice that is operated by the State and that can facilitate the resolution of child abuse claims relating to organisations.

Based on its evidence and additional research, the Committee determined that an effective alternative justice avenue for victims of criminal child abuse in organisations must have the following features:

- It needs to be independent and have sufficient authority to ensure that the right parties come to the table to resolve claims.
- It needs to respect and properly engage victims in the process and support them throughout by ensuring access to counselling support and legal assistance.
- It needs to have a strong focus on the needs of victims, families and communities, and not be bound by legal parameters in determining outcomes that respond to the multiple needs of victims.

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<sup>12</sup> See Chapter 1 for a full explanation.

- As part of the process, relevant organisations need to take responsibility for delivering outcomes, including the funding of compensation and services.
- It should be able to continue regardless of a parallel investigation by police.
- There needs to be a clear avenue to appeal decisions.

The Committee recommends that the Victorian Government should review the functions of the Victims of Crime Assistance Tribunal (VOCAT) to consider its capacity to administer a specific scheme for victims of criminal child abuse in non-government organisations that:

- enables victims and families to obtain resolution of claims arising from criminal child abuse in organisations
- is established through consultation with relevant stakeholders, in particular victims
- encourages non-government organisations to contribute a fee to administer the scheme
- ensures non-government organisations are responsible for the funding of compensation, needs and other supports agreed through the process.

The Committee understands that many victims are likely to face a number of barriers in having their claims addressed through the new avenue, not least of which is the fact that many of those who have reached a settlement with a non-government organisation would have signed release papers as a condition, stating they had no further claim against the organisation. Nevertheless, the Committee is strongly of the view that, in light of evidence provided to this Inquiry, these victims should have an opportunity to have their claims revisited through the proposed new avenue.

The Committee considers the willingness of organisations to review these existing settlements will be a measure of how genuine their undertakings are to comply with the Inquiry recommendations and their implementation.

## **Beyond the Inquiry—responsibilities**

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Throughout its deliberations and in the pages of this Report, the Committee has endeavoured to accurately and faithfully reflect the voices of those people who were criminally abused as children (and their families) and who had the courage to come forward to help the Committee with its Inquiry.

While mindful of the limitations in trying to repair the sometimes irreparable, having confronted and exposed the truth of these experiences, the community cannot ignore its obligations to assist the victims of criminal child abuse in non-government organisations and to provide greater protection for children in the future.

The Committee's recommendations are directed to the achievement of these objectives as far as reasonably possible.

The organisations and individuals who were at least morally complicit in the crimes with which the Inquiry has been concerned, cannot be permitted to make superficial and professionally constructed gestures of regret and effectively walk away.

Failure in either of these respects would constitute another reprehensible betrayal.

# Inquiry recommendations

The criminal abuse of children involves extremely serious breaches of the laws of our community. Those who engage in it, or are in positions of authority and conceal such offences, should be dealt with under the criminal law. Non-government organisations must be expected to adequately protect children in their care and respond to any allegations of criminal offences by reporting to the police and relevant authorities. Victims of criminal child abuse should have access to appropriate avenues to pursue justice for the harm they have suffered.

These principles informed the Committee's recommendations, which relate to the following five broad areas:

- reforming criminal law
- accessing civil litigation
- creating an independent, alternative avenue for justice
- monitoring responses by organisations to criminal child abuse
- preventing criminal child abuse in organisations.

The Committee considers that it is reasonable for the community to expect that non-government organisations will honour the undertakings they made during the course of the Inquiry and comply with the requirements of any new schemes established by the Victorian Government.

## Reforming the criminal law

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The Committee makes recommendations to reform criminal laws to strengthen the potential for perpetrators of criminal child abuse and personnel in organisations who conceal such crimes to be prosecuted and punished. It requests that the Victorian Government is mindful that while the recommendations have been considered in their application to the criminal abuse of children within non-government organisations, if implemented they may become of general application. In consequence, in drafting any legislation there needs to be consideration of any unintended implications for other groups and individuals.

### **Crime to conceal criminal child abuse offences and compulsory reporting to police—no requirement for benefit**

Section 326 of the *Crimes Act 1958* (Vic) currently requires proof that the person who concealed a serious indictable offence received a benefit. The Committee determined that failure to report knowledge of the commission of a serious indictable offence to police (including those relating to child abuse) and thereby concealing the offence should be punishable as a crime, regardless of whether any benefit is received.

**Rec** That the Victorian Government consider amending Section 326 *Crimes Act 1958* (Vic) to remove the element of 'gain', to ensure that a person who fails to report a serious indictable offence involving the abuse of a child will be guilty of an offence. (Recommendation 23.1, Part G)

### **A new child endangerment offence—criminal responsibility for placing children at risk**

The creation of this offence will impose criminal responsibility on those individuals in positions of authority in organisations who act or fail to act understanding that their action or inaction may pose a substantial and unjustifiable risk of harm to children, but they disregarded that risk and acted or did not act accordingly. This would cover the situation where a person gives responsibility to another for the care of children and is aware there is a risk of harm to those children and who fails to take reasonable steps to protect them from that risk.

**Rec** That the Victorian Government consider the introduction of a criminal offence relating to child endangerment in organisations that covers relevant wanton or reckless behaviour in situations:

- ♦ when a person in authority is aware of and consciously disregards a substantial and unjustifiable risk that their acts or omissions placed a child in a situation that might endanger the child’s life, health, welfare, morals, or emotional well-being
- ♦ where the risk is of such a nature and degree that disregarding the risk would constitute a gross deviation from the standard of conduct that a reasonable person would observe in the situation. (Recommendation 23.2, Part G)

### **A new grooming offence**

The current Commonwealth and Victorian laws of grooming relate to grooming activity by way of various forms of telecommunication. New South Wales has extended its grooming legislation to cover a broader range of grooming activities. The Committee considers that Victoria should go further by recognising that grooming can occur in all manner of ways, including through conduct directed at family members of an intended victim of child sexual activity. A new offence of grooming should recognise that there are other victims, beyond those that are the subject of the substantive offence.

**Rec** That the Victorian Government give consideration to an amendment to the *Crimes Act 1958* (Vic) to create a criminal offence of grooming.

The grooming offence should:

- ♦ not require a substantive offence of sexual abuse to have been committed
- ♦ recognise that in addition to the primary or intended child victim of sexual abuse, parents and others can be victims of this criminal conduct. (Recommendation 22.1, Part G)

## **Improving access to civil avenues of justice**

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In recognition of the importance of civil litigation as an avenue for victims seeking justice, the Committee makes several recommendations to reduce the legal barriers to pursue claims through this avenue.

### **Addressing the legal identity of non-government organisations**

- Rec** That the Victorian Government consider requiring non-government organisations to be incorporated and adequately insured where it funds them or provides them with tax exemptions and/or other entitlements. (Recommendation 26.1, Part H)
- Rec** That the Victorian Government work with the Australian Government to require religious and other non-government organisations that engage with children to adopt incorporated legal structures. (Recommendation 26.2, Part H)

### **Removing limitations—claims arising from criminal child abuse**

- Rec** That the Victorian Government consider amending the *Limitation of Actions Act 1958* (Vic) to exclude criminal child abuse from the operation of the limitations period under that Act. (Recommendation 26.3, Part H)
- Rec** That the Victorian Government consider amending the *Victims of Crime Assistance Act 1996* (Vic) to specify that no time limits apply to applications for assistance by victims of criminal child abuse in organisational settings. (Recommendation 27.1, Part H)

### **Vicarious liability and duty of care**

It should be recognised that non-government organisations are directly liable for harm suffered by children in their care given that the perpetrator has relied on the reputation and community's trust in the organisation to offend against the child. This duty of the organisation to the child includes the responsibility to monitor and screen employees and other personnel and to take reasonable steps to ensure the safety of the child in their care. Additionally, an organisation should be held vicariously liable (on the basis of the existence of a deemed employment relationship with its agents, representatives or volunteers who it has permitted to act on its behalf) for acts committed in the course of that relationship.

- Rec** The Committee recommends that the Victorian Government undertake a review of the *Wrongs Act 1958* (Vic) and identify whether legislative amendment could be made to ensure organisations are held accountable and have a legal duty to take reasonable care to prevent criminal child abuse. (Recommendation 26.4, Part H)

## **Creating an independent, alternative avenue for justice**

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In making its recommendations, the Committee is aware that there are limitations in the civil justice system that the recommendations will not overcome. These include:

- the practical barriers that arise from the financial and psychological position of victims of child abuse and evidentiary issues relating to historical events
- the non-retrospective nature of law reform and the sometimes limited outcomes that the civil litigation system offers (see Chapter 1).

In recognition of these limitations, and in preference to internal organisational systems for resolving claims, the Committee has recommended an independent, alternative avenue for justice for those victims who are not in a position to pursue civil claims in the courts for practical, evidentiary and legal reasons.

**Rec** The Committee recommends that the Victorian Government review the functions of the Victims of Crime Assistance Tribunal (VOCAT) to consider its capacity to administer a specific scheme for victims of criminal child abuse that:

- ♦ enables victims and families to obtain resolution of claims arising from criminal child abuse in non-government organisations
- ♦ is established through consultation with relevant stakeholders, in particular victims
- ♦ encourages non-government organisations to contribute a fee to administer the scheme
- ♦ ensures non-government organisations are responsible for the funding of compensation, needs and other supports agreed through the process. (Recommendation 28.1, Part H)

## **Improving organisation responses to allegations of criminal child abuse**

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The Committee determined that there needs to be improved responses to allegations of criminal child abuse in organisations and greater scrutiny and monitoring of how organisations respond to such allegations. It also determined that it is appropriate for the Victorian Government to identify the most relevant statutory authority to assume responsibility for overseeing such responses when it is in the public interest, when there are systemic problems and when complaints are raised about an organisation's handling of a matter of criminal child abuse.

**Rec** That the Victorian Government authorise an independent statutory body with relevant powers and legal and operational resources to:

- ♦ oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations
- ♦ undertake independent investigations into systems and processes in the context of allegations of reportable conduct and/or reportable convictions
- ♦ scrutinise and audit the systems and processes in non-government organisations for handling allegations of child abuse
- ♦ monitor and report on trends associated with allegations by collecting relevant data and report to the Parliament on an annual basis
- ♦ build the skills and knowledge of personnel in relevant government departments, religious and non-government organisations to ensure they have the capacity to competently handle allegations of suspected child abuse. (Recommendation 18.1, Part E)

**Rec** That the Victorian Government review the current Department of Education and Early Childhood Development (DEECD) procedures for responding to allegations of all forms of criminal child abuse within all Victorian schools and

identifies a benchmark that could be applied more broadly to non-government schools. (Recommendation 16.1, Part E)

## **Improving the prevention of criminal child abuse—organisation and their duty of care to children**

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The Committee determined that the prevention of criminal child abuse is critical and that organisations need support, guidance and greater accountability to exercise their duty of care.

### **Effective selection of suitable personnel (paid, voluntary, religious)**

- Rec** In regard to the operations of the *Working with Children Act 2005* (Vic) (WWC Act), that the Victorian Government:
- ♦ clarify the requirements for religious organisations to ensure ministers of religion have a current Working with Children check (WWCC)
  - ♦ institute a system of compliance monitoring and investigation of the operation of the WWC Act similar to the equivalent system in New South Wales
  - ♦ ensure that all relevant non-government organisations are required to report any allegations of misconduct relating to children to the Victorian Department of Justice WWC Unit
  - ♦ raise the awareness of organisations about the importance of regularly reviewing the status of WWCC by personnel, the need to adopt a range of screening tools, and to not over rely on the WWCC. (Recommendation 10.1, Part D)

### **Managing situational risk**

- Rec** That the Victorian Government review its contractual and funding arrangements with education and community service organisations that work with children and young people to ensure they have a minimum standard for ensuring a child-safe environment, including the following principles:
- ♦ a statement of zero tolerance of criminal child abuse
  - ♦ principles to guide decisions
  - ♦ procedures on the employment of new personnel
  - ♦ a risk management approach
  - ♦ processes for reporting and responding to allegations of criminal child abuse.
- That the Victorian Government consider the potential for extending a standard for child-safe environments to other organisations or sectors that have direct and regular contact with children. (Recommendation 12.1, Part D)

**Support, guidance and oversight—prevention systems and processes**

- Rec That through the relevant statutory body or department the Victorian Government should:
- ♦ identify an effective approach or model for supporting peak bodies to build preventative capacity in sectors that interact with children
  - ♦ identify ways to encourage smaller organisations or activities to be affiliated with peak bodies to enable access to capacity building opportunities. (Recommendation 13.1, Part D)

**Raising awareness of criminal child abuse in non-government organisations**

- Rec That the Victorian Government expand on its response to Recommendation 10 in the Cummins Inquiry report to ensure that non-government organisations are equipped with high quality information and advice about the prevention of criminal child abuse in organisations. (Recommendation 13.2, Part D)

# Inquiry findings

## Part B: Victims experiences, impacts and their pursuit of justice

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### Victims and the impact of criminal child abuse

- Children subjected to criminal abuse in organisations often experience lifelong impacts that include mental health problems, addiction issues, relationship difficulties, issues with anger and difficulties with life skills, education and employment.
- Children who suffer criminal child abuse in organisations can experience specific consequences from being abused by a trusted person in the community, such as the loss of spirituality and having problems with authority.
- There are frequently significant effects on the families of victims criminally abused by personnel in organisations, including the fragmentation of families and the intense guilt felt by parents at not having protected their child.
- The impact on local communities of criminal child abuse in trusted organisations, particularly religious organisations, can be deep and divisive.
- While the actual costs associated with criminal child abuse in organisations are unknown, there are significant economic and social costs associated with child abuse in Victoria.

### Achieving justice

- Victims often want an opportunity to restore their lives and to repair the damage they experienced as a consequence of being criminally abused by personnel in a non-government organisation.
- Victims frequently wanted to see consequences for the perpetrator of the criminal child abuse—to be stood down from their position, the allegation reported to the police and the perpetrator prevented from continuing to criminally abuse children.
- Victims often want to receive vindication from the organisation for the injustice they suffered and acknowledgement that the organisation failed in its duty of care to protect them.
- Many victims, families and communities felt a lack of justice and a sense of ‘unfinished business’ with non-government organisations, particularly the Catholic Church in Victoria, for the following reasons:
  - ♦ double betrayal—inconsistent approaches to victims and offenders
  - ♦ hypocrisy—claims of moral authority
  - ♦ lack of accountability—refusal to accept responsibility.
- While not within the Terms of Reference, a number of victims, particularly those in the care of the State, felt betrayed by authorities, such as the Government and the police, for the following reasons:
  - ♦ lack of supervision—inadequate government inspectors and monitoring of the non-government institutions in which they were placed

- ♦ lack of intervention—the police often escorted those who escaped back to the non-government institution.

## **Part C: Context**

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### **Child abuse in organisational contexts**

- Due to a lack of accurate data, the prevalence and incidence of criminal child abuse in the community is currently unknown, which has implications for the development of evidence-based interventions and preventative frameworks in non-government organisations.
- There has been minimal research into criminal child abuse in organisations and the majority that has been undertaken relates to child sexual abuse, with less known about physical abuse and multiple forms of child abuse.
- There is no typical offender of criminal child abuse, and many child sex offenders often appear as regular community members with good intentions.
- There are many types of organisations in which criminal child abuse occurs, and over many decades the nature of the services and programs provided by these organisations have evolved to meet the changing needs of children and the community, including services commenced following the closure of institutions providing out-of-home care.

### **Past handling of allegations of criminal child abuse**

- There has been substantial criminal child abuse in the Catholic Church over a long period of time, perpetrated by priests and other members of religious orders in Victoria.
- The environment in institutions, schools and parishes, particularly from the 1950s to the 1980s, gave perpetrators or representatives of religious or other non-government organisations the opportunity to exploit vulnerable children in their care.
- A culture existed in religious organisations that allowed for the occurrence of systemic criminal child abuse.
- The initial formal response to criminal child abuse that the Catholic Church in Victoria and in Australia more broadly adopted in the early 1990s was influenced by its previous approach. The response continued to conceal rather than expose criminal child abuse in the organisation.

## **Part D: Prevention—duty of care to create child-safe organisations**

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### **Effective prevention**

- There are a number of focus areas for preventing criminal child abuse in organisations, including preventing offending, raising children's awareness, ensuring child-safe environments in organisations and empowering the broader community to respond to criminal child abuse.
- Situational crime prevention has considerable potential as a model for prevention of criminal child abuse in non-government organisations through its focus on social and physical environments that reduce opportunity for crime and increase the risks to perpetrators associated with criminal behaviour.

- There are three core elements that are central to the prevention of criminal child abuse in organisations:
  - ♦ effective selection of suitable personnel—including paid, voluntary, ministers of religion and contractors
  - ♦ managing situational and environmental risks
  - ♦ creating child-safe organisational cultures.
- Commitment to prevention of criminal child abuse is crucial, but equally essential is the effective implementation of systems and processes through adequate knowledge, skills and awareness and appropriate oversight.

### **Effective prevention**

- To ensure the appointment of suitable personnel, organisations need to adopt a combination of recruitment and selection, screening and checking processes.
- The value in background checking—such as referee checks and Working with Children Checks (WWCC)—is that past behaviour can provide an indication of possible future behaviour.
- The Victorian WWCC is an effective screening tool but has some limitations—including a reliance on individuals to update their WWCC card, a lack of monitoring to ensure compliance and a lack of clarity regarding whether ministers of religion need to undergo checks before their appointment.
- The majority of organisations have WWCC processes in place, but can unknowingly over-rely on them as a tool for preventing the appointment of unsuitable personnel.
- Registration systems for professionals and offender registers provide an additional checking process to ensure suitable personnel are appointed to specific professions or organisations.

### **Managing situational risk and ensuring a child-safe culture**

- Managing internal situational risks involves assessing risk to the organisation, establishing behavioural expectations of personnel, providing ongoing support, supervision and training and considering risks in the physical environment.
- Identifying high risk activities and children’s varying needs is important, yet there is minimal guidance to assist organisations to assess and mitigate risks specific to criminal child abuse.
- Organisations need to establish clear behavioural expectations and boundaries for personnel interacting with children without creating an environment of undue suspicion.
- A number of organisations indicated that education and training are strategies they use to ensure their personnel are informed about child safety, yet there can be inconsistencies in the nature of the training provided by organisations.
- Non-government organisations that provide activities and services for children would benefit from greater awareness of how to use regular supervision and performance monitoring to identify concerns regarding the conduct of personnel interacting directly and regularly with children.

- There is a need to build the capacity of leaders and managers to increase their awareness of how to create an organisational culture that ensures children are reasonably protected from criminal child abuse.

### **Policies to protect children from criminal child abuse**

- Many non-government organisations have given consideration to the need to develop policies to protect children from criminal child abuse, but these are often basic and fragmented across other policies.
- Those organisations that voluntarily participated in the Inquiry had often considered policies for protecting children, while those directly requested to participate were less likely to have adequately considered their duty to take reasonable care to ensure children are safe with their personnel.
- The level of knowledge and the degree of action in establishing and improving child safety policies varied greatly, ranging from proactive to inactive.
- Funded organisations and registered professionals are expected to meet standards relating to child-safe practices that vary considerably across sectors such as early education, teaching and community services.

### **Improving preventative systems and processes**

- Some organisations indicated a willingness to be subjected to higher levels of accountability through accreditation processes that involve both self-assessment and external scrutiny of prevention systems.
- Sector peak bodies potentially have an important role in supporting their members to become child-safe organisations and many are well positioned to promote child-safe practices by their members.
- Children should never be responsible for protecting themselves from the harm of criminal child abuse, and prevention approaches that target children should be focused on initiatives that build their awareness.
- Many organisations have a poor understanding of criminal child abuse and often people find the issue too confronting to acknowledge, respond to or address.

## **Part E: Responding to reports and allegations of child abuse in organisations**

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### **Importance of effective processes for responding to allegations of criminal child abuse in organisations**

- Processes for handling allegations of criminal child abuse need to be simple, transparent and easily accessible for children, adults and personnel within the organisation.
- An effective process for responding to allegations of suspected criminal abuse of a child should:
  - ♦ clearly state what types of conduct should be notified, who can or should make notifications and who they should notify in the organisation

- ♦ make it clear what next steps need be taken, including ensuring the child is safe, and reporting suspected criminal abuse to police and relevant authorities
- ♦ provide guidance for responding to the outcomes of a report of criminal child abuse, including disciplinary processes, ongoing support for the victim and the review of internal policies and processes.
- Internal and external processes in response to an allegation of criminal child abuse may occur in parallel, which requires transparency and communication across all relevant bodies to ensure internal processes do not impede on any criminal investigation in progress.
- Written processes are not always implemented effectively and it is important that there are oversight and monitoring systems to enable scrutiny of an organisation's handling of criminal child abuse if there are concerns.

### **Encouraging disclosure and appropriate initial response**

- Very few organisations indicated that they had simple, accessible processes that help children to understand what to do if they need to disclose behaviour that makes them feel unsafe or uncomfortable and that may constitute criminal child abuse. This may prevent children from telling an adult if they have concerns.
- Some organisations appeared progressive in their guidance to personnel regarding what they should notify and who to notify if they observe or suspect conduct of concern.
- Many policies used by organisations are complex and unclear regarding the responsibility of personnel to notify, including the person in the organisation they should notify, if a child discloses concerning behaviour or if they have a concern about the conduct of other personnel. This may discourage some individuals and personnel in organisations from reporting or disclosing abusive behaviour.
- A number of organisations provide guidance on how to respond to a disclosure made by a child, yet very few make reference regarding how to ensure the child is safe and receives appropriate medical and other professional support.

### **Recognising criminal child abuse and reporting allegations to authorities**

- Responding to a notification of concerning behaviour and forming reasonable grounds to believe that a crime may have occurred is complex and requires a skilled and sophisticated level of judgement.
- Some organisational policies reviewed by the Committee for responding to allegations of criminal child abuse were narrowly focused on child sexual abuse rather than all forms of criminal abuse.
- Organisations providing services funded by the Department of Human Services are required to report all physical and sexual assault of clients by staff to the police, yet the inconsistent implementation of this requirement indicates that not all personnel in organisations have the appropriate skills and knowledge to determine suspected criminal conduct.
- Catholic and independent schools are not expected to meet the same requirements as government schools in responding to suspected sexual assault of children and there is no clear guidance for any schools regarding other forms of criminal abuse.

- A number of policies used by organisations that provide services in unregulated sectors do not make it clear that all staff have a responsibility to report allegations of criminal child abuse to police, and some policies suggest that the onus is on victims to do so.
- Organisations in regulated sectors have requirements to report critical incidents to a funding or relevant body and can be subject to review if they do not handle allegations of criminal child abuse appropriately.
- Organisations that provide services in unregulated sectors have no overarching requirements or oversight to ensure they report all suspected criminal child abuse to police and relevant authorities and are not subject to any external review of their responses if they do not handle allegations appropriately.

### **Internal processes and systemic review**

- Most organisations have disciplinary processes in place for breaches of their code of conduct, but in practice find it difficult to make the decision to stand personnel aside when they are subject to an allegation of criminal child abuse.
- Few organisations indicated that they undertake systemic reviews of their systems and processes to identify any internal factors that may have contributed to an incident of criminal child abuse, and those that do are often expected to have such processes in place through contractual arrangements with funding bodies.
- Organisations contracted by government to provide out-of-home care services can be subject to external review of their systems and processes if concerns are raised about the quality of care they provide. The education, recreation, religious and other sectors are not subject to any external review of their systems and processes.

### **Improving monitoring, oversight and capacity building regarding reports of child abuse**

- There is a need for independent scrutiny of the systems and processes organisations have in place for preventing and responding to allegations of criminal child abuse and ensuring the safety of children.
- Many organisations are seeking guidance in developing the skills and knowledge necessary to respond appropriately to allegations of criminal abuse and to report to police and other authorities.
- The New South Wales Ombudsman has a system for independently scrutinising and monitoring the systems and processes of organisations in the handling of allegations of criminal child abuse. The model also provides training and assistance to personnel in building their knowledge and skills in managing allegations of criminal child abuse and has resulted in improvements in the systems and processes of organisations in NSW.

## **Part F: Responding to reports and allegations of past child abuse in organisations**

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### **Case studies—processes of religious organisations for responding to allegations of past criminal child abuse**

- The processes that have been adopted by non-government organisations to respond to complaints of criminal child abuse are varied. Some organisations have very detailed and documented policies whilst others are less formal. The purpose of these policies is to meet the needs of victims and to provide them support.

### **Analysis of processes for responding to allegations of past criminal child abuse**

- The internal systems adopted by religious organisations reviewed by the Committee, revealed the features listed below, which, whether considered individually or in combination, have contributed to the ongoing dissatisfaction of victims and their families with the organisation's response to allegations of criminal child abuse:
  - ♦ the processes for responding to complaints used by non-government organisations are not truly independent of the organisations
  - ♦ there is no existing recognition of or support for secondary victims of criminal child abuse in the systems used by organisations to respond to allegations of such conduct
  - ♦ the approach to financial compensation by the organisations reviewed often did not provide a clear explanation of the basis on which an organisation makes a financial payment, how the amount awarded was determined and obligations regarding confidentiality
  - ♦ organisations rarely encourage participants in the process to seek independent legal advice before reaching any agreements that might affect their subsequent legal rights
  - ♦ organisations tend to provide generic apologies that do not focus on the specific circumstances of the individual and the role played by both the perpetrator and the organisation in regard to the damage suffered by the victim
  - ♦ not all organisations provide counselling support, and some that do tend to provide inadequate counselling for a number of reasons, including limited sessions offered, counselling services not tailored to individuals, or counselling services operated internally within the organisation
  - ♦ some organisations demonstrated a reluctance to implement effective disciplinary processes for offenders in their organisation, such as standing them down from their duties, removing their title or their membership to the organisation.
- The dissatisfaction with the internal process of an organisation was influenced by the manner in which the organisation supported the perpetrator of criminal child abuse.

## Part G: Law reform and criminal justice

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### The criminality of grooming

- Treating grooming as an aggravating feature of a sexual offence does not sufficiently recognise the damage such conduct causes to those who are the subject of such behaviour, categorised as secondary or passive victims. The criminality of the conduct of grooming should be recognised as an offence, and in addition to the primary victim, parents and others should be recognised as victims of grooming.
- It is recognised that grooming can occur in many contexts other than via telecommunications which are currently covered by legislation. Perpetrators of sexual offences against children often engage in grooming behaviour directly with the child cultivating a friendship through personal contact and the criminality of that conduct should be recognised.

### Reporting abuse and the response of the criminal justice system

- Improvements in techniques adopted by Victoria Police in investigating criminal child abuse have resulted in increased satisfaction with complainants and their involvement in the criminal justice system.
- Given that criminal child abuse is a very serious offence against the criminal law, failure to report or concealment of an offence is more appropriately dealt with under the criminal law than under the welfare/child protection regime.
- Section 326 *Crimes Act 1958* (Vic) currently requires proof that the person who concealed a serious indictable offence received a benefit. The failure to report to police knowledge of the commission of a serious indictable offence (including those relating to child abuse) and thereby concealing the offence should be punishable as a crime, regardless of whether any benefit is received.
- The creation of the offence of child endangerment will impose criminal responsibility on those who act understanding that their action may pose a substantial and unjustifiable risk of harm to children, but who disregard that risk and act accordingly.

## Part H: Civil justice reform

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- Non-government organisations that appeared before the Committee undertook to comply with any Committee recommendations that would improve their processes for responding to child abuse claims.

### What are the different forms of civil justice?

- There is no existing independent avenue in Victoria for the resolution of claims by victims of criminal child abuse in organisational settings that is paid for by non-government organisations.

### **Why is access to civil litigation important?**

- Victims of criminal child abuse have a fundamental right to sue non-government organisations for damage they have suffered at the hands of representatives of that organisation. This course is an important avenue for some victims of criminal child abuse to achieve justice.
- Court judgements provide a valuable and practically available form of public condemnation for criminal child abuse, and create a powerful incentive for organisations to change their practices to prevent child abuse.
- No civil claims of criminal child abuse made against organisations have been decided by the Victorian courts. Instead, civil litigation in such cases is usually resolved by private settlements.
- Victims can be at a disadvantage in private settlement negotiations, due to their lack of resources and the evidentiary, legal and practical barriers of challenging an organisation in court. The emotional impact of an adversarial battle also acts as a deterrent to litigation for already suffering victims of criminal child abuse.
- Barriers to litigation for victims of criminal child abuse in organisational settings include:
  - ♦ lack of financial means
  - ♦ lack of emotional resources
  - ♦ practical limitations associated with the typically lengthy delay in bringing cases to court
  - ♦ family considerations.

### **Legal barriers to claims against non-government organisations**

- The Victorian Government has an important role to play in reforming the law to reduce the barriers to litigation faced by victims of criminal child abuse.
- In Victoria, most not-for-profit non-government organisations are incorporated. This means they have a legal identity independent of their members and can be sued in their own name. However, not-for-profit organisations are not required to incorporate.
- Trusts are used widely in Victoria in the for-profit and not-for-profit sectors. Amending specific statutes that establish trustee corporations for some organisations is unlikely to resolve the issue of establishing the legal identity of unincorporated associations and ensuring appropriate governance structures to address civil claims for criminal child abuse.
- There is no evidence that non-government organisations have deliberately been structured to avoid liability for criminal child abuse claims. However, the lack of incorporation by non-government organisations that work with children can make it difficult for victims of abuse in organisational settings to identify an appropriate entity to sue for damages.
- The application of the statute of limitations is currently at the discretion of the defence and judges. However, there is evidence that non-government organisations have aggressively pursued the limitation defence in civil trials. There is also

evidence that the limitation defence adversely affects the bargaining position of victims in settlement negotiations for victims.

- Statutes of limitations disadvantage victims of child sexual abuse because these victims typically take decades to understand the harm arising from their abuse and to act on that understanding and decide to issue proceedings.
- There is no public policy justification for applying limitation periods to civil cases relating to criminal child abuse.
- Because reporting in cases of criminal child abuse is typically delayed for several decades, it is necessary to amend of the *Limitation of Actions Act 1958* (Vic) to allow victims of criminal child abuse sufficient time initiate civil legal action.
- Because perpetrators of criminal child abuse in organisational settings derive their credibility from their association with the organisation, there is a need to recognise the legal obligation of organisations to reasonably ensure the safety of children who come into contact with their members. This includes implementing effective employment controls and adopting best practice in relation to risk management and prevention.

#### **An alternative to civil litigation—the Victims of Crime Assistance Tribunal**

- VOCAT provides a viable alternative to civil litigation for victims of criminal child abuse because of its ability to provide an independent acknowledgement of harm, its non-adversarial approach, and the supports provided for victims.
- Limitations of VOCAT include the application of a two-year time limit on claims, limited compensation available and the lack of ongoing financial support for victims.

#### **An independent alternative justice avenue for criminal child abuse victims**

- The elements of a successful alternative justice approach include:
  - ♦ independence and authority
  - ♦ respect, engagement and support for victims
  - ♦ contribution by non-government organisations
  - ♦ opportunity for appeal and review.

# PART A

## INTRODUCTION AND PROCESS





# Chapter 1

## Introduction—confronting and exposing the truth

A society which fails to protect its children from sexual abuse by adults, particularly those entrusted with their care, is degenerate.<sup>1</sup>

This uncompromising statement, made 20 years ago by Justice Marks in the Supreme Court of Victoria, emphasises the collective and individual responsibilities of the members of any community to its children. The statement applies not only to the sexual abuse specifically mentioned. All forms of sexual, physical and psychological abuse of young or otherwise vulnerable members of our community are, and must remain, matters of the deepest concern. We should take all reasonable steps to prevent them from occurring. All types of abuse involve a departure of the gravest kind from the standards of decency fundamental to any civilised society. Although our society appears to have understood this for a long time, we have not given enough attention to the need to accept its implications and take adequate protective measures. There are many reasons for this, a number of which the Committee considers in this Report.

The Australian community now acknowledges that there has been a serious incidence of criminal sexual and physical abuse of children in our society over many years and, specifically, in some of our most trusted and important non-government institutions and organisations. The community also recognises that much of the offending could have been prevented if society in general had honoured its obligation to protect its vulnerable young people. This failure is perhaps most easily seen in the terrible crimes and psychological abuse perpetrated against children in orphanages and homes, where there seems to have been no adequate monitoring or supervision of standards for many decades. Those children often suffered triple betrayal. Sometimes neglected or abandoned as infants, they were taken into the community's care and handed over without any apparent recognition of their needs and rights other than limited financial responsibility for their welfare, to organisations in which they were physically, emotionally and sexually abused. They suffered and continue to suffer grievously. There is, overall, guilt in abundance and many to share it.

There is no way today that we can accurately count the total number of victims. But based on what we do know, and recognising the reluctance of victims to report such offences, we can reasonably estimate that there have been several thousand victims in such organisations in Victoria alone.

Second only to the fact of criminal abuse and its destructive effects upon the lives of its victims, perhaps the most disturbing features in the course of the present Inquiry are the periods of time involved and the disregard of the rights and human dignity of victims. This has been evident not only within some of the large religious organisations involved but also broadly in the country. Victims and their advocates were forced to struggle long and hard to be heard against the much more powerful

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<sup>1</sup> *Part E 'Offences' 31.3.2.2 Incest. Victorian Sentencing Manual*, Judicial College of Victoria. Accessed on 20 August 2013 from <http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#13888.htm>.

voices, both politically and socially, of organisations that effectively traded on and were concerned to protect their own status and interests.

More recently, our community's awareness and concern about this problem has increased. Our understanding of the nature and extent of the abuse has grown. We have a greater appreciation of the short- and long-term consequences of abuse and more of us accept victims' continuing calls for genuine accountability of those involved. These developments have led the Victorian Government to establish this Inquiry.

By Order of the Governor in Council the Family and Community Development Committee was requested to investigate the manner in which religious and other non-government organisations in Victoria have responded to the possibility of criminal abuse of children in their care. The Governor in Council has asked the Committee to make recommendations for any reforms it considers necessary or desirable to improve our criminal and civil law and our regulatory mechanisms.

As a result, the Committee asked some obvious but fundamental questions:

- how did this terrible situation develop
- why was it not addressed long ago
- is the abuse to be properly viewed as the activity of relatively few aberrant individuals for which they alone could be held responsible
- are there others (including the leadership of organisations involved) that, through organisational cultures, structures and policies, contributed and should be held accountable
- what should we do now to secure justice for those who have suffered and continue to do so
- how do we, as a community, protect children in the future

An important responsibility of the Committee has been to provide a genuine opportunity for the personal experiences, insights and recommendations of individual victims and their families to be publicly acknowledged on behalf of the people of Victoria. The community has also been able to hear the views of the various groups that have supported victims and their families.

The task of the Committee is not to report on what has occurred in individual cases, although it has been obliged to examine many of them in order to understand the overall situation. The Committee's task has been to focus on systemic issues. However, it has maintained constant liaison with Victoria Police, which has set up the SANO Task Force to conduct any necessary criminal investigations. This liaison has been an integral part of the Committee's processes. A number of matters have been referred to Victoria Police and this has, in turn, opened up further lines of inquiry that the police are pursuing. Chapter 2 discusses this process in more detail.

Most of the criminal child abuse considered by the Committee was perpetrated more than 20 years ago. But for the people affected there is nothing 'historical' about what happened or about their present situation. They live every day with the consequences of these crimes. We cannot relegate to the past the organisational or individual responsibility for the abuse that has occurred. Nor can we relegate to the past the issues presented by child criminal abuse generally in our community.

We need to understand the significance of such assaults upon young persons and the short-term and long-term effects on them, their families and our society generally. To do this we must appreciate the effects of child abuse on the victims' sense of personal value and identity. This sense of personal value and identity is crucially important to a person's functioning as a socially and psychologically healthy human being.

The sense of guilt and shame resulting from criminal child abuse is all too often borne by the victim, rather than by the perpetrator, who is often totally unrepentant. This is perhaps the most terrible consequence of sexual abuse. The factors that contribute to this transference are complex, but the effect is frequently the concealment of what has happened. There is a struggle within the victim to function normally while concealing what they feel to be a deeply shameful secret. This struggle creates an increasingly self-destructive internal pressure that may lead to serious and continuing social dysfunction and lifelong disadvantage.

For some victims of criminal child abuse this pressure has been so intense that it has led to suicide.

An equally unjustified, but similarly powerful, sense of transferred guilt and shame is often experienced by parents and other carers when they learn what has happened. Some parents and carers who gave evidence to the Inquiry now spend much of their lives attempting to assist and deal with damaged adults. Others live in permanent grief following their child's suicide or the break-up of their family. They feel deeply responsible and naive for having placed trust in individuals and organisations that betrayed them, with such tragic results. When the offender is a member of a religious order, a victim can suffer in yet another way, feeling that they were betrayed at a deeply personal, spiritual level. One witness, attempting to convey this impact to the Inquiry, that the perpetrator who anally raped him 'stole my soul.'<sup>2</sup>

Criminal child abuse also has significant consequences for the broader community. We may never be able to assess some of these consequences in economic terms or even identify them as related to abuse. The hidden costs of physical and mental illness, drug and alcohol abuse, involvement of damaged individuals in the criminal justice system, problems caused by family dysfunction and the loss of potential of so many individuals are incalculable but must be enormous. Chapter 4 of Part B discusses the consequences of the criminal abuse of children in greater detail.

We must also recognise other and subtler damage to our social fabric. The commission of sexual and physical assault creates a distrust that reduces our confidence in important institutions. This distrust is reflected every day in normal interactions between adults and children.

It is important for many reasons to examine what has occurred in these organisations. We can gain insights into possible problems in other organisations or communities and develop recommendations that could be applied more widely.

What follows in this chapter of this Report is a broad overview of the problem of criminal child abuse and how this has emerged in the course of the Inquiry. It is based on the written submissions and evidence received and the investigations and research conducted or initiated by the Committee. Chapter 2 outlines the Inquiry

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2 *Transcript of evidence*, Mr Keith Whelan, Ballarat, 28 February 2013, p. 6.

process and the Committee's analysis of the evidence received. Its findings and recommendations are expanded on and addressed throughout the Report.

## **1.1. Evidence to the Inquiry**

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For many people who presented evidence to the Inquiry, this was the first time that they were prepared to disclose the abuse to which they or members of their families have been subjected, or to discuss the terrible effects the abuse has had on their lives. Some people could do this only through a confidential written submission or a presentation made in camera (privately). Whether they made gave evidence publicly or privately, it was clear that these witnesses needed a great deal of courage to come forward. The process has been challenging, both for victims and the Committee, but its importance is obvious.

Sexual offences against children are by no means a recent phenomenon. Nor have these crimes occurred only or mainly within the institutions that are now subject to increased scrutiny. The sad reality is that such assaults have been committed throughout human history, in virtually every kind of family and other setting that gives perpetrators access to children.

However, the incidence of criminal child abuse within our largest religious denomination, the Catholic Church, has emerged as a significant issue, not only in the context of this Inquiry but across Australia and internationally. There is a striking similarity between the patterns of offending behaviour, the responses of Church authorities and the expressions of victims' anger in this country and those disclosed in inquiries overseas, notably in Ireland and the United States of America.

This Report may appear to emphasise offences that occurred in the Catholic Church and the homes and orphanages operated by the Salvation Army. This is an inevitable product of the volume and content of the evidence the Committee received and the information it secured. More than 80 per cent of public submissions to the Committee were about abuse by members of Catholic religious orders, covering a period spanning more than 70 years. When both the public and confidential submissions are considered, a substantial portion of evidence to the Inquiry contained complaints of abuse in Salvation Army institutions.

The Committee is aware that the particular attention given to the Catholic Church in this report and generally in the community could present an unbalanced image of a wider problem. This is not to understate in any way the seriousness of the Catholic Church's failures and breaches of trust or to downplay the extent of abuse, but to warn that we can only speculate about the situation in many other groups in our society. There is a distinct possibility that the high level of publicity has resulted in a higher level of reporting by victims of crimes in the Catholic Church than in other, perhaps more enclosed or smaller, religious bodies or other communities.

The Committee holds the view that there is potentially a hidden problem of abuse in a number of organisations and groups. Spokespersons for Jewish and Islamic representative bodies, for example, gave evidence that their communities also suffered from this scourge but experienced difficulty in even mentioning what is regarded as a particularly sensitive subject or acknowledging that abuse may have occurred. We can reasonably expect a similar situation in other religious, social, sporting and

cultural groups where offenders have relatively easy access to children and where—for a range of reasons—abuse has been kept hidden.

Many of the written submissions and oral presentations from victims of abuse in the Catholic Church revealed intense anger directed at the Church itself and those seen as its representatives. The Committee observed a powerful underlying theme of betrayal and disillusionment among these witnesses. This sense of betrayal arose from the nature and circumstances of the crimes committed against these victims and, importantly, from the responses of Church representatives to their complaints. The Committee observed a similar intensity of feeling in the submissions of those who had been offended against while in the care of the Salvation Army, and for largely the same reasons. This sense of anger, betrayal and disillusionment may also have contributed to the relatively high level of reporting of abuse in these two institutions.

Many factors will influence whether incidents of abuse are reported or even mentioned in an organisation or community. These may include a strong view within an organisation that there is a stigma in being a victim. The victim's family members may feel personal shame and embarrassment. Community members may believe that disclosing such shameful criminal offending or enabling the prosecution of one of its respected members is damaging and disloyal to the group.

Community members may also be worried about evoking religious, cultural or racial prejudice against their group by admitting that abuse has occurred in its ranks.

## **1.2. The experience of victims**

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Children are in an extraordinarily vulnerable position with respect to physical and sexual assault. They rely heavily upon those into whose care they are placed to protect them from risks of which they may be totally unaware or only dimly aware. Children can be easily intimidated by those in positions of power over them. An abuser may use fear or manipulation to discourage a child from reporting abuse, or may convince a child that the child is personally responsible for the abuse they have suffered. Children are likely to feel confused and shamed by sexual conduct that they may not understand but that they sense is very wrong.

In the vast majority of cases considered by the Inquiry, the Committee concluded that clear (although unstated) boundaries governed appropriate interactions between adults and children in family and other relationships. Evidence given to the Inquiry showed that most young victims intuitively recognised that an offender had departed from the child's normal experience in interacting with adults. Children found this departure deeply troubling. Furthermore, many young victims had felt very uncomfortable speaking about sensitive issues related to their bodies and their own sexual confusion. This was particularly true in families in which such matters were normally never mentioned, rendering these children additionally vulnerable.

Almost all of the offending occurred in private and without witnesses. Many of the young people, particularly in those cases where the perpetrators were associated with religious groups, were uncertain whether they would be believed, even by their own family. Regrettably, many were not believed. Many parents were deeply committed to their religion and held ministers of religion and religious leaders in the highest

regard. To these adults it was often unthinkable that a church member could have acted in the way that their child asserted.

Many victims, living with the destructive consequences of criminal child abuse, have found themselves unable to confide in anyone at all. We can reasonably assume that there is an unknown but large number of victims who remain locked in this silence. They have been guarding their secret deep within themselves for many years. Even after hearing many other disclosures that have shocked the community, they may have no confidence that people will understand their situation or appreciate their continuing difficulties.

Evidence presented to the Inquiry indicated that, even when victims do come forward, most do so with great trepidation. The Committee received many confidential written submissions and observed that victims required great courage to present oral in camera evidence. This demonstrated the ongoing difficulties being experienced by those who can still only speak about the offences committed against them in these strictly controlled and secure ways. Victims themselves often struggle to understand why the abuse has had such a profound impact on their lives. They want to put it behind them but find it impossible to do so. They are unable to communicate the sense of dysfunction that lies at the centre of their being and affects in some indefinable way almost every aspect of their lives. Several witnesses had not yet disclosed their abuse to their families and it is doubtful that they ever will. Others said that when they did tell others what had happened, either as children or adults, their reports were either disregarded or met with such overt anger and rejection, even within their own families, that they were quickly discouraged from pursuing them any further.

The Committee has also received credible evidence that, within a number of religious groups, there has been some ostracism of those who have attempted to draw attention to the existence of the problem. These people's truthfulness and motivation have been challenged or there has been denial or scepticism about the continuing effects of the abuse on their lives. In some groups, members fear being ostracised or excommunicated from all religious, family and social contact, as they may be seen as disloyal for voicing any concerns or claims outside the group.

Unfortunately, in spite of public admissions by senior representatives, the conduct of high-profile criminal prosecutions and incontrovertible evidence to the contrary, victims report that there are still some who refuse to accept the reality and consequences of abuse or the extent to which respected individuals have concealed knowledge of it.

This is apparent in the Catholic Church. Evidence presented to the Inquiry showed that even today, Church leaders are reluctant to fully acknowledge that they adopted policies that gave first priority to protecting the interests of the Church. Church leaders have engaged in only a limited way with their parishioners and the wider community to correct this situation. The Catholic Church's submission, *Facing the truth*, barely mentions past Church policies and is expressed mostly in the present tense. Only at a late stage in this Inquiry did any senior Church representative in the Catholic Archdiocese of Melbourne make even limited acknowledgement of the importance of those policies, the motivation for their adoption and the extent to which they protected perpetrators. Given this lack of information regarding the manner in which complaints were treated, it is hardly surprising that trusting

adherents of the faith are sceptical about, or at least confused by, challenges to the integrity of Catholic Church processes. The betrayal of trust perpetrated at a number of levels of the Church hierarchy is so completely contrary to the stated values of their religion that many parishioners find the betrayal almost impossible to acknowledge.

It is important to recall a view that was deeply embedded in our society and our legal system for most of the period covered by the Inquiry. This view was that women and children were unreliable complainants in sexual matters, prone to making false claims or engaging in unthinking and irresponsible flights of imagination. This view, and its manifestation in the principles and structures of our criminal justice system in particular, influenced responses to reports of abuse in many different ways and at all levels of our community. Victims who came forward often received scant respect from police and prosecution authorities. Their complaints were regarded with obvious suspicion and were subjected to unfair challenge in an adversarial and insensitive legal system. The unjustness of the treatment accorded to adult rape victims over many years is now well recognised. The position of victims of child sexual abuse has been even more difficult.

These pressures were compounded by the power, approaches and policies of the organisation involved and the high status and perceived integrity of the perpetrator. Such an environment severely disadvantaged victims.

As mentioned earlier, many victims had sustained severe personal damage and their lives had become dysfunctional. They doubted they could cope with a complex, adversarial legal system. They were well aware that their credibility and reliability as complainants could be easily and successfully challenged (if, of course, their complaint ever reached that stage).

For victims who have sought justice through the criminal law, the outcome has often proved unsatisfactory. The process has only increased their sense of injustice and societal indifference to their situation and its causes. Criminal prosecution has often proven very difficult, for a variety of legal and practical reasons.

There have however been a number of legislative changes to both the substantive and procedural law that have improved the position in this regard. A number of these changes were introduced following a comprehensive review conducted by the Victorian Law Reform Commission in 2004.<sup>3</sup>

However, for reasons of both principle and practicality, in specific situations initiating such cases through the criminal justice system will continue to present difficulties for victims. The criminal law is, at best, a relatively blunt instrument. It is usually employed well after the crime has been committed. It operates in the framework of an often protracted and extremely stressful adversarial system with a complex set of legal principles and evidentiary requirements. Because the criminal law is centred on attributing responsibility to a charged individual, it has not served, or been expected, to address all or even most of the causes or consequences of criminal behaviour. Victims of sexual assault have experienced similar problems in conducting legal proceedings aimed at securing financial compensation. Claims for damages under the civil law can present equal difficulty. Long periods of time usually elapse between

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3 Victorian Law Reform Commission (2004) *Sexual Offences: Final Report*. Melbourne, VLRC.

the abuse occurring and the victim taking action. This period averages 23 years.<sup>4</sup> This can make it more difficult for a victim to meet the standard of proof required or to persuade the court that the action has not commenced outside the limitation period. The question may arise, particularly in the case of a religious organisation, as to whether there is a legally recognisable body that can be sued. Even if a defendant can be so identified, the court might not hold this body directly or vicariously accountable for the acts of its personnel or others associated with its activities.

### 1.3. Organisational responses to abuse

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As soon as knowledge arises of a reasonable possibility that a young person has been criminally abused, a number of consequences should follow as a matter of course:

- The concerns should be reported to and properly investigated by police.
- Every reasonable step should be taken to ensure that any wrongdoing is exposed.
- The rights and personal dignity of the victim, and any other victims discovered in the process, should be vindicated.
- Appropriate supports and assistance should be provided for those affected.
- Any necessary measures required to reduce or remove the risk of further incidents should be adopted.

However, it is beyond dispute that some trusted organisations have sometimes taken the opposite approach. This has been a deliberate choice by those organisations. There has been a substantial body of credible evidence presented to the Inquiry, and ultimately concessions made by senior representatives of religious bodies including the Catholic Church, the Anglican Church and others, that they took steps with the direct objective of concealing the wrongdoing.

One feature that is relevant in the present context distinguishes the Catholic Church from all other religious and non-government bodies considered by the Inquiry: the Vatican's Holy See is recognised as a State under international law. For certain purposes, the Church operates through its governing religious structures, while for others it insists on addressing matters through diplomatic channels.

In the case of criminal child abuse, it is difficult to argue that the Catholic Church was acting as a nation-state in setting out the religious obligations of its clergy or lay orders. For example, in 1962 the Supreme Congregation of the Holy Office set out principles for the handling of such cases in an instruction sent to all bishops, titled *Crimen sollicitationis*. The instruction itself was confidential and not to be copied. The instruction requires Church members to maintain confidentiality concerning any such incidents of criminal child abuse and to notify the Vatican.<sup>5</sup> If Catholic Church members have been complying with the instruction, the highest levels of this Church would know a great deal about what has been happening, not only in Australia but worldwide.

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<sup>4</sup> *Transcript of evidence*, Victoria Police, Melbourne, 19 October 2012, p. 3.

<sup>5</sup> The Holy Office (1962) *Instruction of the Supreme Sacred Congregation of the Holy Office, addressed to all Patriarchs, Archbishops and other local ordinaries "Also of the Oriental Rite" on the manner of proceeding in causes of solicitation*, Vatican Polyglot Press. Accessed on 20 August 2013 from [http://www.vatican.va/resources/resources\\_crimen-sollicitationis-1962\\_en.html](http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html).

We do not know to what extent this instruction directed responses in the Catholic Church in Australia. However, given the clergy's obligations to be obedient, and the Church's hierarchical structure, the Committee believes it is reasonable to think that Church members followed the instruction. At the very least, the instruction would have been highly influential. This could partly explain why an apparent policy of concealment continued for the next 30 years. Certainly, the instruction would have provided comfort to those who were reluctant to attract public embarrassment or expose fellow religious to criminal prosecution by reporting their offending. It probably also increased perpetrators' sense of freedom to act, and let them assume that their Church would protect them if their crimes were detected.

The relationship between religious organisations and the communities in which they operate has historically been fraught with problems. Tension has often arisen when adherents find themselves obliged to choose between complying with the civil law on the one hand, and with the edicts, beliefs and principles of their religion on the other. In the case of the Catholic Church, the situation is further complicated by a rigid hierarchical structure and by obligations of strict obedience. This obedience is to a body that functions for some purposes as a foreign nation-state but also possesses a separate character and role as an institution.<sup>6</sup> This character reflects adherents' belief that the Catholic Church was established by God. Evidence presented to the Committee suggests that the concept of the Church as a *societas perfecta* (perfect society) is still influential among some members of the Church hierarchy.<sup>7</sup> These Church leaders view the current question of the abuse of children as a short-term embarrassment, which should be handled as quickly as possible, to cause the least damage to the Church's standing. They do not see the problem as raising questions about the Church's culture and about practical adherence to its precepts. This is despite the fact that the protection of children is fundamental to the Catholic Church's stated precepts.

Instead of protecting the rights and human dignity of victims and providing proper support to them, the Church has at times exerted pressure on its members to silence, denigrate or disbelieve victims, in a deliberate pursuit of thoroughly unworthy objectives. Senior Catholic Church representatives have now acknowledged that Catholic Church policy was to strictly quarantine any knowledge of what had occurred. Church leaders aimed to protect, as a matter of priority, the public image and financial interests of the Church, over the interests of children. The Committee believes that victims would have shown much less scepticism towards the Church's recent acknowledgements and apologies, had the Catholic Church not made these admissions so belatedly and against a background of increasing disclosures, public pressure and the activities and scrutiny of this Inquiry.

The Committee observed a broadly similar concern for damage control in the approach taken by the Salvation Army. It appears that the Salvation Army kept minimal records of even the most basic information about the children in its care. When victims eventually lodged applications for assistance, the Salvation Army response was to accept them and, in the majority of cases, have its solicitors negotiate compensation. Despite the 474 cases of abuse accepted in this process, Captain

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6 Marie Keenan (2011) *Child Sexual Abuse and the Catholic Church: Gender, Power, and Organizational Culture*. USA, Oxford University Press, pp. 45, 209.

7 *Transcript of evidence*, In Good Faith and Associates, Melbourne, 12 November 2012, p. 10.

Malcolm Roberts (who represented the Salvation Army before the Committee) would still not acknowledge that abuse had been endemic in its institutions and homes. The Salvation Army has undertaken no investigation to identify any systemic problems that may have contributed to the offending or to identify any other victims who may need assistance. Nor has it yet made any significant endeavour to provide pastoral care for victims already identified. The Committee noted, however, that Captain Roberts indicated that the Salvation Army will give attention to these deficiencies.

There is another important consequence of the Catholic Church's longstanding approach of denial and concealment: an observable tendency to avoid investigating the problem or adopting adequate measures to reduce the risk of further offending by identified or suspected perpetrators. The Church appears to have reasoned that by taking such steps it would indicate the presence and awareness of at least a potential problem that could damage the Church, if not an existing one that required action. Unfortunately, this reasoning exposed other young people to abuse, with tragic consequences.

The Committee received no evidence of active concealment of offending within the Salvation Army. However, the Committee believes that it is extremely unlikely that such extensive physical and sexual abuse of children entrusted to the care of the organisation could have been perpetrated without church leaders receiving some reports or having some awareness of the existence of a problem. Some of the most vulnerable and powerless children in our society suffered extensive physical, sexual and psychological abuse over many years in institutions operated by the Salvation Army. If the hierarchy of the Salvation Army was indeed unaware, this implies a culpable absence of proper supervision and inadequate concern for the welfare of the children in its care. In these cases, through the State, the community had assumed the role and duties of parents of these vulnerable young people but had failed to protect them. As stated earlier, there is much guilt for what happened and many to share it.

The Committee received only a small number of submissions about criminal child abuse in the Anglican Church. Relatively few offences have been reported to police. One measure possibly contributing to this distinction between the Anglican Church and the other religious organisations discussed earlier is that, from at least 2002, the Anglican Church adopted a formal protocol and practice that placed much greater emphasis on victim support and pastoral care. This protocol had evolved from the Anglican Church's experiences in attempting to develop appropriate responses since 1994. Before that time, the Anglican Church's approach had been broadly similar to that of the other religious bodies. The difference between the way in which the Anglican Church handled the complaints of victims under its protocols and the manner adopted by the other organisations is almost certainly reflected in the number and tone of the submissions received. Nevertheless it is to be noted that issues of compliance still may exist. There is some evidence for this in the relatively recent resignation interstate of the Bishop of Grafton.

The features of the different responses by religious organisations to complaints of criminal child abuse and the processes that each organisation put in place is discussed later in this Report.

### 1.3.1. Failure to respond

A number of religious leaders claimed that their failure to respond to reports of child abuse in what we now understand to be an appropriate manner was caused by a lack of knowledge about this type of offending, combined with a compassionate desire to rehabilitate the offender and a limited understanding of the difficulty of that task. There is some substance to these claims. However, the Committee could not accept explanations of this kind, particularly from the Catholic Church and the Salvation Army, for a number of reasons.

In the case of the Catholic Church, the Committee could potentially give greater weight to this type of explanation if:

- there had been only a few isolated offenders or incidents of offending
- the offending had been a recently identified problem
- there were no ongoing problems with repeat offenders
- the Church had fully investigated and reported individual reports of abuse
- it could have been reasonably believed (albeit incorrectly) that individual perpetrators posed no continuing risk
- the Church had made serious efforts to support victims and their families and to find out how they were responding to the abuse
- there had not been an emerging problem internationally
- the Vatican had not issued an instruction in 1962 that all such offending was to be handled with strict confidentiality
- the Church had not shown a consistency of approach that indicated the existence of an understood policy
- the Church had conducted an investigation to identify any systemic issues that may have contributed to the incidence of offending.

But the Committee concluded that, in the case of the Catholic Church, none of these conditions was present. Senior members of the Catholic Church hierarchy knew that there were reports extending over many decades of conduct that constituted gross departures from the normal standards of human decency, let alone the standards that might reasonably be expected of a religious institution. The reports, which involved not only offences against morality but also serious breaches of the criminal law,<sup>8</sup> appear to have been largely disregarded.

Further, the Committee found it difficult to accept that the distress of victims and their families was not observed by those who received reports or who became aware in other ways of what had happened. Due to the nature of their calling, priests and other religious are likely to be in regular contact with people in personal difficulty. Even if these religious were, to some extent, unaware of the problem, they should claim no comfort from their ignorance. It reveals a continuing and inexcusable lack of preparedness to confront the issues. The Committee observed a culpable, wilful blindness in the failure to investigate and respond, even in the circumstances that were known, or to provide anything approaching genuine pastoral support that would have revealed the level of victims' distress. Neither individuals nor the religious body

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<sup>8</sup> See Appendix 3 for a list of penalties for relevant sexual offences.

can reasonably rely upon a lack of understanding of either the extent of the problem or the consequences of abuse to reduce their responsibility.

The assertion that the Catholic Church, like the rest of the community, did not know the extent of the abuse, is also unsatisfactory. The Committee accepts that many religious and almost all of the laity were not aware. But some people in senior positions clearly knew what was happening. One very good reason for the broader community's inadequate understanding of the extent and significance of the problem for many years was that the organisation was hiding the commission of serious criminal offending. This concealment, and the resulting lack of community awareness, had the additional effects of adding to victims' sense of isolation. It discouraged them from reporting offences and it created opportunities for perpetrators.

The extent of knowledge possessed within other religious bodies is unclear. The Committee accepts that institutions and society understood less about these matters at the time of much of the offending that has now been exposed. However, there was more than enough information at hand and available many years ago to show that action was required.

The Committee asked the following rhetorical questions:

- When was the commission of a sexual offence upon a child *not* a matter of great seriousness under our criminal law, against the principles of all of our various religious faiths and abhorrent to our community.
- When was it not understood that children are vulnerable to physical and sexual abuse and that they need protection.
- How many complaints or established incidents of abuse would be necessary before it was appreciated that there was a systemic problem within the organisation itself and its structures and cultures that required full investigation.

As far as the Committee is aware, none of the religious denominations represented at the Inquiry has ever conducted a full, systemic investigation into the conduct of perpetrators, to know the extent of offending, to put in place protective measures for the future, or to enable support for victims who remain locked in silence. Religious bodies have dealt with each case as a separate incident of offending, by an individual perpetrator, for which the organisation could not be regarded as responsible. Nor is the Committee aware of any occasion on which religious leaders in any denomination have directly reported possible sexual abuse to the police. At most, representatives from complaint processes adopted by religious organisations have 'encouraged' complainants to report the abuse to the police. The efficacy of these internal processes and whether encouragement—in whatever form it may be provided—is sufficient, is discussed in Chapter 23 of Part G.

### **1.3.2. Unique nature of religious organisations**

Religious organisations in our community advocate standards of morality, human value and integrity to which we should all aspire in our public and private lives. These standards are fundamentally inconsistent with giving priority to the interests of a religious organisation over those of a victim of criminal abuse. There can be several reasons for our society's toleration of this inconsistency. This Inquiry can address only some of them.

Firstly, from the perspectives of both a religious organisation's adherents and the broader community, exposure of serious physical and sexual offending by its religious personnel or members of its teaching orders can profoundly damage the moral force and credibility of that organisation's statements and teachings. The greater the incidence and the more serious the abuse, the more threatening the risk of exposure. Senior members of any religious community, in particular those committed to propagating its teachings, have a strong interest in ensuring that the community's mission, standing and reputation are not compromised by the conduct of a relatively small percentage of its members. 'Noble cause corruption' can develop: embarrassing matters are concealed in order to perform a 'higher duty'. Religious organisations could, and almost certainly on some occasions did, rationalise toleration of the most egregious conduct and protection of perpetrators on this basis.

Secondly, the ability of any organisation to maintain itself, engage in charitable activities and propagate its teachings is limited by its financial capacity. Some religious bodies have very substantial financial interests that could be at risk if the incidence and consequences of abuse were acknowledged and appropriate compensation and support provided to victims.

Thirdly, in any organisation, a misguided sense of group loyalty or personal empathy can influence the nature of the organisation's response to offences by its members. In the case of the Catholic Church, many perpetrators of abuse were members of a relatively closed community. They had formally dedicated their lives to the service of their religion, giving up the prospect of the ordinary relationships of marriage and family. They had taken vows of obedience, poverty and celibacy. In that situation, it seems almost inevitable that a protective mentality, an inappropriate empathy among peers and superiors, and a desire to guard the reputation of the religious order, should develop, unless Catholic Church leadership squarely confronted the issues. But the latter was certainly not the case for many years. Many people who provided evidence still questioned whether, in spite of many statements to the contrary by the Catholic Church leadership, and although much has been and is being done, the basic priorities have changed. They wondered whether the Catholic Church still gives central significance to organisational self-protection. This cynicism is a consequence of the Church's self-created damage to its own reputation.

The internal structures and principles of any religious organisation remain exclusively within the domain of the organisation and its members. They are relevant to this Inquiry in limited respects only. But one possibility is relevant: is there an inconsistency between the Catholic Church's public stance on sex-related questions and the reality (known within the Catholic Church) of the lives of significant numbers of its clergy and orders? This inconsistency contributed to a culture in which some level of inappropriate sexual activity has been treated as unavoidable, to be addressed internally if at all.

An important feature of this culture is that criminal child sexual abuse has been treated primarily as a sin committed by the perpetrator, who then needs to be reconciled with God and the Church. A sliding morality has developed, which emphasises the interests of the perpetrator and the Church over those of victims. The criminal and destructive character of the conduct has been diminished in significance. The Catholic Church appears to have compartmentalised the issues, in order to avoid the obvious moral conflicts.

We can unhesitatingly dismiss any possibility that the perpetrators were unaware of the criminal character of their conduct. No ordinary member of the community would have been under the misapprehension that the sexual or physical assault of a child can ever be other than abhorrent in the view of the community, contrary to the law and a terrible misuse of power and trust. We can also safely assume that perpetrators understood their own hypocrisy and the extent to which they were betraying the religious principles that they claimed to follow.

We can take a similar view of those who protected perpetrators from disclosure. It has become clear that religious leaders in the Catholic Church moved a substantial number of offenders from areas where they had become an embarrassment to parishes where their proclivities were not known. Rather than conducting a full investigation of a complaint, reporting the matter to the police and seeking out victims and their families to provide pastoral support and assistance, the Catholic Church's most common response for many years was to attempt to avoid public exposure of what has occurred. The Committee finds it difficult to see how those who made these decisions could have ever honestly reconciled the tension between adopting a stance of concealment and denial and their avowed religious obligations to support the innocent children and families who trusted them implicitly.

A number of religious bodies, including the Anglican Church and the Salvation Army, failed to report abuse to the police. They have justified this in part on the basis that victims wanted matters to be handled confidentially. In some cases that was true. However, the organisations themselves cannot be absolved of their responsibility as a consequence. The lack of a legal requirement to report abuse, combined with Church authorities' choice to leave the decision on reporting solely to the known victim, has given organisations an opportunity and rationale to evade their responsibilities and avoid exposure of their own inaction and possible contribution to what has occurred.

Some of the actions of religious leaders to whom reports of offending were made may have breached the criminal law. The Committee's view is that, regardless of the legality, individuals who had knowledge of earlier offending and knowingly exposed other children to the risk of similar conduct are at least morally complicit in, or responsible for, later offending.

#### **1.4. Evidence themes**

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Although expressed in different ways in the written submissions and oral presentations received by the Committee, a number of common themes and generally similar Inquiry for reform emerged.

The core theme lies at the very centre of the justice sought by victims. This is a wish for the community generally, and the organisations and individuals involved specifically, to honestly and unequivocally recognise the real character of the crimes perpetrated and their significant consequences for victims and their families.

It is the Committee's view that the behaviour of perpetrators, and the actions of individuals or organisations that failed in their duty to protect victims, must be exposed. Those responsible should be held accountable, to whatever extent is now possible. This is beyond question. Many people expressed to the Inquiry a sense of frustration and anger that justice has been permanently denied in numerous cases.

While some perpetrators have been brought before the courts or their conduct otherwise exposed, others have not, including some now deceased serial offenders. The knowledge that some perpetrators have been, or continue to be, supported by their religious communities only aggravates this frustration.

As indicated earlier, much of the evidence revealed deep scepticism about the preparedness of some religious groups to address the issues in this open and honest fashion. Very few victims accepted the recent public apologies, or regarded the various processes put in place by these bodies, as indicating a real desire to assist them. Most victims saw such actions as part of carefully orchestrated public relations exercises and damage-control techniques.

When we consider victims' cynicism and distrust towards these organisations' apologies and processes, it is crucial to bear in mind the vitally important roles that religious organisations play in our society. Society entrusts much of the moral, social and academic education of a substantial proportion of our children to these groups. Until the late 1980s they operated orphanages, children's homes and detention facilities as trusted agents of the community. Both State and Commonwealth governments still rely upon and fund religious organisations to provide a wide range of important educational and social welfare services.

Generally, members of religious orders have been accorded great respect, even by people who reject their teachings and, indeed, the concept of religion itself. Traditionally, these orders have advocated the highest standards of personal conduct and community values. The community has regarded the integrity of priests and other religious as largely beyond question. This is because of their calling and their claims to act as exemplars of their stated religious principles. This high regard is especially true for followers of the particular religion, who see religious personnel as custodians of the true faith concerning the relationship between God and humankind.

Clerics and members of quite diverse religious communities have, in consequence, been permitted a degree of access to children that would ordinarily not have been possible or would, at least, have been more carefully monitored. This special relationship does not affect the extent or character of their duty to protect the children entrusted to their care. However, it does render breaches of that duty even more reprehensible. Betrayal of trust by religious personnel makes people's anger and distress even greater and can make the effects on the victim even more serious.

### **1.5. Reforms—an umbrella of protections**

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Evidence to the Inquiry revealed a strongly perceived need for government intervention. Participants argued that it was essential for government to introduce legislative and administrative reforms applicable to all organisations and groups involved with children. This is needed to ensure satisfactory standards of protection, the detection and prosecution of offenders and the establishment of better compensation and support processes for victims and their families. People no longer trusted religious organisations to maintain proper standards themselves.

Proposals included improving preventative structures and programs including the system of working with children checks, expanding the present mandatory reporting

regime to include priests and other religious personnel, and developing effective monitoring mechanisms to ensure that proper standards are maintained.

One particular aspect of the mandatory reporting of abuse has received some attention in submissions and public discussion: the possible inclusion in such a regime of admissions made in religious confession. The Catholic Church regards the seal of the confessional as inviolate. It is not the function of the Committee to investigate the theological foundations of this position or to express any opinion generally in relation to it. Additionally under *The Evidence Act 2008* (Vic) information provided to religious in the context of the confessional is privileged and would not be admissible. Nevertheless, it seems that a confession made in such circumstances is directed to the penitent's relationship with their deity in a religious context and not to their secular obligations to their fellow citizens. The Committee considers that the current exemption in Section 127 (2) of the *Evidence Act 2008* (Vic) provides an appropriate check on the potential abuse of any communication in a religious confessional setting made for a criminal purpose. The operational effect would be that where a religious confession of criminal child abuse is made for the purposes of seeking assistance in concealing that crime, the exemption will not apply.

It is important for all organisations involved in activities for children, whether of an educational, religious, sporting or general community character, to have protective structures and programs. Yet the peak bodies of some quite large groupings have directed little attention to such structures and programs. This is despite the fact that parents and other carers accept the trustworthiness of constituent organisations by virtue of their association. Given the very large numbers of children involved in a wide range of such groups, the Committee has given considerable attention to this question. It has discussed the best means of creating a practical and cost-effective umbrella of protections to ensure that, as far as reasonably possible, children participating in these activities will be safe from predators.

A great deal more is now being done in both religious organisations and the community generally to ensure children's safety. However, a number of questions still arise regarding the implementation and monitoring of appropriate child protection policies, including reporting mechanisms.

Organisations will probably continue to wish to avoid public embarrassment and to defend their reputations and financial interests. Human beings from their earliest ages are likely to rationalise their own conduct, refuse to acknowledge the truth (even in the face of incontrovertible evidence) and deny knowledge or involvement when the truth is known. People become adept in a range of techniques to protect themselves against exposure. Part of the answer to the inevitability of human nature lies in establishing external and independent structures that set appropriate standards and ensure genuine accountability. Properly implemented, these would also operate as agents of change within the culture.

The large institutions in which many care leavers experienced abuse no longer exist. There is much greater awareness in society about criminal child abuse. But this does not mean that we can relegate the problem to the past. Predators' recent use of modern technology to gain access to young people demonstrates that the problem continues. In some ways, this type of behaviour may be as difficult to detect now as it has been

previously. Predators will continue to seek opportunities as they arise in our rapidly changing society and take advantage of whatever techniques become available.

The Committee recommends the establishment of a system to set and uphold the basic standards expected of all groups dealing with children. Implementation should permit flexibility, to avoid unduly inhibiting the activities of the numerous small, local community bodies that play an important role in engaging children in sporting and cultural activities. There should be a system of sanctions for failures to comply with the standards set. These might include exclusion from such engagement and financial penalties, including withdrawal of public funding. The community must be confident that whatever dangers may await children in the external world, the church, the synagogue, the mosque, the temple and the school are places where they can grow and learn in safety. Similarly, joining sporting clubs or enjoying the many other cultural and social activities that assist in the normal processes of development should not put children at risk of predators. However, the structures put in place to protect them cannot be so restrictive or bureaucratic that well-motivated parents or other volunteers decide not to participate.

## **1.6. Mechanisms for redress**

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The role of redress mechanisms in providing justice to victims, whether through the civil courts or alternative processes, is complex. The approaches and experiences of victims varied substantially.

Some victims saw the payment of monetary compensation as the only form of penalty likely to be incurred by the organisation. It implied at least a limited acknowledgement of wrongdoing and responsibility, even if made *ex gratia* and with a denial of liability. Other victims saw compensation paid through internal mechanisms, in the absence of a successful criminal prosecution or civil court judgement as the price of maintaining silence. This was particularly true in cases where victims were required to enter into confidentiality agreements. Victims resented what they regarded as being ‘bought off’ in this way but felt that, in their circumstances of need, they had to accept what was available.

Victims who were prepared and able to claim damages through the courts appeared to receive much higher compensation than those who relied upon internal processes. The amounts paid by organisations under their internal arrangements were, on many occasions, remarkably small. They seemed unrelated to the nature, circumstances or duration of abuse, or to payments made to other victims. The apparent arbitrariness of the processes and the outcomes caused grave dissatisfaction to victims. The *ex gratia* character of these payments, made with a denial of liability, added to victims’ scepticism towards the accompanying letters of apology.

Evidence to the Inquiry consistently stated that those who could properly be held to account for the loss and damage that they had sustained should be under a legally enforceable obligation to mitigate it to the extent practically possible.

The Committee accepts this view. Organisations that fail to honour the responsibilities that they have undertaken to protect children, and who breach the trust given to them, should be required to accept the full consequences of that failure. They should also support the victims as far as possible to enable them to rebuild their lives. This

support should include appropriate financial redress. It should not fall upon the community to be the primary provider of support in such situations.

The evidence the Committee received generally described the present forms and avenues for redress available to victims as grossly inadequate.

Suggested reforms in this area included amending the statutory provisions relating to the period within which civil actions can be brought: the 'statute of limitations'. The Committee considers that, in view of the long periods of time that often pass before a victim is prepared to disclose their abuse to anyone at all, let alone before they are prepared to take on the stress of civil litigation, there should be no time limit on commencing actions arising from child sexual abuse.

Some religious communities are not recognised as legal entities, although they function effectively as corporate bodies engaging in a wide range of activities, many of which are publicly funded. A number of submissions argued that this situation had been a serious obstacle for many victims seeking justice in the courts and required legislative action. The Committee accepts the need for attention to this nationwide problem. An effective solution will require State and Commonwealth cooperation, as discussed in Part H.

A number of submissions proposed the introduction of legislation to make organisations directly liable under the civil law for criminal acts performed in their name by their religious personnel or others entrusted with access to children, where there were no adequate supervisory or monitoring systems. Australian courts do not regard religious organisations as vicariously liable for the unlawful actions of priests and other religious. This has often meant that the only person a victim can sue is the individual perpetrator, who has no money. The Committee regards this situation as clearly unacceptable, particularly as the relationship of trust that gives perpetrators access to children arises principally from the perceived trustworthiness of the body with which the perpetrator is associated. The Committee recommends amendment of the *Wrongs Act 1958* (Vic) to rectify this situation.

The proposed changes outlined above are discussed in detail in later chapters. The Committee considers that, if implemented, they would give victims greater opportunities to enforce their rights and secure adequate compensation. Further, the direct exposure of an organisation's assets would be a powerful form of accountability to victims and an incentive to organisations to minimise the risks of offending.

However, the Committee acknowledges at the outset that much of the terrible damage that has been suffered can never be repaired. The question can be reasonably asked: how can there ever be adequate reparation or compensation for the loss sustained. Lives have been lost or destroyed. They cannot be restored. Families have been irretrievably torn apart. Many victims have been permanently denied even the limited forms of justice available under our either our criminal or civil law.

The obstacles lying in the path of the achievement of justice for victims of abuse and protecting children in the future have been the subject of considerable attention and concern for the Committee. It is apparent that changes are required. While their design and implementation is by no means straightforward, in the Committee's view, the general character of the reforms that should be effected for the future, is reasonably clear.

The position with respect to those who, although grievously offended against, have, at this stage under existing law or as a practical proposition, no enforceable legal rights presents much more complex problems. This arises in part from the fact that it is only in rare circumstances. Parliament will retrospectively create enforceable rights and obligations and almost never to the disregard of existing entitlements and protections. This approach is based on the fundamentally important proposition in a democratic society that behaviour, which is lawful under the criminal law at the time at which it is engaged in or creates no rights or obligations under the civil law, should not retrospectively be rendered criminal or the subject of civil liability. In short, it is accepted that we should not be later held liable under the criminal or civil law for conduct which was not prohibited at an earlier time, apart from the most exceptional circumstances.

The absence of proper accountabilities under our legal system of organisations and leaderships that, acting in self interest, adopted policies and approaches which not only contributed to the incidence of abuse but then endeavoured to quarantine knowledge of what had happened and safeguard their reputation and financial interests is, in the Committee's view, deeply disturbing. One of the most disappointing features of the responses of the leaders of a number of such organisations that has emerged in the course of the Inquiry is the extent to which they appear to have disregarded their claimed religious beliefs when addressing criminal child abuse and its consequences.

Contrary to the repeated assertions of a number of such leaders there has been demonstrated a deliberate adoption of policies that involved a disregard of the basic human rights and dignity of victims and those associated with them. The protections provided within our legal structures have been developed to serve the ends of justice but, on many occasions and particularly within some of our major religious bodies, have been systematically exploited to deny it. This state of affairs has given rise to the question: is this one of those rare situations in which there should be a departure from a fundamental principle underlying our law because the achievement of justice requires that retrospective legislation should be recommended. Ultimately, for reasons of both principle and practicality and taking into account recent public expressions by religious leaders of a deeply felt desire to make amends to those who have been so injured, the Committee does not consider that it is necessary to recommend to the Parliament that this extreme step be taken.

Over recent times, and notably since the establishment of this Inquiry and the Royal Commission into Institutional Responses to Child Sexual Abuse, religious leaders have been at pains to emphasise their bona fides in this area and their desire to support victims assist them achieve justice. This can be easily tested and will be quickly evident. Whether or not they are prepared to continue to rely upon the legalistic approaches adopted to date, using their own complex structures, limitation of action provisions and a technical view of their vicarious relationships with their religious and others acting in their name, will constitute a powerful indicator of the genuineness of their remorse or whether they are simply engaged in damage control, hoping that the issues will soon fade from public consciousness. This must not be permitted to happen.

In Part H of the Report the Committee recommends that incorporation should constitute one of the eligibility criteria for Victorian Government tax exemptions for non-government organisations (including land tax, council rates and other

entitlements) and that incorporation should also be a condition of all service agreements where the Government contracts non-government organisations to provide services.

Evidence to the Inquiry stressed the importance of complementary and adequate non-adversarial systems of redress. These systems should combine continuing support structures with appropriate compensation. People argued that any such system must function with total independence from the religious or other body involved. It should provide another avenue for recourse in situations where the traditional court process would not be appropriate. Such a system should also address the needs of many severely damaged victims for ongoing assistance with housing, health and personal problems.

The Committee appreciates that victims with entirely credible histories of abuse are unable to provide the kind of detail needed to satisfy the standard of proof required by a civil court in a contested matter. Some victims may be reluctant to attempt to enforce their rights or secure assistance through an adversarial system. This reluctance might be a consequence of the personal damage they have suffered or feelings of deep personal embarrassment about disclosing what has happened and its effects on them. Others may not have the financial or personal resources to undertake what could be, in some cases, a protracted and expensive process. An alternative form of redress should be available in such situations. However, any such system must function independently of the organisation involved. It must not displace the criminal law.

The Committee recommends a number of actions in each of these areas of civil recourse. These are set out later in this Report.

Dissatisfaction with the very notion of an internally controlled and operated redress scheme underlay many of the submissions. Even if an organisation where abuse occurred takes the utmost care to deal with all complaints carefully and sensitively, the internal handling of such cases is a problem in itself. The organisation's actual (as opposed to stated) reasons for establishing its process, and its real objectives, are likely to cause doubt and uncertainty in the minds of at least some victims. If a victim lodges a claim because they have formed the view that they have no practically available alternative to secure even limited justice, the potential for dissatisfaction is apparent. This is particularly true if the outcome is a pathetically small compensation sum, a carefully drafted apology that does not unequivocally acknowledge what has happened, and a release of the organisation from any further liability. These matters are discussed in depth in Part H.

### **1.6.1. Introduction of the Melbourne Response**

It is useful to consider the circumstances and objectives behind the establishment of the Catholic Church's Melbourne Response in 1996. Cardinal George Pell described these in a speech delivered in Ireland in 2011:

One of the major challenges to be faced has been the abuse scandal and in this I was given some very good advice by a former Supreme Court Judge. He told me that the scandal would bleed us to death year after year unless we took decisive action. I was also summoned by the Premier at the time, who made it clear that if we did not clean the Church up, then he would, and so we made a determined effort to do so. So we did clean it up; we set up an independent Commission, we set up a panel to provide

counselling and a system to pay compensation—and please God the worst of it is behind us.<sup>9</sup>

Disclosure from the late 1980s of serious abuse within the Catholic Church, both locally and internationally, had led to increasing public pressure. A number of high-profile criminal prosecutions had been conducted and the establishment of advocacy groups had encouraged many more victims to come forward. Greater public attention was being given to the incidence of offending and the manner in which the Catholic Church had addressed the problem. A substantial number of victims who gave evidence to the inquiry perceived that the Catholic Church's central aim, as Cardinal Pell seemed to indicate, was to safeguard its own interests. It is noteworthy that this description of objectives contains no acknowledgement of the terrible suffering of victims, except perhaps what could be implied by the reference to counselling and compensation. Nor is there any suggestion of any failures of the Catholic Church itself.

In establishing the Melbourne Response the Church consulted with both Victoria Police and the Victorian Government, both who welcomed it as an innovative measure to provide victim support. A media release issued on 30 October 1996 put the police position:

Victoria Police have welcomed today's announcement of a series of initiatives in response to sexual abuse by priests, religious and lay people under the control of the Catholic Archdiocese of Melbourne.

The announcement is seen as a positive step in tackling this very sensitive community issue.

Police have also welcomed the appointment of Peter O'Callaghan QC to the position of Independent Commissioner.

They say that they are pleased to see the appointment of the commissioner will not in any way conflict with police investigations or actions in respect to sexual abuse.

Police are hopeful that the appointment of the commissioner will assist [to] identify those engaging in sexual abuse and result in them being dealt with by the law.<sup>10</sup>

The system was seen by all concerned primarily as an internal mechanism to provide compensation, counselling and pastoral support. However, the police appreciated that any consideration of the fact or circumstances of abuse undertaken in this process could impinge on their inquiries. They also saw advantages in that the Catholic Church may have information about offenders that could be valuable to them.

It must be remembered that Catholic Church authorities who became aware of criminal child abuse were under no legal obligation to report offences to police. That is still the position. However, the Catholic Church reached an agreement with the police that it would 'encourage' victims to do so. The Catholic Church inserted an agreed form of words into the protocols at the request of Victoria Police. A copy of the formal document setting out this arrangement was forwarded to the Solicitor-General and was obviously regarded as satisfactory before the launch of the program by the Catholic Church.

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9 AD 2000—A journal of religious opinion (2011) *Cardinal Pell: the responsibilities of Church leadership*. Edited text from Cardinal Pell's address at the Catholic Voice Annual Dinner, Cork Ireland, 29 July 2011. AD 2000. Accessed on 1 May 2013 from [http://www.ad2000.com.au/articles/2011/oct2011p3\\_3622.html](http://www.ad2000.com.au/articles/2011/oct2011p3_3622.html).

10 *Right of Reply*, Archbishop Denis Hart, Catholic Archdiocese of Melbourne, 5 June 2013. Attachment 3, p.22.

However, the Melbourne Response protocol was conceptually flawed at a number of levels, and fraught with difficulty from the outset. The Independent Commissioner appointed by the Church wished to apply principles of natural justice to persons accused of abuse. This was to be expected, given the nature of his role in what was effectively an internal civil tribunal. However, this carried the potential not only for interference with police investigations (investigations of which the Commissioner may or may not have been aware) but also for role confusion. The latter conflict arose in particular when dealing with inexperienced and sometimes severely impacted victims. The problematic nature of the role of the Independent Commissioner's is discussed in Chapter 21 of Part F.

During the Inquiry, the Melbourne Response's undertaking to 'encourage' victims to report abuse to the police has been the source of criticism of the operation of this process. In part, this criticism arises from uncertainty about what was required to satisfy this vaguely worded undertaking. It is likely that interpretations of this requirement differed significantly between cases and in some instances may have involved the provision of professional support. There is some dispute about whether the Melbourne Response encouraged all victims to report to the police. There were some variations in the language employed which became stronger over time. The Commission's examination of transcripts of interviews revealed that the Melbourne Response's practice throughout was to tell victims that they had an 'unfettered right' to report abuse to the police. Several victims perceived such statements as ritual recitals, providing little or no additional information to help them in considering an option that, in reality, they were not being encouraged to pursue. Given the well-recognised reluctance of victims of sexual assault to report matters to the police, and the personal difficulties that had resulted in the victims approaching the Church for assistance, we can reasonably infer that active encouragement would require more than a simple statement of entitlement, or more even than an expression of encouragement. Regardless of the language in which Melbourne Response's representatives expressed 'encouragement', victims were presented with a dilemma. They knew that, if they chose to go to the police with all the uncertainties involved in that process, they may have to wait for a long time before they could secure any compensation. This could, in some cases, have operated as another powerful disincentive to taking that course.

In the Melbourne Response process, any findings of abuse are made by respected members of the Victorian Bar, designated as 'Independent Commissioners'. No doubt they have seen themselves as independent throughout their involvement. However, they are only one part of an internal Church mechanism, the area of operation of which intersects with both our civil and criminal justice systems. Victims may have seen the Commissioners not as independent but as powerful Catholic Church representatives, or possibly as senior lawyers who have been engaged to assist them. There is clear potential for confusion and misunderstanding. The lack of appreciation of this potential when the Melbourne Response was established probably arises from the Church's failure to consult in any way with victim groups.

Although problems and victim dissatisfaction with the Melbourne Response started to emerge at an early stage, the Church appears to have given them little attention until around 2009. The Committee accepts the assertion by Mr Peter O'Callaghan QC that, until very recently, he was totally unaware of any concerns within the hierarchy of Victoria Police about his role or performance, or about the process

generally. He believed that his relationships with those with whom he had substantial contact in Victoria Police were friendly and cooperative. There are indications of some frustration among individual police members as a result of difficulties they encountered in the course of investigations, but nothing in the documentation examined by the Committee nor in any of the submissions or evidence it received suggests that any significant problems were drawn to the attention of Mr O’Callaghan QC, the Catholic Church, or were even seen to exist by Victoria Police. As far as the Committee is aware, Victoria Police made no complaint about the absence of reports and made no request for a review of the protocol for at least 12 years.

It is clear that Victoria Police paid inadequate attention to the fundamental problems of the Melbourne Response arrangements until relatively recently in April 2012 and that, when they did become the subject of public attention, Victoria Police representatives endeavoured quite unfairly to distance the organisation from them.

From the broader community perspective, criminal child abuse cannot be treated as a private matter to be resolved between the perpetrator or organisation involved and the victim, and essentially through the payment of compensation. This is true regardless of whether the abuse only comes to light years later. Society has a strong interest in maintaining and vindicating the values and laws of our community and in preventing extremely serious antisocial and criminal behaviour and the damage that it causes.

## **1.7. Confronting and exposing the truth**

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The exposure and appropriate response in a case of criminal child abuse are important for many reasons. Matters of this kind should be referred to, and investigated by, the police. Whether this leads to the successful prosecution of the offender depends on many factors, including the preparedness and ability of victims to participate. But it is vital, in both the long-term and short-term interests of the victim, to pursue this. As stated earlier, incidents of this kind must be approached with sensitivity but they must be dealt with as crimes.

Two important functions of the criminal justice system are the public attribution of culpability of the perpetrators of criminal offences and the vindication of the rights of the victims. The greater the vulnerability of the victim and the more difficult it is for them to defend themselves, the more important it is that the processes of the criminal law should operate. This is not achieved through private processes, however well-functioning and intentioned they may be. Private processes provide no unequivocal, publicly recognised accountability, give no vindication of community values and impose no public sanction.

It is evident from many of the submissions that victims and their families feel continuing dissatisfaction and sense of injustice on these grounds. This dissatisfaction can be aggravated if the process itself is not sufficiently sensitive to the real needs of victims, and if victims regard the practical outcome (in terms of financial and personal support) as unsatisfactory.

Neither of the Catholic Church’s systems—the Melbourne Response or Towards Healing—provide for clear public acknowledgement of any wrongdoing by the alleged perpetrator, regardless of the circumstances. Only in recent months have

senior representatives of the Catholic Church accepted responsibility for the Church's failure to conduct its operations with due regard to the safety of children and the considerable trust placed in them by victims and their families. The amounts of compensation have been arbitrarily set and the individual awards bear no identifiable relationship to the nature and circumstances of the assaults, the personal situations of the victims or each other and all compensation has been offered as *ex gratia* payments on a 'take it or leave it' basis.

Children cannot be expected to protect themselves against abuse and may suffer very seriously in consequence. It is the community that must vindicate their rights, both on behalf of the children and in its own interests. The community must enforce the law and its values in order to achieve these objectives. Private processes are inherently incapable of advancing these aims, but may well impede their achievement.

There has been a great deal of attention over recent years to reforming the criminal law relating to sex offences and much legislative activity in this area. Governments have made a large number of improvements at both the substantive and procedural levels. The penalties currently available appear to have adequate scope to punish even the most serious offending.

In the past, this was not the case. Prosecution in some of the older cases was statute barred (too much time would have passed since the offence). In some cases, the penalty available or imposed would, by today's standards, be considered inadequate. The community has, however, recognised this situation and there has been an observable trend to increased recognition of the criminal seriousness and consequences of such offences. Nevertheless, there is still a need for better education, particularly on the effects of abuse by those involved in the handling of such cases at every level of our criminal justice system, whether at the investigatory, prosecutorial or judicial stages. Some reform of the criminal law is also required. The Committee recommends the introduction of a new offence of grooming a child for sexual purposes.

This offence would meet the need for a charge specific to situations that would not currently be considered an offence under criminal law, but could be seen as acts of preparation before a criminal sexual abuse offence. The proposed new offence would address the seriousness of manipulative, criminally motivated conduct.

Because grooming activities may on the surface appear harmless or well-meaning, even if inappropriate, it may be difficult to establish the fact of grooming in cases where the person suspected has no prior relevant criminal history. The new law would most likely be applied where the individual did have such a history and the behaviour could be properly interpreted as part of a criminal plan to abuse. It could apply to the use of the internet or social media for this purpose.

In situations where an offender has, for example, infiltrated a family for criminal sexual purposes and has gone on to commit such an offence, then they would also be culpable for the earlier planning and deliberate behaviour, which would then be regarded as an offence in its own right. Now, the grooming would be treated as an aggravating feature of the main crime for sentencing purposes. Some would argue that this is sufficient.

The main arguments for treating grooming additionally and separately from the principal offence are that its distinct and sometimes high level of criminality should

be separately recognised, punished and recorded. It is also the case that there are often family members and others whose lives are seriously affected by the offence of grooming, and these people should properly be regarded as victims of that criminal activity.

Until the passage of the *Crimes (Classification of Offences) Act 1981* (Vic), it was a criminal offence to conceal knowledge of the commission of a felony or a serious crime by another (known as ‘misprision of felony’). At that time, the distinction between felony and misdemeanour was abolished. The *Crimes Act 1958* (Vic) was amended to reflect this and the misprision of felony provision altered to apply to serious indictable offences (those carrying a maximum penalty of 10 years or more) and only in circumstances where the person who concealed the crime received a benefit.

The Committee recommends that this offence be amended by removal of the requirement of receipt of a ‘benefit’ in cases of the criminal sexual abuse of children. Misprision of felony would therefore apply *when* the knowledge of the offence was gained, not at the time of the commission of the offence. A person who fails to report material information relating to such a crime to police and thereby concealing the crime, should be criminally liable.

Additionally individuals in positions of authority who have knowledge of a risk that a person may harm children and exposes other children to the risk of similar conduct should be criminally responsible for placing such children in danger.

The Committee has always remained conscious of the responsibility entrusted to it by Parliament to examine carefully and fairly the issues presented by the physical and sexual abuse of children in non-government organisations in Victoria. Victims have provided truly distressing narratives of abuse and betrayal and have called for justice not only for themselves but for those who still remain locked in silence or who have taken their own lives. While it has often been very emotionally difficult for them, they have now made their voices heard before their democratically elected Parliament.

Throughout the Inquiry, victims and others who gave evidence in the course of the hearings were regularly asked, ‘What does justice mean to you?’ Responses emphasised the need to expose what happened. Victims were also clear that the organisations in which the crimes took place should acknowledge the full personal and social impact of these crimes. As far as possible, those who were guilty of offending against children or who contributed to the occurrence of these crimes should be held accountable. The rights of victims should be vindicated and, to the extent that it can be achieved, there should be adequate redress available to them.

This notion of justice cannot be confined to the past or the present but must have regard to the rights of children in the future. The Inquiry recommendations are directed to the achievement as far as possible of these objectives.



# Chapter 2

## Inquiry process

In undertaking its Inquiry, the Committee acknowledged that it had been tasked with a significant responsibility. It committed itself to thoroughly examining and considering the vast amount of evidence that it received. It also emphasised that it would work cooperatively with the appropriate authorities to ensure it did not impinge on the responsibilities of other investigatory bodies.

The Committee undertook a comprehensive research and consultation process to inform its findings and recommendations. This chapter outlines the:

- scope of the Inquiry
- parallel processes of investigation
- powers of the Committee
- support to victims participating in the Inquiry
- process for gathering evidence
- treatment and analysis of the evidence.

### 2.1. Inquiry scope

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The Committee was asked to consider the systems and processes used by non-government organisations to respond to the criminal abuse of children by their employees, associates or others engaged in their activities. It also included measures for prevention. The Terms of Reference focus on religious and other non-government organisations.

The Committee considered how these organisations' practices and processes may have discouraged victims and others from reporting abuse to state authorities, and how they may have contributed to the incidence of offending and the denial of justice to victims.

The task of the Committee was to focus on systemic issues, not to report on what occurred in individual cases. In order to understand the overall situation, however, the Committee examined hundreds of individual accounts. While it reviewed these accounts, it did not assume responsibility for investigating individual allegations of criminal child abuse. As outlined below, it established a parallel process of investigation with the appropriate authorities.

#### 2.1.1. Definitions and terminology

Many of the terms and definitions used in this Report are listed in the Glossary. Terminology relevant to the scope of the Inquiry is outlined in this section.

#### **Criminal abuse of children**

The Committee interpreted the expression 'criminal abuse of children' in its Terms of Reference as including unlawful physical assaults, sexual abuse offences, such as

rape or indecent assault under the *Victorian Crimes Act 1958* (Vic), acts of criminal neglect and the facilitation of such offences by others.

Sexual and other forms of physical abuse are often linked with demeaning or degrading behaviour that include verbal and emotional abuse. The Terms of Reference allowed for consideration of such behaviour that may lead to criminal abuse or allow it to occur.

### **Victims and offenders**

The Committee recognises that language describing those who have experienced criminal abuse and those who have committed acts of abuse is not always straightforward. It acknowledges that people who have been victims of criminal abuse have also survived their experience of abuse. For the purposes of the Inquiry, the Committee refers to ‘victims’, while also recognising that victims are survivors. In regard to offenders and alleged offenders, the Committee uses the terms ‘offender’ and ‘perpetrator’ interchangeably, with clarification of whether they are alleged or proven offenders.

### **Non-government organisations**

The Terms of Reference relate to criminal child abuse that occurs within non-government organisations, including secular, religious and community organisations. Organisations can be clubs, associations, agencies and any other entity or group of entities. The nature, purpose and scope of non-government organisations are diverse and their structure and operations are wide ranging. They include:

- incorporated or unincorporated organisations
- not-for-profit or for-profit organisations
- small or large organisations
- unfunded or government-funded organisations
- local, national and international organisations.

The activities in which non-government organisations engage are equally diverse. The Committee focused on those non-government organisations that provide child-related services or activities (in areas such as welfare, education, sport and recreation), but recognised that many organisations will come into direct contact with children regardless of their purpose.

### **Religious organisations and personnel**

The Inquiry scope was broad and reached across all religious organisations and denominations. While it did not hear from all denominations, a diverse range of religions organisations gave evidence and provided information.

In view of the wide-ranging terminology for personnel across religious organisations the term ‘ministers of religion’ was generally used to refer to those who perform spiritual functions associated with beliefs and practices of religious faiths and provide motivation, guidance and training in religious life for the people of congregations and parishes, and the wider community.

Ministers of religion can include chaplains, imams, monks, priests, rabbis and Salvation Army officers. In certain contexts, the Committee refers to specific personnel in organisations, such as clergy or rabbis.

### 2.1.2. Inquiry timeframe

The Committee pledged to conduct a thorough Inquiry, not a hasty one. Its organisation of evidence, whether oral or documentary, had to be rigorous and any inferences or conclusions reached had to be soundly based.

The Committee promised to hear from all victims who wanted to appear before the Inquiry to discuss matters relevant to the Terms of Reference. There was substantial interest in the Inquiry and to ensure it heard from everyone and maintained its thorough approach, the Committee requested an extension to its tabling timeline to 30 September 2013.

In its deliberation process, the Committee sought additional information and undertook further analysis of matters relevant to its findings and recommendations. To enable it to access the information it required, a further extension to the timeframe was provided to 15 November 2013.

## 2.2. Parallel processes—allegations and investigations

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The Committee was conscious that its role did not include investigating specific instances of criminal child abuse in a forensic manner. This is the role of the police and the courts. At the same time, it was aware that people are seeking justice and that the appropriate investigatory authorities need to address allegations of criminal conduct.

### 2.2.1. Referrals to police

To ensure criminal allegations were responded to appropriately, the Committee established a referral pathway to ensure people received professional advice on pursuing criminal and civil options.

The Committee's senior police adviser and an internally appointed investigator with substantial experience as a former member of Victoria Police examined all written submissions, to identify any victims who referred to incidents of criminal child abuse that warranted further police investigation. Those submitters identified were individually contacted to ask whether they wanted their matter referred to the police. In all but one instance, those who were contacted willingly consented to Victoria Police further investigating their case.

In order to facilitate the process of referral to police, the Secretariat developed a liaison relationship with Victoria Police and the Victim Support Agency.<sup>11</sup> This was designed to ensure appropriate referral pathways that included support through the referral process and ongoing support through any investigative or prosecutorial process.

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<sup>11</sup> The Victim Support Agency is funded by the Victorian Government. The VSA funds a network of Victim Assistance and Counselling Programs throughout metropolitan and regional Victoria.

Victoria Police established the SANO Task Force to follow up specific allegations of child abuse raised during the Inquiry. As could be expected, the establishment of the Inquiry and the Task Force also encouraged more victims to report abuse to the police. Members of the Task Force attended all public hearings, liaised with witnesses and gave assistance when required. In some situations, the Committee arranged for Victoria Police to secure further information, conduct an investigation or have its internal investigator check information.

At 6 November 2013, a total of 135 matters had been referred to the SANO Task Force by the Committee as a result of Victoria Police attendance at hearings and the Committee's examination of written submissions. As the review of submissions specific to this process continues, more referrals are expected. The Committee has been informed that some cases are the subject of ongoing investigation and criminal charges have been laid in others.

### **2.3. Parliamentary Committee powers**

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The Committee had substantial powers and privileges as a joint investigatory committee of the Victorian Parliament. Under the *Parliamentary Committees Act 2003* (Vic), it had the legal power to call for any witnesses to come before the Inquiry, produce any and all documents and answer questions relevant to the Terms of Reference. These powers and privileges are equivalent to those of a court, judicial inquiry or royal commission.

The Committee has additional powers and privileges that relate to Parliamentary Privilege. This is a key form of transparency, accountability and free speech in a democratic society and is unique to the Parliament. It allows Members of Parliament and other people to seek and speak the truth in a way that other settings do not necessarily allow.

The Committee did not need to resort to its powers to compel documents or witnesses. All of the organisations and individuals approached cooperated fully. Ultimately, no individuals or organisations refused a request to attend a hearing or to provide information.

### **2.4. Support to participate in the Inquiry**

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From the outset, the Committee acknowledged that for many victims, revisiting issues relating to experiences of child abuse would be distressing and traumatic. It was conscious of the need to ensure that appropriate support was available to people who wanted to participate in the Inquiry. It established a holistic process of support for victims to ensure they were given all the available and necessary support and information they needed to participate in the Inquiry and following their involvement in the Inquiry.

#### **Support through the process**

Community engagement officers in the Secretariat provided support to victims and other Inquiry participants in a number of ways. This included:

- responding to general enquiries about the process for giving evidence and other related matters
- giving advice on procedural issues for making written submissions and participating in the hearing process
- making referrals to professional counselling support and to police.

The Committee was aware that the experience of appearing at a formal hearing could be emotionally difficult and potentially daunting for many participants. To support people through the process, the Secretariat established a pre-hearing briefing process for individuals who wanted to give evidence and relate their experience. The pre-hearing briefing enabled people to meet with Secretariat staff and other relevant support people prior to their hearing. They received an overview of the hearing process and had the opportunity to see the room in which the hearings would be held. Staff explained where they would sit when giving evidence and where the Committee members and Hansard reporters would be seated. They also saw the quiet room that was available to them before and after the hearing. Witnesses received a package of materials about the hearing process. Following their hearing, staff from the Secretariat contacted witnesses to offer them the opportunity to de-brief if they wished.

In view of the sensitive and personal information that some individuals wanted to present to the Inquiry, people had the option of giving confidential evidence in hearings or in writing. The Committee also accepted name-withheld written submissions. A combination of these types of evidence was also possible. The Committee's objective was to give victims and others as much opportunity as possible to participate in the way they felt most comfortable.

The Committee aimed to be as flexible as it could with the evidence provided by victims. Many participants reconsidered their position regarding the disclosure of highly personal and sensitive information for various reasons. The Committee respected those wishes. In order to finalise the status of the evidence, the Committee sent a letter to all participants on 5 July 2013, formally advising them that it had accepted their written submission and indicating that any requests to change the publication status of a submission needed to be made in writing to the Secretariat.

The Committee received a total of 325 written submissions from victims and their family members. Of these 254 were submitted by primary victims, with 148 public submissions, 30 requesting their name be withheld and 76 confidential submissions. The remaining 71 submissions were provided by secondary victims, including 44 public, 6 name-withheld and 21 confidential.

### **Professional support**

The Committee was conscious that many victims and their families would need professional counselling and other support during the Inquiry process. It recognised that preparing evidence, whether written or oral, could be distressing and traumatic. It wanted to ensure that people had appropriate support to write their submission or to participate in a hearing. The Committee also considered that for some people, ongoing support might be necessary after their participation in the Inquiry.

The Committee established a relationship with the Victim Support Agency (VSA) to provide support for participants throughout the Inquiry. The VSA supported victims in a range of ways, including:

- support in preparing a submission
- support to victims preparing for and attending a public hearing
- referring victims to therapeutic interventions including counselling
- linking people to support groups and locating services such as private solicitors or legal aid.

Representatives of the VSA attended all public hearings and were available at all in camera (private) hearings for victims who might need support. They were available at pre- and post-hearing briefings and provided support to individual victims when they gave their evidence.

Many participants engaged in the support provided by VSA. There were 91 victims referred from the Secretariat to the VSA. Some sought information, a large number were referred to counselling and sexual assault services and many were supported through the submission and hearing process, including support with practical arrangements such as travel and accommodation. The VSA supported 16 per cent of those referred by the Secretariat to make statements to the SANO Task Force.

The figures do not include those who made contact with the VSA but preferred not to leave their personal details and those who self-referred.

## **2.5. Evidence gathering**

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The Committee used a comprehensive range of methods to gather evidence to inform its findings and recommendations. These included calling for written submissions, holding public hearings, seeking information from organisations and examining the files of specific organisations.

### **2.5.1. Written submissions**

To assist those who wanted to make a written submission to the Inquiry, the Committee released a Submission Guide. This was published on the Committee's website and circulated to those who expressed an interest in submitting to the Inquiry.

The Submission Guide outlined the scope of the Inquiry and the processes for making a written submission. It provided a thematic outline of the types of issues about which it was seeking evidence. It listed a number of questions for individuals and organisations to consider when preparing their submissions. A copy of the Submission Guide is provided in Appendix 1.

Between 15 and 20 June 2012, the Committee called for submissions through advertisements in nine metropolitan, regional and national publications. On 12 July 2012, it sent invitations to numerous religious and other stakeholder organisations outlining the general scope and conduct of the Inquiry, its Terms of Reference and the process for making a written submission.

The Committee received submissions from a range of individuals and organisations, including:

- victims of child abuse
- secondary victims of child abuse
- victim support and advocacy groups

- concerned citizens
- religious organisations
- community groups and charities
- peak bodies
- government departments and agencies
- community service organisations
- psychologists
- independent statutory authorities in Victoria and interstate
- academics and research organisations
- legal firms and representative bodies.

The Committee was able to receive written submissions in three forms—public, name withheld, and confidential. Some submissions contained a combination of these forms and were accepted as evidence. The Inquiry received a total of 450 submissions, comprising 305 public, 38 name-withheld and 107 confidential. Three submissions were later withdrawn. It also accepted 92 supplementary submissions.

The initial due date for submissions was 31 August 2013. Due to the high level of interest in the Inquiry, the Committee extended this date to 21 September 2012. It continued to receive written submissions on a case-by-case basis until 7 June 2013.

In practice, no submission was rejected if it related to the Terms of Reference. The Committee wanted to provide as much opportunity as possible to those who wanted to participate, particularly victims.

### **Committee request for name-withheld submissions**

In addition to the submissions received through the above process, the Committee requested that a number of specific witnesses who appeared before the Inquiry at an in camera (private) hearing provide part of that evidence as a name-withheld submission. These submissions related to the experiences of their abuse, its impacts and the emotions that victims had shared with the Committee.

### **2.5.2. Hearings**

The Committee held hearings between October 2012 and June 2013. It scheduled its sequence of hearings in four phases:

1. Background information from selected experts, legal organisations and government departments.
2. Perspectives from victims of child abuse in organisations, including individual witnesses and victim advocacy organisations.
3. Organisations and experts with information about effective child-safe practices in organisations and other bodies.
4. Non-government organisations that work directly with children, regarding allegations of criminal child abuse by personnel and their systems and processes for responding to such allegations.

The Committee held 162 hearing sessions—106 public hearings and 56 in camera (private) hearings. It heard evidence in Melbourne, Bendigo, Ballarat and Geelong.

In its initial hearings between October and December 2012, the Committee received background briefings from the Department of Justice, Victoria Police and the Department of Human Services. Academic and legal experts presented valuable background information on matters such as the effects of child abuse, the scale of the problem, its risk of occurring in organisations, effective organisational processes, and the nature of offending behaviour

The Committee encouraged victims to participate in the hearing process and gave them the opportunity to express their interest in appearing at a hearing. From July 2012 the Committee accepted written expressions of interest to appear before the Inquiry.<sup>12</sup> Between November 2012 and March 2013 it heard from victims, their families and victim advocacy groups. These people gave important evidence that helped the Committee understand criminal child abuse and the reforms victims that were seeking.

The Committee took evidence about organisational systems and processes from religious and other non-government organisations. These included community service organisations, education providers, sporting bodies, recreation and leisure groups, cultural groups, and a number of religious organisations.

The Committee did not need to use its powers to direct any witnesses to attend hearings. It did request to hear from the former Bishop of the Ballarat Diocese, Ronald Austin Mulkearns. At the Committee's request, an independent neuropsychological assessment of Bishop Mulkearns was undertaken. As a consequence, the Committee was satisfied that Bishop Mulkearns did not have the capacity to present reliable evidence.

### 2.5.3. Additional information

The Committee requested additional information from non-government organisations to assist with its Inquiry and its understanding of their systems and processes. On 5 September 2012 it wrote to organisations seeking specific information about their systems and processes for handling allegations of criminal child abuse.<sup>13</sup> The type of organisations to which the Committee wrote included sporting bodies, recreational organisations, peak bodies, community service organisations, education bodies and religious organisations. The information it sought related to:

- the number of complaints the organisation or associated organisations had received and how they were handled
- any financial compensation the organisation had paid out
- the consequences of complaints and any internal disciplinary procedures
- any avenues for review or appeal of the organisation's decisions.

The majority of organisations provided a response to the Committee's request for information. These varied in length and detail. It became apparent that in some of the organisations approached there had been few if any reports of abuse. These

<sup>12</sup> To enable it to finalise its hearing schedule, from 23 January 2013 the Committee could not accept any further requests to appear at hearings.

<sup>13</sup> A copy of the letter is attached in Appendix 2.

organisations did not initially perceive the existence of any problem for them or the relevance of the Inquiry to them. This lack of perception and the potential risks it created have been addressed by the Committee in its recommendations.

Throughout the Inquiry, the Committee actively sought information via correspondence from organisations, statutory bodies, experts and government departments. This additional information related to queries about evidence or information provided, or concerned newly emerging issues.

#### 2.5.4. Accessing files

The Committee requested access to files from the Catholic Church in Victoria, the Anglican Diocese of Melbourne and the Salvation Army. It chose to focus on these three organisations because the majority of evidence and other information received related to them. In addition, evidence received from Victoria Police early in the Inquiry highlighted that the majority of allegations it had investigated related to these organisations.

The Committee examined files relating to the complaint processes and internal files of selected dioceses and orders in the Catholic Church in Victoria, as outlined in Table 2.1. An outline of the Committee's method of analysing these files is in Appendices 9 and 10.

**Table 2.1: Number of files examined**

Organisation	Number of files
Towards Healing—the Catholic Church	129
Melbourne Response—the Catholic Archdiocese of Melbourne	158
The Salvation Army	52
Anglican Diocese of Melbourne	33
Archdiocese of Melbourne	11
Ballarat Diocese	115
Christian Brothers (complaint files) <sup>14</sup>	8
Salesians of don Bosco	69
Hospitaller Order of St John of God	29
Total	604

Source: Compiled by Family and Community Development Committee.

Although the Committee examined a considerable volume of material, most of it covered the period from the early 1990s onward. Representatives of the Catholic and Anglican Churches and the Salvation Army told the Committee that they kept no, or inadequate, records of these matters before that time. In the course of the Inquiry representatives of the Catholic Church conceded that the Church had, on occasion, destroyed records.<sup>15</sup>

14 The legal team of the Secretariat viewed a significant number of files containing visitation reports and other internal documents from the Christian Brothers at the archives maintained at the Treacy Centre in Parkville.

15 *Transcript of evidence*, Catholic Diocese of Ballarat, Melbourne, 29 April 2013, p. 26.

### 2.5.5. Research

Researchers in the Secretariat conducted an extensive search of the literature relevant to the Terms of Reference. This included researching the outcomes of other relevant inquiries, reviewing academic literature, considering effective systems and processes in organisations and reviewing legislation. In addition, evidence presented to the Inquiry drew its attention to a considerable amount of published material on issues relating to criminal child abuse nationally and internationally. As noted, the Committee also asked a number of individuals and organisations with relevant expertise to give evidence and information to the Inquiry.

**Table 2.2: Evidence received and referrals made during the Inquiry**

<b>Evidence and referrals</b>	<b>Number</b>
<b>Evidence received</b>	
Written submissions	450
• Public submissions	305
• Name withheld submissions	38
• Confidential submissions	107
Supplementary submissions	92
Additional name withheld submissions requested by Committee	36
Total written submissions received	<b>578</b>
Hearings sessions	<b>162</b>
• Public hearing sessions	106
• In camera (private) hearing sessions	56
Right of reply submissions	<b>30</b>
Complaint files reviewed <sup>16</sup>	<b>604</b>
<b>Referrals</b>	
SANO Task Force (at 6 November 2013)	135
Victims Support Agency	91

Source: Compiled by Family and Community Development Committee.

## 2.6. Treatment and analysis of evidence

As far as possible, the Committee acted on objectively established evidence and contemporaneously recorded activities. The Secretariat therefore undertook an intensive examination of a considerable amount of documentation, covering issues that had arisen in a wide range of organisational and individual submissions.

<sup>16</sup> As noted, the legal team of the Secretariat viewed a significant number of files containing visitation reports and other internal documents from the Christian Brothers at the archives maintained at the Treacy Centre in Parkville. These files are not reflected in these figures.

### 2.6.1. Evidence from victims

The Committee reviewed the large volume of submissions it received and the evidence it heard and made assessments according to a number of factors, in order to get a sense of the experiences of victims and the effects of abuse on them.

It is important to note that the Terms of Reference do not ask for specific details about individual experiences of abuse and its effects. Rather, they focus on the responses of organisations to criminal child abuse. However, the Committee wanted to give victims as much flexibility as possible to present their accounts in the way they felt most comfortable. In its Submission Guide the Committee therefore advised that:

The Committee emphasises that for those people who do not want to retell their experience of abuse, the Terms of Reference enable them to focus specifically on the response to the experience by the organisation. At the same time, the Committee also recognises that for some people, retelling their experience will be an important part of their submission.<sup>17</sup>

It is important to qualify, therefore, that while many of the submissions received outlined specific experiences of child abuse and its effects on victims, others focused solely on the response of organisations to their disclosure. In addition, as a result of the flexibility the Committee offered victims in preparing their submissions, there were many variations in the type of information provided.

The Committee recognised that this would be the first time some victims had disclosed their individual experiences and that some would only be able to do so if the setting was confidential and supportive. Most had suffered extensively as a consequence of criminal child abuse, with some seriously affected socially and educationally. Many found it extremely difficult to speak about what had happened to them and the Committee appreciated their fortitude in relating their histories, their perceptions and their efforts to pursue the justice and vindication that they felt they had long been denied.

The Committee recognised that it needed to take great care to ensure that the information upon which its findings and recommendations were based was reliable and well supported. The need to provide natural justice to all involved was therefore at the forefront of the minds of Committee members throughout the Inquiry.

Much of the information presented to the Inquiry had not been tested in an adversarial process of the kind generally employed in courts or tribunals. The Committee placed considerable importance on the reliability of information. In a number of cases much time had passed since an event described by a witness had occurred or a conversation had been conducted. Many witnesses were not independent and objective observers, but victims or people advocating on their behalf. Commonly, they were deeply affected by their experiences. On some occasions they relied in part on hearsay, personal beliefs and impressions formed over time and while under great stress.

Many factors can influence the accuracy and reliability of a person's description of an incident, even one in which they may not have been involved or which took place in the most favourable situation. For victims in this Inquiry, the level of involvement

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<sup>17</sup> Family and Community Development Committee (2012) *Submission Guide, Inquiry into handling of child abuse in religious and non-government organisations*. (See Appendix 1).

and the circumstances were very different. The Committee was alert to the potential for exaggeration, distortion of perception or inaccurate recollection.

The Committee does not intend to cast doubt upon the integrity or honesty of any of those narratives, but to emphasise the care that it took before relying on any single piece of information. The Committee always took into account the extent to which a piece of evidence was supported by, or conflicted with, other evidence. It also carefully considered the significance of any finding that might be influenced by any given piece of evidence.

Although the effects of abuse were deeply personal to each victim, the descriptions and narratives related to the Inquiry were very similar and often involved the same perpetrators or institutional settings. In general, the Committee observed a high level of credibility in, and consistency between, the many individual narratives of the circumstances and personal consequences of criminal child abuse.

### **2.6.2. Treatment of sensitive evidence**

The Committee withheld some material from publication, or redacted (blocked out) passages from the written submissions and transcripts of oral evidence. This process required careful consideration of each submission. Importantly, the public character, transparency of the Inquiry, the information gathered and the individual perspectives presented had to be maintained. However, the Committee needed to ensure that Parliamentary Privilege was not abused and that natural justice was not denied to any individuals or bodies mentioned. It needed to avoid unfairness, reputational damage or unnecessary embarrassment to people identifiable through the dissemination of unsupported allegations or innuendo. On some occasions the Committee redacted material because of the possibility that publication might affect ongoing or potential police investigations.

The task of processing submissions for publication on the Committee website is a time-consuming one and will continue after the tabling of this report. The delay between the receipt of many submissions and their public release has been a matter of considerable concern to the Catholic Church in Victoria and those involved in the Melbourne Response. They have expressed apprehension that they might be denied an adequate opportunity to respond to assertions made in subsequently publicly released submissions or transcripts.

The Committee offered representatives of the Catholic Church the opportunity to view any unpublished public submissions and transcripts relevant to the Melbourne Response or themselves and on behalf of Cardinal George Pell and Archbishop Denis Hart before these representatives appeared before the Committee. The Catholic Church accepted this offer and the documents were made available. Arrangements were made on 11 April 2013 and confirmed by letter on 15 April 2013 for relevant public submissions received up to that date and transcripts that had not been published to be available for inspection on a confidential basis before being placed on the website. The Committee also arranged for the office of Cardinal Pell to view relevant public submissions before he presented his evidence.

### Right-of-reply submissions

Unsurprisingly, some written public submissions and oral presentations contained assertions that were disputed. Some contained assertions or imputations of an adverse or hostile nature about named or affected people or organisations. In each of these situations, the Committee gave an opportunity for a right of reply, usually through publication on the Inquiry's website.

The Committee received 30 right-of-reply submissions from a number of individuals. Most individuals were associated with an organisation, although two were independent of any organisation. Twenty-five submissions were from individuals associated with the Catholic Church.

On 5 July 2013, the Committee sent a general letter to participants who had made a written submission, indicating that it had formally accepted their submission and would publish on its website the names of all people who had made public written submissions yet to be approved for publication. It also explained that if the content of submissions was difficult to understand following extensive redactions due to multiple adverse reflections or inappropriate content, the Committee could choose not to publish the submission.

The letter told participants that any person or organisation that was apprehensive that they may have been the subject of an adverse reflection in an unpublished public submission would be given an opportunity to examine the submission in confidence and to exercise a right of reply. The Committee asked for any right-of-reply submissions to be lodged by 30 July 2013. The Committee also added this information to its website.

On the question of using evidence subject to a right of reply, the Committee approached disputed assertions with considerable circumspection. It did this whether the dispute related to a question of fact or to the attribution of a specific motivation or attitude to an individual or body. The Committee drew adverse conclusions only when it was satisfied of their accuracy and reliability.

### 2.6.3. Analysis of evidence—systemic focus and evidence from individuals

Of fundamental significance to the processes of the Inquiry was the requirement under the Terms of Reference that the Committee focus its attention on any *systemic* issues that may be identified in religious and non-government organisations with respect to the criminal abuse of children. The Committee was *not* intended to operate as a forensic investigative body that would explore and make findings of fact in particular cases.

This did not mean, however, that the Committee saw the individual experiences of victims, the general circumstances of their abuse and the manner in which they were treated within organisations as unimportant to its deliberations. The Committee believed it necessary to consider all of these questions. There were several reasons for this. Central to the approach of the Committee was a concern that victims and others affected should have a genuine opportunity to relate their personal experiences, impressions and perspectives concerning the abuse and the manner in which their complaints were handled. Further, it is not possible to understand how an organisation

approaches such issues and assess the adequacy of its responses simply by examining its formal structures and protocols. Even if these form a satisfactory framework for resolving problems, ultimately it is the manner in which an organisation handles matters on a day-to-day basis that demonstrates its practices, values, culture and priorities.

### **Inferences in the absence of records**

The Committee considered the inferences that could be properly drawn from the absence and destruction of records. Based on all the information it had acquired, the Committee considered whether individuals may have followed these practices as a matter of policy in order to protect the organisation or perpetrators.

In the case of the handling of abuse cases in the Catholic Archdiocese of Melbourne, for example, the Committee concluded that this was the most reasonable inference to draw. The Committee learnt that Archbishop Frank Little, who occupied the position of Archbishop of Melbourne from July 1974 to July 1996, a period in which abuse is known to have occurred, kept no records until 1993. He dealt with all complaints of abuse personally and in strict confidence. Bishop Mulkearns in Ballarat adopted a similar approach. It is clear on the basis of credible evidence that each was aware of reports of abuse by priests in their respective dioceses and that each tried to quarantine that information as far as possible. The Committee could not determine precisely what these two men knew about individual cases. Archbishop Little is now deceased and, as explained in Section 2.5.2, Bishop Mulkearns was unable to give evidence to the Inquiry.

Although there could be dispute about some individual cases, the Committee concluded that there is more than sufficient reliable information upon which to base the inference that Catholic Church leaders knew a problem existed, that the absence of files was deliberate and that Church leaders sought to protect the organisation and the perpetrators. Indeed, Cardinal Pell, Archbishop Hart and Bishops Peter Connors and Paul Bird have effectively conceded that this was the overall situation. This inference is also consistent with the conclusions of inquiries conducted in other countries and with the approach directed by the Vatican in its 1962 Instruction *Crimen sollicitationis*. Other Church religious orders in which abuse was reported dealt with cases in an almost identical fashion.

The manner in which the Committee dealt with this issue reflects its approach to the issues and evidence generally.

The Committee heard many allegations of criminal child abuse and inadequate handling by organisations, yet it did not know if these were properly founded or possible to prove. But in addition to the evidence gathered by the Committee, as the Inquiry proceeded senior leaders of the Catholic Church conceded that there had been many incidents of its religious personnel abusing children; that this abuse extended over a period of many years; that the Church had adopted a policy of cover-up; and that this involved concealing offending, and moving priests and other religious to areas where further abuse then occurred. Representatives of the Anglican Church and Jewish religious bodies also conceded that there had been criminal child abuse in their organisations.

When forming a general picture as the Inquiry progressed, the Committee took into account the high degree of consistency between descriptions of events and their effects made by a large number of witnesses whom the Committee regarded as both credible and independent.<sup>18</sup> Obviously, for the reasons mentioned above, there were some individuals whose narratives the Committee did not, for one reason or another, find to be reliable. The Independent Commissioner of the Melbourne Response, Mr O’Callaghan QC, advanced specific criticisms of particular witnesses and their submissions in his right-of-reply submissions. The Committee took these into account. Such cases also served to highlight the general need for care in assessing evidence.

The vast majority of submissions received by the Inquiry related to the Catholic Church. Clear and powerful themes emerged, almost all of which were supported by objective evidence, and ultimately were accepted by Church authorities. In this context we should mention that the Church’s position underwent a notable evolution as evidence emerged during the course of the Inquiry—namely, an increased preparedness to accept some measure of responsibility for what had occurred.

## 2.7. Royal Commission

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On 12 November 2012 the Australian Government announced that it would establish a Royal Commission into Institutional Responses to Child Sexual Abuse.

The Committee was conscious that the Royal Commission, given its scale and scope, would take time to commence. The Committee made a decision to continue its work on the Inquiry and its focus on reforms to Victoria’s laws, policies and oversight mechanisms.

On 21 November 2012 the Committee Chair wrote to all Inquiry participants advising of the Committee’s decision to continue its work, and attached a copy of its Frequently Asked Questions (FAQs). The FAQs stated that people were welcome to change their mind if they had expressed an interest in participating in the Inquiry (either through its hearing or submission process) but now preferred to wait for the Royal Commission. It encouraged those people to contact the Secretariat to discuss their options. No one contacted the Secretariat to withdraw their decision to participate in the Inquiry, but in 2013 seven people decided not to give evidence at a hearing and to wait for the Royal Commission.

Some Inquiry participants wanted to know whether the Committee could forward their evidence to the Royal Commission. The Parliament of Victoria determined that due to Parliamentary Privilege, and also in the case of confidential evidence, the Committee is unable to make its evidence available to the Royal Commission.

The Committee trusts, however, that this Report will be of great use to the Victorian community and the Royal Commission.

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<sup>18</sup> Employing broadly the form of reasoning approved by the High Court of Australia in the criminal case of *Hoch* but adapted to the present context. *Hoch v The Queen* (1988) 165 CLR 292.



# PART B

## VICTIMS' EXPERIENCES, IMPACTS AND THEIR PURSUIT OF JUSTICE





Victims of crime seek justice for the harm they suffered and the ongoing consequences of the crime. How that justice is provided is important and can assist in their recovery and efforts to rebuild their lives after experiencing criminal child abuse.

## **Experiences**

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Central to the Inquiry has been the experiences of victims who have been subjected to physical, sexual and emotional abuse in their childhood. The Committee heard graphic accounts of the horrific and traumatic experiences of victims abused as children in the care of non-government organisations.

While not required by the Committee's Terms of Reference, many victims were willing to tell their accounts of abuse to the Inquiry, which were important in helping the Committee to understand their feelings of fear and helplessness. In circumstances of sexual abuse, victims explained that they lacked the intellectual framework as a child to understand their abuse. They spoke of subsequent feelings of guilt, shame and embarrassment.

Sexual and other criminal offences committed against children are not a new phenomenon. Conduct of this kind has been condemned by society for centuries. It has attracted severe penalties under our criminal law for a long time.

Chapter 3 outlines the broad experiences of physical, emotional and sexual assault of children that the Committee heard, with some specific examples of individual experiences. While graphic and confronting, the vulnerability of these accounts of children exposed to criminal abuse is clearly evident.

## **Impacts of abuse**

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The impacts of their experiences of criminal child abuse are significant and the Committee heard many accounts of the harm that it caused them at the time and throughout their life.

Knowledge of the effects of criminal abuse on children has been in the public domain since the 1960s. Children subjected to criminal abuse in organisations often experience lifelong impacts that include mental health problems, addiction issues, relationship difficulties, issues with anger and difficulties with life skills, education and employment.

In addition, the consequences of child abuse that is suffered in secular and religious organisations can be intensified due to the often high moral standing of the perpetrator. More specifically, abuse by a trusted religious figure can destroy a child's belief that the world is a safe place and makes the world seem chaotic and unstructured.

The majority of evidence received by the Inquiry related to the criminal abuse of children within the Catholic Church in Victoria. Most accounts were provided by adult victims who disclosed their experience a long time after the abuse occurred. For many it was the first time they had disclosed their abuse. The Committee valued the courage of the hundreds of victims who shared their experiences, contributing significantly to its knowledge and understanding of the crime of child abuse in non-government organisations.

The impacts of criminal child abuse in organisations also extend to families. Parents told the Inquiry of feelings of profound guilt that they had not protected their child and had been drawn in by the grooming tactics of the perpetrator. Some victims of child abuse blamed their parents for not protecting them. Some families have been fragmented and damaged as a consequence of the abuse a family member has experienced.

The Committee heard that some local communities had become divided as a consequence of the responses of organisations to criminal child abuse, particularly in religious organisations. Members of some religious communities spoke of a loss of trust for organisations they had previously held in high regard.

Chapter 4 outlines what the Committee heard regarding the extensive impacts of criminal child abuse. It considers it is important to understand and acknowledge the profound, and often lifelong, consequences of physical, emotional and sexual abuse on children.

## **Achieving justice**

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Victims of criminal child abuse by personnel in trusted organisations told the Inquiry they were seeking justice for what they often felt was a loss of innocence as a child.

Chapter 5 outlines the justice that victims sought, including their views on what justice means to them individually. The Committee heard, however, that many victims were not given the basic levels of respect they expected. Organisations often did not assume responsibility for the harm victims had suffered. Victims spoke of ‘unfinished business’ and resentment resulting from the inadequate response by organisations to their disclosure of abuse they experienced by personnel within the organisation.

Adding to the sense of injustice that victims experienced was their feeling of betrayal by organisations, particularly the Catholic Church, that were inconsistent in their approaches to victims and offenders—giving inadequate support to victims, yet providing pastoral, legal and financial support to offenders. They spoke of unfulfilled promises by leaders in the organisation and the trivialising of their experiences.

Victims provided numerous recommendations for reforms to the handling of criminal child abuse by non-government organisations. The Committee considered what victims and their families were seeking in its consideration for improvements to systems and processes.

# Chapter 3

## Victims and their experience of criminal child abuse in organisations

### AT A GLANCE

#### Background

In order to consider the most appropriate response to victims of criminal child abuse occurring within religious and non-government organisations, it is necessary to consider the experiences of victims. The purpose is not to make specific findings regarding individual experiences, rather it is to ascertain if there are common characteristics or particular areas that non-government organisations need to address in preventing criminal child abuse and responding to complaints.

The Committee was provided with many accounts of criminal child abuse suffered while in the care of religious and non-government organisations. The majority of these accounts related to events that had occurred in the 1960s through to the 1980s, often when they were children in the care of ministers of religion in orphanages and institutions or at schools and parishes.

Religious and non-government organisations that provide care to children traditionally have been held in high esteem, with its representatives being trusted and respected members of the community. In these environments, children were made vulnerable to criminal child abuse in the following ways:

- The environment in which the child was living in the institution or boarding school was such that opportunity to criminally abuse children arose with no adult to whom a child could complain.
- In some circumstances, there was the opportunity for perpetrators to ingratiate themselves with families, ensuring access to the children.

The experiences of victims reveal that in both instances perpetrators were able to take advantage of their revered position and ensure that victims either did not reveal their abuse or were not believed when they attempted to do so.

The Committee heard that the occurrence of criminal child abuse was not limited to one-off incidents and that in one particular area, the Ballarat Diocese, the systemic nature of this abuse is undeniable.

### 3.1. Common experiences

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Victims who appeared before the Inquiry came from a range of social backgrounds and geographical locations. This is consistent with research that suggests that because children rely on adults to meet their basic needs, all children are at risk of criminal child abuse.<sup>1</sup> At the same time, however, it is important to emphasise that most children are safe from abuse in organisations.

As described in Chapter 2 of Part A, the Committee provided flexibility in how victims could approach their evidence to the Inquiry. As a consequence there were many variations in the type of information provided. Some were full accounts of the abuse experienced—the location, the perpetrator, when the abuse occurred and their age at the time. Others provided brief explanations of a specific instance of criminal child abuse and focused on how non-government organisations responded to their experience.

Despite the varied nature of the submissions received, in reviewing them the Committee was able to identify trends in the experiences of the victims. It considered:

- the age of the victim when they were abused
- the nature of the abuse reported in their evidence
- the context in which the abuse occurred
- information about the perpetrator of the reported abuse.

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1 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*. *Child Abuse Prevention Issues series*. vol. 25, Spring 2006, Melbourne, Australian Institute of Family Studies, p. 4.

The Committee did not seek a detailed account of individual victims' specific experiences of criminal child abuse and many did not provide this information. Table 3.1 outlines the Committee's analysis of the written submissions to the Inquiry regarding the victim's age, the nature of the reported abuse, the time period in which it occurred and the context.

**Table 3.1: Submission analysis**

Characteristic	Variable	Percentage
Age of victim	0–4 years	5.4
	5–6 years	12.2
	7–9 years	20.5
	10–12 years	28.9
	13–15 years	20.6
	16–17 years	4.1
	Unknown	8.3
Nature of abuse experienced	Physical	23.6
	Sexual	48.1
	Combination <sup>2</sup>	27.4
	Unspecified	0.9
Approximate time period of reported abuse	1930s–1940s	9.2
	1950s–1960s	57.8
	1970s–1980s	25.4
	1990s–2000s	0.4
	Undated	7.2

Source: Compiled by the Family and Community Development Committee.

Most of the victims who participated in the Inquiry were male, and the large majority of reported abuse occurred in Christian affiliated organisations. Only 10 per cent of victims who provided submissions to the Inquiry reported their abuse to the police. The Committee noted that this reluctance to report criminal child abuse to police is consistent with research findings.

Many of the submissions contained graphic details of horrendous experiences of criminal child abuse. Legal advocate for victims, Ms Judith Courtin, summarised the experiences of child abuse victims in Ballarat. These experiences reflected the broader evidence to the Inquiry. She stated that:

With the physical assaults, the ages of the children ranged between 5 years of age and 16 years of age, and some examples of these physical assaults were bashing and punching with closed fists to many parts of the body, but the head, the neck and the buttocks were preferred ...

The victims described much of this treatment as torture ...

<sup>2</sup> Including physical, sexual and emotional abuse.

The sexual assaults and the rapes consisted of penile oral rape of the child, penile anal rape of the child, digital anal rape of the child, forced masturbation by the child of the offender, masturbation of the child by the offender, and fondling of genitalia both through and under clothing. The age range of these children at the time was between 5 years of age and 14 years of age.<sup>3</sup>

### **3.2. Delayed understanding and reporting**

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Many of the written submissions received by the Inquiry marked the first time victims revealed the fact they had been abused decades earlier as children. No doubt many victims of criminal child abuse have passed away with their account remaining a painful secret.

The Committee heard evidence from a woman who was 83 years of age who explained that she had been subjected to criminal child abuse when in the care of a non-government organisation when she was seven years old. It was the first time she had disclosed her experience of abuse.<sup>4</sup>

#### **3.2.1. Delayed understanding**

In instances of criminal child sexual abuse, victims told the Inquiry they were often confused about what was happening to them, and that while they had a sense that it was wrong, they were too young to know or describe the experience. For example, one victim explained that:

I had no concept of sex, as it were. This was something that just happened. I could not name it, I could not verbalise it, I could not articulate it, but I knew I needed to run away.<sup>5</sup>

Another victim, Mr Philip Nagle, also told the Committee that ‘I did not know what was happening to me was sex. I knew nothing about that.’<sup>6</sup> Mr Tim Lane similarly stated that ‘I was only five and still did not quite understand what he was doing, really.’<sup>7</sup>

The Deputy Director of the Australian Institute of Family Studies (AIFS), Dr Daryl Higgins, indicated that this experience is not unique. He explained that ‘There is also a lack of recognition sometimes of the experience as abuse, and it is often not until adulthood that people will actually recognise, “What happened to me was not my fault; I didn’t ask for it, and it is abuse.”’<sup>8</sup>

#### **3.2.2. Concealing the abuse**

The Committee heard that perpetrators of criminal child abuse used different methods to prevent their victims from disclosing the abuse. It identified trends in the physical location or context of the criminal child abuse.

Victims who experienced criminal child abuse in institutions said that perpetrators would often tell them they were dirty and unwanted. Victims told the Inquiry that

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3 *Transcript of evidence*, Ms Judith Courtin, Ballarat, 28 February 2013, p. 3.

4 *Transcript of evidence*, Ms Valda Lang, Melbourne, 1 March 2013, p. 3.

5 *Submission S465*, Name withheld.

6 *Transcript of evidence*, Mr Philip Nagle, Ballarat, 7 December 2012, p. 4.

7 *Transcript of evidence*, Mr Tim Lane, Ballarat, 28 February 2013, p. 2.

8 *Transcript of evidence*, Australian Institute of Family Studies, Melbourne, 19 October 2012, p. 3.

they felt isolated and worthless, and felt a lack of genuine love and affection in their lives. Perpetrators often threatened the victims with more abuse if the victim attempted to report the matter.

Perpetrators who abused children in a parish environment tended to use different tactics to hide criminal child abuse. They tried to appease the child and they told the victim that their sexual relationship was their 'little secret' and that no one need know about it. Quite often, the minister of religion or lay employee would shower the child with attention to make them feel special.

Regardless of the physical location or context of criminal child abuse, many victims were told by the perpetrator not to report the criminal child abuse because no one would believe them, including their parents.

### 3.3. Victims' experiences

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Graphic accounts of childhood experiences were provided to the Inquiry dating as far back as the 1920s. Victims recalled the harrowing details of the abuse they had suffered at the hands of those responsible for their care. The criminal child abuse occurred in a number of contexts, though principally while the child was living in institutional care, attending school or participating in parish or other community activities.

One witness told the Inquiry he was aware of criminal child abuse occurring in 1953 in the Ballarat area by the Christian Brothers. He explained that:

... these sex crimes were not happening over years; they were not happening over decades; they were happening over generations. Pat is the oldest victim to come forward that we know about. He is in hospital at the moment, and he is very ill, partly due to stress and anxiety, but partly due to injuries to his body. He is just outraged that this has gone on, not only since he was at school but clearly it happened before him and undoubtedly it would have happened ever since the Church and the Christian Brothers came to Ballarat.<sup>9</sup>

Mr Alfred Stirling, a resident at Bayswater Boys Home, provided an example of criminal child abuse that occurred in institutions:

Whilst in care at both facilities [operated by the Bayswater Boys Home], I was abused mentally, sexually and physically by the staff. I was not privy to the names of the staff as I was only ordered to refer to them as BOSS. We were given food that was not even fit to be given to animals: meat covered with maggots, porridge with [weevils], mouldy bread and rotten vegetables. Floggings and beating on a daily basis, scars on my body bear the horrific memories. At night I would hear screams and crying, hoping that my door would not be opened, that that night I would not be sexually abused. Although, I was no exception, I was sexually abused many times.

Today I sleep with an axe and knife under my bed. My family has suffered by side effect behaviour from the abuse.<sup>10</sup>

In the submissions received by the Committee, this description of experiences growing up in institutions was, regrettably, common.

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<sup>9</sup> *Transcript of evidence*, Ballarat & District Group, Ballarat, 28 February 2013, p. 8.

<sup>10</sup> *Submission S054*, Mr Alfred Stirling, p. 1.

In its analysis of submissions, the Committee identified that the nature of the abuse experienced by victims that participated in the Inquiry varied depending on the context in which it occurred. It heard that approximately:

- 37 per cent of reported abuse occurred in institutions
- 39 per cent of reported abuse occurred in schools
- 22 per cent of reported abuse occurred in parishes
- 2 per cent did not specify the context.

### 3.3.1. Institutions—orphanges, cottage homes and other institutional care

There were a range of institutions in operation prior to the 1990s. Most institutions were established to care for children who were wards of the State. Table 3.2 outlines the type of institutions that existed prior to the 1990s. Institutions were largely operated by non-denominational and Christian organisations. The phasing out of institutional care for children is discussed further in Chapter 6.

**Table 3.2: Types of institutions prior to the 1990s**

Type of care	Overview
<b>Children's home</b>	The term commonly used from the 1920s to the 1970s to describe institutions providing out-of-home care to children.
<b>Orphanage</b>	An institution offering dormitory-style accommodation for children.
<b>Cottage care / cottage home</b>	A model of institutional care that began in the United Kingdom in the late nineteenth century. It was seen as an alternative to large-scale dormitory-style accommodation (although cottage homes could house up to 40 children).
<b>Family group home</b>	A model of care from the 1940s where small groups of children were accommodated in buildings the size and form of an average family home. The family group home emerged out of concern at the lack of individual attention given to children in largescale institutions.
<b>Farm school</b>	A model of residential care for children based in a rural area that trained children (typically boys) in agricultural duties. Farm schools usually comprised a number of cottages in which children lived with cottage parents.
<b>Receiving home or reception home</b>	An institution designed to provide short-term care for children before they were sent to a longer-term placement (typically a foster home). From the 1950s this type of institution was often called a 'reception home'.
<b>Reformatory or youth training centre</b>	A children's institution for children convicted of criminal offences used to keep them separate from the adult prisoner population. They were also used for children judged as needing strong discipline. From the 1950s they were often referred to as a 'youth training centre'.

Source: Adapted from the Department of Families, Housing, Community Services and Indigenous Affairs the *Find and Connect Australia* website.<sup>11</sup>

11 Department of Families, Housing, Community Services and Indigenous Affairs (2013) *Find and Connect Australia*, Accessed on 14 August 2013 from [www.findandconnect.gov.au/](http://www.findandconnect.gov.au/).

Perpetrators of criminal child abuse tended to commit a combination of physical and sexual abuse and victims were often subject to both by the same person. Beltings and canings were the most common instances of physical abuse and this was reported to have occurred regularly. Other acts involved locking a child in a room without a blanket or forcing the heads of bedwetters into their dirty linen. Sexual abuse took all forms including anal penetration, and participation in acts of oral sex or masturbation.

The Committee heard that while the majority of perpetrators of criminal child abuse in orphanages and cottage homes were male, physical and sexual abuse was engaged in by females. Victims of criminal child abuse in cottage homes experienced a higher level of abuse by female perpetrators than any other setting. They included nuns from catholic-affiliated orphanages, a female cottage parent, or female officers in the Salvation Army. Criminal child abuse by female perpetrators was not reflected in the submissions to the Inquiry but was identified in the files reviewed by the Committee.

The Committee received submissions from victims who had attended a number of institutions. Many of the accounts related to experiences of growing up in institutions or orphanages operated by the Salvation Army including Bayswater Boys Home and Box Hill Boys Home. Individuals also related experiences of being placed in the care of the Christian Brothers at St Vincent de Paul Boys Home in South Melbourne, St Augustine's Boys Home in Geelong or the Franciscan Brothers at Morning Star in Mt Eliza. The Committee heard accounts of criminal child abuse perpetrated by both female and male ministers of religion in institutions who were responsible for children's care.

There are a variety of reasons and circumstances that result in children being placed in care. For many victims, the State had intervened due to parental neglect, illness, abandonment, poverty or domestic violence. Many of these children, who were either temporary or long-term wards of the State, were placed in institutions run by religious or non-government organisations. Others were placed in these institutions voluntarily by family or parents.

One common feature applying to all children sent to these institutions was that they had no avenue to make a complaint or to reveal the criminal child abuse they were suffering. Perpetrators of abuse exploited this impossible position in which these children found themselves. Abusers knew their authority would never be questioned and that the child would or could not complain. They could also be confident that the State, which placed significant trust in the abuser's organisation, would not intervene. There appears to have been either limited or no State monitoring of these non-government organisations.

The Committee was informed of an example of a child being physically assaulted by a police officer when apprehended and then returned to the institution.<sup>12</sup>

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12 Care Leavers of Australia Network (CLAN) outlined the experience of an orphanage resident who sneaked out of the orphanage after an incident of criminal child abuse and made his way to South Melbourne police station to report the abuse. He described how his report was received by the police: 'a detective, Brian Murphy, came into the cell and slapped me a number of times before punching me in the stomach and told me not to bother coming to the police station with such cock-and-bull stories'. *Transcript of evidence*, Care Leavers of Australia Network (CLAN), Melbourne, 17 December 2012, p. 9.

Mr Wayne Davis, a resident of Morning Star Boys Home operated by the Franciscan Brothers in Mt Eliza, provided another example of treatment by police and their response. He and some other boys escaped from the home and were apprehended by police. The observations by police members finally exposed the criminal child abuse. Mr Davis explained:

I have nothing but praise for the police who picked us up. They went to fingerprint us because we were escapees, and when they opened my hands and put them on the fingerprint paper blood went everywhere because of the blisters all over my hands. They could not believe that, and then we told them about the kidneys. They did not believe us. They lifted all our shirts. Every one of us had bruised kidneys. We were all urinating blood, and we all had blisters all over our hands. We did not mention the sexual assault. I did not; I do not know about the others. I did not, because I was embarrassed by it. I could not tell anyone. They asked us what had happened. I told them everything bar that sexual thing ...

So getting back to the police, we told them all this, so they said, 'We want to get this out in the open' ... So when they got up I remember one of the questions was, 'What condition were we in when you found us?' They told them about the rags, we were starving, blisters, the bruised kidneys, blah, blah, blah. 'Could we have got in that condition in the amount of time we were out?' —'No, it was impossible. They looked like they had been in the jungle for six months', was the answer. And so it went ...<sup>13</sup>

Later, the witness indicated that he could not compare the treatment at Morning Star Boys Home with what he experienced at Turana (juvenile detention centre) or adult prison, with the former being much worse and more brutal than either of the other correctional institutions.

### 3.3.2. Boarding and parish schools

The Catholic Church is and has been responsible for the education of a significant number of children in Victoria.<sup>14</sup> Many primary schools are attached to Catholic parishes in both metropolitan and rural areas of the State. Historically, some of these primary schools engaged members of religious orders who were residing in the parish as teachers. Also, the parish priest was frequently involved in the affairs of the school, including the religious education of the children.

A significant number of secondary students are educated at Catholic schools administered by religious orders. These schools function as both day and boarding schools, the latter more commonly in rural areas of Victoria. Historically, students at these secondary schools, mainly single-sex schools, were taught by members of these religious orders and were cared for by them where boarding facilities were available.

The Committee heard accounts of cruel physical and psychological treatment perpetrated by members of a number of religious orders, including those responsible for the education of girls. The vast majority of information the Inquiry received related to the Christian Brothers and the Salesians of Don Bosco and their treatment of boys in the schools with which they were either affiliated or responsible for administering.

<sup>13</sup> *Transcript of evidence*, Mr Wayne Davis, Melbourne, 25 March 2013, p. 2.

<sup>14</sup> In 2012 the Catholic Church had responsibility for the primary and secondary education for about 146,400 students enrolled in 328 Catholic schools in the state. *Submission S185*, Catholic Church in Victoria, p. 95.

The Christian Brothers have been operating schools, predominantly boys' schools, in Victoria for over 100 years. Registered in 1929, Salesian College Rupertswood, in Sunbury, is the oldest Salesian education institution in Australia. In the early 1990s the school became a co-educational college, having previously existed as a day/boarding school for boys.

The Committee held hearings at Ballarat, an area where the Christian Brothers were responsible for the education of a significant number of boys at both primary and secondary level. A group submission was provided to the Inquiry regarding alleged physical and sexual assaults perpetrated in areas around Ballarat—the submission also summarises the relevant schools, the dates during which the conduct took place and the alleged perpetrators of the abuse. The schools noted in Ballarat were St Alipius Primary School, St Patrick's Secondary College and St Paul's Technical College:

- One victim was abused by the same perpetrator at different schools.<sup>15</sup>
- One individual was abused between the ages of 11–14 by three different clergy/brothers in Ballarat.<sup>16</sup>

The documented criminal child abuse occurred between 1965 and 1983, and the age range of the children was between 5 and 16 years.<sup>17</sup> The Committee was provided with accounts containing similar allegations in respect of other schools that were administered by the Christian Brothers, particularly when it conducted hearings in Geelong and heard accounts relating to St Joseph's College.

One startling fact for which the Christian Brothers could provide no explanation related to St Alipius, a primary school connected to that Church in Ballarat East. During 1973, the principal and Grade 6 teacher was Br Robert Best, the Grade 5 teacher was Br Stephen Farrell and the Grade 3 teacher was Br Gerald Leo Fitzgerald. Additionally, the school chaplain was Fr Gerald Ridsdale. Extraordinarily, the only teacher not subsequently suspected or convicted of sexual abuse of children teaching at that school was a female lay teacher. In evidence to the Inquiry, Deputy Province Leader of the Christian Brothers, Br Julian McDonald, said:

I have no adequate explanation for that ... It is certainly an accident of history. It was a terrible, terrible situation.<sup>18</sup>

The Committee was concerned that the Deputy Province Leader could not provide an explanation regarding how three teachers and the school principal who were perpetrators of criminal child abuse could be working at the school at the same time in 1973.

The Salesians of Don Bosco is an order made up of lay religious (brothers) and priests. Material provided to the Inquiry raised concerns about the protection by the Salesians of alleged perpetrators overseas, which is discussed further in Chapter 21 in Part F. As the criminal convictions of former principal of Rupertswood College Fr Frank Klep illustrate, the occurrence of abuse at Rupertswood during this period cannot be denied. Fr Klep was convicted on 14 counts of indecent assault occurring between 1973 and 1979, relating to 11 adolescent boys who were placed in the infirmary at the school, of which Fr Klep was in charge. Of the 14 counts, six of them were

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15 *Transcript of evidence*, Ms Anne Murray, Ballarat, 28 February 2013, pp. 9–10.

16 *Transcript of evidence*, Mr Stephen Woods, Ballarat, 28 February 2013, p. 8.

17 *Submission S317*, Ballarat & District Group, p. 2.

18 *Transcript of evidence*, Christian Brothers, Melbourne, 3 March 2013, p. 3.

representative counts. Representative counts mean sexual assault perpetrated on the victim occurred on more than one occasion.<sup>19</sup>

Offenders who were members of religious organisations were confident that they could abuse their victims and that their activities would not be revealed. Victims were too terrified to report their crimes or were fearful of what people would think of them. Victims have explained that upon reporting criminal child abuse to other members of the religious organisation, no action was taken or that they were physically punished. Others told their parents but were not believed.<sup>20</sup>

### 3.3.3. Parish activities

Parishes operate within local communities and, regardless of the religious beliefs of members of the community, parish priests are usually recognised as respected leaders who represent ‘good’ values and make a positive contribution to society. The fact that parents endorsed these values reinforced the respected status of parish priests and often strongly influenced the young child’s failure to disclose abuse by a priest. Consequently, a situation ripe for criminal child abuse arose, as the trusted offender could take full advantage of his revered status and conduct criminal activities without fear of challenge or exposure.

Many of the children who attended primary schools attached to the parish were also involved along with family members in other parish activities. As is evident from a number of the submissions received, it was not uncommon for the parish priest to be a regular visitor to the homes of parishioners and for him to share meals or other important family occasions. Some perpetrators took full advantage of this hospitality relationship and ingratiated themselves with the family. Such conduct or ‘grooming’ of both the child and parents was able to occur because of the family’s unquestioning trust in the priest and because of the good standing of the religious organisation. This concept of grooming is considered in depth in Chapter 22 of Part G.

This attitude towards parish priests is illustrated by the remarks of a witness whose brother was a victim of the abuse of Fr Ridsdale in the Ballarat Diocese:

When Anthony told Mum when he came home from the camp, I think on that night, that he did not want to go on a camp anymore because Father Ridsdale made him sleep in the tent, and Mum’s reaction was, ‘Oh, that’s lovely darling. Wasn’t that kind of him to comfort you?’ And I think from that moment on, it was probably a profound moment, Anthony knew that there was not an understanding and not even a beginning of an understanding of the horror that went on in that tent and how it changes someone’s mind, and how the culture at that time could not possibly see that this was going on.<sup>21</sup>

Children were actively encouraged to become involved in parish activities, particularly as altar boys. In addition, children were alone with a priest when they administered the sacrament of confession. The Committee heard that some activities involved a priest driving children to assist him in his parish duties, particularly in rural areas, providing an opportunity for criminal child abuse to occur. For example:

On the first intimation of abuse, O’Donnell found an excuse to have me alone in his car while he took communion to an elderly lady at Tallarook. While returning via a

<sup>19</sup> *DPP v Klep* [2006] VSCA 98.

<sup>20</sup> *Submission S317*, Ballarat & District Group, pp. 5–6.

<sup>21</sup> *Transcript of evidence*, Ms Anne Murray, p. 9.

back road to Seymour he slowed the car, let go of the steering wheel and lunged at me. I shrank away, said ‘the car’ which was running off the road. He desisted and resumed driving, in silence, except for asking ‘you won’t tell anyone, will you?’ I was traumatised and completely shocked for many days after ...

After a little while, when I was again off-guard, O’Donnell asked my mother and the Sisters permission to take me out of school early on Monday afternoons so I could help teach catechism to the children who attended Tallarook State School. All agreed. I was not consulted, just told to ‘go with Father’ when he appeared at the classroom door. Upon entering the sacristy at Tallarook, he pushed me against the wardrobes and digitally raped me. This became a frequent event, both at Tallarook and in other situations where he would entrap me.<sup>22</sup>

### 3.3.4. Regional experiences—Ballarat example

The prevalence of criminal child abuse in non-government organisations and the broader community is discussed in Chapter 6 of Part C.

The extent of criminal child abuse within an organisation can be illustrated by much of the material that was presented to the Committee in hearings conducted in Ballarat on 7 December 2012 and 28 February 2013. The Committee received a group-written submission and also heard from a collection of individuals who appeared at the hearings in Ballarat. The following are accounts from different witnesses:

Reporting the abuse. Segments of that very day in 1972 when I was digitally raped by a Christian brother —while attending form 1 at St Thomas More College, Nunawading are still so very real to me to this day. The cologne or similar worn by the abuser remains a trigger from wherever it finds me. The bicycle ride home with a big hill did not beat me. Most vivid for me was running outside to play footy and the back door slamming after I had told my mother what had happened to me that day in the school classroom. He taught me subjects such as religion, English, geography and mathematics and went with the title of form master. I was only asking for help when he took advantage of me and stole my soul in a brutal act ...

I believed that I was listened to, because soon after I was travelling to a new school by train. With my parents being strict Catholics, I was certainly frightened about getting my mouth washed out with disinfectant if I had said something wrong. That did not happen ... 25 years later, in 1997, these troubles and no care for authority led me to doing a police statement about my abuser. Sadly, I did not get the result I was looking for. My abuser was in jail, but he did not remember me —so I was told. The answer hurt more. With my anger still raging and the alcohol turned off, I penned a letter in 2004 to the church. I decided to show my parents the letter before I posted it. It was also a way of making sure I was brave enough to post it. So after 32 years the incident was spoken about again. It was to my disbelief that I had not been heard all those years ago. The change of school was for academic reasons ...

Mum and Dad were appalled by knowing they had given all their lives to the Catholic Church —their family, their trust, their money, their time and their support, broken by the Catholic Church. They supported my letter and encouraged me to persist. The response was quick, and the matter would go to the appropriate place, and that was the Towards

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22 *Submission S056*, Ms Janice Dwyer, p. 1.

Healing process. By 23 February 2005, the last thing I was fighting for was money.<sup>23</sup>

Another witness said:

In the very early 70s I was sent to boarding school. I did not know I was going there. It was in Ballarat. Fortunate or not, I had an understanding. I was probably a little bit older, probably a little wiser and maybe as a 13-year-old physically more advanced, so I understood from the first night in the dormitory what was going on. Having been exposed to violence early in my life and understanding violence in a very raw form, it seemed to be that the best form of defence would be offence.

For my year at St Pat's, rather than go to the small room on the corner where other boys went, I took the fight to the brother and preferred the damage. It seemed smarter. Unfortunately it did not work out that way in the end. Eventually you get put in a position you cannot get out of, and you are locked in the room. There are things that even as an old man today I am embarrassed about. I was raped by a bloke. It is an incredibly humiliating thing. But the fortunate part about it was that after it happened I found an opportunity to get him back and show him how angry I was and how angry I was going to be. I had my day in court. I told him what I thought of him, and I told him what I thought of the things he did. I had written down everything he had done for that year. I had written down every person he had been with, because I knew one day we would be here and somebody would ask the question.<sup>24</sup>

Mr Peter Blenkiron told the Committee:

When the abuse happened, when I was 11, I froze. Not only did I freeze on the spot, I froze emotionally. It was only three or four years into counselling that I started to actually feel an emotion in my body from that day forward. I thought emotion was a thing you did in your head. I got a sense of it. When I had a normal emotional upheaval in my life in 2000, it was the straw that broke the camel's back. The ability to hold that emotional trauma inside and any other emotion that I experienced since 11, it all snowballed up inside. So not only did I experience the initial trauma but every single emotion I had held back from 11. So when the straw broke the camel's back it was an absolute avalanche of terrible emotions experienced all at once. It knocked me into oblivion. I was in my house for probably two years. I would only go out to go to cricket or cricket training. I tried to hold my coping strategies together, or I would go out and obliterate the emotion with drink. And I would do anything I could to get away from those feelings. That is what I was doing subconsciously, because the feelings are still all there.

It is like [another victim] Andrew said with the beach ball. That beach ball is that emotional horror that eventually gets bigger and bigger and you cannot hold it back. It goes off like a bomb, and it destroys your ability to think. It shuts down your brain, and that has been proven chemically. I have been told by therapists that that is what happens. Your body actually has a chemical reaction in the brain. Then what happens is you try to learn to function.<sup>25</sup>

Mr Tim Lane told the Inquiry:

He used to do it to us all the time: go up and say goodbye to us when we were in bed. But why would he want me to leave the room to say good night to somebody? I will never forget the look on [my brother] John's face. I did not understand it then, but that

23 *Transcript of evidence*, Mr Keith Whelan, Ballarat, 28 February 2013, p. 6.

24 *Transcript of evidence*, Mr Paul Tatchell, Ballarat, 28 February 2013, pp. 13–14.

25 *Transcript of evidence*, Ballarat & District Group, p. 16.

image is still clear in my head and I could see he was scared. I wish I had stayed in the room. Maybe he would not have touched him while I was present; I do not know.

Johnny's trigger point was depression and he took his life. He gassed himself in the car around Lake Wendouree. I drove his car for years. That was how I thought: that that was the closest I could get to John now. Besides seeing him ice cold in the coffin they were your last memories of him, besides the fun we had as kids. Other members of the family will not come forward. I am the youngest of the six and I am the voice for them.<sup>26</sup>

In Ballarat, reasons for non-disclosure as discussed above were put forward. One witness reported that he told his mother, a staunch Catholic, of the abuse, and she did not believe him. The following day he told a teacher at the school, who responded that:

'He's a pervert; just try to keep away from him', and nothing else was done.<sup>27</sup>

Some of the witnesses who presented oral evidence to the Committee displayed photographs of themselves as young children when the criminal child abuse took place.

One witness, Mr Andrew Collins, reported as follows:

While I am talking, I would appreciate if you could keep in mind that that is the boy who was abused. It is very easy to look at me and say, 'That's a man sitting there talking to us', but that is the boy who was abused.

I was abused at age 14 at St Patrick's College in Ballarat by a Christian Brother. I was brought up in a very devout Catholic family and had great respect for the Church and its clergy, who were seen and believed by us all to be closer to God. The Christian Brother who abused me was not only my teacher, an authority figure and a man of God, but he reminded me very much of my father, who I had been very close to. At the start of the year he was very kind and very nice to me; by the end of the year he was a sadistic brute. My reporting of the abuse was not believed by any of the adults who I told, and nothing was done about it. This was not only a betrayal of trust, but it left me in fear. I was all alone, and I had to face this fear by myself ...

I changed a lot that year. One of my fears was that I would be labelled as a homosexual ...

I wanted to make sure that everybody knew that I wasn't gay and that I wasn't weak, so I adopted a tough persona. Fighting became a regular occurrence. I played a lot of sport, and I played hard. For the rest of the year, I made sure that he knew that I was tough. I swore, I played up in his class and I was in a lot of trouble that year. I indulged in some risky activities like shoplifting, and I was in fear all year. After the abuse, he would stand and watch me in the showers after sport, even though he had nothing to do with coaching or being in that sport. There was just constant fear. I had to endure being taught sex education by him as well that year, which was horrendous. I think it is fair to say that my childhood ended that year ...

I had to develop a coping strategy, and the best analogy I can use is that of a beach ball. I held the beach ball under the water. It is easy to do, but after a while your arms get tired and it becomes hard to do. As life goes on, you have to use one arm to deal with something else and it becomes harder again. Eventually the beach ball flies up out of the water, and once it is up you cannot get it back down again.

I discovered that, if I was occupied constantly, I did not have time to think ... I have always been emotionally numb. My feelings have always felt fake, and I have never really understood them ...

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26 *Transcript of evidence*, Mr Tim Lane, p. 2.

27 *Submission S317*, Ballarat & District Group, p. 5.

The media reporting of my abuser being charged and sent to prison, the media reporting of the Ridsdale and Best cases, followed by some business problems, and then the decision of my son going to secondary school, were all catalysts for me. I had nightmares about my son being abused as he got to around the same age.

I hit rock bottom. Severe depression set in. It has been reported that the average time between abuse and reporting the abuse is 25 years, and that roughly fits in with me. The day I went to the police station and reported the case was one of the hardest days of my life. I was that 14-year-old child again. I had a fear of disclosing what happened to me to others. Would they think I was gay, weak or a liar? Would I become a social outcast? There was my family to deal with —what they would think —the shame that I felt and what I call the Catholic guilt because you cannot speak ill of the Church.

In some ways I was correct. Most of my family I have lost. I have lost a lot of relatives and friends who just don't want to know. I have a guilt that I have a lost soul, that heaven is gone for me. Although I have many new friends and they are very supportive, many others just do not want to know and do not call anymore. I didn't do anything wrong, but I feel punished. I have definitely lost my faith, and I believe I have lost my soul.<sup>28</sup>

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28 *Transcript of evidence*, Mr Andrew Collins, Ballarat, 28 February 2013, p. 11.

# Chapter 4

## Victims and the impact of child abuse in organisations

### AT A GLANCE

#### Background

Criminal child abuse has a profound and devastating impact on the lives of victims that is unique to each individual. It has far-reaching consequences for families, communities and society.

#### Key findings

- Children subjected to criminal abuse in organisations often experience lifelong impacts that include mental health problems, addiction issues, relationship difficulties, issues with anger and difficulties with life skills, education and employment.
- Children who suffer criminal child abuse in organisations can experience specific consequences from being abused by a trusted person in the community, such as the loss of spirituality and having problems with authority.
- There are frequently significant effects on the families of victims criminally abused by personnel in organisations, including the fragmentation of families and the intense guilt felt by parents at not having protected their child.
- The impact on local communities of criminal child abuse in trusted organisations, particularly religious organisations, can be deep and divisive.
- While the actual costs associated with criminal child abuse in organisations are unknown, there are significant economic and social costs associated with child abuse in Victoria.

Victims told the Committee that the experience of criminal child abuse has had a profound and devastating impact on their lives. The consequences reach far beyond the individual to their family, their community and to broader society.

There is no single experience of the damage resulting from criminal child abuse. The Committee listened to many accounts of people's experiences of criminal child abuse and its effects on their lives, including feelings of fear and helplessness. The Committee acknowledges the resilience of victims who have survived their abuse and its ongoing consequences. It also recognises that not everyone is affected in the same way or to the same degree and that it is not always possible to link impacts directly with an experience of criminal child abuse.

The consequences are not limited to those who personally experienced criminal child abuse. The Committee heard multiple accounts of families that had suffered enormously from knowing the suffering of their child, brother, sister, niece, nephew or other family member. Some families separated as a consequence, and parents spoke of feelings that they had not protected their children and the resulting sense of guilt. Some relationships were significantly damaged by the effects of criminal child abuse on victims.

The impacts of criminal child abuse extend beyond the nucleus of the family and into local religious, school and other communities. Communities have been divided and damaged by the poor responses to criminal child abuse by some non-government organisations.

The importance of a strong focus on preventing criminal child abuse is evident when considering its far-reaching consequences. Victims told the Inquiry that non-government organisations had failed in their duty of care to protect them from the harm of criminal child abuse. Part D of this Report discusses the importance of prevention and how it should be approached.

#### **4.1. Awareness of criminal child abuse and its impacts**

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It is difficult to pinpoint when the criminal abuse of children in organisations was first identified publicly as an issue.

Sexual and other criminal offences committed against children is not a new phenomenon. Conduct of this kind has been condemned by society as evil for centuries and it has attracted severe penalties under our criminal law for a long time.

Until 1949, buggery of a child under 14 years carried the death penalty and until 1980, it carried 20 years imprisonment. Since 1980 the penalty has been 15 years. Rape also, until 1949, carried the death penalty and was from 1958 to 1980 punishable by a maximum term of 20 years. Presently, the maximum term is 25 years imprisonment.<sup>29</sup> Indecent assault has attracted a maximum penalty of 10 years imprisonment for a substantial period of time. The majority of victims who presented submissions before the Committee were offended against in at least one or more of these ways.

Almost all of the forms of physical and sexual child abuse considered by the Inquiry would have been categorised as serious breaches of the criminal law. However, the grotesque nature of this kind of offending has contributed to the creation of a veil of

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<sup>29</sup> For a list of maximum penalties relating to criminal child sexual abuse, refer to Appendix 3.

secrecy and shame, which in turn has served to hide the problem and ensured the true extent of it was not revealed.

#### 4.1.1. Emerging understanding of the effects of child abuse

Awareness of child abuse has been emerging in different phases since the late nineteenth century. In 2010, a resource paper by the National Child Protection Clearinghouse reported:

Child protection in the late 19th century in Australia followed a similar path to the United States and the United Kingdom. An increased public awareness of child abuse issues led to the establishment of non-government and voluntary child protection societies, partly in imitation of those established in the United States and the United Kingdom.<sup>30</sup>

In other countries, community awareness of the impacts of child abuse began to receive significant media attention in the 1960s, leading to policy and legislative change. In Australia:

New research on the effects of child abuse in the 60s and the subsequent media attention that followed helped to increase public and political awareness of child protection matters and led to continued debates and various changes to government approaches in the decades to follow.<sup>31</sup>

## 4.2. Impacts on victims

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In regard to the impacts of criminal child abuse on victims, one person stated to the Inquiry that:

I have heard reference to ‘stealing the childhood of victims’, but the reality is that it is frequently stealing their entire lives.<sup>32</sup>

There are multiple impacts that victims of criminal child abuse experience and these are frequently lifelong consequences.

In organisations, there are unique impacts of criminal child abuse, particularly in religious organisations. Furthermore, the difficulty experienced by adult victims of criminal child abuse who were wards of the State in accessing their records has implications for their sense of identity and their full knowledge of what may have occurred to them during their time in an institution.

In addition to the specific effects of criminal child abuse in organisations, the Committee identified the following range of consequences that child abuse victims may experience regardless of the context:

- mental health problems
- shame and guilt
- relationship difficulties
- addiction
- issues with anger

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30 A. Lamont & L. Bromfield (2010) *History of child protection services NCPC Resource Sheet*. Melbourne, National Child Protection Clearinghouse, Australian Institute of Family Studies, p. 2.

31 A. Lamont & L. Bromfield (2010) *History of child protection services*, p. 3.

32 *Transcript of evidence*, Dr Tom Keating, Melbourne, 10 December 2012, p. 2.

- sexual development problems
- issues with authority
- difficulties with life skills, education and employment.

Research supports the Committee's findings, highlighting that criminal child abuse and neglect can have physical, psychological, cognitive, behavioural and social consequences.<sup>33</sup>

#### **Finding 4.1**

Children subjected to criminal abuse in organisations often experience lifelong impacts that include mental health problems, addiction issues, relationship difficulties, issues with anger and difficulties with life skills, education and employment.

#### **4.2.1. Specific impacts of criminal child abuse in organisations**

More is known about the impacts of child abuse that occurs in families than is known about criminal child abuse in the context of organisations, since abuse occurs at lower rates in organisations. In addition, there is limited research and data relating to criminal child abuse in organisations.

Over the last decade, empirical research has started to emerge regarding the impacts of criminal child abuse in institutional and organisational settings.<sup>34</sup>

Many victims told the Inquiry of the negative impacts flowing from their abuse in institutions as a child, such as mental health problems, lower educational attainment and chronic physical problems.

The nature of the relationship between the offender and the victim can influence the impacts of abuse. Studies reveal that being abused by someone you know or in whom you have placed great trust is associated with more negative long-term consequences than being abused by a stranger. This is especially true of mental health impacts.<sup>35</sup>

The Committee identified that criminal child abuse that occurs in secular and religious organisations and institutions can be intensified due to the high moral standing of the abuser. Criminal child abuse by a minister of religion such as a priest, imam or rabbi has been linked to difficulties in trusting others, a sense of alienation from the world and the development of post-traumatic stress disorder (PTSD).<sup>36</sup> For

33 A. Lamont (2010) *Effects of child abuse and neglect for adult survivors*. NCPC Resource Sheet. Melbourne, National Child Protection Clearinghouse, Australian Institute of Family Studies.

34 See D.A. Wolfe, P.G. Jaffe, J.L. Jette et al. (2001) 'Child Abuse in Community Institutions and Organizations: Improving Public and Professional Understanding'. *Law Commission of Canada*; D. Pilgrim (2012) 'Child Abuse in Irish Catholic settings: A non-reductionist approach'. *Child Abuse Review*, Vol. 21, No. 6, pp. 405-13; K. Terry (2008) 'Stained Glass: The nature and scope of child sexual abuse in the Catholic Church'. *Criminal Justice and Behaviour*, Vol. 35, No. 5, pp. 549-69.

35 E.A. Sirles, J.A. Smith, & H. Kausama (1988) 'Psychiatric status of intrafamilial child sexual abuse victims'. *Journal of the American Academy of Child & Adolescent Psychiatry*, Vol. 28, No. 2, pp.225-29; T. Wozencraft, W. Wagner, & A. Pellegrin (1991) 'Depression and suicidal ideation in sexually-abused children'. *Child Abuse & Neglect*, Vol. 15, No. 4, pp. 505-11.

36 D.A. Wolfe, P.G. Jaffe, J.L. Jette et al. (2001) 'Child Abuse in Community Institutions and Organizations: Improving Public and Professional Understanding'; P. Parkinson (2003) *Child sexual abuse and the churches*. 2 edn., Sydney, Aquila Press.

many victims, being abused by clergy—trusted authority figures who speak of love, trust and faith—can make it more difficult to trust.<sup>37</sup>

Broken Rites also explained to the Inquiry that there is an additional complexity for people who have lived in institutions as they get older. Honorary researcher for Broken Rites, Mr Wayne Chamley, explained some of the implications:

Their fear, as they get older—and they are now in their 60s—is that on the probability basis some of them are going to develop degenerative illnesses like dementia, Alzheimer’s and whatever. When you develop those sorts of conditions, you start losing memory. First you lose your working memory, and then you lose your short-term memory. The memory that lasts is your childhood memory. What a memory to be stalking them for the remaining 10 or 15 years of their life. Maybe they will go into an aged-care home, reinstitutionalised again. This is what they all talk to me about—the fear of what is going to happen to them.<sup>38</sup>

#### Finding 4.2

Children who suffer criminal child abuse in organisations can experience specific consequences from being abused by a trusted person in the community, such as the loss of spirituality and having problems with authority.

#### Impacts on spirituality

A number of victims told the Committee that their experience of criminal child abuse had led to a loss of faith, particularly in the institution of the Catholic Church, but sometimes also in their god. Others felt fearful that they would go to Hell because of the criminal child abuse they experienced.

The parish priest of St Mary of the Angels Parish in Geelong, Fr Kevin Dillon, explained the complexity of a victim’s relationship with their spirituality. He told the Committee:

Over nearly 44 years of parish experience, a number of people have said to me, through bereavements, sickness and so on, ‘I don’t know how I could have done this without my faith’. Any number of people have said that to me, but an abuse victim cannot say that, because they lose their faith—for some people it is their faith in God, but certainly their faith in the institutional Church.<sup>39</sup>

Psychologist Dr Joseph Poznanski similarly highlighted to the Inquiry the significant implications that criminal child abuse by religious personnel can have on the spirituality of victims—as children, and into adulthood:

Clergy abuse not only attenuates individuals’ psychological capacity to cope with demands of everyday living but it also attenuates the victim’s spiritual beliefs and their sense of belonging to family, the Church and the local community. This loss of spiritual beliefs and the loss of one’s sense of belonging is yet another factor that keeps victims away from their families, church and the local community.<sup>40</sup>

Victim advocacy groups also emphasised the spiritual dimension and impacts of being abused by a minister of religion. For example, Mr Mark Fabbro, who is a victim

37 D. Farrell & M. Taylor (2000) ‘Silenced by God—An examination of unique characteristics within sexual abuse by clergy’. *Counselling Psychology Review*, Vol. 15, No. 1, pp. 22–31.

38 *Transcript of evidence*, Broken Rites (Australia) Collective Inc., Melbourne, 9 November 2012, p. 13.

39 *Transcript of evidence*, Father Kevin Dillon, Geelong, 15 February 2013, p. 3.

40 *Transcript of evidence*, Dr Joseph Poznanski, Melbourne, 1 March 2013, p. 2.

of child abuse and also the contact person for the Melbourne area chapter of the Survivors Network of those Abused by Priests (SNAP), explained there is an:

... additional impact of spiritual abuse and associated spiritual trauma when abused by a figure purporting to be the representative of God on earth. It adds a whole other dimension to the impact and the damage.<sup>41</sup>

Mr Peter Komiazyk explained to the Inquiry that:

My beliefs, by the Catholic Church, have been shattered. I do not believe in God or the Church, the bible and all of those that I have come across in my life: Salvation Army, Careforce and other organisations. I have stated from the start that: do not preach the bible to me or any verses from the bible, and we will get along just fine, that way we can become friends—nothing to do with Christianity.<sup>42</sup>

Another victim said ‘It has caused me to lose faith in the Church as a fundamental religious base and in the sanctity of family. It has caused me to develop a healthy disrespect for authority.’<sup>43</sup>

Research findings suggest that many victims of clerical sexual child abuse experience adverse impacts on their faith and spirituality.<sup>44</sup> Furthermore, researchers have identified that criminal child abuse by a trusted religious figure can destroy a child’s belief that the world is a safe place and makes the world seem chaotic and unstructured.<sup>45</sup>

### **Impact of lack of records—past institutions**

The Committee heard evidence from representatives of Records and Information Management Professionals Australasia (RIMPA). It explained that it had conducted a survey of the experiences of care leavers in accessing their records since 2004. It found that 70 per cent of those who participated in the survey believed that they did not get their records in full. It explained that:

- Only 10 per cent believed they did receive their records in full.
- More than 65 per cent of respondents were disappointed with the level of detail in the records received.
- 30 per cent were frustrated with the level of censorship.
- 50 per cent reported mistakes and inaccuracies, with 8 per cent stating that the records were not actually about themselves.
- 40 per cent of the respondents were angry with the way the events were interpreted.
- Another 40 per cent said the information was not truthful.
- 25 per cent required counselling after receiving their records.<sup>46</sup>

From its survey results, RIMPA explained to the Inquiry that it concluded:

41 *Transcript of evidence*, Survivors Network of those Abused by Priests (SNAP), Melbourne, 26 November 2012, p. 14.

42 *Transcript of evidence*, Mr Peter Komiazyk, Melbourne, 1 March 2013, p. 2.

43 *Submission S465*, Name withheld.

44 D. Farrell & M. Taylor (2000) ‘Silenced by God—An examination of unique characteristics within sexual abuse by clergy’; S.J. Rosetti (1995) ‘The impact of child sexual abuse on attitudes towards God and the Catholic Church’. *Child Abuse and Neglect*, Vol. 19, No. 12, pp. 1469–81.

45 D.A. Wolfe, P.G. Jaffe, J.L. Jette et al. (2001) ‘Child Abuse in Community Institutions and Organizations: Improving Public and Professional Understanding’.

46 *Transcript of evidence*, Records & Information Management Professionals Australasia, Melbourne, 5 April 2013, p. 5.

These results provide a clear example of the continuing detrimental effects of poor records management of institutional care providers. They also suggest that little has changed since 2004, detailing the obstacles to accessing records and the emotional trauma experienced by care leavers and their frustrated attempts at piecing together the facts of their lives and identities.<sup>47</sup>

In regard to the more specific impacts of not having access to records, the Committee heard from RIMPA about the value of the records to those who responded to its survey and the importance of having them. For example, the following comments were made:

I know who I really am and where I have come from.

My mother's letters that were sent to me, that I was never allowed to read, were in my file. They tell a story that I have not been able to understand for most of my life.

I am no longer a member within a system that did not care that I was a human. I would like to know the reasons why.<sup>48</sup>

In response to questions about the experience people had in attempting to access their records, RIMPA advised that the following explanations were provided by care leavers:

We never got anything.

The DHS [Department of Human Services] person contacted me by phone and said they found the folder with my name on it but nothing inside it. It took three months after I applied.

I have tried to apply for my files three times and on one occasion the Uniting Church told me that there were so many old files to go through and they wouldn't go through them.

I tried to get more information but was denied access by the FOI [freedom of information].<sup>49</sup>

The care leavers also described the impact of not having access to their records or where records were incomplete or inaccurate. They said that they had feelings of disconnectedness, abandonment and betrayal when denied full and accurate records of the time they were in care. RIMPA heard a range of feelings from those who participated in the survey:

The blacking out of information in my records left me wondering about what and why, causing me to have no way of knowing the truth and leaving me feeling hopeless and sad.

It's as though I was invisible to the governments of Victoria and the Mercy nuns for 13 years.

... a lost soul looking for a paper trail ...

I didn't get all the facts about my past. I was put in a mental ward with adults as a 12-year-old. Caulfield convalescent and two others. Men sexually touched me and I was suicidal. None of this was in my records. None of my health records provided rheumatic fever, arthritis and most probably from sleeping in wet beds as a part of my institutional abuse.<sup>50</sup>

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47 *Transcript of evidence*, Records & Information Management Professionals Australasia, p. 5.

48 *Transcript of evidence*, Records & Information Management Professionals Australasia, p. 5.

49 *Transcript of evidence*, Records & Information Management Professionals Australasia, p. 5.

50 *Transcript of evidence*, Records & Information Management Professionals Australasia, p. 5.

In addition to the survey questions detailed, care leavers were also asked to provide their opinions on potential courses of action to resolve the issues they continue to face when accessing their records. RIMPA provided the Inquiry with examples that conveyed the level of frustration, outrage and erosion of trust in the transparency and accountability of care provider institutions. This resulted from the inability of care leavers to access their records when they need to rely on them. One example stated a desire:

For government and past providers to be honest and do not block out any information. It is our information not the government's or past providers'. Also give original photos, letters and envelopes—not copies! I firmly believe that all information on holiday hosts, foster families, names should be given as these people were adults, and they knew what they were doing in taking a child from an orphanage and in foster parents getting paid to do so. Their names should be released. I also would like to know who, when and where has had access to my family—the names of DHS workers who had access to my state ward files. I want Australia to commit to the UN rights of the child that state governments have an obligation to provide a child with identity.<sup>51</sup>

Another care leaver explained their experience:

DHS needs to be open and honest, to speak up if our records have been destroyed or if accessed by other family members. It's cruel to leave us thinking they are still there somewhere. DHS needs to contact us and not wait for us to apply for access. Just send the files to Care Leavers—even DHS need closure on historical files.<sup>52</sup>

The Committee noted that recent audits and investigations by the Victorian Auditor-General's Office and Ombudsman Victoria have highlighted issues relating to the ability of care leavers to access their records.<sup>53</sup>

#### 4.2.2. Mental health issues

The Committee heard from large numbers of victims regarding the impact of criminal child abuse on their mental health. Many indicated that they live with the trauma daily. A substantial portion of victims revealed they had been diagnosed with post-traumatic stress disorder (PTSD). Furthermore, many victims told the Inquiry they had experienced suicidal thoughts and some had made an attempt to end their life.

As a victim himself, Dr Tom Keating gave his perspective on the mental health impacts of criminal child abuse:

The effects become a part of the person; they cannot be compartmentalised and put to one side, and they are not amenable to rational persuasion. However much you can say to someone, 'You are successful, there is this which is good in your life; this is positive', it is very hard to persuade someone who believes, quite fundamentally, that they are worthless that that is the case.<sup>54</sup>

He further outlined the effects of the criminal child abuse:

... is most commonly experienced as an overwhelming sense of personal worthlessness

51 *Transcript of evidence*, Records & Information Management Professionals Australasia, p. 5.

52 *Transcript of evidence*, Records & Information Management Professionals Australasia, p. 5.

53 Ombudsman Victoria (2012) *Investigation into the storage and management of ward records by the Department of Human Services*. P.P. No. 109, March 2012; Victorian Auditor-General's Report (2012) *Freedom of Information*. Melbourne, VAGO.

54 *Transcript of evidence*, Dr Tom Keating, p. 2.

that is recurrent, debilitating and persistent throughout a lifetime. It is frequently accompanied by post-traumatic stress, which involves relived experience, intense anxiety attacks and soul-destroying depression. Pre-pubescent and early pubescent boys, typically between the ages of 10 to 13, are particularly vulnerable. This, of course, is the group which is most commonly targeted by clerical predators.<sup>55</sup>

He told the Inquiry of the impacts on him personally as a victim of criminal child abuse:

You do not recover from childhood rape; you try to find some way to live with it, and often you fail. I have experienced post-traumatic stress for all of my life.<sup>56</sup>

Dr Poznanski explained the complexities of the mental health issues victims often experience to the Inquiry:

A large proportion of my clients suffer a condition known as complex post-traumatic stress disorder. One of its critical symptoms, if left untreated—as is the case most times—is the loss of core beliefs that previously sustained the individual. These beliefs refer to a person’s fundamental values that are instilled during one’s social development within a family environment, and these beliefs usually relate to faith, moral and cultural values.<sup>57</sup>

Research similarly suggests that acute and chronic mental illness is a common consequence arising from criminal child abuse. Adult survivors of child sexual abuse have been shown to have a lifetime risk of developing major depression that is four times greater than the risk of those who have not experienced abuse.<sup>58</sup> In addition, links have been consistently demonstrated between child abuse and neglect and conditions such as PTSD, depression and anxiety.<sup>59</sup>

Mental health issues, including depression and PTSD, have been linked to high rates of suicide and attempted suicide for people who have experienced criminal child abuse. Research has found that suicide attempts and suicidal thoughts are common among people who have been abused. One study identified that rates of attempted suicide are 12 times higher for people who have experienced abuse than for those who have not.<sup>60</sup>

The Committee heard several tragic accounts where the pain of living with their experience of criminal child abuse was too much for victims to bear and they ultimately took their lives. It also heard of many who had contemplated suicide and continually struggle with suicidal thoughts. For example, Ms Jessie Turner-Booth explained that:

I have not attempted to kill myself recently but the thought is constantly with me. I loathe myself, I can’t stand to look at myself in the mirror.<sup>61</sup>

55 *Transcript of evidence*, Dr Tom Keating, p. 2.

56 *Transcript of evidence*, Dr Tom Keating, p. 2.

57 *Transcript of evidence*, Dr Joseph Poznanski, p. 2.

58 J.N. Briere & D.M. Elliott (1994) ‘Immediate and long-term impacts of child sexual abuse’. *The future of children*, Vol. 4, No. 2, pp. 54–69; J. Cashmore & R. Shackel (2013) *The long term effects of child sexual abuse Child Family Community Australia, Paper No. 11*. Melbourne, Australian Institute of Family Studies.

59 K. Harkness & M. Lumley (2008) ‘Child abuse and neglect and the development of depression in children and adolescents’. In Abela, J. & Hankin, B. (Eds.), *Handbook of depression in children and adolescents*. New York, The Guildford Press; P. Parkinson (2003) *Child sexual abuse and the churches*; D. Higgins (2004) ‘Differentiating between child maltreatment experiences’. *Family Matters*, Vol. 69, pp. 50–55; R. Gilbert, C. Spatz Widom, K. Browne et al. (2009) ‘Burden and consequences of child maltreatment in high-income countries’. *The Lancet*, Vol. 373, No. 9657, pp. 68–81.

60 A. Lamont (2010) *Effects of child abuse and neglect for adult survivors. NCPC Resource Sheet*.

61 *Submission S335*, Mrs Jessie Turner-Booth, p. 4.

### 4.2.3. Guilt and shame

Victims were consistent in expressing that they experienced feelings of guilt, shame and embarrassment regarding the abuse they were subjected to. One victim, Mr Manny Waks, told the Inquiry that ‘I had been living with guilt, shame, pain and a profound sense of disempowerment.’<sup>62</sup> Mr Andrew Collins similarly explained that:

I hit rock bottom. Severe depression set in ... I had a fear of disclosing what happened to me to others. Would they think I was gay, weak or a liar? Would I become a social outcast? There was my family to deal with—what they would think?—the shame that I felt and what I call the Catholic guilt.<sup>63</sup>

The Committee also heard from Mr Max Johnson who stated:

I have been that ashamed of myself over the years that I could not tell [my son]. How do you sit down with your son and tell him what happened to you when you were in orphanages and that? You can’t. It just rips you to pieces.<sup>64</sup>

A research study by a team of researchers in the United States about men who were abused by Catholic clergy explained that participants in the study ‘reported feeling an immediate burden of shame ... the men recalled intense feelings of shame during and after the abuse, including irrational and deep pervasive guilt for the abuse.’<sup>65</sup>

Feelings of shame, guilt and self-blame which are commonly expressed by victims of child sexual abuse have also been linked in research studies to the high rates of suicide and attempted suicide in child sex abuse victims.<sup>66</sup>

### 4.2.4. Relationship difficulties

The experience of criminal child abuse often has significant implications on a victim’s capacity to trust and to be intimate with others. This affects their ability to develop and maintain relationships with others such as partners, friends, colleagues and their children. Some victims who have married or partnered have experienced relationship breakdown as a consequence of their difficulties in being intimate or trusting others.

Social isolation was emphasised by many, such as one person who said:

I have been cynical against most people in power most of my life. I second guess everyone, I’ll question you three times, watch everything you do and try to assess in my mind whether you’re really legit. I have a lack of trust for a lot of people, you know.<sup>67</sup>

In his hearing evidence, Mr Kevin Houlihan stated that:

Though I have only ever been in one long-term relationship, I have generally been unable to form and maintain intimate relationships ... I do not have many friends and tend to keep mainly to myself.<sup>68</sup>

62 *Transcript of evidence*, Mr Manny Waks, Melbourne, 10 December 2012, p. 8.

63 *Transcript of evidence*, Mr Andrew Collins, p. 11.

64 *Transcript of evidence*, Mr Max Johnson, Geelong, 15 February 2013, p. 3.

65 P.J. Isely, P. Isely, J. Freiburger et al. (2008) ‘In their own voices: A qualitative study of men abused as children by Catholic clergy’. *Journal of Child Sexual Abuse*, Vol. 17, No. 3–4, pp. 201–15, p. 206.

66 B. Brodsky & B. Stanley (2008) ‘Adverse childhood experiences and suicidal behavior’. *Psychiatric Clinics of North America*, Vol. 31, No. 2, pp. 223–35; M. Cutajar, P. Mullen, J. Ogloff et al. (2010) ‘Suicide and fatal drug overdose in child sexual abuse victims: a history cohort study’. *The Medical Journal of Australia*, Vol. 192, No. 4, pp. 184–87; D. Fergusson, J. Boden, & J. Horwood (2008) ‘Exposure to childhood sexual and physical abuse and adjustment in early adulthood’. *Child abuse and neglect*, Vol. 32, No. 6, pp. 607–19.

67 *Submission S481*, Name withheld.

68 *Transcript of evidence*, Mr Kevin Houlihan, Melbourne, 15 March 2013, p. 4.

Mr Raymond D’Brass also told of the effects on his interactions with others, noting that ‘I have avoided close relationships throughout my life because I have believed that my behavioural issues would only bring my loved ones down with me. I saw myself as poison.’<sup>69</sup> Uncle Howard Edwards explained that for him:

I have never had long relationships with women. I have three children by three different wives, and I have been in and out of relationships for most of my life. It is all part of the institutional upbringing and the molesting.<sup>70</sup>

Developing and maintaining relationships is a common problem for criminal child abuse victims, as one research study outlined:

Immediate difficulties with trust were also pervasive during childhood for most victims after their initial abuse experience. The severe betrayal of trust by the perpetrator combined with the belief that they would not be believed produced noteworthy changes in social functioning, including increased periods of isolation from others and few friendships.<sup>71</sup>

Other research shows links between physical and sexual abuse and depression, and difficulties interacting with peers that can result in social isolation.<sup>72</sup>

Victims also described the impacts of criminal child abuse on their role as parents, including an inability to be affectionate towards their own children. For example, Mr Paul Tatchell explained that:

I do not cuddle my kids. They are old now; the oldest one is in his 30s, and I do not go near them. I have never kissed one of my children, because there is something in me that says the day you do that, you break down. You are no longer the strength, because you need to have that strength to go on.<sup>73</sup>

Ms Mairead Ashcroft also told the Committee of the impacts on her interactions with her children:

Because I was an abused child, I believed that I would grow up to be an abuser myself. It was in all the movies, it was in media ... When my children were small, I would wear rubber gloves to change their nappies—not to keep the poo off my hands, but so that my skin would not touch their skin. That is a dreadful thing.<sup>74</sup>

Another victim explained that ‘I have been accused of being an unfit parent because of my past abuse.’<sup>75</sup>

Emerging research indicates that men who were sexually abused as children can face difficulties if they become fathers. These include often unfounded fears that they may abuse their own children and problems with physical displays of affection and

69 *Transcript of evidence*, Mr Raymond D’Brass, Melbourne, 4 March 2013, pp. 2–3.

70 *Transcript of evidence*, Connecting Home, Melbourne, 18 March 2013, p. 7.

71 P.J. Isely, P. Isely, J. Freiburger et al. (2008) ‘In their own voices: A qualitative study of men abused as children by Catholic clergy’, p. 206.

72 A. Lamont (2010) *Effects of child abuse and neglect for adult survivors. NCPC Resource Sheet*; M. Merrick, A. Litrownik, M. Everson et al. (2008) ‘Beyond sexual abuse: The impact of other maltreatment experience on sexualized behaviours’. *Child maltreatment*, Vol. 13, No. 2, pp. 122–32.

73 *Transcript of evidence*, Mr Paul Tatchell, p. 15.

74 *Transcript of evidence*, Ms Mairead Ashcroft, Melbourne, 23 November 2012, p. 3.

75 *Transcript of evidence*, Mr Raymond D’Brass, p. 5.

intimacy with their children. Some victims, particularly men, also report that they are often overprotective towards their children.<sup>76</sup>

#### 4.2.5. Addiction

For a large number of victims, addictive behaviour has been a key strategy to assist in numbing the pain associated with their childhood abuse. Many told the Committee that they have had a past and/or ongoing issue with their alcohol use, and some found solace in gambling and other addictive behaviours.

The majority of victims who gave evidence to the Inquiry explained they had experienced addiction issues specifically with alcohol. Mr Chris Pianto said that:

The abuse had a huge impact on my life since then, and it is only in the last decade or so of my life that I have been able to cope without so much alcohol in my system.<sup>77</sup>

Another victim explained a similar relationship with alcohol and other addictive behaviours:

As a young man I tried to live my life and move on from this traumatic childhood. I knew that I was not coping. At age 35 I was and still am an alcoholic through binge drinking. I am a problem gambler.<sup>78</sup>

Ms Ashcroft explained to the Committee that ‘I actually started drinking when I was 12. That was my method of coping.’<sup>79</sup> Mr Peter Blenkiron also used alcohol to cope with the impacts of the abuse, stating that ‘I would go out and obliterate the emotion with drink. And I would do anything I could to get away from those feelings.’<sup>80</sup>

The Committee heard that there are high costs associated with addiction. Mr Hugh McGowan explained that ‘I have suffered from alcohol abuse and as a result my health isn’t the way that it should be.’<sup>81</sup> Another victim told the Committee that:

I have been up before the court several times myself for drink driving. I’ve never stolen or done anything else, but I’ve always been drinking and in trouble.

Yes, you just try to block it out.<sup>82</sup>

In his submission, Mr Lewis McCabe explained the costs of addiction, stating that:

I am now 51 years old and have not reached my potential. Indeed I am an alcoholic, in ill health, live alone and continue suffering from the trauma brought on by my treatment in the Bayswater Boys’ Home. I experience panic attacks, anxiety and depression and am addicted to alcohol and other substances.<sup>83</sup>

Some victims told the Inquiry that they were introduced to alcohol, tobacco or other drugs by the perpetrator as part of the grooming process. Chapter 22 of Part G discusses the grooming process in further detail. The costs of addiction contribute to the broader social and economic costs of criminal child abuse in non-government organisations, which is discussed in Section 4.5.

76 R. Price-Robertson (2012) ‘Fathers with a history of child sexual abuse: New findings for policy and practice. Child Family Community paper number 6’. *Australian Institute of Family Studies*.

77 *Transcript of evidence*, Mr Chris Pianto, Geelong, 15 February 2013, p. 2.

78 *Submission S477*, Name withheld.

79 *Transcript of evidence*, Ms Mairead Ashcroft, p. 6.

80 *Transcript of evidence*, Ballarat & District Group, p. 16.

81 *Transcript of evidence*, Mr Hugh McGowan, Melbourne, 4 February 2013, p. 6.

82 *Submission S481*, Name withheld.

83 *Submission S196*, Mr Lewis McCabe, pp. 1–2.

Expert witnesses supported the evidence the Committee heard from victims. For example, Associate Professor Judith Cashmore from Sydney University stated that:

The way in which men often tend to cope with these issues, their method of coping, is by using drugs and alcohol. That is a very common method, and it is a sort of self-medication, a means of dampening the hyperarousal of anxiety that goes with the consequences of abuse.<sup>84</sup>

Research evidence also indicates that all types of child maltreatment are significantly related to higher levels of substance use (tobacco, alcohol and illicit drugs).<sup>85</sup> Consistent with the evidence provided by Associate Professor Cashmore, studies have suggested that chronic stress associated with childhood trauma can contribute to victims self-medicating through the use of alcohol and other drugs, including smoking.<sup>86</sup>

#### 4.2.6. Issues with anger

The Committee heard that some victims had struggled to cope with their emotions, in particular intense feelings of anger.

One victim explained how this had impacted on his employment:

This was the kind of behaviour that dogged me for most of my working life. I was seen to be aggressive and uncooperative. I was often referred to as the angry ant. While I was very good at whatever my job was, my relationships with colleagues were mostly strained.<sup>87</sup>

Mr Tim Lane said that ‘as I got older, the anger started to come’ and that ‘I was very angry, had fits of rage and still do, but not as badly.’<sup>88</sup>

Mr Wayne Davis told the Committee that:

I became an extremely violent person. I was absolutely certain no-one was going to stand over and beat me up again ...

Thankfully I do not do that sort of thing now.<sup>89</sup>

He also explained that he was aware of other men with similar tendencies, noting that ‘they were exactly the same as me—very, very angry and violent. You would do anything. You became fearless. Nothing else could hurt you that bad.’<sup>90</sup>

A parent explained how ‘the abuse haunted [my son], which gave him terrible mood swings which brought out violence and bad tantrums, screaming and throwing things.’<sup>91</sup> Another parent, Mrs Helen Watson, watched her son go through a similar experience:

Peter was an intelligent, gentle, fun-loving, beautiful soul who was respected by all

84 *Transcript of evidence*, Dr Judith Cashmore, Faculty of Law, University of Sydney, Melbourne, 12 April 2013, p. 5.

85 P. Moran, S. Vuchinich, & N. Hall (2004) ‘Associations between types of maltreatment and substance use during adolescence’. *Child Abuse & Neglect*, Vol. 28, No. 5, pp. 565–74.

86 P. Moran, S. Vuchinich, & N. Hall (2004) ‘Associations between types of maltreatment and substance use during adolescence’.

87 *Submission S094*, Mr Hugh McGowan, p. 4.

88 *Transcript of evidence*, Mr Tim Lane, p. 2.

89 *Transcript of evidence*, Mr Wayne Davis, p. 5.

90 *Transcript of evidence*, Mr Wayne Davis, p. 6.

91 *Submission S179*, Name withheld, p. 2.

who knew him. His tragic journey following the sexual abuse started with escalating antisocial behaviours. He felt worthless, lacked motivation, had low self-esteem with bouts of depression ...

Peter's life spiralled out of control.<sup>92</sup>

Research suggests there are associations between criminal child abuse and behavioural problems in childhood and adolescence. These tendencies can manifest in shyness, withdrawal or aggressive and impulsive behaviours.<sup>93</sup>

#### 4.2.7. Sexual intimacy and development

A theme in the evidence related to the impact of child sexual abuse on the emerging sexual development of young people and their experience of sexual intimacy in later life.

The Committee noted that this is a sensitive area for any person to discuss. It heard that some victims of criminal child abuse develop difficulties with sexual intimacy and can also experience confusion regarding their sexual identity.

One victim explained to the Inquiry that:

I struggle to enjoy kissing my wife ... That took my innocence away, and that never came back. I will go into how a victim feels there, sexually, the whole works. We have had huge problems. We have been to psychologists.<sup>94</sup>

In his submission, Mr Arthur O'Bryan similarly stated that the sexual abuse he experienced as a child 'contributed significantly to a lack of intimacy with my wife that eventually led to our divorce.'<sup>95</sup>

Other victims spoke of confusion relating to their sexual identity. For example, Mr Paul Brockhoff said that 'Every moment of my adolescence I thought I was homosexual and I was so desperately unhappy about it. Because I didn't want to be.'<sup>96</sup>

Expert evidence provided to the Committee supported the experiences of victims. For example, Associate Professor Cashmore explained that:

Males are socialised in our society to be self-reliant and independent and to have some pride around sexual prowess. In terms of sexual abuse by a male—and that is what we are talking about here—then you are bringing in an overlay of homosexuality and a real confusion for these young boys as to 'What does this mean? Does this mean I am gay? Does it mean I am going to become homosexual?'<sup>97</sup>

She went on to advise the Inquiry that:

There is research that is indicating that abuse in early adolescence can be particularly problematic because that is the time of developing sexual identity, those trusting relationships, and so on. What sexual abuse does is disrupt the trusting relationships and disrupt that early developing sexual identity.<sup>98</sup>

Other research studies indicate that criminal child sexual abuse can influence sexual development. Researchers have attributed the damaging impact of sexual abuse to

92 *Transcript of evidence*, Ms Helen Watson, Ballarat, 7 December 2012, p. 2.

93 A. Lamont (2010) *Effects of child abuse and neglect for adult survivors*. NCPC resource sheet.

94 *Submission S478*, Name withheld.

95 *Submission S254*, Mr Arthur O'Bryan, pp. 1–2.

96 *Submission S392*, Mr Paul Brockhoff, p. 3.

97 *Transcript of evidence*, Dr Judith Cashmore, pp. 4–5.

98 *Transcript of evidence*, Dr Judith Cashmore, pp. 5–6.

the way in which it ‘undermines the victims’ trust, sense of self, sexual identity, and social and cognitive development.’<sup>99</sup>

#### 4.2.8. Issues with authority

Several victims told the Inquiry that they had developed problems with authority following their experience of criminal child abuse. For example, Mr Johnson told the Committee that:

It has made me hate authority from being in these homes. I got that many bashings and floggings that I took up professional fighting when I got out of the homes, to protect myself. I do not even let police push me or anybody.<sup>100</sup>

Another victim explained that ‘I am always nervous around people in authority and am especially suspicious of powerful men.’<sup>101</sup>

Mr Joseph Saric reiterated these points, explaining that:

One of the problems you have when you get abused as a child is that you get very anti-authority. You get very paranoid, and I still suffer from that today. Consequently, trust for authority drops right off ... I will be honest with you that I would be quite comfortable in going back and talking to the police now. I was not comfortable before.<sup>102</sup>

The father of a victim also observed his son’s ambivalence towards authority, telling the Inquiry that ‘There was always somebody he could not get along with—always. Authority—he could not handle it; he just could not handle authority.’<sup>103</sup>

Research supports the evidence heard by the Committee, demonstrating that children’s confidence in authority can be damaged if they feel that trusted people are not interested in their circumstances or might not appear capable of protecting a victim from harm.<sup>104</sup> These authority figures include police officers, therapists, teachers and social workers.

#### 4.2.9. Life skills, education and employment

Poor life skills as a consequence of the criminal abuse they suffered as a child was a common theme in the evidence from victims. For some, the greatest impact was on their education, while others felt their social skills were affected due to low self-esteem and a lack of confidence. A number of victims indicated that they had not achieved what they had hoped to in their employment or life more generally.

In his submission, Mr James Fitzpatrick told the Committee that:

I remember before all of this happened, that I was good at school and was getting good grades. Then suddenly my grades got worse. I was so angry and confused about what had happened, I just gave up on school and was acting out ...

99 A. Lamont (2010) *Effects of child abuse and neglect for adult survivors*. NCPC Resource Sheet; M. Merrick, A. Litrownik, M. Everson et al. (2008) ‘Beyond sexual abuse: The impact of other maltreatment experience on sexualized behaviours’.

100 *Transcript of evidence*, Mr Max Johnson, p. 3.

101 *Submission S268C*, Name withheld, p. 3.

102 *Transcript of evidence*, Mr Joseph Saric, Geelong, 15 February 2013, p. 8.

103 *Submission S475*, Name withheld.

104 For example, see K. Kendall-Tackett, L. M. Williams, & D. Finkelhor (1993) ‘Impacts of sexual abuse on children: A review and synthesis of recent empirical studies’. *Psychological Bulletin*, Vol. 113, No. 1, pp. 164–80. P. Parkinson (2003) *Child sexual abuse and the churches*.

I recall suffering at school, feeling alienated. Throughout my schooling my grades were dropping and I was getting picked on all the time.<sup>105</sup>

Another victim explained to the Inquiry that he had no literacy skills as a result of his experience in institutions, commenting that ‘I never learnt to read and write when I went through all these homes, so I can’t read or write at all.’<sup>106</sup> He went on to explain that:

It would be very good to learn to read and write, to feel I could pick up a book and read it, or something. I get a letter. I do not even give my son the letters to read because he does not realise that I cannot read or write—I take it to my brother’s or my friend’s place and get them to read what it is.<sup>107</sup>

These negative experiences in school often extended into experiences of employment. Mr Tony Hamilton, for example, stated that ‘I had a history of sabotaging employment success so was not well paid.’<sup>108</sup> Mr Fitzpatrick also said that:

I have had good jobs and lost them, either due to the alcohol or going off at authority figures or people who would upset me. I often doubt myself, feel like I am on the outer. Often feeling like I am not worthy of good things, of happiness. I think that when things are going well, then I may self-sabotage and things start to unravel.<sup>109</sup>

A further example was provided by Mr Alister McKeich from Connecting Home on behalf of Uncle Howard Edward who explained that he was lauded as:

... a 10 year old boy as being ‘the best scholar, the best sportsman, the most popular boy in grade 4 and the natural choice as leader of his class.’ However, by 16 years of age Howard was in and out of Turana youth centre and not long after spent time in Pentridge prison. It is not difficult to see how the effects of abuse while institutionalised greatly contributed to Howard’s transition from a boy of such great potential to someone who, as an adult, would remain in and out of prison and suffer from alcohol and drug related issues for many years.<sup>110</sup>

### 4.3. Impacts on families and secondary victims

The impacts of criminal child abuse can extend well beyond the experiences of the individual victims. Families and other supporters of victims of child abuse in non-government organisations can be significantly impacted by the knowledge of the abuse of someone they care deeply for.

Mr Waks explained to the Committee that ‘People often think about the toll on the victims, but there is an incredible toll that the victims’ families also have to pay, often unacknowledged and in complete silence.’<sup>112</sup>

**Secondary victims**—in the context of abuse that occurred outside the family, secondary victims include family members, partners, friends and children of victims/ survivors who are affected by a victim’s maltreatment and its aftermath.<sup>111</sup>

105 *Submission S369*, Mr James Fitzpatrick, pp. 3–4.

106 *Transcript of evidence*, Mr Max Johnson, p. 2.

107 *Transcript of evidence*, Mr Max Johnson, p. 4.

108 *Submission S149*, Mr Tony Hamilton, p. 2.

109 *Submission S369*, Mr James Fitzpatrick, p. 4.

110 *Transcript of evidence*, Connecting Home, Melbourne, 18 March 2013, p.2

111 Z. Morrison, A. Quadara, & C. Boyd (2007) *‘Ripple effects’ of sexual assault*. Melbourne, Australian Centre for the Study of Sexual Assault.

112 *Transcript of evidence*, Mr Manny Waks, p. 9.

The Committee heard of numerous impacts on families following the disclosure of criminal child abuse experienced by a family member. For example, Mr Pianto explained the effects on his mother:

My mum suffered also. Mum was an advocate for victims, and due to my suicidal tendencies and the lack of empathy and acknowledgement from the Christian Brothers, which she pursued vigorously, she suffered anxiety, high blood pressure, shingles, lockjaw and depression. Mum had to have a dental plate inserted in her mouth at night to stop her grinding her teeth in bed.<sup>113</sup>

Parents told the Inquiry of feelings of profound guilt that they could not protect their child. Victims of criminal child abuse on occasions blamed their parents for not protecting them. Some families have been fragmented and damaged as a consequence of the abuse a family member has experienced.

A mother explained the extent of the impact on their family of criminal child abuse that occurred in a non-government organisation:

My son told me he had been molested ... and he said, 'My first sexual experience was with a Brother'. He does not talk to us now because he said I did not protect him. He said, 'You made me go to school. You did not protect me. I want nothing to do with you or the family'. So I do not see him. I have not seen him for 15 years, but I do see a lot of the other four. The whole family has been broken down because of this Church abuse—school abuse.<sup>114</sup>

Another family had a similar experience, telling the Inquiry:

He was angry particularly with us because he thought we did not protect him. We sent him to a Catholic school where he was abused by this person or people ... He was so angry with us at one stage that he even wrote us an email repudiating our parenthood. That was a bit rough, that one, and it was very hard to take.<sup>115</sup>

Parents described feelings of intense guilt, with one mother of a victim explaining that:

They were abused for about 18 months before we knew, and then they would go to school and get abused again and we did not know until later. I still feel the guilt that I did not know about it, and I should have, being a good mother. I should have been a better mother.<sup>116</sup>

The sister of multiple victims, Mrs Anne Murray, gave the Committee her perspective of her parents' reaction:

Dad developed hypertension and distress, feeling like he had not protected his children ... Dad's spirituality declined as he saw the vicious beatings and the effect that the behaviour of the clergy had on his children. Mum developed polymyalgia, an autoimmune deficiency disease, as a response to the stress.<sup>117</sup>

Parents are not the only family members negatively affected by criminal child abuse, siblings are also secondary victims. For example, the father of a victim said that 'It was difficult for him to get on with his own siblings, very difficult. He was prickly, he was angry. He would always take offence at anything.'<sup>118</sup> Another sibling of a victim

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113 *Transcript of evidence*, Mr Chris Pianto, p. 2.

114 *Submission S466*, Name withheld.

115 *Submission S475*, Name withheld.

116 *Submission S482*, Name withheld.

117 *Transcript of evidence*, Ms Anne Murray, p. 10.

118 *Submission S475*, Name withheld.

explained how distressing she felt seeing the lives of her sisters unravel from the impacts of criminal child abuse. Ms Aimee Foster told the Committee:

I had an amazing childhood with two awesome, gorgeous older sisters, who I looked up to completely. I have suffered absolute heart loss and heartbreak from seeing their lives fall apart. I cannot describe to you the weight of the pain I have felt.<sup>119</sup>

These experiences of the families of victims of criminal child abuse in organisations are consistent with research findings. For example, one study explored how families adapt to crisis and found that:

All traumas have the power to put stress on the family system, interrupt routines, require abrupt changes, and create anxiety. Based on systemic theory, following traumatic exposure all members of the family undergo some level of change ... Communication patterns, role relationships, expectations for behavior, trust that others will meet one another's needs, and flexibility in tolerating differing individual needs can be impacted in a crisis. The traumatic experience, such as child sexual abuse, reverberates throughout the family system.<sup>120</sup>

Other research has identified that responses of family members to criminal abuse of a family member in childhood can include shock, helplessness, anger and guilt which can very closely resemble that of the primary victim.<sup>121</sup> In instances in which 'family members ... experience a range of symptoms similar to those of the direct victims, [this is] a pattern often referred to as *secondary trauma*.'<sup>122</sup>

### Finding 4.3

There are frequently significant effects on the families of victims criminally abused by personnel in organisations, including the fragmentation of families and the intense guilt felt by parents at not having protected their child.

## 4.4. Impacts on communities

The Committee heard that the impacts of criminal child abuse in non-government organisations goes well beyond individuals and families and deep into local communities. This includes religious, schooling and sporting communities. The majority of evidence received by the Committee related to local religious communities, particularly in the Catholic Church.

In relation to the Ballarat community, victims' advocate, Ms Judy Courtin, told the Inquiry that:

Tragically the people of this community know all too well of the totally unacceptable number of suicides and premature deaths relating to the decades of Catholic clergy sex crimes in this region of Ballarat.<sup>123</sup>

119 *Transcript of evidence*, Ms Aimee Foster, Melbourne, 23 November 2012, p. 19.

120 L.H. Wind, J.M. Sullivan, & D.J. Levins (2008) 'Survivors' perspectives on the impact of clergy sexual abuse on families of origin'. *Journal of Child Sexual Abuse*, Vol. 17, No. 3–4, pp. 238–54, p. 240.

121 D. Silverman (1978) 'Sharing the crisis of rape: Counselling the mates and families of victims'. *American Journal of Orthopsychiatry*, Vol. 48, No. 1, pp. 166–73. in Z. Morrison, A. Quadara, & C. Boyd (2007) '*Ripple Effects*' of sexual assault. See also L.H. Wind, J.M. Sullivan, & D.J. Levins (2008) 'Survivors' perspectives on the impact of clergy sexual abuse on families of origin', p. 240.

122 See also L.H. Wind, J.M. Sullivan, & D.J. Levins (2008) 'Survivors' perspectives on the impact of clergy sexual abuse on families of origin', p. 240.

123 *Transcript of evidence*, Ms Judith Courtin, p. 4.

Also from Ballarat, local community member Ms Carmel Moloney spoke of the ‘members of their community suffering deep distress.’<sup>124</sup> Another victim told the Committee that criminal child abuse ‘is devastating the Catholic community. I know parishioners who are devastated by their reaction.’<sup>125</sup>

Witnesses in other parts of Victoria spoke of the damage such extensive abuse by religious personnel has caused, with one Inquiry participant noting ‘that the impact on the community of my experience ... has meant that that community is very, very damaged and that church community is really damaged.’<sup>126</sup>

The Committee heard about divisions that had emerged in communities as a consequence of disclosure of criminal child abuse, particularly in religious organisations. For example, one family explained that:

The Church just closes ranks around itself, but also the Catholic community does in lots of ways. We’ve lost friends ... because we know their children were abused, but they’ve done nothing about it.<sup>127</sup>

Ms Nicky Davis from the Survivors Network of those Abused by Priests (SNAP) also explained the complexities of responses by church communities, stating that ‘Victims often complain of intimidation and ostracisation, not just by church officials but even by entire church communities.’<sup>128</sup> Similarly, In Good Faith and Associates stated that there is ‘a judgemental and hostile church community.’<sup>129</sup> Ms Ann Ryan explained her view that ‘more than anything, I still wonder at the silence of the Catholic community.’<sup>130</sup>

The mother of a victim, Ms Sandra Clark, told the Inquiry that religious communities can be challenged when confronted with the issue of criminal child abuse. She stated that:

My husband’s uncle was a leading light at the Catholic organisation at Croydon. He knew all about this [alleged perpetrator], and when my husband asked his uncle to support us or to give us some evidence, anything, because it was horrific what was happening to me and to [my son], my husband’s uncle sided with the priest.<sup>131</sup>

After voicing her concerns about criminal child abuse, Ms Clark said ‘I have been absolutely ostracised in the districts surrounding where I live even now.’<sup>132</sup>

Victims themselves highlighted to the Inquiry the importance of community healing. Mr Peter Blenkiron told the Committee that ‘Healing does not have to take place just for us survivors; it has to take place in the community as well.’<sup>133</sup>

The Committee reviewed research relating to the impacts of criminal child abuse on communities. Some research indicates that such abuse, particularly by ministers of religion, can have severe and negative impacts on wider religious communities. This

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124 *Transcript of evidence*, Ms Carmel Moloney, Ballarat, 7 December 2012, p. 2.

125 *Submission S454*, Name withheld.

126 *Submission S471*, Name withheld.

127 *Submission S451*, Name withheld.

128 *Transcript of evidence*, Survivors Network of those Abused by Priests (SNAP), p. 8.

129 *Transcript of evidence*, In Good Faith and Associates, Melbourne, 12 November 2012, p. 5.

130 *Transcript of evidence*, Ms Ann Ryan, Ballarat, 28 February 2013, p. 2.

131 *Transcript of evidence*, Ms Sandra Clark, Melbourne, 25 March 2013, p. 6.

132 *Transcript of evidence*, Ms Sandra Clark, p. 6.

133 *Transcript of evidence*, Ballarat & District Group, p. 5.

impact is compounded when perceptions emerge that the responses to criminal child abuse have been insensitive and unfair.<sup>134</sup> One study identified that:

In response to this ‘discovery’, participants described strong feelings of ‘disgust’ toward bishops and cardinals as well as a burden of personal shame. Many described their church as now ‘stained’ and ‘soiled’.<sup>135</sup>

The research also identified that:

... for many, the rupture in the emotional connection to church leaders occurred in response to what participants perceived as the true motives behind church leaders’ improper decisions when confronted by the problem of clergy sexual abuse of minors.<sup>136</sup>

The Committee identified there is considerable work to be undertaken by non-government organisations in rebuilding some communities and re-establishing trust. Some suggested a need for restorative justice in communities. For example, Ms Pam Krstic from In Good Faith and Associates explained that ‘Canada has some examples of restorative justice and models of how parishes can rebuild and regenerate.’<sup>137</sup>

In its submission, Jesuit Social Services acknowledged there is a critical need to rebuild trust in the community. It stated that:

The trust of the community in religious and community organisations must be rebuilt if these organisations are to continue to carry out their missions. We firmly believe that trust and confidence will only be rebuilt when religious and other community organisations are fully transparent and allow themselves to be scrutinised by the public.<sup>138</sup>

It went on to state that Jesuit Social Services hoped ‘that opening ourselves up to scrutiny will allow us to restore the trust and integrity that forms the basis of our relationship with the community’.<sup>139</sup>

#### **Finding 4.4**

The impact on local communities of criminal child abuse in trusted organisations, particularly religious organisations, can be deep and divisive.

## **4.5. Impacts on society**

The impacts of criminal child abuse that occurs in non-government organisations on individuals, families and communities have broader implications and costs for society.

As illustrated above, many victims of criminal child abuse experience problems that can place complex and significant demands on a range of government services and resources. This involves considerable costs to the community.<sup>140</sup>

134 S.J. Rosetti (1995) ‘The impact of child sexual abuse on attitudes towards God and the Catholic Church’.

135 P.M. Kline, R. McMackin, & E. Lezotte (2008) ‘The impact of the clergy abuse scandal on parish communities’. *Journal of Child Sexual Abuse*, Vol. 17, No. 3–4, pp. 290–300, p. 294.

136 P.M. Kline, R. McMackin, & E. Lezotte (2008) ‘The impact of the clergy abuse scandal on parish communities’, p. 294.

137 *Transcript of evidence*, In Good Faith and Associates, p. 18.

138 *Submission S206*, Jesuit Social Services, p. 5.

139 *Submission S206*, Jesuit Social Services, p. 2.

140 *Transcript of evidence*, Professor Chris Goddard, Child Abuse Prevention Research Australia, Monash University, Melbourne, 19 October 2012, p. 5.

Similarly, the difficulties faced by primary and secondary victims often reduce their participation in education and employment and can reduce their capacity to engage in other activities, such as volunteer work, education and political participation. Connected with this reduced participation is the potential loss of productivity in Victoria.

Comparatively little work has been done to measure the broader economic impacts of criminal child abuse perpetrated in organisational settings.<sup>141</sup> Most of the work measuring the economic impacts of child abuse examines costs to the community broadly. It is not specifically focused on whether the abuse occurs within or outside the family.

The Committee noted the research into the cost of criminal child abuse in Victoria in 2009–10 that was commissioned by the *Protecting Victoria's vulnerable children inquiry* (the Cummins Inquiry). Basing its findings on the best estimates of prevalence and incidence of child abuse, Deloitte Access Economics identified substantial costs to Victoria. These included financial costs associated with the health, education and justice systems. The findings also emphasised productivity costs and costs to the social welfare system.

Importantly, the research commissioned by the Cummins Inquiry relates specifically to the prevalence of criminal child abuse emerging from the child protection system and survey data produced by the Australian Bureau of Statistics (ABS). In its report, Deloitte noted the following:

Limitations to data and evidence mean that there will naturally be a margin of uncertainty surrounding the magnitude of the estimated costs ...

It is difficult to isolate the extent to which ill health, substance misuse, poor social functioning, adult victimisation, poor employment and earnings outcomes and the other adverse outcomes listed above can be directly attributed to abuse.<sup>142</sup>

With these limitations in mind, it reached the following broad conclusion:

In total, the financial costs of child abuse and neglect which occurred for the first time in 2009–10 in Victoria were between \$1.6 billion and \$1.9 billion.<sup>143</sup>

Box 4.1 provides an overview of the costs identified in the research. The Committee noted that the research commissioned by the Cummins Inquiry has a specific focus on costs associated with child abuse that occurs in families.

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141 Work exists on the economic costs associated with maintaining child protection systems which are mostly geared towards preventing and responding to abuse within the family. See Australian Institute of Family Studies, Child Family Community Australia (2013) *The economic costs of child abuse and neglect*, from [www.aifs.gov.au](http://www.aifs.gov.au).

142 Deloitte Access Economics (2011) *The economic and social cost of child abuse in Victoria, 2009–10. Protecting Victoria's Vulnerable Children Inquiry*. p. 8.

143 Deloitte Access Economics (2011) *The economic and social cost of child abuse in Victoria, 2009–10.*, p. 8.

**Box 4.1: Lifetime costs of child abuse and neglect**

For each cost estimate, the ‘lower bound’ and ‘best estimate’ are provided to inform the broad range of impacts.

**Health system costs**

The lifetime health system costs of abuse and neglect that occurred for the first time in 2009–10 were between \$29.8 million and \$187.7 million. The Australian Government incurs the greatest share of the health system costs of child abuse and neglect, followed by the Victorian Government.

**Additional education costs**

The lifetime costs of additional programs required to assist children who were abused or neglected for the first time in 2009–10 were between \$6.4 million and \$38.7 million. The Victorian Government incurs the greatest share of these costs.

**Productivity losses**

Lifetime productivity losses due to child abuse and neglect that occurred for the first time in 2009–10 were in the following areas:

- Lower employment—children in out-of-home care are less likely than other children of their age to be employed and if they are employed, they are likely to receive lower weekly earnings on average. These costs over the lifetime for those whose abuse or neglect occurred for the first time in 2009–10 are between \$11 million and \$67 million.
- Premature death—around \$37 million in productivity losses occurred because of premature death associated with child abuse and neglect that occurred for the first time in 2009–10.

**Courts and crime**

The lifetime costs to the justice system of abuse and neglect that occurred for the first time in 2009–10 were \$74.4 million. These costs are borne by the Victorian Government. This excludes the association between child abuse and criminal activity later in life.

Second-generation crime refers to criminal activity later in life by adults who were abused as children. The lifetime cost of second-generation crime related to abuse that occurred for the first time in 2009–10 is between \$260,000 and \$1.6 million.

**Deadweight losses**

Efficiency losses associated with taxes and transfer payments arising because of abuse or neglect that occurred for the first time in 2009–10 are between \$351.2 million and \$411.4 million.

Source: Adapted from Cummins, Scott, Scales (2012) *Report of the Protecting Victoria's vulnerable children inquiry* (Cummins Inquiry).

In the broader Australian context, Access Economics, the Australian Childhood Foundation and Monash University undertook a study in 2008 on the economic costs of criminal child abuse.<sup>144</sup> The Access Economics report was based on the prevalence

144 P. Taylor, P. Moore, L. Pezzullo et al. (2008) *The cost of child abuse in Australia*. Melbourne, Australian Childhood Foundation and Child Abuse Prevention Research Australia.

of child abuse and neglect in 2007 and looked at the number of children who had experienced abuse and neglect in that year.<sup>145</sup> The overall costs were made up of government expenditure on child protection, health services and crime.

The Access Economics report estimated that 177,000 children under the age of 18 were abused or neglected in Australia in 2007. The victims who were abused in organisational settings were not specifically identified but are captured in the overall figures. The best estimate of the actual cost of child abuse incurred by the Australian community in 2007 was \$10.7 billion, and could have been as high as \$30.1 billion.

The same study estimated that the value of the burden of disease (a measure of lifetime costs of fear, mental anguish and pain relating to child abuse and neglect) represented a further \$6.7 billion.

#### **Finding 4.5**

While the actual costs associated with criminal child abuse in organisations are unknown, there are significant economic and social costs associated with child abuse in Victoria.

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145 Methodology for calculating estimates is detailed in the study itself.



# Chapter 5

## Achieving justice

### AT A GLANCE

#### Background

Victims of crime seek justice for the harm they suffered. How that justice is provided or achieved is important and can assist in their recovery from the crime of child abuse. Justice is multilayered and means different things to different people.

#### Key findings

- Victims often want an opportunity to restore their lives and to repair the damage they experienced as a consequence of being criminally abused by personnel in a non-government organisation.
- Victims frequently wanted to see consequences for the perpetrator of the criminal child abuse—to be stood down from their position, the allegation reported to the police and the perpetrator prevented from continuing to criminally abuse children.
- Victims often want to receive vindication from the organisation for the injustice they suffered and acknowledgement that the organisation failed in its duty of care to protect them.
- Many victims, families and communities felt a lack of justice and a sense of ‘unfinished business’ with non-government organisations, particularly the Catholic Church in Victoria, for the following reasons:
  - ♦ double betrayal—inconsistent approaches to victims and offenders
  - ♦ hypocrisy—claims of moral authority
  - ♦ lack of accountability—refusal to accept responsibility.
- While not within the Terms of Reference, a number of victims, particularly those in the care of the State, felt betrayed by authorities, such as the Government and the police, for the following reasons:
  - ♦ lack of supervision—inadequate government inspectors and monitoring of the non-government institutions in which they were placed
  - ♦ lack of intervention—the police often escorted those who escaped back to the non-government institution.

Victims want justice. This was a strong and consistent message throughout the Inquiry.

Justice is multi-layered and the Committee learnt that it means different things to different people. The experiences victims shared with the Committee revealed broad themes about what justice would look and feel like.

Victims of criminal child abuse by personnel in trusted organisations pursued justice for what they often perceived to be the loss of their innocence as a child. They wanted to see consequences for perpetrators—to see them removed from their position, reported to police and potentially punished through the criminal justice system.

Victims also had hopes and expectations that organisations they had trusted would acknowledge their failure in their duty of care to protect children from the harm of criminal child abuse. Victims hoped organisations would listen to their experiences and validate them by providing a genuine expression of remorse and an acknowledgement of wrongdoing.

The Committee heard, however, that many victims were not given the basic levels of respect they expected. Organisations frequently did not assume responsibility for the harm suffered by victims of criminal child abuse. Victims spoke of ‘unfinished business’ and resentment resulting from the inadequate response by organisations to their disclosure of criminal child abuse they experienced by personnel within the organisation.

Adding to the sense of injustice that victims experienced was a sense of betrayal by organisations that failed to provide the response they anticipated. Victims told of circumstances where organisations were inconsistent in their approaches to victims and offenders—giving inadequate support to victims, yet providing pastoral, legal and financial support to offenders. They spoke of unfulfilled promises by leaders in the organisation and the trivialising of their experiences.

Victims and their families expressed specific outrage at the apparent hypocrisy of religious organisations that failed to protect children yet refused to acknowledge the harm and suffering caused by perpetrators. Religious institutions that claim moral authority in society demonstrated their incapacity, and sometimes unwillingness, to respond adequately to the crime of child abuse committed by personnel in their organisations.

## 5.1. Need for justice

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From the outset, the Committee acknowledged and recognised that victims are seeking justice. Many witnesses and submitters to the Inquiry impressed on the Committee that victims are entitled to justice. Their comments included:

What I wanted to see was justice.<sup>146</sup>

I think the most important thing to a victim is to get justice.<sup>147</sup>

I feel I need to achieve ... a sense of justice being done in this matter.<sup>148</sup>

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146 *Transcript of evidence*, Mr John Frederiksen, Melbourne, 4 March 2013, p. 6.

147 *Transcript of evidence*, Mr Chris Pianto, p. 3.

148 *Transcript of evidence*, Mr Kevin Houlihan, p. 3.

Those men deserve justice.<sup>149</sup>

Justice has to be seen to be done, and I do not believe it has been.<sup>150</sup>

I believe there has to be justice.<sup>151</sup>

I want justice. I want it for me, but I also want it for a lot of other people, too.<sup>152</sup>

Real justice—that long-overdue justice that these people and this community have an entitlement to.<sup>153</sup>

While many victims seek vindication, others were uncertain about what they wanted or what justice would mean to them. The Committee acknowledges that decisions about how to pursue justice are not easy for victims. For many, the process of pursuing justice can in itself retraumatise them.

Many victims and their families told the Inquiry that despite their efforts to achieve justice, they felt they had not received the justice they were entitled to. One witness stated that ‘I see it is unfinished business ... There are certainly a lot of open sores that still have not been closed.’<sup>154</sup> Mr Paul Brockhoff also expressed his view in his written submission, explaining his participation in the Inquiry:

So why am I writing? I want to ensure that no stone is left unturned and that every single person who covered up and who committed grave offences against small children is brought to justice and in doing so, rendered incapable of committing such badness again. My expectations of this process are limited. I don’t see how it could result in the ‘opening of the can of worms’ we are all secretly expecting and hoping for. Though it *is* good to be heard.<sup>155</sup>

## 5.2. What does justice mean to victims?

The Committee became acutely aware of the profound importance that achieving justice has to victims, their families and local communities. To improve its understanding of what victims want in their pursuit of justice, throughout the hearing process the Committee Chair asked this question of nearly all individuals who asked to appear before the Inquiry.

After considering the responses of nearly 100 witnesses, the Committee concluded that the meaning of justice is unique to each victim, while also being multidimensional. One victim advocacy group, In Good Faith & Associates, explained that justice ‘is multifaceted, it is comprehensive’ and that it needs to be approached holistically.<sup>156</sup> In the context of the Catholic Church, Mrs Helen Watson, the mother of a victim, suggested to the Inquiry that:

Justice has huge scope. It is a lot of things. It is about acknowledgement; it is about how the alleged perpetrator—if found guilty—needs to do the time; and it is about the hierarchy of the Church that is actually a part of the cover ups and allows these sexual perpetrators to move from place to place continually sex abusing. They need to

149 *Transcript of evidence*, Mr Hugh McGowan, p. 3.

150 *Submission S470*, Name withheld.

151 *Transcript of evidence*, Ms Brenda Coughlan, Melbourne, 15 March 2013, p. 4.

152 *Transcript of evidence*, Mr Wayne Davis, p. 5.

153 *Transcript of evidence*, Ms Judith Courtin, p. 2.

154 *Submission S470*, Name withheld.

155 *Submission S392*, Mr Paul Brockhoff, p. 4.

156 *Transcript of evidence*, In Good Faith and Associates, pp. 11–12.

be held accountable as well. It is about accountability for the Church, very much so.<sup>157</sup>

One member of the Catholic Church community, Mr Bernd Bartl, explained to the Committee that achieving justice is broad and that:

Proper restitution, restoration, redress—including punishment—and reconciliation for any wrong done, to the extent that is humanly possible, has to be an absolutely essential part of any ‘sorry’.<sup>158</sup>

Many who responded to this question had firm views about what justice meant to them individually. The Committee found that victims need access to multiple options in the pursuit for justice, ranging from a meaningful apology to financial compensation.

Hearing the experiences of victims in their oral evidence and reading their written submissions helped the Committee understand the concerns of victims, their families and their communities. The Committee identified the following motivations for seeking justice:

- To see consequences for the perpetrator of the criminal child abuse and an opportunity to restore their lives and the damage done to them.
- To receive vindication from the organisation for the injustice they suffered and acknowledgement that the organisation failed in its duty of care to protect them.

Victims told the Inquiry that when organisations and authorities failed to provide the response they were seeking, victims were strongly driven to pursue their grievance through the criminal and civil justice systems. In some instances, the inability to pursue civil options due to the nature of the entity—for example, the Catholic Church is not a legal entity that can be sued—added further to victims’ sense of injustice.

### **Finding 5.1**

Victims often want an opportunity to restore their lives and to repair the damage they experienced as a consequence of being criminally abused by personnel in a non-government organisation.

## **5.3. Justice for damage to lives**

In disclosing their abuse to family, friends or the organisation, many victims were seeking justice specific to the perpetrator of the abuse. They described how losing their innocence at a young age had tarnished their lives. As one victim said, ‘I think it is fair to say my childhood ended that year.’<sup>159</sup> He was 14 years of age.

When victims disclosed their experience of criminal child abuse and its impact on them, they had expectations of how they would be treated and what they hoped would happen. The Committee heard almost solely from adult victims who disclosed long after the abuse, which is consistent with evidence received that it is often decades after the abuse that victims disclose their experience. Some, however, had tried to disclose earlier.

<sup>157</sup> *Submission S158*, Ms Helen Watson, p. 6.

<sup>158</sup> *Transcript of evidence*, Mr Bernd Bartl, Melbourne, 26 March 2013, p. 3.

<sup>159</sup> *Transcript of evidence*, Mr Andrew Collins, p. 11.

Victims had three initial expectations and hopes when they first reported their experience of criminal child abuse:

- They expected to be believed when they disclosed the abuse.
- They hoped and expected that there would be consequences for the perpetrator—that is, being stood down from their position and the allegation reported to police.
- They wanted to prevent abuse that occurred to them occurring again or to others.

### **Finding 5.2**

Victims frequently wanted to see consequences for the perpetrator of the criminal child abuse—to be stood down from their position, the allegation reported to the police and the perpetrator prevented from continuing to criminally abuse children.

#### **5.3.1. Being believed—disclosure**

When they first found the courage to disclose their experience of criminal child abuse to their parents or to a person in the organisation, some victims described situations of not being believed. If they reported this experience as a child and were not believed, many felt unable to raise their experience again until decades later, or sometimes never.

The reasons children felt unable to disclose are complex. Fear of not being believed was a significant factor. Some victims also described a feeling of wanting to protect their parents from knowing what was happening. For example, Mr Raymond D’Brass explained that:

I never told my parents or anyone in the church about what was happening. It was a very confusing time for me, as I came from a very staunchly Catholic household and upbringing where the priest was considered to be the centre of our community and a direct link to God which could never be questioned.<sup>160</sup>

The Committee heard of the traumatic consequences for victims who were not believed as children when they disclosed their criminal child abuse. For example, Mr Andrew Collins told the Inquiry that:

My reporting of the abuse was not believed by any of the adults who I told, and nothing was done about it. This was not only a betrayal of trust, but it left me in fear. I was all alone, and I had to face this fear by myself.<sup>161</sup>

Not only were children not always believed, some experienced punishment for mentioning what had happened to them. Mr Chris Pianto recalled that ‘When I first told my mother, she told me to wash my mouth out with soap, because it was lies.’<sup>162</sup> Another victim told the Inquiry of a similar experience of a friend:

He told the nun who was running the school. She promptly gave him a hiding. He went home, told his parents, his parents never believed him. He has locked it up for 40 years. There are about four or five people in this world that he has told.<sup>163</sup>

160 *Transcript of evidence*, Mr Raymond D’Brass, p. 2.

161 *Transcript of evidence*, Mr Andrew Collins, p. 11.

162 *Transcript of evidence*, Mr Chris Pianto, p. 2.

163 *Submission S458*, Name withheld.

When adults did not believe disclosures of criminal child abuse, children were left unprotected and at continued risk and exposure to abuse. There were no consequences for the perpetrator, who remained in the community providing them opportunities to continue abusing children. Chapter 15 of Part E discusses the measures that are important for supporting children's disclosure of criminal child abuse.

For victims in institutional settings, the criminal child abuse was part of the culture. Children often felt there was no one to whom they could disclose. For example, some explained being taught not to be a 'dobber'.<sup>164</sup> On occasions, some ran away, only to find that external authorities, such as the police, did not believe them and even escorted them back to the same or another institution. Their return would often result in harsh punishment for running away and further abuse.<sup>165</sup>

Ms Gabrielle Short told of her experience when she tried to escape an abusive situation in an institution:

If we were caught talking or resting, we were severely punished. I was getting to the point of complete desperation, so after a few months I escaped; however, I ended up at the Kyneton police station and was taken to a remand centre called Winlaton.

This was not a place for a child, especially a child whose only crime was running away from the system that was failing me and many other wards of the State.<sup>166</sup>

For those who disclosed their criminal child abuse as an adult, similar feelings of a need to be believed were expressed. Mr Max Johnson told the Inquiry that when he tried to report his experience of abuse, the Catholic Church did not treat him with sensitivity. His interpretation of the response was that "They would not believe me. I said, "At least could you come and listen?" And they said, "We are not prepared to help you in any way."<sup>167</sup>

Mr Brian Cherrie also reported his abuse to the organisation, the Salvation Army, and felt that he was not believed. While he received an apology from the Salvation Army, it was qualified with a comment about the abuse 'which you say occurred'. Mr Cherrie told the Inquiry that he found this comment 'absolutely offensive'.<sup>168</sup>

One man explained that victims 'are looking for somebody who wants to listen. There are so many who were not believed ... It is something that only other survivors can understand.'<sup>169</sup> Not being believed led to many victims feeling an intensified need for validation through their pursuit for justice.

### 5.3.2. Consequences for the perpetrator

The Committee heard that victims of criminal child abuse hoped and expected that when they told someone about the abuse there would be consequences for the perpetrator. The evidence before the Inquiry showed, however, that there were often no consequences for the perpetrator. The treatment of the perpetrator by the organisation was a significant contributing factor to the general sense of dissatisfaction with the process for responding to allegations and the victim's sense of injustice.

164 See *Transcript of evidence*, Mr Peter Komiazyk, pp. 2–3.

165 *Transcript of evidence*, Care Leavers of Australia Network (CLAN), p. 9.

166 *Transcript of evidence*, Ms Gabrielle Short, Melbourne, 26 March 2013, p. 4.

167 *Transcript of evidence*, Mr Max Johnson, p. 5.

168 *Transcript of evidence*, Mr Brian Cherrie, Melbourne, 4 February 2013, p. 7.

169 *Submission S463*, Name withheld.

Victims told the Inquiry that they wanted to see the person who had abused them punished for their actions. For some this involved removing the perpetrator from their existing position to prevent others being at risk. For example, Ms Sandra Higgs stated that ‘My intention was to get rid of that priest.’<sup>170</sup>

Another victim explained that exposing the perpetrator publicly was essential commenting that ‘I want him physically and permanently named as a paedophile.’<sup>171</sup>

Similarly the Committee heard of victims seeking to have offenders’ honours removed or cancelled. In instances in which ministers of religion were found guilty of criminal child abuse, victims and their families felt strongly that they did not deserve ongoing public accolades.

Mr John Frederiksen explained to the Inquiry that ‘We have tried with this [perpetrator] to get his Order of Australia removed by writing to the Governor-General.’<sup>172</sup> He went on to state that the issue has not been resolved:

We have got one letter back. I might have two letters back saying that the G G [Governor-General] is looking into it. We have kept the pressure on. I even wrote to Julia Gillard the other night ... I think they have said either to me or to one of the others they are still looking into it ... I just think that it is ridiculous that this guy would be given an order.<sup>173</sup>

The brother of a victim, Mr James Boyle, told the Inquiry of a similar challenge:

If we go quickly through how Gavan was treated. He asked for three things: good counselling, the removal of Penn Jones’s, the abuser, name from an honour roll in St Patrick’s Cathedral, and the removal of Jones’s honorific rank, Very Reverend Monsignor, Prelate of Honour of His Holiness the Pope. None of those was ever actioned in response to Gavan’s wishes. Only much later the second of those items, the removal of Jones’ name on a plaque, was done, at my sister’s insistence.<sup>174</sup>

Another victim explained:

There is also a street in Laverton, which is where I grew up, which has been named after Father Rubeo. I do not go there often, but if I do, I have to drive past that street and see that name. It is not a main thoroughfare but I know it is there, my brother knows it is there, everybody knows it is there, everybody knows who it was named after in the first place, because he was the first parish priest in Laverton. That sticks in my craw a bit.

We have some friends who went to the local council—and again I do not know whether Parliament can do anything about this; it is a local council issue, I suppose. They took up a petition, got signatures, and when the council sent letters out half the people did not bother responding. Half the people said, ‘Yes, we will have the name changed’ and the other half said, ‘No, we don’t want the name changed’, so they are not going to change the name as far as I know. I got an email yesterday. There was a council meeting last night, and it looked like the council was not going to change the name. That really does get my goat a little bit.<sup>175</sup>

170 *Transcript of evidence*, Ms Sandra Higgs, Geelong, 15 February 2013, p. 2.

171 *Submission S455*, Name withheld.

172 *Transcript of evidence*, Mr John Frederiksen, p. 4.

173 *Transcript of evidence*, Mr John Frederiksen, p. 7.

174 *Transcript of evidence*, Mr James Boyle, Melbourne, 15 March 2013, p. 3.

175 *Submission S480*, Name withheld.

One victim explained that he discovered that not only had perpetrator not been stood down, he was also honoured in his death:

He was buried as a full priest after he came out of jail. He was still Father O'Donnell ... when he died. This was two years after he had come out of jail, and he was still a priest, and he was buried in the Melbourne General Cemetery in the bloody priests' crypt.<sup>176</sup>

Mr Anthony Foster, the father of children abused by the same priest, made a similar point, stating that there has been 'continued reverence for people who have carried out terrible acts and continued support for them in a priestly way'.<sup>177</sup>

This conduct of the Catholic Church is considered in more detail in Chapters 20 and 21 of Part F, which explores the manner in which it currently deals with allegations of criminal child abuse.

For others, seeing charges laid for criminal acts was a critical element of the response they expected to receive after disclosing their abuse. One victim said to the Committee, 'The perpetrators, I feel, need to experience the full force of the law. The result may be guilty or not guilty, but something needs to be done'.<sup>178</sup> Another victim made a similar point:

The victims and their families also need and deserve an assurance that no crimes or serious breaches of trust and responsibility have gone unpunished and that action has been taken to ensure that no such crimes or breaches can occur in the future.<sup>179</sup>

### 5.3.3. Punishment and prevention

Several witnesses made the link between punishment and prevention, demonstrating how important they felt it was not to subject other children to the experiences they had suffered. Part D discusses the prevention of criminal child abuse in non-governmental organisations and Part G details the role of the criminal law in prevention.

In relation to the punishment of offenders through the criminal justice system, consistent with research findings, the Committee was informed that the actions of perpetrators were very rarely reported as crimes. The movement of priests within the Catholic Church caused particular outrage amongst victims and their families. For example, the wife of a victim explained that:

This guy was found doing this [abusing children] since 1948. [My husband] was born in 1960; he was 14 in 1974. This did not have to happen ...

But they knew. They just moved him from parish to parish and tried to just shut it down and pretend it never happened.<sup>180</sup>

The mother of a victim, Mrs Helen Watson, expressed with incredulity:

It is beyond belief that the bishop of Ballarat, Mulkearns, could place Ryan in a church community with the knowledge that he was a sexual predator, endangering the lives of young members of the church community.<sup>181</sup>

176 *Submission S478*, Name withheld.

177 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 16.

178 *Submission S459*, Name withheld.

179 *Submission S476*, Name withheld.

180 *Submission S478*, Name withheld.

181 *Transcript of evidence*, Ms Helen Watson, p. 3.

The lack of consequences for perpetrators led to a profound sense of injustice for victims, their families and communities. While at times victims were let down by the criminal justice system itself, the failures of organisations in how they acted were an equal cause of anger and feelings of injustice. The next part of this Report looks at the responses of organisations to reports of criminal child abuse by their personnel prior to any formal internal process being developed.

#### **5.4. Justice for failing to uphold duty of care to children**

The Committee heard that an organisation's response to a report of criminal child abuse is a key factor in whether a victim feels they have been dealt with fairly and justly. Historically, religious and non-government organisations in Victoria have a poor record in responding to complaints of criminal child abuse. Chapter 7 in Part C discusses the past handling of child abuse by organisations. Given that many victims are adults when they disclose experiences of abuse, an organisation's response to cases that occurred in the past are essential in providing victims with a sense of justice.

In addition to wanting organisations to take action to respond to the alleged offender and to stop the abuse from recurring, victims of criminal child abuse described four ways in which they expected to receive justice from organisations in response to their disclosure. They expected to:

- be heard and have their experience validated
- receive an expression of genuine remorse by the organisation and acknowledgement of its failure to protect them
- receive an offer of appropriate support
- receive an explanation of the available options for legal, financial and other redress.

##### **Finding 5.3**

Victims often want to receive vindication from the organisation for the injustice they suffered and acknowledgement that the organisation failed in its duty of care to protect them.

##### **5.4.1. Being heard—validation by the organisation**

Victims who reported an experience of criminal child abuse to an organisation wanted to be heard. This was similar to their need to be believed. They expressed a need to be listened to and for the organisation to make the effort to understand and validate what had happened to them. The Committee learnt, however, that many victims felt they had not been heard and that their experience was not treated sensitively, not understood and sometimes trivialised. In addition, some felt that the organisation did not believe their story, or worse, actively sought to deny or minimise the extent and knowledge to which the leadership was aware of the abuse.

The Committee heard that a number of religious and non-government organisations had failed to provide a sense of justice for victims and their families. How they were treated when they made a complaint of criminal child abuse was important to victims. Parish priest from St Mary of the Angels Parish in Geelong, Fr Kevin Dillon, explained that victims should be treated 'with compassion, with support, with justice

and a sense of recognising their value'.<sup>182</sup> Mr Bartl expressed his view that there has been an 'appalling lack of justice and compassion in relation to victims of sexual abuse' in the Catholic Church specifically.<sup>183</sup> Victim advocate group, In Good Faith & Associates, suggested that:

Victims are best served when they are listened to ... when they hear our outrage at what has been done to them and when they see we are not frightened by their stories, that we can handle them and that we are galvanised for action.<sup>184</sup>

One victim, Mr Jim Commadeur, expressed his view that the processes he experienced were not designed to make people listen. He explained that the 'Towards Healing protocol has had an adverse healing impact; it was as if "they" did not let me speak—"they" did not listen.'<sup>185</sup>

Other victims also spoke of not being listened to and not being treated with compassion. Ms Mairead Ashcroft described her experience:

I was asked a whole heap of questions. So you are not believed first; you are interrogated, and then if you can give enough evidence that there is a possibility that you might be telling the truth they look into it.<sup>186</sup>

Others described the importance of validation from the organisation. Fr Paul Walliker explained that 'validation is incredibly important for people ... It is when they hear from somebody that they are believed that it is important.'<sup>187</sup> Another victim told the Inquiry:

People who have experienced abuse as children first need to have their trauma acknowledged and validated to begin the healing process.<sup>188</sup>

Victims' sense of a lack of compassion by organisations in response to complaints of criminal child abuse led to a further feeling that organisations trivialised victims' experiences. Dr Joseph Poznanski, a psychologist who works with victims of child abuse, explained:

Most clients with whom I have had the privilege of working appeared to feel that these internal processes had been geared towards denial and minimisation of their suffering.<sup>189</sup>

Victims expressed these same views to the Inquiry. One person said, 'He minimised things ... He minimised what had happened to me.'<sup>190</sup> Mr Foster emphasised how unjust he considers this trivialisation, stating that 'This has been known as a severe crime in our society for centuries, and here we have ... the church minimising what we all know is a crime.'<sup>191</sup>

Some victims of criminal child abuse and their families felt that this belittling of their experiences was connected to the organisation's incapacity to comprehend the impacts of the abuse. They explained that their experience and the response they

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182 *Transcript of evidence*, Father Kevin Dillon, p. 3.

183 *Transcript of evidence*, Mr Bernd Bartl, p. 6.

184 *Transcript of evidence*, In Good Faith and Associates, p. 9.

185 *Transcript of evidence*, Mr Jim Commadeur, Melbourne, 23 November 2012, p. 2.

186 *Transcript of evidence*, Ms Mairead Ashcroft, pp. 2–3.

187 *Transcript of evidence*, Father Paul Walliker, Bendigo, 14 March 2013, p. 6.

188 *Submission S476*, Name withheld.

189 *Transcript of evidence*, Dr Joseph Poznanski, p. 2.

190 *Submission S461*, Name withheld.

191 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 9.

received ‘shows a complete lack of understanding’.<sup>192</sup> One victim referred to ‘the lack of awareness and ... the inability to really grasp the realities of abuse victims and their families and their life situations’.<sup>193</sup>

Br Barry Coldrey supported these views, stating that from his perspective the Catholic Church ‘is not sympathetic to victims ... there is just no sympathy’.<sup>194</sup>

The Committee heard the benefits that come from victims receiving validation of their experience and understanding of its impacts. One victim, for example, explained that he secured a meeting with the provincial of the perpetrator’s religious order:

Talking to him, I just think, ‘Oh my God, finally here is somebody who really does get it’. That was the beauty of that whole meeting too: it was so healing. Forget the money side of it, I just felt somebody really heard us and understood our situation. There are so few people who seem capable of doing that for one reason or another ...<sup>195</sup>

#### 5.4.2. Remorse and acknowledgement

The Committee concluded that remorse and a sincere apology from the organisation are central to the process of bringing justice to victims and families who report an allegation of criminal child abuse. Linked to this is validation for victims through an acknowledgement of wrongdoing by the organisation—recognition that it breached its duty of care to ensure the safety of children.

Victims and their families consistently emphasised that they would have valued an expression of remorse and a meaningful and considered apology from the organisation. Yet many felt they did not get this validation from the perpetrator’s organisation. As one victim said: ‘What I wanted was some real remorse from an organisation and an apology, and I got neither.’<sup>196</sup> Mr Wayne Davis explained to the Inquiry that what he wants to see is ‘a genuine and sincere apology [to] be given by church and institutions for what was done in their name’.<sup>197</sup> He went on to say:

It has taken until last year to get the Catholic Church to give me a piddling, and I mean a piddling, for what I have suffered, which I have got, a one-fits-all apology from them in there. They just change a couple of names and give it to every single one of us.<sup>198</sup>

Another person told the Inquiry of a similar experience:

The other thing that I got which really upset me was a very generic apology, a legally safe apology and one which I have since found out was almost like one that is photocopied and they just change the name here and there. I have pushed for a more sincere apology that really related to what actually happened but never got that.<sup>199</sup>

The Committee heard that an apology that a victim finds meaningful can be very beneficial to them. Uncle Murray Harrison from Connecting Home explained to the Committee the value of the Australian Government’s apology in 2008 to the Stolen Generations:

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<sup>192</sup> *Submission S456*, Name withheld.

<sup>193</sup> *Submission S464*, Name withheld.

<sup>194</sup> *Transcript of evidence*, Dr Barry Coldrey, Melbourne, 1 March 2013, p. 7.

<sup>195</sup> *Submission S464*, Name withheld.

<sup>196</sup> *Submission S477*, Name withheld.

<sup>197</sup> *Transcript of evidence*, Mr Wayne Davis, p. 3.

<sup>198</sup> *Transcript of evidence*, Mr Wayne Davis, p. 3.

<sup>199</sup> *Submission S464*, Name withheld.

For me personally, the apology meant that we were recognised as somebody and we are able to heal. Maybe an acknowledgement of being abused will also go towards helping healing.<sup>200</sup>

In September 2013, a senior Orthodox rabbi apologised for years of mishandling and cover-up of child sexual abuse within the Jewish community. Mr Manny Waks, who appeared before the Inquiry in December 2012 and sought such a public apology, referred to it as ‘an incredible milestone’.<sup>201</sup>

The Committee noted that other organisations, including the Catholic Church and the Salvation Army, have not provided a full and frank account of the extent of criminal child abuse in their organisations. This presents a challenge for these organisations — their past reluctance to openly acknowledge, and express genuine remorse for, their abuse of children has created a level of scepticism amongst victims. The Committee found that this will make it difficult for such organisations to gain credibility in any attempt to make an apology for individual and more systemic abuse.

There is a link between a meaningful, individualised apology and victims feeling validated. For some victims the connection between an apology, acknowledgement and being believed was important. One person explained:

What [an apology] would have provided is acknowledgement, validity that I had been through this experience, that they understood that I had been through this experience and that they were responsible for that.<sup>202</sup>

Many victims expressed similar views about how they believe a sincere apology and recognition by leaders in organisations of wrongdoing would assist. For example:

I think the most important thing to a victim is ... for people to acknowledge the suffering, the pain, the guilt and the shame that they have had to live through for, sometimes, 20 or 30 years.<sup>203</sup>

My wish list is: for the church to acknowledge that the abuse by the members was unacceptable.<sup>204</sup>

To get recognition of the trauma and the suffering that is ongoing.<sup>205</sup>

I would like some formal acknowledgement and apology about what took place and an acknowledgment of the impact it has had on me, so that I can obtain some sense of closure.<sup>206</sup>

As discussed by Uncle Murray Harrison, for a number of victims acknowledgement was valuable in helping with a healing process. Fr Walliker explained:

The victims should have [an] authority ... say to them, ‘Yes, we acknowledge it. We have the hard evidence. We have the goods. We are sorry that we can’t give you the justice that perhaps you want, but we acknowledge and we accept.’<sup>207</sup>

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200 *Transcript of evidence*, Connecting Home, p. 10.

201 Barney Zwartz ‘Senior rabbi apologises for sexual abuse cover-up’, *The Age*, 12 September 2013.

202 *Submission S460*, Name withheld.

203 *Transcript of evidence*, Mr Chris Pianto, p. 3.

204 *Transcript of evidence*, Mr Keith Whelan, p. 6.

205 *Transcript of evidence*, Mr Rob Walsh, Ballarat, 28 February 2013, p. 13.

206 *Transcript of evidence*, Mr Kevin Houlihan, p. 3.

207 *Transcript of evidence*, Father Paul Walliker, p. 6.

Member of the Catholic Church community, Mr Bartl, expressed his views about the importance of acknowledgement if a person is to attempt to restore their life after an experience of criminal abuse as a child:

For somebody who has been sexually abused, on the face of it their innocence is enormously difficult to restore. But in so far as there can be any restoration, it involves the person who has done the wrong acknowledging that it was a wrong.<sup>208</sup>

In one of the less common experiences recounted to the Committee, Mr Hugh McGowan spoke of the acknowledgement of wrongdoing by the organisation he received when he met with senior representatives of the Uniting Church. This related to his experience of abuse while in institutional care. He stated:

I thought the meeting we had was productive and there was a good understanding of my concerns, which were acknowledged and sympathetically received. This included an acknowledgement of the wrongdoings to me as a child in the care of the church.<sup>209</sup>

Mr McGowan went on to explain that he had not sought financial compensation from the Uniting Church, but that victims in similar circumstances should be entitled to do so.

Another victim referred to his experience after reporting his abuse to the Anglican Church:

I would like to say that the support that I received was absolutely fantastic. You hear a lot of negativity about, ‘There was no support’. Well, for me there was support; I cannot deny that. When I told the chairman of the Church of England Boys Society, the CEBS ... [t]he director, Garry Allen, came and visited me. The Anglican diocese provided counselling. I could not fault their reaction; it was excellent.<sup>210</sup>

The Committee noted during its examination of the Catholic Church files that a number of victims expressed satisfaction with aspects of the response they received, such as their allegation being dealt with efficiently and sensitively. Chapters 20 and 21 in Part F discusses this further.

The Committee also heard that for many victims and their families an apology alone, without actions, is not enough. For example, Mr Joseph Saric said:

I totally agree with an apology. But the problem I see with the Catholic Church is that they are only words ... Words are just words to a lot of these people; they do not mean too much. Words are meaningless ...

To me, only deeds and actions represent a way forward. Apologies are just words.<sup>211</sup>

Mr Bartl made a similar comment regarding offers of apology stating that ‘Saying the words “sorry” or “apology” or praying to God when there is a very real earthly action that could be initiated and continued is simply and grossly inadequate.’<sup>212</sup>

### 5.4.3. Support

The Committee found that it is critical to provide appropriate and holistic support when people disclose an experience of criminal child abuse. They relive their trauma

208 *Transcript of evidence*, Mr Bernd Bartl, p. 4.

209 *Transcript of evidence*, Mr Hugh McGowan, p. 5.

210 *Submission S463*, Name withheld.

211 *Transcript of evidence*, Mr Joseph Saric, p. 5.

212 *Transcript of evidence*, Mr Bernd Bartl, p. 3.

when retelling their experience. Many participants in the Inquiry emphasised this, yet explained that they did not receive such support when they reported their abuse to the relevant organisation.

One witness explained to the Committee that:

... the police should be the first port of call. But at the same time there should also be some kind of support mechanism, because it is a very traumatic experience as a victim of criminal child abuse to tell your story; I have to tell you that it is very traumatic.<sup>213</sup>

Fr Dillon told the Committee that in the context of the Catholic Church he considered pastoral care is critical in supporting victims of criminal child abuse. In his experience, however, he found that:

There is no pastoral follow through ... When I have spoken to victims, I have asked, 'Have you had any follow through? Has anybody ever rung you up to ask how you're going? Have you got through this all right? Are you still okay?' and whatever, but there is never a phone call, never a follow up.

This is something that should be at the very core of the church's mission.<sup>214</sup>

Dr Poznanski also expressed concern that the Catholic Church processes for responding to allegations of criminal child abuse do not necessarily include the provision of support or follow up:

The most critical issue for my clients is the protracted nature of the complaint process, and in many instances a lack of pastoral care during the lengthy duration. In my experience, no representative of Towards Healing has ever approached any of my clients to inquire about their wellbeing and whether or not he or she would like to accept a pastoral meeting with the provincial of the relevant religious order.<sup>215</sup>

Mr Frank Golding from the Care Leavers Australia Network (CLAN) explained the importance of support during a process of reporting abuse to an organisation:

The organisation should encourage and enable the victim to be supported throughout the process by an advocate of their choice ... It should not be the choice ... that the support person is discouraged from even participating and told not to speak during the interview ... Victims do need to be supported, given the power imbalance that exists in such a negotiation.<sup>216</sup>

Some witnesses told the Inquiry that while they wanted a support person at meetings about their grievance, they were not permitted to take anyone with them. For example, one person told the Committee that in the Catholic Church's Melbourne Response process:

They just keep stringing you on and stringing you on. They have brought me into meetings, not allowing me to bring a support person ... so I had to go on my own, and that was pretty traumatic.<sup>217</sup>

The Committee recognised that support, including pastoral support, is essential for victims when they disclose an allegation of criminal child abuse and engage in any process with an organisation.

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213 *Submission S462*, Name withheld.

214 *Transcript of evidence*, Father Kevin Dillon, pp. 3–4.

215 *Transcript of evidence*, Dr Joseph Poznanski, p. 3.

216 *Transcript of evidence*, Care Leavers of Australia Network (CLAN), p. 13.

217 *Submission S452*, Name withheld.

#### 5.4.4. Organisation processes for responding to reports of child abuse

The Committee heard that after disclosing an experience of criminal child abuse, victims hoped the organisation would be respectful towards them. They hoped the organisation would provide them with adequate options for seeking redress for the harm they had experienced and the opportunity to try to restore their lives.

Some non-government organisations, such as the Catholic Church and the Anglican Church, have set up internal systems and processes for responding to allegations of child abuse. These processes are discussed in Chapters 19, 20 and 21 in Part F. But the Committee found that some of these internal processes were not always conducive to a positive experience for victims, resulting in a sense of further injustice and damage for many.

One of the notable features of the processes in the Catholic Church specifically was that victims felt they were not informed about the process for responding to reports of criminal child abuse and what it involved. For example, one victim described their experience to the Committee:

I got no explanation at all of the process. Not at any time through the whole interview did he give me any description of the process—what was involved, what his role was, really what I could possibly get out of going to the Melbourne Response. There was none of that given to me—no paperwork, nothing.

I had no idea how it worked.<sup>218</sup>

Similarly, another person explained their view that the process and the options were not clearly outlined:

I went to see the so-called independent commissioner ...

Then he was explaining to me what I should do, and he said, 'We can take a contract. You can go to the police. What do you want to do?' I said, 'I don't know.' He said, 'Look, why don't we get down your story. I will put it in a transcript.' He was really encouraging me to talk, and he put on his recording machine; but he never explained my legal rights. He never explained what was being done.<sup>219</sup>

The Committee recognises that there is value in ensuring that victims engaging in a process that responds to their report of criminal child abuse are given a clear outline of their options and what each stage of the process involves. Some victims explained, however, that their confusion about the process intensified when they were asked questions that seemed unclear or irrelevant:

You are sitting in front of all these people who would just basically stare at you, asking you questions which were totally irrelevant to what I was feeling.<sup>220</sup>

Another person reported:

I met with him and told him some of the story, because I was absolutely petrified and overwhelmed by sitting in his office in town with a big bloody microphone pointed at me and being asked questions about what happened and clarifying all that. I became aware of the fact that he was more interested in finding out if I knew about other people.<sup>221</sup>

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<sup>218</sup> *Submission S456*, Name withheld.

<sup>219</sup> *Submission S462*, Name withheld.

<sup>220</sup> *Submission S478*, Name withheld.

<sup>221</sup> *Submission S461*, Name withheld.

Some victims believed that, although those involved in the processes had good intentions, their confusion and concern about a lack of transparency made them suspicious of the Catholic Church's involvement in the process.

Victims expressed to the Inquiry that the process of being interviewed or assessed by investigators, facilitators or lawyers was re-traumatising them. For example:

My experience with them and the Melbourne Response has—as much as it seemed [he] was quite a nice bloke and everything—I think, re-traumatised me and the whole process for 19 years has done nothing to provide any justice.<sup>222</sup>

Another victim commented:

This event ... was more traumatising than all the events that had gone before it. My actual interview ... worse than the actual event.<sup>223</sup>

Dr Poznanski explained to the Inquiry that many people he sees find the processes adopted by the Catholic Church, in particular, extremely difficult:

As a psychologist, I am often exposed to clients' despair and helplessness that comes from their experience of the Towards Healing and Melbourne Response processes as being protracted and also legally oriented rather than processes that place an expression of compassion and concern for the client at the heart of the espoused Towards Healing objective.<sup>224</sup>

Mr Jim Commadeur told the Committee that what he had expected from the Towards Healing process was quite different from what he actually experienced:

I felt as if the whole process was half-hearted in terms of seeking a sophisticated, professional outcome. I felt as if I was not taken seriously. I came for help and left feeling even more frustrated.<sup>225</sup>

The Committee also heard that some victims, as well as perceiving the processes as unprofessional, did not feel confident in the skills of those central to the process. One victim said that the skills of an expert counsellor were required to assist victims through the process. Another said that the outcome of the process 'confirmed to me how poorly skilled these personnel were.'<sup>226</sup>

Researcher, Dr Coldrey, supported this view, expressing his opinion about 'inadequacies of the church's response due to the lack of ability, qualifications, reasonable experience and consistent integrity.'<sup>227</sup>

The Committee found that any processes that victims are referred to for the purposes of disclosing an experience of criminal child abuse must be open, transparent and supportive. This is discussed further in Part E.

#### **5.4.5. Financial compensation for harms incurred from child abuse**

Identifying the most appropriate response to compensate for harms suffered by victims of criminal child abuse is complex and often unique to the individual.

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222 *Submission S479*, Name withheld.

223 *Submission S456*, Name withheld.

224 *Transcript of evidence*, Dr Joseph Poznanski, p. 3.

225 *Transcript of evidence*, Mr Jim Commadeur, p. 3.

226 *Transcript of evidence*, Mr Jim Commadeur, p. 3.

227 *Transcript of evidence*, Dr Barry Coldrey, p. 2.

Different people have different needs, and different victims groups advocate for different approaches and priorities.

In the context of financial compensation, the Committee heard a range of victims' perspectives and expectations:

- For some, justice was not connected to financial compensation.
- A number were of the view that accepting money feels wrong.
- Others believe that victims have an entitlement to financial compensation—essential in acknowledging harms suffered, despite not alleviating the pain.
- For another group, money was initially not important but subsequent treatment perceived as unfair or unjust changed their views.

The Committee heard that many victims were not encouraged by the organisation to seek legal advice and this had implications for the approach they took in seeking financial compensation and ultimately for the amount of compensation they received. Chapter 21 in Part F discusses this in greater depth.

### **Not about financial compensation**

A number of victims emphasised to the Inquiry that justice is not about receiving financial compensation. One victim explained that 'my case has never ever been about compensation in any way, shape or form'.<sup>228</sup> Representatives of the Survivors Network of those Abused by Priests (SNAP) made a similar comment: 'I would like to say that so often when you are talking about these sorts of things, it keeps coming down to money, and money is just not the key issue.'<sup>229</sup>

The reasons for emphasising that justice for victims is not about money were varied. For example, Fr Dillon told the Inquiry that 'you can never compensate for what has happened to people in these circumstances'.<sup>230</sup> As one man explained 'I don't seek compensation. I want life. At 57 years of age the search for justice is far outweighed by the desire to live out the rest of my life in a more meaningful connected way'.<sup>231</sup>

Others said that they would have preferred an apology and a commitment to changed attitudes by organisations and more preventative approaches. Ms Higgs explained her perspective:

I thought if they are going to give us money, that to me is a cop-out. I would have been much happier if they had said to me, 'We are really sorry that this priest did what he did to you and that it has affected your family. We will try and change things', but no.<sup>232</sup>

Mr Frederiksen explained that 'I would not have been originally seeking compensation. What I wanted to see was justice. I wanted to see a guarantee that this is not going to happen again'.<sup>233</sup>

Another witness explained that 'money is not the thing. What we need is pastoral support and care for families'.<sup>234</sup>

<sup>228</sup> *Submission S453*, Name withheld.

<sup>229</sup> *Transcript of evidence*, Survivors Network of those Abused by Priests (SNAP), p. 17.

<sup>230</sup> *Submission S452*, Name withheld.

<sup>231</sup> *Supplementary evidence*, Mr Jim Commadeur, 27 November 2012.

<sup>232</sup> *Transcript of evidence*, Ms Sandra Higgs, p. 4.

<sup>233</sup> *Transcript of evidence*, Mr John Frederiksen, p. 6.

<sup>234</sup> *Submission S454*, Name withheld.

### Money felt wrong

The Committee heard that some victims considered money an inappropriate component of any exchange aimed at redressing the suffering of criminal child abuse. Some explained that it felt wrong to receive an offer of money to compensate for the damage they had experienced. One victim explained how the process of receiving financial compensation made him feel:

When I did actually go to the panel and ... got compensation ... I felt I had sold my soul basically. It was like hush money ...

I just expected some form of justice, and to me the \$25,000 was basically hush money.<sup>235</sup>

Another victim used similar language to say that he felt the organisation gave him money to keep him quiet. He said, 'It was hush money; that is all it was. You did not feel pleased about taking it, but I have done some good things with that money since I have had it.'<sup>236</sup>

The parents of one victim explained that 'I am pretty sure [our son] has got 90 per cent of his still put away. It is dirty money; he does not want it. He invested it, and he put his two older kids through school with it.'<sup>237</sup> Along similar lines, another victim told the Committee that:

He was there to pay off the victims, really. For my mind, paying me off would just be like retrospective prostitution. I don't feel any value from being paid. I never went there for that, and I don't want that.<sup>238</sup>

### Became about money

The Committee heard that in their initial pursuit of justice, a number of victims were not seeking money. But as their hopes and expectations about the response they might receive were not realised, some victims' priorities changed and they came to see money as the best way to achieve justice.

Mr Frederiksen's experience illustrates how his sense of justice has evolved over time:

I would not have been originally seeking compensation ... But when I realised the stalling process and the rest of it, it has just made me and my other fellow victims nastier and nastier. We are trying to get whatever we can out of the church. If that is what it means, if they cannot be fair, open and honest, and do stuff. I did not want a razoo, but I sure as hell do now.<sup>239</sup>

Mr Keith Whelan told of a similar experience. He said that in 2005, 'the last thing I was fighting for was money ...' but in 2013, 'I wish to be released from that [agreement] so I can now be adequately compensated.'<sup>240</sup>

Mr Foster explained that he and his family had initially not wanted to take the Catholic Church to court. He stated that 16 years ago they told the then Archbishop, George Pell that 'We don't want to drag the Church through the courts. We don't want this.'<sup>241</sup> In evidence to the Inquiry, Cardinal Pell advised the Committee that

<sup>235</sup> *Submission S480*, Name withheld.

<sup>236</sup> *Submission S455*, Name withheld.

<sup>237</sup> *Submission S451*, Name withheld.

<sup>238</sup> *Submission S456*, Name withheld.

<sup>239</sup> *Transcript of evidence*, Mr John Frederiksen, p. 6.

<sup>240</sup> *Transcript of evidence*, Mr Keith Whelan, p. 7.

<sup>241</sup> *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 5.

‘there were always two options: people could either go through the compensation panel or through the courts.’<sup>242</sup> But as a consequence of their dissatisfaction with the attitude and response of the Catholic Church to the sexual abuse of their children, the Foster family’s position changed. Mr Foster told the Inquiry:

I think the greater issue is the justice for victims, and so the accountability of the church has to come out of providing real justice for victims and really doing whatever is necessary to restore victims to the position in life that they would have otherwise been in if this had not happened to them. That can come in various ways.<sup>243</sup>

He went on to explain that:

In our society a major way of that is money.<sup>244</sup>

Another victim explained to the Inquiry that the costs of going through the complaint process made financial compensation more important at a later stage:

In the beginning it was not about money. It really was about me because I had a huge breakdown and I just wanted to know why. In the end it became about money because through the processes I tried to do something about it and then in the process losing everything and then just needing simple financial help to survive.<sup>245</sup>

### **Entitlement to financial compensation**

Some victims and their supporters told the Committee that they should be entitled to financial compensation for the harms they have suffered. They emphasised that while financial compensation cannot cure the pain from their criminal child abuse, it is an important recognition and acknowledgement that they have been wronged. These people also highlighted the link between financial compensation and accountability of the organisation. Part H discusses the fundamental tenets of civil law and the significance of victims of child abuse having access to the avenue of civil justice.

Mr Kevin Houlihan expressed the important place of financial compensation in the pursuit of justice:

Though I firmly believe that money cannot compensate me for the abuse I was subjected to, I nevertheless believe I have some entitlement to an offer of financial compensation and restitution.<sup>246</sup>

In a similar vein, member of the Catholic Church community, Mrs Carmel Moloney suggested that ‘compensation is a recognition of their suffering, acknowledging that nothing can restore their childhood.’<sup>247</sup> One victim’s wife emphasised to the Committee that ‘I think everybody should be entitled to some sort of compensation.’<sup>248</sup>

Mr Davis explained the important connection between financial compensation and accountability:

What I would like to see come out of the inquiry is that any denomination or institution be held fully responsible for their actions, face substantial compensation.<sup>249</sup>

242 *Transcript of evidence*, Catholic Archdiocese of Sydney, Melbourne, 27 May 2013, p. 17.

243 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 5.

244 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 5.

245 *Submission S464*, Name withheld.

246 *Transcript of evidence*, Mr Kevin Houlihan, p. 4.

247 *Transcript of evidence*, Ms Carmel Moloney, p. 3.

248 *Submission S472*, Name withheld.

249 *Transcript of evidence*, Mr Wayne Davis, p. 3.

Mr Foster articulated the importance of civil justice and holding organisations accountable for actions for which they are responsible. He stated that ‘we need to have victims be able to get accountability from the church in the full terms of what our civil legal system would have allowed them.’<sup>250</sup> Mr Foster also suggested that in the context of the Catholic Church, ‘If victims had been awarded civil levels of compensation, the church would have acted decades ago to prevent incidences of sexual assault and the subsequent financial liability.’<sup>251</sup>

For one victim, the ability to seek financial compensation through the civil courts was directly linked to his pursuit of justice:

I want to be able to go to a court. Any Australian citizen can go to a court. This is what Australia is about. It is a democratic country. I need to go there to get proper democracy. That is what I want.

I cannot understand ... I just cannot sue ... I got 27 grand for being bloody raped 10 times ... I want a proper Australian court to basically say, okay, I can go to court, and this is what happened there and to have an Australian judge, like any other citizen within Australia is able to do.<sup>252</sup>

When asked by the Committee about this specific case, Cardinal George Pell stated that ‘if the situation is as described there the compensation is, I would say, miserable. If such a person wanted to go to the Supreme Court, we have no problem about that.’<sup>253</sup>

The Committee heard that victims’ inability to pursue civil justice in cases in which the institution or organisation is not an incorporated entity caused considerable resentment, bitterness and frustration.

Part H discusses the challenges for victims pursuing a civil claim, particularly when their claim relates to a religious organisation.

### **Money was inadequate**

For those individuals who were of the view that financial compensation was an essential part of justice, a number believed that what they received from non-government organisations was inadequate compensation for their experience of criminal abuse as a child. Some felt insulted by the monetary figure put on the harm they had suffered. Connected to these feelings was dissatisfaction with the financial cap that is imposed in Melbourne Response.<sup>254</sup>

Mr Saric asked the rhetorical question of whether financial compensation could ever be adequate:

The question becomes: can any amount of money ever compensate for the destruction of the personal innocence and personal faith of so many victims who carry the scars of their experience for a lifetime?<sup>255</sup>

Mr Cherrie explained his outrage at the amounts of financial compensation some people have received from organisations:

I have heard of terrible, terrible stories of people going through so much abuse and

<sup>250</sup> *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 15.

<sup>251</sup> *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 7.

<sup>252</sup> *Submission S478*, Name withheld.

<sup>253</sup> *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 57.

<sup>254</sup> See Section 21.4.1 of the Report.

<sup>255</sup> *Transcript of evidence*, Mr Joseph Saric, p. 3.

getting figures like \$1000 or \$12,000 for abuse that affects them for their lives. That is absolutely atrocious.<sup>256</sup>

Uncle Howard Edwards told the Inquiry of his experience with the Salvation Army and not receiving adequate financial or other compensation:

I was given a very small sum of money because I did not have my head together, I did not have my papers together and I did not have my psych report—I did not have all that. I got a measly sum and no apology.<sup>257</sup>

Mr Foster explained how the impact on his family led them to step away from the internal organisation process. Unlike many other victims, the Foster family could afford to do this. He stated that ‘We were so disgusted with the \$50,000 price tag on our daughters’ lives that we commenced legal proceedings to achieve a better outcome.’<sup>258</sup>

Some explained that they had not been in a position to understand their legal position and that this resulted in them settling for an amount that they later came to regret. One victim stated:

I guess to me the relatively small sum of money that was awarded to me as a result of that at the time seemed like a lot of money when I was that age ... certainly from the solicitors I felt pressure to settle. I guess it is only now in hindsight, with age and a bit of extra wisdom ... that I can look back and see that really I think the Catholic Church got away with that pretty lightly, pretty well, especially considering there was no communication between the Catholic Church and myself during the whole process—not one attempt to make a phone call, not one attempt to make an apology—and I guess I would have liked back then to have at least received a letter acknowledging that I had been through that process from someone in the church, not via the solicitor.<sup>259</sup>

Both this experience and that described by Uncle Howard Edwards highlight the link between financial compensation and other forms of justice that victims are seeking. Receiving money alone rarely provided the sense of justice victims wanted. This was evident in a settlement reached by another victim’s family:

Although I was instrumental, one of the two people, in starting the class action ... it did not give any satisfaction. I apologise to any lawyers present, but the lawyers shuffled papers in the end and swapped agreements.<sup>260</sup>

There were others who found the process of seeking financial compensation so challenging that they opted to settle on an amount that was smaller than they felt entitled to. Mr Philip Nagle explained:

It came down to that they had a piece of paper there, which I believe was a deed of release, and said, ‘However, if you sign this, you won’t need to go to court, you won’t need to get solicitors and that will be it.’ At that stage my family were just—it was killing all of us. So we just did; we just signed it. We just felt like we had no other choice. We were not given any other options. We did not seek any legal advice. We just did what they said, and that was it ...

It was just inadequate. I mean, it was just wrong. As you go along in life and you get a bit older, it just eats away at you. You just think, ‘Well, hey, how can they do that?’ That

256 *Transcript of evidence*, Mr Brian Cherrie, p. 5.

257 *Transcript of evidence*, Connecting Home, p. 9.

258 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 6.

259 *Submission S460*, Name withheld.

260 *Submission S470*, Name withheld.

is what I am saying. They were just ticking the box. They just wanted us to go away, and we were dealt with. It is not right. So, yes, I think it needs to be on our terms, not their terms.<sup>261</sup>

Mr Foster shared a similar experience, explaining to the Committee that, ‘After almost 10 years, countless hours of effort, a significant personal cost and the pro bono help of our dedicated legal team, we settled with the Church for far less than we believe our children were entitled to. We were exhausted.’<sup>262</sup>

## 5.5. Unfinished business

A large number of victims of criminal child abuse who appeared before the Inquiry indicated that despite a range of efforts to get justice, they felt they had not achieved it. The Committee concluded that this was a consequence of victims’ unrealised hopes and expectations of the organisations’ response. A large amount of this evidence related to the Catholic Church. Many victims continue to feel aggrieved and explained that they have ‘unfinished business’ with the organisation relating to their experiences.

The Committee found that victims, their families and communities felt they had not achieved justice and had unresolved issues with the organisation due to following factors:

- double betrayal—inconsistent approaches to victims and offenders
- hypocrisy—claims of moral authority
- lack of accountability—refusal to accept responsibility.

The responses of non-government organisations to the concerns raised by victims in this section are addressed in later chapters of this Report.

### Finding 5.4

Many victims, families and communities felt a lack of justice and a sense of ‘unfinished business’ with non-government organisations, particularly the Catholic Church in Victoria, for the following reasons:

- double betrayal—inconsistent approaches to victims and offenders
- hypocrisy—claims of moral authority
- lack of accountability—refusal to accept responsibility.

#### 5.5.1. A second betrayal

Many victims of criminal child abuse told the Committee that they felt a double betrayal by organisations—firstly, with the inadequate response they received and secondly, the organisation’s supportive response to the perpetrator. The inconsistent response of some organisations to victims and offenders contributed to a sense of betrayal.

As noted, on the one hand, victims had hoped that reporting the criminal abuse to the organisation would result in consequences for the perpetrator—in particular, seeing the perpetrator stood down from their position and reported to police. However,

261 *Transcript of evidence*, Mr Philip Nagle, p. 4.

262 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 6.

many victims told of experiences in which the organisation did not remove the alleged perpetrator from their position or report them to police, but instead moved the perpetrator to another position in a different location.

In seeking support from the organisation, many victims had to disclose the details of their experience of abuse, which they often found very traumatic. As noted, the Committee heard of many situations in which the victims did not receive support through this process of recounting their abuse, yet discovered that the organisation had provided a range of supports to the alleged, and sometimes convicted, offender.

Mr Cherrie told the Committee that he struggled to understand the inconsistency in the Catholic Church's approach to victims and offenders:

The clergy, when they front up on abuse cases, they are given silks to represent them. [Cardinal George] Pell was asked just the other day what should victims do, and he said they can get legal aid. Where is the balance there? There is just no balance.<sup>263</sup>

In providing a rationale for the Catholic Church's decision to pay offenders' legal costs, Br Brian Brandon of the Christian Brothers said:

There are issues around struggles about legal aid and its capacity to provide support for justice in the criminal defence system ... we determined, as we generally do, to pay for the criminal defence of those within our family, and we try and do it as economically as we can.<sup>264</sup>

The Committee heard that this inconsistency leads victims to feel devalued, inadequately supported, unfairly treated and, ultimately, extremely resentful.

Mr Whelan also emphasised the outrage he felt about the Catholic Church's decision to support the perpetrator while giving little support to him as a victim:

For funds, let us start with what has been rumoured to have been spent by the Catholic Church defending this perpetrator and creep—\$400,000 plus. This would give me a great chance to support myself and be self sufficient in my own home.<sup>265</sup>

Mr Stephen Woods was equally outraged by the willingness of the Christian Brothers to defend a person who one victim referred to as a 'heinous sex criminal'.<sup>266</sup> A victim of a different perpetrator expressed similar views and dismay:

It was a vigorous defence, and for a person who had no money allegedly, where did the money come from to defend the cases? Yet me, as the victim, has to fund my own cases. I have to fund all my costs. I had to fund the [victims of crime application], which I did. I then lodged a claim against him and bankrupted him, and the bankruptcy found that he had no assets. He had nothing at all. If he has no assets, where did he get the legal defence?<sup>267</sup>

The wife of one victim told the Committee:

They told us there was nothing we could do. Because he was in Samoa, they could not extradite him back from Samoa at the time. He was out of jurisdiction, so if we reported it to the police there was nothing they could do.'

263 *Transcript of evidence*, Mr Brian Cherrie, p. 5.

264 *Transcript of evidence*, Christian Brothers, p. 30.

265 *Transcript of evidence*, Mr Keith Whelan, p. 7.

266 *Transcript of evidence*, Mr Stephen Woods, p.8.

267 *Submission S462*, Name withheld.

She went on to explain her frustration: ‘Yet they could still pay him, by the way. He was still on the payroll as a Salesian, and they brought him back.’<sup>268</sup>

Another victim of a Salesian, Mr Saric, made the following point to the Committee:

In Australia the Catholic Church pays no council rates and has every conceivable tax exemption, and yet victims of clergy sexual abuse have to go to Centrelink ... for ongoing monetary support. We as taxpayers have to foot this ongoing bill.<sup>269</sup>

The inconsistencies regarding the Catholic Church treatment of victims and perpetrators contributed on many levels to a strong sense of justice being denied and a frustration that there is no alternate avenue to achieve justice. Chapter 21 in Part F discusses the actions of the Catholic Church in providing legal support for ministers of religion charged with criminal child abuse offences.

### **Moral authority—hypocrisy**

A key issue was evident in the information presented by victims and their families: their struggle to understand the seeming hypocrisy of religious organisations that claim to set moral standards for society. The Committee heard that some religious organisations, while advocating moral standards that communities are expected to abide by, appeared incapable—or at times unwilling—to address an immoral crime committed by their own personnel.

The majority of such concerns related to the Catholic Church. Mr Saric explained his perception:

The more I delved into the sexual abuse of victims by clergy and systems, the more it struck me: where was the moral compass of the senior hierarchy and management of the Catholic Church in Australia? The senior hierarchy, instead of practising the first commandment, ‘Love one another as I have loved you’, has chosen a totalitarian management model of power, control and greed.<sup>270</sup>

One victim expressed the view that the Catholic Church is not committed to upholding its moral authority. This person argued that in managing issues arising from criminal child abuse, the Catholic Church’s most important consideration is its own reputation:

For a supposedly Christian organisation which espouses great views and harangues governments and organisations on moral and ethical issues, the Catholic Church in my and other people’s experience is no better than other ruthless businesses. They protect the brand at all costs. They do not practise what they preach, they are unaccountable and they refuse to show any hint of compassion to victims or their families.<sup>271</sup>

Mr Nagle explained what this hypocrisy meant for him:

Once upon a time the Catholic clergy were held in the highest esteem, even above that of your parents. Not now.<sup>272</sup>

Many people expressed concern about the moral failings of those who espoused moral authority:

I do not think that there is any compensation that can replace a childhood. My mother

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<sup>268</sup> *Submission S472*, Name withheld.

<sup>269</sup> *Transcript of evidence*, Mr Joseph Saric, p. 3.

<sup>270</sup> *Transcript of evidence*, Mr Joseph Saric, p. 3.

<sup>271</sup> *Submission S454*, Name withheld.

<sup>272</sup> *Transcript of evidence*, Mr Philip Nagle, p. 3.

is also not over her sense of loss and her sense of being betrayed by who she thought of as moral authorities.<sup>273</sup>

They obviously raise particularly strong feelings, because it is not only criminal and abusive; it is also probably ... a particularly bad example of a breach of trust by someone whose whole existence is based around having moral authority.<sup>274</sup>

They are meant to be moral leaders of our society, and I just wonder—‘Thou shalt not sin’. A lot of sins were committed to innocent children in orphanages.<sup>275</sup>

The additional impact of spiritual abuse and associated spiritual trauma when abused by a figure purporting to be the representative of God on earth. It adds a whole other dimension to the impact and the damage.<sup>276</sup>

Ms Moloney summarised the views of many, asking:

Has the Catholic Church betrayed its own humanity? The lay community has the right to question why the most vulnerable and least powerful have been so wronged and sadly maligned by men who claim they have a mandate to proclaim the healing message of Christianity but who are indifferent to argument and compassion.<sup>277</sup>

### 5.5.2. Lack of accountability

Also contributing to many victims’ feelings of unfinished business was the refusal by some organisations to accept responsibility for failing in their duty to protect children in their care from harm. The Committee heard that victims and their families want organisations in these circumstances to be accountable for their failure to protect.

In coming to terms with his experience of criminal abuse as a child and finding justice, Mr Nagle explained to the Inquiry:

This is fixable. The wrongdoing here should be a priority in moving forward ...

They cannot undo what happened to me. However, like all problems, you will certainly be measured on what you did about it. My challenge to the Catholic clergy is to be serious about the way they handle the wrongdoings.<sup>278</sup>

For many victims who appeared before the Inquiry, however, the seeming refusal of organisations to genuinely accept responsibility for wrongdoings by personnel under their direction was the cause of a great sense of injustice.

One victim told the Committee that justice for her meant that ‘the church ... be accountable, as all authorities should be, to scrutiny, legal jurisdiction and socially mandated checks and balances.’<sup>279</sup> Another explained:

Institutions within the Church, such as schools or individual religious orders, which have a duty of care should be held accountable for the crimes of their members. The right and proper compensatory outcomes to deal with the effects of abuse on victims should not be dependent on whether priests who commit crimes are under a supposed vow of poverty.<sup>280</sup>

273 *Submission S474*, Name withheld.

274 *Transcript of evidence*, Professor Paul Mullen, Melbourne, 15 March 2013, p. 7.

275 *Submission S473*, Name withheld.

276 *Transcript of evidence*, Survivors Network of those Abused by Priests (SNAP), p. 14.

277 *Transcript of evidence*, Ms Carmel Moloney, p. 3.

278 *Transcript of evidence*, Mr Philip Nagle, p. 3.

279 *Submission S469*, Name withheld.

280 *Submission S474*, Name withheld.

Many others had similar views on what justice meant for them in the context of accountability. For example:

I hope that you members find the strength to make the [Catholic] church accountable—transparency ... to accept responsibility and not leave people in limbo.<sup>281</sup>

I would like to see greater transparency in their processes and more accountability.<sup>282</sup>

I think we have to get to make institutions—and I know it is sort of an easy statement around accountability. What does that look like? It is not so much accountability for actions but accountability for having safe places.<sup>283</sup>

Any denomination or institution be held fully responsible for their actions, face substantial compensation plus medical and psychiatric costs of all abused children, not just sexual abuse but all abuse, and a genuine and sincere apology be given by church and institutions for what was done in their name.<sup>284</sup>

I think there needs to be complete accountability ... There should be one law for every person in this country.<sup>285</sup>

Victims and their families expressed anger and outrage about some of the actions of organisations that did not demonstrate accountability. One victim explained that ‘On a fundamental level it is disingenuous to allow an organisation accused of these kind of crimes to self regulate effectively by taking care of these matters privately. It is just wrong.’<sup>286</sup> Ms Moloney, a concerned community member, made the strong statement asking ‘What right has a bishop to forgive and let off the hook a paedophile priest? It should be dealt with by the police, the authorities and the government.’<sup>287</sup>

The wife of one victim pointed to the outcomes of this lack of accountability. She said, ‘But they knew. They just moved him from parish to parish and tried to just shut it down and pretend it never happened and just, “Go away”. They were little boys.’<sup>288</sup>

Mr Saric told the Inquiry that in the context of the Catholic Church internal processes:

The main problem with this system is that it acts as judge, jury and executioner with no reference to secular authorities or systems. The two processes are privatised. The church is not accountable to any secular authority and there is no external review of the processes ...

The Catholic Church will only secede to a greater power than itself, and that is the State and Federal governments. Law has to change in both parliaments so the Catholic Church is no longer an institution and a law unto itself. It has to answer to secular law, Parliament and the Australian people.<sup>289</sup>

Fr Dillon also emphasised this point, stating: ‘I think that often the church operates on a lack of accountability. It runs its own show. It is separate from everyone else, and that is not healthy. We all should be accountable, including parish priests.’<sup>290</sup>

281 *Transcript of evidence*, Mr Peter Komiazyk, p. 3.

282 *Transcript of evidence*, Ms Mary Rutledge, Melbourne, 1 March 2013, p. 4.

283 *Submission S471*, Name withheld.

284 *Transcript of evidence*, Mr Wayne Davis, p. 3.

285 *Transcript of evidence*, Mr Ian Lawther, Melbourne, 23 November 2012, p. 3.

286 *Submission S474*, Name withheld.

287 *Transcript of evidence*, Ms Carmel Moloney, p. 6.

288 *Submission S478*, Name withheld.

289 *Transcript of evidence*, Mr Joseph Saric, p. 3.

290 *Transcript of evidence*, Father Kevin Dillon, p. 6.

He indicated his awareness of the impact on victims of the injustice of failing to be accountable:

... out of respect for this gathering, I thought I should put on a jacket and Roman collar, as I would normally do for formal gatherings, but I am conscious of the fact that there are people in this room who have been extremely wounded by the church ... even the sight of a priest in a Roman collar can be enough to certainly offend, if not really disturb, people who have been so badly hurt within the church.<sup>291</sup>

### **What should accountability look like?**

Many victims, their families and community members told the Inquiry what they thought accountability would look like. The Committee heard that the government and the legal system have a key role in ensuring the accountability of non-government agencies for child abuse in their organisations.

As a parent of two victims of criminal child abuse, Mr Foster explained to the Inquiry the way in which he thinks the Catholic Church needs to be held accountable and the important role of Victoria's legal system:

We need to have victims be able to get accountability from the church in the full terms of what our civil legal system would have allowed them, rather than this quasi-independent system that is imposed on victims by a foreign state and a foreign set of laws.<sup>292</sup>

Mr Mark Fabbro of SNAP gave his views on the key role of the Parliament in making organisations accountable:

Given that the Roman Catholic Church in Australia wields a lot of political influence and holds considerable legal privilege, I think it is going to require some courage from the elected representatives in Victoria to really get some change happening and bring the church to some sort of account.<sup>293</sup>

Mr Bartl, a Catholic Church community member, emphasised the role of the Victorian Government in ensuring that religious entities are accountable in their duty of care:

The State of Victoria ... may share responsibility in permitting the Roman Catholic dioceses in its jurisdiction to avoid proper scrutiny and accountability, and the dioceses being required to provide redress ... This is about State laws and procedures that may impede proper scrutiny and accountability and allow Roman Catholic institutions to avoid restitution, restoration and redress.<sup>294</sup>

## **5.6. Other authorities**

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The Committee also heard the views of victims relating to the intervention of other authorities. These included the Government and police. These experiences often related to victims of criminal child abuse who had been in the care of the State. In particular, participants told the Inquiry that their experience would have been different if the relevant authorities had honoured their responsibilities.

Adding to the sense of injustice experienced by victims was the:

- lack of supervision—inadequate government inspectors and monitoring

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291 *Transcript of evidence*, Father Kevin Dillon, p. 4.

292 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 15.

293 *Transcript of evidence*, Survivors Network of those Abused by Priests (SNAP), p. 22.

294 *Transcript of evidence*, Mr Bernd Bartl, p. 3.

- lack of intervention—the police often escorted those who escaped back to the institution.

### 5.6.1. Lack of monitoring

The Committee heard that while victims felt betrayed by organisations, they also felt betrayed by the Government and its lack of oversight of institutions in the past. Some victims were in the care of the State during their childhood and lived in institutions operated by non-government organisations. They explained that their circumstances may have been different if the Government had stronger monitoring and supervision mechanisms. Some felt that the opportunity to identify and effectively respond to child abuse in organisations had been missed due to a lack of monitoring. For example, ‘the Salvation Army had a duty of care, but so did the Victorian government’.<sup>295</sup>

One victim explained how the system appeared to work from his perspective as a child in an organisation in which he was subjected to physical, emotional and sexual abuse:

In the orphanage there were some opportunities and attempts to report the abuses that were common practice. We had a little bit of a chance. At times government inspectors visited the orphanage I was in. We were warned to be on our best behaviour on that day, or else punishment. New quilts were issued, and new clothes, to be returned as soon as the inspectors left. No child dare tell any inspectors about how we were treated. It is strange how no inspector picked up on how badly the boys were treated, or were they more interested in keeping their jobs?<sup>296</sup>

Mr Gordon Hill explained to the Inquiry his experience of government inspectors, noting that:

They did not bother to come and check these kids out. Foster families now are a lot different to home families and what we used to go through. A government agency is supposed have inspectors. They used to come to the home. We were isolated. We were the ones who had to cook scones and tea and everything for them. They used to go down to the parlour. They never used to come and see the conditions.<sup>297</sup>

The Committee heard that victims would like to see the Government play a stronger role in monitoring and supervising organisations where children might be at risk of abuse. For example, Mr Johnson explained that he ‘would like to see the government step in on these people and at least screen them or whatever they do to make sure that it does not happen again.’<sup>298</sup> Mr Frederiksen expressed similar views, stating that he believed ‘there has got to be an audit process or a control process’ and that ‘all State and non-government schools must be subject to the same level of public reporting and auditing of sexual assaults’.<sup>299</sup>

Part E discusses the importance of monitoring by the appropriate and relevant government and statutory bodies.

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<sup>295</sup> *Transcript of evidence*, Mr Brian Cherrie, p. 4.

<sup>296</sup> *Submission S473*, Name withheld.

<sup>297</sup> *Transcript of evidence*, Mr Gordon Hill, Melbourne, 26 March 2013, p. 5.

<sup>298</sup> *Transcript of evidence*, Mr Max Johnson, p. 3.

<sup>299</sup> *Transcript of evidence*, Mr John Frederiksen, p. 3.

### 5.6.2. Police response to allegations of child abuse

A number of victims said that the police did not provide the level of support, intervention and investigation they had hoped to receive when they reported their abuse both in the past and even more recently. The issue of reporting allegations of criminal child abuse to the police is considered in Chapter 23 in Part G.

Mr Peter Komiazyk had reported his experience to the police but they did not provide the response he expected. He told the Inquiry:

I took this upon myself some years ago now to actually go to the police. I made a statement. The process that I went through with the police—I have no confidence within the police. There is a crucial statement that was lost, so I had to sign another statement, and I have heard nothing since. That is probably about 12 months ago now.

I have no faith in the church. I have no faith in those investigating the child abuse at all, whether it is the police—I suppose I am a sceptic.<sup>300</sup>

Mr Hugh McGowan advised the Inquiry that the police had not investigated matters to the extent that he had hoped and anticipated:

I have since learnt that that man was being investigated by either the Victorian police or the DPP [Director of Public Prosecutions] in 1997. A number of men who were in Dhurringile in the mid to late 1950s had reported sexual abuse by him. I believe the investigation was abandoned when he died on 16 November 1997. If that is so, I do not know why it was a catalyst to stop the inquiry. I think it warrants an examination as to why the investigation was stopped.<sup>301</sup>

Another victim had found the process of speaking with the police intimidating and uncomfortable. She explained:

I went to the Geelong police station and gave a statement. I am so glad that things have changed now, because I was so uncomfortable. They took me into a room. Thank God I had a female police lady, but while I was giving my statement policemen were walking in and staff were walking in and out, and I felt very, very uncomfortable. I know now that is not going to happen to anyone else. It was very debilitating.<sup>302</sup>

Other victims acknowledged that the police had made efforts to change their processes. For example, Mr Saric said:

I will be honest with you that I would be quite comfortable in going back and talking to the police now. I was not comfortable before, because I did not believe their systems were properly in place.<sup>303</sup>

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300 *Transcript of evidence*, Mr Peter Komiazyk, p. 2.

301 *Transcript of evidence*, Mr Hugh McGowan, p. 3.

302 *Transcript of evidence*, Ms Sandra Higgs, p. 3.

303 *Transcript of evidence*, Mr Joseph Saric, p. 8.

**Finding 5.5**

While not within the Terms of Reference, a number of victims, particularly those in the care of the State, felt betrayed by authorities, such as the Government and the police, for the following reasons:

- lack of supervision—inadequate government inspectors and monitoring of the non-government institutions in which they were placed
- lack of intervention—the police often escorted those who escaped back to the non-government institution.

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## 5.7. Achieving justice—where next?

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In view of the sense of unfinished business identified through the Inquiry and the ongoing grievances of many victims, families and communities, the Committee considered it important to answer the question—where to next in achieving justice? The Committee also considered how the Victorian Government can support and facilitate the next steps.

The Committee acknowledged that for some victims, the damage they have suffered is so great that they are unlikely to ever experience the sense of justice they may be looking for. Mr Saric articulated the challenge that victims' distrust presents for the Catholic Church in particular:

What we need now is honesty, not more denial and not more media spin, because ultimately this has led to a flood of distrust amongst victims. The fact is that the church's credibility, trust and respect from its parishioners has been lost on a scale more damaging than any financial compensation the church has to deliver.<sup>304</sup>

The Committee heard a strong message that exposing the truth about criminal child abuse in religious and non-government organisations is a key part of achieving justice and moving forward. Some spoke of the important role of inquiries and truth commissions in exposing the truth about the existence and consequences of systemic child abuse in some non-government organisations.

SNAP told the Committee that it considered exposing the truth an important first step in achieving justice for victims of child abuse. Mr Mark Fabbro explained that what is 'important to survivors is that the truth of the matter be got to by the secular authorities so that we really do know the extent of the problem.'<sup>305</sup>

Ms Moloney suggested to the Committee that 'if the truth offends you, it is better to be offended than the truth to be concealed.'<sup>306</sup>

Some explained the importance of an inquiry in understanding the extent of the problem of criminal child abuse in organisations. Mr Foster, for example, told the Committee:

For 16 years we have fought long and hard for an official inquiry into the dreadful actions of the leaders of the Catholic Church and their systemic cover up of the horrific sexual crimes perpetrated by their clergy against so many innocent children.<sup>307</sup>

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<sup>304</sup> *Transcript of evidence*, Mr Joseph Saric, p. 3.

<sup>305</sup> *Transcript of evidence*, Survivors Network of those Abused by Priests (SNAP), p. 13.

<sup>306</sup> *Transcript of evidence*, Ms Carmel Moloney, p. 3.

<sup>307</sup> *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, p. 3.

Ms Ashcroft referred to the potential value of a public inquiry into criminal child abuse and how it has been handled by non-government organisations:

I am hoping that this inquiry and the royal commission, when that happens as well, will give the public a real picture of what is going on and give them a chance to speak out, because I feel that a lot of people do want to speak out ... they feel they need permission to be able to speak.<sup>308</sup>

Many thought there was a need for an investigation by non-government organisations themselves to identify systemic child abuse, particularly in the Catholic Church. For example, a former priest in the Catholic Church, Mr Phil O'Donnell, raised a number of rhetorical questions that he had previously put to the Church in 1993:

Why didn't the Archbishop initiate an investigation once a formal complaint of serious substance had been personally made to him?<sup>309</sup>

How genuinely healing it would have been if the Pope had pledged a thorough and rigorous open investigation into the problems ... of the Universal Church.<sup>310</sup>

How much more respect would the Church engender if it had the courage to call for a full and open independent investigation of sexual abuse of all children, not just those abused by Catholic clergy, in Australia.<sup>311</sup>

Yet, like many others, Mr O'Donnell acknowledged that:

Many of us feel uncomfortable with only internal investigations of serious matters. An example is the police investigating police corruption/abuse. Noone is saying that the police investigators are corrupt or compromised. It's just that 'in house' investigations do not inspire public confidence. The old adage, 'Not only should justice be done, it should be seen to be done', applies in these matters. This is even more important when the investigations are of a serious criminal nature, as is child sexual assault.<sup>312</sup>

Chapter 7 in Part C provides a detailed account of the past handling of child abuse in non-government organisations, particularly the Catholic Church, the Salvation Army and the Anglican Church. It outlines the Committee's findings from its evidence-gathering and the analysis of documents it accessed from organisations.

To conclude, the nature of the justice desired by victims and their families includes improved prevention, improved responses to allegations of criminal child abuse and reforms to the civil and criminal justice systems. Table 5.1 outlines these in more detail and links them to the relevant parts of this Report.

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308 *Transcript of evidence*, Ms Mairead Ashcroft, p. 2.

309 *Submission S104 part 1*, Mr Phil O'Donnell, p. 27. Mr Phil O'Donnell makes a number of recommendations in regard to these issues in his submission.

310 *Submission S104 part 2*, Mr Phil O'Donnell, p. 51.

311 *Submission S104 part 2*, Mr Phil O'Donnell, p. 51.

312 *Submission S104 part 1*, Mr Phil O'Donnell, p. 10.

**Table 5.1: Areas for improvement in responding to child abuse in non-government organisations**

<b>Improvement</b>	<b>Description</b>
<b>Prevention</b>	Victims suggested that it is important to create child-safe cultures to prevent criminal child abuse in organisations (Part D of report).
<b>Responses to allegations of child abuse in non-government organisations</b>	Victims suggested that organisations need to change their systems and processes, and that these processes need to be effective and monitored by an independent statutory authority and that governments have a key supervision role (Part E of report).
<b>Reforms to criminal law</b>	Victims wanted to see the criminal justice system extended to enable perpetrators to be prosecuted and punished and also for individuals in organisations who conceal crimes to be punished (Part G of report).
<b>Reforms to civil laws</b>	Many victims told the Inquiry there is a need to make it easier for victims to sue organisations and that reforms to civil laws are necessary to do this (Part H of report).
<b>Alternative forms of justice</b>	A number of victims explained that not everyone wanted to or could make claims through the civil justice system; some wanted to seek other forms of justice (such as ongoing counselling or an apology) and suggested alternative avenues to achieve this (Part H of report).

Source: Compiled by the Family and Community Development Committee.

# PART C

## CONTEXT



## **Context—criminal child abuse in organisations and its past handling**

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The context in which criminal child abuse has occurred is important to understand—that is, the nature of non-government organisations, their past handling of criminal child abuse and the response of governments through formal inquiries and subsequent policy and legislative reform.

Understanding the scale of the problem of criminal child abuse in non-government organisations is a key starting point in identifying a strategy for improving responses to the issue. There is minimal data relating to the extent of child abuse in the broader community and even less information about the prevalence and incidence of the criminal abuse of children in non-government organisations.

With minimal data to determine the scale of criminal child abuse in non-government organisations, the risks can only be speculated. The internal structure and culture of organisations can affect the level of risk of personnel criminally abusing children in their care.

An awareness of the motivations of offenders can assist organisations to reduce the risk of criminal child abuse. Notably, there is no ‘typical’ offender of criminal abuse of children in organisations. Many child sex offenders, for example, appear as regular members of the community who are motivated by good intentions. Offenders range from those who are predatory, those who use grooming tactics to gain access to children to those who are more opportunistic and take advantage of a situation or an opportunity to offend.

## **Non-government organisations—Inquiry focus**

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The nature of government organisations that participated in the Inquiry was diverse, reflecting the broader context of non-government organisations across Victoria. The purpose, size, available resources and structure of the organisations varied considerably. They included religious organisations, out-of-home care services, early education services and schools, child care organisations, youth services and recreational and sporting organisations.

There are unique circumstances for victims of criminal child abuse in religious organisations. While the extent of abuse in these settings compared with other organisations is difficult to ascertain, children subjected to criminal abuse are less likely to be protected in religious organisations than any other group in society. There are many reasons for this, including the policy of forgiveness, the self-protection of many religious organisations and their trusted, revered status in society.<sup>1</sup>

Non-government organisations continually evolve. The nature of non-government organisations 70 years ago was markedly different from today. The types of services, activities and programs provided by organisations that interact with children have also evolved over time to meet the changing needs of children, their families and communities. While the functions and activities of organisations may change, organisational culture is often more stable and resistant to change. This has implications for how organisations respond to the criminal abuse of children by personnel in their organisations.

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1 *Transcript of evidence*, Professor Patrick Parkinson, University of Sydney, Melbourne, 19 October 2012, p. 3.

## Past handling of criminal child abuse by organisations

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Evidence from victims provided to the Inquiry indicated that the past handling of criminal child abuse by specific non-government organisations, particularly religious organisations, was seriously inadequate.

To understand the past handling of criminal child abuse by religious organisations, the Committee focused particularly on the Catholic Church, the Salvation Army and the Anglican Church. The majority of evidence and other information received focused on these organisations and the Committee felt it was important to gain insight into the handling of abuse by religious organisations specifically.

The Committee identified that the handling of the criminal abuse of children by these organisations in the past was motivated by self-interest and the protection of the organisation. This resulted in serious consequences for the safety and protection of children in religious organisations.

In regard to the Catholic Church in Victoria specifically, the Committee found that rather than being instrumental in exposing the criminal abuse of children and the extent of the problem, senior leaders of the Church:

- minimised and trivialised the problem
- contributed to criminal child abuse not being disclosed or not being responded to at all prior to the 1990s
- ensured that the Victorian community remained uninformed of the abuse
- ensured that perpetrators were not held accountable, with the result that the abuse of children by some religious personnel which could have been avoided, tragically continued.

The handling of criminal child abuse by the Catholic Church demonstrates that as an organisation it had (and continues to have) many of the internal features of an organisation at high risk of having abuse perpetrated by its personnel. These features include its:

- trusted role in caring for children
- culture and power
- hierarchy and structure
- teachings and beliefs—canon law
- processes for responding to allegations—including the failure to report abuse
- response to alleged offenders—including their relocation and movement.

These features have continued to influence the response of organisations to allegations of criminal child abuse and may provide an understanding as to why victims remain aggrieved.

Reflecting on the past handling of criminal child abuse provides useful insights into how religious organisations have evolved in their approaches, the enduring nature of their organisational culture and the extent to which they have learnt from their past handling.

In addition, the way in which a religious organisation dealt with reports of suspected criminal child abuse is inextricably linked to the desire of victims for justice.

## Government directions—policy and legislation

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Over the past two decades, governments have given greater attention to the protection of children from abuse. Much of this has related to child abuse that occurs in families when children are at risk of harm by their primary carer/s. Where attention has been directed to children's safety from abuse in organisations, governments have generally focused on the education sector and community services, such as out-of-home care. Religious organisations have been largely overlooked in policies and regulations, which have failed to recognise the duty of such organisations to protect children in their care from criminal abuse.

The introduction of mandatory reporting in 1993 was a significant development for the protection of children from abuse in families. This made it mandatory for professionals in specific occupations that work with children to report suspected child abuse within families to child protection services in the Department of Human Services (DHS). This enabled the Victorian Government to more effectively identify children at risk in families and to intervene early to reduce the risk, and where necessary remove children from the care of their parent/s or primary carer/s.

The policy focus of the recent strategy for protecting children in Victoria (*Protecting Victoria's vulnerable children strategy*) is largely on child abuse that occurs within families. The Committee considered that there would be value in reviewing the extent to which existing government policy incorporates child abuse that occurs in organisations so that as far as possible child abuse prevention strategies can be uniform and consistent.

In Victoria, legislative and regulatory developments relating to the protection of children in the context of organisations include the establishment of Working with Children Checks (WWCC) and the creation of an independent Commission for Children and Young People, which has a focus on promoting child-safe organisations.

# Chapter 6

## Child abuse in organisational contexts

### AT A GLANCE

#### Background

It is acknowledged that criminal abuse of children occurs in organisational contexts such as religious, educational and community organisations. It has occurred in the past and continues to occur today. Understanding the scale of the problem and what constitutes risks to non-government organisations is important in identifying appropriate responses to the issue.

#### Key findings

- Due to a lack of accurate data, the prevalence and incidence of criminal child abuse in the community is currently unknown, which has implications for the development of evidence-based interventions and preventative frameworks in non-government organisations.
- There has been minimal research into criminal child abuse in organisations and the majority that has been undertaken relates to child sexual abuse, with less known about physical abuse and multiple forms of child abuse.
- There is no typical offender of criminal child abuse, and many child sex offenders often appear as regular community members with good intentions.
- There are many types of organisations in which criminal child abuse occurs, and over many decades the nature of the services and programs provided by these organisations have evolved to meet the changing needs of children and the community, including services commenced following closure of institutions providing out-of-home care.

Each year hundreds of thousands of children and young people spend time involved with religious and other non-government organisations. These organisations provide a broad range of services and social programs including child care, education, social activities and sports and recreation programs. Some non-government organisations also provide temporary or permanent residential care away from the family.

Importantly, the overwhelming majority of people who work in these organisations are not perpetrators of criminal child abuse and most child abuse occurs in families, not organisations. Less frequently children are abused by ‘strangers’.

To improve the handling of criminal child abuse in non-government organisations, it is important to have a clear understanding of:

- the scale of criminal child abuse in organisations—its prevalence and incidence
- organisations at risk and children who are vulnerable to child abuse
- the characteristics of offenders who abuse children in organisations
- the range of non-governmental organisations that directly interact with children.

### **6.1. Evolving nature of organisations, services and activities**

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Organisations are not static—they continually evolve. The nature of non-government organisations decades ago was markedly different from such organisations today.

Similarly, the types of services, activities and programs provided by non-government organisations that interact with children are continually evolving to meet the changing needs of children, their families and communities.

Understanding the dynamic and fluid nature of these organisations and the communities they serve is an important component in understanding criminal child abuse in organisational contexts—how it occurred in the past, how it is occurring now and how it might occur in the future.

### **6.2. Abuse in organisations—scale of the problem**

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Understanding the scale of the problem of criminal child abuse in non-government organisations is a key starting point in identifying a strategy for improving responses to the issue. Some of the factors that need to be understood include the prevalence and incidence of criminal child abuse in organisations, and the types of abuse that occur.

The Committee identified that for a range of reasons it is difficult to draw conclusions regarding the scale of criminal child abuse in society generally. It is even more challenging to identify its prevalence or incidence in non-government organisations.

The Deputy Director of the Australian Institute of Family Studies (AIFS), Dr Darryl Higgins, explained to the Inquiry that:

... one of the difficulties that we face in Australia is that there is no national prevalence study of child abuse and neglect.<sup>2</sup>

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<sup>2</sup> *Transcript of evidence*, Australian Institute of Family Studies, Melbourne, 19 October 2012, p. 2.

Child Family Community Australia<sup>3</sup> similarly noted that ‘There has been no methodologically rigorous, nation-wide study of the prevalence or incidence of child abuse and neglect in Australia.’<sup>4</sup> It did state, however, that:

There are ... a number of recent studies that have either measured one or two maltreatment types in detail, or have superficially measured all individual maltreatment types as part of a larger study.<sup>5</sup>

Dr Higgins suggested to the Inquiry that it is important to ‘understand where child abuse within organisations, be they religious or other community organisations, fits within the broader context of abuse and neglect more generally.’<sup>6</sup>

This section outlines the Committee findings in regard to:

- the extent of criminal child abuse in the broader community
- the scale of criminal child abuse in non-governmental organisations.

### 6.2.1. Extent of child abuse in the community

The majority of information about child abuse relates to abuse in family or domestic settings. Existing data is often based on notifications and substantiations received by the statutory child protection system.

The Committee identified that it is not possible to gain an accurate picture of the extent of child abuse in the wider community through existing sources of data and research.

There are a number of factors that make the available data and research inadequate for accurately understanding the scale of child abuse in the community. These include:

- minimal research into the prevalence and incidence of child abuse
- low reporting rates and difficulties investigating official reports
- varying definitions of child abuse—physical, emotional and sexual
- greater research attention to child sexual abuse over other forms of criminal child abuse.

In recent research, Professor Stephen Smallbone from the School of Criminology and Criminal Justice at Griffith University and his colleagues identified the difficulties in drawing conclusions about the scale of child sexual abuse using existing data and research. They emphasised that low reporting rates and difficulties associated with investigating child sexual abuse mean that official reports ‘seriously underestimate the scope of the problem.’<sup>7</sup>

Researcher Anne-Marie McAlinden states that research in the United Kingdom has revealed similar low reporting rates:

Recent research shows that fewer than 5 per cent of sex offenders are ever apprehended.

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3 Child Family Community Australia is an amalgamation of three previous AIFS clearinghouses: the National Child Protection Clearinghouse, the Australian Family Relationships Clearinghouse, and the Communities and Families Clearinghouse Australia.

4 Child Family Community Australia (2013) *The prevalence of child abuse and neglect fact sheet*. Accessed on 28 July 2013 from [www.aifs.gov.au](http://www.aifs.gov.au).

5 Child Family Community Australia (2013) *The prevalence of child abuse and neglect*.

6 *Transcript of evidence*, Australian Institute of Family Studies, p. 2.

7 S. Smallbone, W. L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*. Devon, Willan Publishing, pp, 17–18.

Estimates also suggest that only 3 per cent of all cases of child sexual abuse and only 12 per cent of rapes involving children are ever reported to the police.<sup>8</sup>

Other researchers and research institutes have expressed concern regarding the implications for policy development due to unreliable data about the scale of child abuse in the community. For example, the Director of Child Abuse Prevention Research, Professor Chris Goddard, told the Inquiry that developing effective preventative and other interventions requires a strong evidence base. He was firmly of the view that significant improvements need to be made to the collection of data relating to child abuse in the community.<sup>9</sup>

In an analysis of current data used to measure child abuse in society, Professor Goddard and colleagues identified that data on notifications or substantiations of criminal child abuse are not reliable and that changes to data sets reduce the capacity to make comparisons over time.<sup>10</sup>

The Australian Institute of Health and Welfare (AIHW) has also identified the limitations of data relating to notifications and substantiations in the child protection system:

National child protection data are only based on those cases reported to departments responsible for child protection and, therefore, are likely to understate the true prevalence of child abuse and neglect across Australia.<sup>11</sup>

The importance of accurate and reliable data was emphasised in the Protecting Victoria's Vulnerable Children Inquiry (the Cummins Inquiry). While its focus was on the statutory child protection system, it noted that:

Good public policy and planning must be grounded in high-quality information and data, particularly in complex service delivery environments. The Inquiry found a lack of data across several areas relating to Victoria's system for protecting children. There is a lack of ongoing data on major demographic characteristics and presenting issues of vulnerable children and their families, as well as data on the impact of statutory child protection services and other interventions.<sup>12</sup>

Similarly, the Committee concluded that unreliable data and the shortage of information regarding the extent of child abuse in the community have implications for developing and implementing evidence-based interventions and frameworks. The issue was highlighted during the Department of Human Services (DHS) evidence when it was discovered that human error contributed to an inaccuracy in recording information in one particular case.<sup>13</sup>

While it did not make any recommendations that relate specifically to the prevalence of child abuse in the community, the Cummins Inquiry made recommendations

8 A-M. McAlinden (2006) "Setting 'em up': Personal, familial and institutional grooming in the sexual abuse of children". *Social and Legal Studies*, Vol. 15, No. 3, pp. 339–62, p. 347.

9 *Transcript of evidence*, Professor Chris Goddard, Child Abuse Prevention Research Australia, Monash University, Melbourne, 19 October 2012, p. 7.

10 K. Broadley, C. Goddard, & J. Tucci (unpublished) *Surveillance: Towards a child-centred national framework for protecting children*. Child Abuse Prevention Research Australia, Monash Injury Research Institute, Monash University, and Australian Childhood Foundation.

11 Australian Institute of Health and Welfare (2013) *Child protection Australia: 2011–12. Child Welfare series no. 55, Cat. no. CWS43*. Canberra, AIHW, p. 6.

12 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*. Melbourne, Department of Premier and Cabinet, p. xlvii.

13 *Transcript of evidence*, Department of Human Services, Melbourne, 3 June 2013, pp. 12–13.

regarding program areas that require improved data collection to enhance the capacity for evidence-based interventions.

### **Finding 6.1**

Due to a lack of accurate data, the prevalence and incidence of criminal child abuse in the community is currently unknown which has implications for the development of evidence-based interventions and preventative frameworks in non-government organisations.

### **What we know—estimating prevalence in the broader community**

Despite the shortcomings of the data relating to the scale of child abuse in the community, experts and researchers have attempted to estimate its prevalence and incidence using the disparate information available through different data sets and various research studies.

Dr Higgins from the AIFS explained to the Inquiry that in view of the lack of data in Australia, it is necessary to draw on international prevalence studies.<sup>14</sup> In Australia there are no similar prevalence studies and prevalence rates have relied upon the Australian Personal Safety Survey conducted by the Australian Bureau of Statistics (ABS) in 2006. The Cummins Inquiry commissioned Deloitte Access Economics to report on the prevalence and incidence of child abuse and neglect in Victoria. In its best estimate of the prevalence it relied on the Australian Personal Safety Survey.<sup>15</sup>

Using the same source to provide an estimate of the prevalence of child abuse, Dr Higgins explained to the Committee that:

... the Australian Personal Safety Survey conducted ... in 2006, ... showed that nearly 1 million adult women reported that they had experienced sexual abuse before the age of 15, so that is about 19 per cent of women and about 5.5 per cent of men.<sup>16</sup>

Professor Goddard advised the Inquiry that:

[it is] important to note the reservations about this data ... The ABS survey only asked about physical and sexual abuse. They obviously could not include people who had died because of abuse, and they also excluded people living in institutions.<sup>17</sup>

In an analysis of the available research on prevalence rates, Child Family Community Australia reached a similar finding. In 2013, it updated an original review of research on the prevalence of child abuse conducted by the National Child Protection Clearinghouse and made the following broad estimates of the scale of child abuse in Australia:

- physical abuse—prevalence ranges from 8 to 15 per cent (depending on definitions)
- child neglect—ranges from 2 to 12 per cent
- emotional abuse—prevalence ranges from 6 to 17 per cent
- witnessing family violence—between 12 and 23 per cent.<sup>18</sup>

14 *Transcript of evidence*, Australian Institute of Family Studies, p. 2.

15 Deloitte Access Economics (2011) *The economic and social cost of child abuse in Victoria, 2009–10. Protecting Victoria's Vulnerable Children Inquiry*. Deloitte Access Economics Pty Ltd, p. 7.

16 *Transcript of evidence*, Australian Institute of Family Studies, p. 2.

17 *Transcript of evidence*, Professor Chris Goddard, p. 4.

18 Child Family Community Australia (2013) *The prevalence of child abuse and neglect*.

Child Family Community Australia also reviewed the more extensive research on child sexual abuse. It concluded that of the more comprehensive studies undertaken, the following prevalence rates were identified:

- Males—prevalence rates of 1.4 to 8.0 per cent for penetrative abuse and 5.7 to 16.0 per cent for non-penetrative abuse.
- Females—prevalence rates of 4.0 to 12.0 per cent for penetrative abuse and 13.9 to 36.0 per cent for non-penetrative abuse.<sup>19</sup>

Child Family Community Australia noted a number of limitations in drawing concrete conclusions from available research. These included varying methodologies, differing definitions of child abuse and the specific population samples used in the studies. Despite this, it stated that:

... some findings emerged unequivocally from this review: all five types of child maltreatment occur at significant levels in the Australian community.<sup>20</sup>

The Committee also heard evidence regarding the incidence of different types of child abuse and noted that sexual abuse generally occurs at lower rates than other forms of abuse. For example, Professor Smallbone from Griffith University explained to the Inquiry that:

... in terms of the incidence of child maltreatment, only about 10 per cent of substantiated notifications of child maltreatment involve sexual abuse, so 90 per cent of the abuse of children is not sexual.<sup>21</sup>

This reflects the national data produced by the AIHW for 2011–12, which indicates that approximately 12 per cent of all substantiated forms of harm that occur are child sexual abuse. Emotional child abuse and neglect occur at higher rates, with criminal child physical abuse occurring in approximately 21 per cent of all cases. In Victoria specifically, the incidence of child abuse with substantiated notifications in 2011–12 was:

- sexual abuse—10 per cent
- physical abuse—29 per cent
- emotional abuse—54 per cent
- neglect—7 per cent.<sup>22</sup>

While the Victorian figures may differ slightly from the national figures, as noted in the previous section, the AIHW has indicated there are limitations to the data and in the accuracy of cross-jurisdictional comparisons.

The Committee also heard that many children subject to child abuse experienced more than one form of abuse. It notes that the current estimates do not consider the number of children that experience multiple forms of abuse.

19 Child Family Community Australia (2013) *The prevalence of child abuse and neglect*.

20 Child Family Community Australia (2013) *The prevalence of child abuse and neglect*.

21 *Transcript of evidence*, Professor Stephen Smallbone, Griffith University, Melbourne, 9 November 2012, pp. 2–3.

22 Australian Institute of Health and Welfare (2013) *Child protection Australia: 2011–12*, p. 59.

### 6.2.2. Scale of criminal child abuse in organisations

While there is minimal data relating to the extent of child abuse in the broader community, the Committee identified that there is even less information about the prevalence and incidence of criminal child abuse in non-government organisational contexts. This shortage of information has significant implications for establishing effective interventions, including preventative measures, in addressing child abuse in these contexts.

The CEO of the Australian Childhood Foundation (ACF), Dr Joe Tucci, advised the Inquiry that:

... child abuse as an umbrella term has almost overlooked the exploitation and harm instigated by volunteers and employees of organisations. I have been a social worker in the field for 20-odd years, and to date the research into that issue has been very scarce. It is not top of mind, and in fact in the systems in Victoria it is not part of the broad child protection response.<sup>23</sup>

In its submission, the ACF advised that there is currently no way of accurately knowing the extent of criminal child abuse perpetrated by employees and volunteers in organisations that provide a service or activity to children.<sup>24</sup>

Dr Higgins from the AIFS also advised the Inquiry that:

... there is often little research available documenting child maltreatment in organisations, so we tend to need to look at what the particular risk factors are at the individual level as well as the organisational level.<sup>25</sup>

The Committee acknowledges that criminal child abuse in the context of non-government organisations has been generally under-researched and that the small amount of research undertaken has tended to focus on child sexual abuse.<sup>26</sup>

The Committee noted that the Productivity Commission has started to record figures for 'safety in out-of-home care', but that this data is too broad for the context of this Inquiry.

The Cummins Inquiry recommended that:

The Department of Justice should lead the development of a new body of data in relation to criminal investigation of allegations of child physical and sexual abuse, and in particular the flow of reports from the Department of Human Services to Victoria Police. Victoria Police, the Office of Public Prosecutions, the Department of Human Services and the courts should work with the Department of Justice to identify areas where data collection practices could be improved.<sup>27</sup>

The Committee notes that available sources, such as critical incident reporting in educational, early childhood and out-of-home care settings, are currently not used to measure patterns of criminal child abuse in organisational settings. It requested if DHS could identify trends or patterns through data it receives from its critical

23 *Transcript of evidence*, Australian Childhood Foundation, Melbourne, 9 November 2012, p. 2.

24 *Submission S224*, Australian Childhood Foundation, p. 2.

25 *Transcript of evidence*, Australian Institute of Family Studies, p. 4.

26 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*. *Child Abuse Prevention Issues series*. vol. 25, Spring 2006, Melbourne, Australian Institute of Family Studies.

27 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*, p. 337.

incident reporting process.<sup>28</sup> DHS advised that due to limitations in reporting using the existing database, it is difficult to draw conclusions in regard to patterns or trends.

### **Finding 6.2**

There has been minimal research into criminal child abuse in organisations and the majority that has been undertaken relates to child sexual abuse, with less known about physical abuse and multiple forms of child abuse.

## **6.3. Risk—organisations and children**

With minimal data to determine the prevalence and incidence of criminal child abuse, the risk of such abuse in organisations can only be speculated. Researchers have stated it is known that:

Children have historically been vulnerable to multiple types, and repeated episodes, of abuse within Australian organisations.<sup>29</sup>

Children rely on adults to meet their basic needs—they are physically, sexually and psychologically vulnerable and they lack social power.<sup>30</sup>

The risk of criminal child abuse is a combination of the inherent vulnerability of children, the intrinsic culture of an organisation and the type of activity or service that enables access to children. The interaction of these various elements of risk is multifaceted, complex and nuanced.

Dr Higgins from the AIFS told the Inquiry that:

... the international data are really suggesting that children are likely to be at heightened risk of maltreatment in organisational settings where employees are really acting in the place of parents and have the same kind of expectations and obligations that parents do.<sup>31</sup>

A research project undertaken by the National Child Protection Clearinghouse in 2006 explained that there are two key factors for creating risk in organisations:

... high-risk environments are those contexts that are 'home-like' or where employees have time alone with a child including in their own or the child's home. Being able to make contact with children outside the organised activity or seeking time alone with them, including car rides are therefore high-risk behaviours and situations. Babysitting, foster care, residential institutions and groups that involve sleepovers must be considered high-risk environments for abuse.<sup>32</sup>

The report from the above research explains that:

A high-risk environment that is 'homelike', coupled with children who have characteristics that make them especially vulnerable to abuse (very young,

28 Family and Community Development Committee, Correspondence to the Department of Human Services.

29 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, p. 3.

30 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, p. 4.

31 *Transcript of evidence*, Australian Institute of Family Studies, p. 4.

32 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, p. 43.

disabled, previously abused or neglected and so on) would be one of the highest risk environments.<sup>33</sup>

An organisation that promotes child-safe environments, Child Wise, outlines three levels of risk relating to criminal child abuse that are important for organisations and the community to be conscious of. Figure 6.1 outlines these risk levels.

**Figure 6.1: Risk factors within organisations**

<b>Low/acceptable risks</b> Should be monitored and periodically reviewed to ensure they remain acceptable	<b>Medium level risks</b> Requires more intervention to move them to the lower risk end of the continuum	<b>High level risk</b> Requires even greater intervention
Activities that are considered to be low level risk or limited risk:	Examples of medium risk activities are where:	Examples of high risk activities are those which:
<ul style="list-style-type: none"> <li>involve older less dependent, and able bodied children</li> <li>take place in full view of people and in open plan environments</li> <li>have high adult/child ratios</li> <li>have active parent involvement</li> <li>do not involve bodily contact</li> <li>are accompanied by active staff supervision</li> <li>shorter sessions.</li> </ul>	<ul style="list-style-type: none"> <li>children are younger and more dependent</li> <li>view of the activity is obscured</li> <li>there is minimal supervision</li> <li>there is less parent involvement</li> <li>there are policies and procedures but they are not actively implemented</li> <li>they are held in external locations e.g. excursions, walks</li> <li>there are some physical activities with children.</li> </ul>	<ul style="list-style-type: none"> <li>involve very young and/or vulnerable children</li> <li>take place out of sight</li> <li>involve bathing or toileting</li> <li>have low adult/child ratios</li> <li>have no supervision</li> <li>include overnight stays</li> <li>take place in a private home or in isolated settings.</li> </ul>

Source: Adapted from Child Wise (2004), *Choose with care, a universal information and training program*, p. 49.

In 2009 a study was undertaken in relation to reported child sexual abuse in the Anglican Church. Youth groups were found to be a key target and accounted for 50 per cent of all cases.<sup>34</sup> It revealed that most accused people were either religious personnel or laypeople involved in a form of paid or voluntary youth work.<sup>35</sup> The study identified that 41 per cent of the offenders were religious clergy.

In evidence to the Inquiry, Professor Smallbone explained that criminal child abuse in organisations tends to occur in one of four ways:

- Among children themselves—in the context of harassment, bullying, initiation practices and sexual experimentation gone wrong.

33 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, p. 43.

34 P. Parkinson, K. Oates, & A. Jayakody (2009) *Study of reported child sexual abuse in the Anglican Church*, p. 25.

35 P. Parkinson, K. Oates, & A. Jayakody (2009) *Study of reported child sexual abuse in the Anglican Church*, p. 5.

- Between a child and a current employee or volunteer—that is, an adult in a responsible position who develops abuse-related motivations for the first time.
- Between a child and a new employee or volunteer who brings previously established abuse-related interests or motivations into an organisational setting.
- ‘Stranger danger’ problem—that is, a visitor or passer-by may take or lure a child.<sup>36</sup>

### 6.3.1. Children—factors increasing vulnerability to abuse

Research evidence has suggested that specific groups of children, or children with particular characteristics, can be more vulnerable to criminal child abuse, particularly in organisational settings. Notably, the majority of this research relates to child sexual abuse, with very little research relating to physical or emotional abuse in organisations.

In evidence to the Inquiry, Dr Tom Keating made a link between power relationships and the potential for criminal child abuse. He told the Committee that:

Without absolving individuals from responsibility for their crimes, it is important to understand the systemic context within which abusive situations arise. We know that abuse occurs in any social care situation where there is a significant power differential. We have seen it with children, with the elderly, with the mentally ill and with the disabled ... Whenever there are situations in which one group has uncontrolled power over others, there will be a proportion of people who will abuse that power.<sup>37</sup>

In the context of child sexual abuse, researchers have identified some characteristics in children that appear to make them more vulnerable. These findings have emerged from studies with offenders that seek to understand how they have selected victims. For example, one research study suggested that:

Perpetrators are most likely to target victims who are alone, who have family problems and who are physically small ... perhaps more tellingly, they also looked for children who appear to lack confidence and have low self-esteem, and who seem innocent, curious and trusting.<sup>38</sup>

More broadly, research has suggested that a number of factors can make children vulnerable to child abuse. These can include a child’s age, their gender or a previous experience of child abuse. Children with a disability can also be more vulnerable to abuse.<sup>39</sup>

The National Society for the Prevention of Cruelty to Children in the United Kingdom reported that 49 per cent of offenders included in a research study chose victims who were lacking in confidence or had low self-esteem.<sup>40</sup> In the same research, 84 per cent of offenders identified vulnerability in their victims and 79 per cent of

36 *Transcript of evidence*, Professor Stephen Smallbone, p. 3.

37 *Transcript of evidence*, Dr Tom Keating, Melbourne, 10 December 2012, p. 3.

38 M. Elliott, K. Browne, & J. Kilcoyne (1995) ‘Child sexual abuse prevention: What offenders tell us’. *Child Abuse and Neglect*, Vol. 19, No. 5, May 1995, pp. 579–94. Referenced in S. Smallbone, W. L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 135.

39 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, pp. 6–7.

40 M. Erooga, D. Allnock, & P. Telford (2012) *Towards safer organisations II: Using the perspectives of convicted sex offenders to inform organisational safeguarding of children*. London, National Society for the Prevention of Cruelty to Children (NSPCC), p. 54.

offenders reported having manipulated the victim's vulnerability in order to carry out the abuse.<sup>41</sup>

The Committee noted that these factors are not necessarily effective in assessing risk, but can provide indicators of potential vulnerabilities.

It is widely acknowledged that adult and adolescent child sexual abuse offenders often seek to establish a non-sexual relationship with a child victim, and very often with a parent as well, before the first incident of criminal child abuse occurs.<sup>42</sup> Many offenders seek to build trust that involves an emotional connection emerging over time.<sup>43</sup> This is understood as 'grooming' behaviour and is discussed further in Chapter 22 in Part G.

#### 6.4. Offenders in organisations

An area of interest to the Inquiry is the research evidence relating to the way offences of criminal child abuse occur in non-government organisations. The Committee noted there is mixed evidence regarding the behaviour of offenders in the context of criminal child abuse. Most researchers are primarily concerned with those offenders who commit child sexual abuse. Less is known and understood about those who commit other forms of criminal child abuse in organisations, including female offenders.

Professor Smallbone and his colleagues have highlighted the mixed evidence emerging from research. They stated that:

A popular assumption is that adult CSA [child sexual abuse] offenders consciously and actively join organisations or seek out relationships with single mothers in order to obtain sexual access to children. The evidence is mixed in this regard.<sup>44</sup>

In view of the mixed findings about the motivations of offenders, they also state that a key challenge:

... is how to distinguish early grooming behaviours from normal care-giving behaviours, and thus how to detect and intervene in CSA before the problem is fully established.<sup>45</sup>

One of the hazards within this challenge is misidentifying legitimate behaviour as grooming. The goal is to specifically distinguish grooming behaviours to avoid 'a high rate of false-positive identification.'<sup>46</sup>

For example, a sports coach who is actively involved in club governance, forms close bonds with children and their families and shows an interest in the child's

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41 M. Erooga, D. Allnock, & P. Telford (2012) *Towards safer organisations II: Using the perspectives of convicted sex offenders to inform organisational safeguarding of children*, p. 54.

42 S. Smallbone, W. L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 10.

43 S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 10.

44 S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 10.

45 S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 11.

46 S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 11.

development and emotional welfare is not necessarily grooming the organisation, the families or the children for the purposes of offending.

#### 6.4.1. Characteristics of offenders

It is important to acknowledge that there is no ‘typical’ offender in the context of child sexual abuse. The Committee determined that in view of this, research studies can only generalise and it is not possible to specifically characterise an offender of criminal child abuse.

In evidence to the Inquiry, Professor Smallbone explained this inability to effectively characterise an offender of criminal child abuse, specifically a child sex offender:

I think we have constructed this picture of the predatory sex offender, and people think they are going to be able to recognise them because they are going ... to look strange and behave strangely. People do not really get the idea that not only might they look ordinary but they might actually be ordinary in that sense.<sup>47</sup>

Offenders cannot, therefore, be viewed as a homogenous group who are preoccupied with seeking out opportunities to offend against children.

Researcher Anne-Marie McAlinden emphasised the point that despite popular perceptions, offenders of criminal child abuse are not identifiable by their presentation:

... to invoke the much-used phrase ‘monsters do not get children, nice men do’. Contrary to the media-inspired popular belief, a sex offender is not instantly recognizable as the ‘dirty old man in the raincoat’.<sup>48</sup>

She went on to explain that offenders often strategise by ensuring they appear like a regular community member with virtuous and good intentions:

Part of their skill is to ingratiate themselves with children and infiltrate themselves into unsuspecting families, communities and organizations. To do this successfully, they must pass themselves off as being very nice, usually, men who simply like children.<sup>49</sup>

Research has indicated that many offenders tend to be highly likeable and adopt a pattern of responsible and caring behaviour in public. They endeavour to build a good reputation and to create a strong social perception of themselves as a good and honest person. Dr Higgins from the AIFS also described this to the Inquiry:

The research often tends to talk about perpetrators as being ‘charming’ and people who can easily ingratiate themselves with others, and these are often the characteristics we admire in many organisations. They often tend to be the leaders because people are attracted to that kind of personality, but they often display very deviant attitudes.<sup>50</sup>

Dr Higgins explained to the Committee that these ‘deviant’ attitudes of offenders are often identified retrospectively. That is, they are recognised when offenders describe how they were able to access children and how they were able to subvert the organisation.<sup>51</sup>

47 *Transcript of evidence*, Professor Stephen Smallbone, p. 9.

48 A-M. McAlinden (2006) “Setting ‘em up”: Personal, familial and institutional grooming in the sexual abuse of children’, p. 348.

49 A-M. McAlinden (2006) “Setting ‘em up”: Personal, familial and institutional grooming in the sexual abuse of children’, p. 348.

50 *Transcript of evidence*, Australian Institute of Family Studies, p. 5.

51 *Transcript of evidence*, Australian Institute of Family Studies, p. 5.

The evidence does suggest, however, that broad patterns in offending of criminal child abuse can be identified. These are that:

- males are far more likely to perpetrate child sexual abuse than females
- adolescence and early middle age are two distinct risk periods in the onset of child sexual abuse offending.<sup>52</sup>

Research also contends that while there is no typical offender, three offender ‘types’ can be broadly identified. These relate to two factors—first, their motivations in the context of an offender’s criminal disposition and, second, the environmental factors that might create opportunities to offend. Situational or environmental risk factors can be influenced by the structural components of an organisation and its culture. Table 6.2 outlines these three offender ‘types’.

**Table 6.2: Types of offenders**

Characteristic	Description
Predatory offenders	<ul style="list-style-type: none"> <li>• Research suggests that this type of offender is the stereotypical fixated, predatory child abuser who offends whenever there is an opportunity and who also seeks to create opportunities for offending.</li> </ul>
Opportunistic offenders	<ul style="list-style-type: none"> <li>• Restrain themselves from offending for social and personal reasons, but these weaken from time to time.</li> <li>• They may make excuses for their behaviour or to minimise their offending. For example, they might suggest they were providing intimacy and affection to a vulnerable child as an excuse to continue offending.</li> </ul>
Situational offenders	<ul style="list-style-type: none"> <li>• React to the environment they find themselves in.</li> <li>• Crimes can be spontaneous, such as heat-of-the-moment acts of violence or impulsive crimes where temptation and opportunity overcome their self-control.</li> <li>• Given the right situation, they will offend.</li> </ul>

Source: Adapted from M. Erooga, D. Allnock, & P. Telford (2012) *Towards safer organisations II: Using the perspectives of convicted sex offenders to inform organisational safeguarding of children*. London, NSPCC, pp.31–32.

In addition, research suggests that offending behaviour varies depending on the type of offender and the situation in which the offending occurs. This is demonstrated in the matrix in Table 6.3.

52 S. Smallbone, W.L.Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 5; *Transcript of evidence*, Professor Stephen Smallbone, p. 2; L.R. Beyer, D.J. Higgins, & L.M. Bromfield (2005) *Understanding organisational risk factors for child maltreatment: A review of literature. A report to the Community Services Ministers’ Advisory Council (CSMAC) Child Safe Organisations Working Group*. Australian Institute of Family Studies, pp. 43–47.

**Table 6.3: Behaviour of offenders—offender disposition and situational context**

Situation	Offender		
	Situational	Opportunistic	Predatory
Challenging			Manipulates
Tempting		Exploits	
Precipitating	Reacts to		

Source: Adapted from the R. Wortley & S. Smallbone (2006) 'Applying situational principles to sexual offences against children'. In Wortley, R. & Smallbone, S. (Eds.), *Crime prevention studies: Vol. 19. Situational prevention of child sexual abuse*. Monsey, NY, Criminal Justice Press, p. 17.

### Finding 6.3

There is no typical offender of criminal child abuse, and many child sex offenders often appear as regular community members with good intentions.

#### 6.4.2. Child sex offenders—religious personnel

While there will be obvious overlap among many of the profile features described above, the Committee heard evidence that there are additional and unique 'dispositional traits of the individual clerical or monastic offender'.<sup>53</sup> The majority of the evidence received by the Committee related to child sex offenders in the Catholic Church.

The Committee reviewed extensive research conducted by John Jay College of Criminal Justice in New York in 2004. It suggested that 'certain personality characteristics have been shown to be unique to clergy offenders'.<sup>54</sup> In its analysis of research conducted on clergy offenders, the John Jay study suggested that offenders appeared to experience:

- loneliness, masturbation conflicts and a wish to be known beyond their role by others
- shyness, loneliness and passivity
- over-controlled hostility compared with non-offending priests.<sup>55</sup>

In research on clergy offenders in the Catholic Church conducted in the 1970s, the findings suggested that 60–70 per cent of offending priests who participated in the study were emotionally immature.<sup>56</sup>

The John Jay study found that among offenders there was:

A failure to appreciate the power differential between minister and parishioner, naivety about sexual issues and desensitisation of the intimacy of the minister/laity relationship all combine to affect victim empathy.<sup>57</sup>

53 *Transcript of evidence*, Professor Desmond Cahill, School of Global, Urban and Social Studies, RMIT University, Melbourne, 22 October 2012, p. 3.

54 John Jay College of Criminal Justice (2004) *The nature and scope of sexual abuse of minors by Catholic priests and deacons in the United States 1950–2002*. Washington DC, United States Conference of Catholic Bishops, p. 181.

55 John Jay College of Criminal Justice (2004) *The nature and scope of sexual abuse of minors by Catholic priests and deacons in the United States 1950–2002*, p. 189.

56 John Jay College of Criminal Justice (2004) *The nature and scope of sexual abuse of minors by Catholic priests and deacons in the United States 1950–2002*, p. 189.

57 John Jay College of Criminal Justice (2004) *The nature and scope of sexual abuse of minors by Catholic priests and deacons in the United States 1950–2002*, p. 189.

### 6.4.3. Recidivism—child sex offending

Understanding recidivism rates for offending in organisations is an important factor in the context of prevention. The reliance on screening methods relates to the recognition by the community that some offenders of criminal child abuse may reoffend. Importantly, however, as noted above, child sex offending behaviour varies and is often interconnected with the situational context. That is, some offenders may never have offended or never been caught, yet may respond to an ‘opportunity’ to offend. Similarly, research is not conclusive and can only allude to patterns of offending.

The majority of research into recidivism and criminal child abuse relates to child sexual abuse. Recidivism rates in this context can be difficult to determine. Researchers have emphasised that:

We simply do not know how many people may commit one or two CSA offences, never get caught, and never repeat it, although presumably this happens.<sup>58</sup>

Professor Smallbone told the Inquiry research findings suggest that ‘Most of the new offences are going to occur from people who are not on [a] register.’<sup>59</sup> He explained:

Clearly true recidivism is underestimated because of underreporting and so on, but in criminology there is what is called an 80/20 rule—that is, 20 per cent of offenders are responsible for 80 per cent of crime. That is true, I think, for sex offences as well. For example, I would expect that if you looked at all the sex offenders in prison in Victoria, about 70 to 80 per cent of them would not have a prior record of sex offences anyway, so that raises questions for me too about the limitations, I guess, of many of our efforts to do offender registers, for example ...

In terms of recidivism rates, looking at the problem the other way, about 15 to 25 per cent, at least officially—in terms of official records—of sex offenders will be reconvicted of a sex offence over the next 5 to 15 years.<sup>60</sup>

In the context of clergy offenders, the John Jay study conducted explained that there appeared to be a 10 per cent recidivism rate, but that due to discrepancies in the sample it exercised caution in relying on this figure.

The Committee heard that there is a higher recidivism rate among those offenders who target child male victims as opposed to those who offended against child female victims. Professor Smallbone told the Inquiry:

The capacity of different kinds of offenders to change their attitude, if you like, or to change their behaviour in relation to children in a general sense varies enormously. I come back to the point that people who have offended against boys find it more difficult to stop for one reason or another, or at least they have higher recidivism rates.<sup>61</sup>

The Committee noted that offending behaviour and recidivism is complex and difficult to accurately determine.

Based on current assessments, the suggestion is that recidivism is relatively high for previous offenders. In acknowledging that recidivism is a potentially significant issue, prevention strategies have focused on the value of using screening tools.

58 S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 7.

59 *Transcript of evidence*, Professor Stephen Smallbone, p. 6.

60 *Transcript of evidence*, Professor Stephen Smallbone, p. 6.

61 *Transcript of evidence*, Professor Stephen Smallbone, p. 11.

At the same time, situational contexts and the interplay with offender motivations and behaviour indicate that reducing opportunities for first time offending or opportunistic offending through the structures and culture in an organisation is equally important in preventing criminal child abuse.

#### **6.4.4. Child sex offenders engaging in ‘grooming’ behaviour**

For a percentage of offenders it appears that there is a premeditated effort to select or ‘groom’ victims in the context of criminal child sexual abuse. Research has found that the pre-abuse circumstances that present the greatest degree of risk are those in which the offender’s role involves a mix of care-taking and authority, as is often found in parental and guardianship roles.<sup>62</sup>

As described above, some offenders will attempt to position themselves in ways that enable easier access to children. These offenders tend to be ‘predatory offenders’, who are prepared to manipulate a situation to create opportunities for offending. Grooming can occur in a range of ways, including seeking to develop relationships with victims or their families. It can also extend to grooming individuals within organisations.

The Committee considered that a course of conduct described as ‘grooming’ warrants the introduction of a new criminal offence, encompassing conduct where it is accompanied with an intent to facilitate sexual activity with a child. This is considered in more detail in Chapter 22 in Part G.

### **6.5. Religious and non-government organisations in Victoria**

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The nature of non-government organisations that participated in the Inquiry was diverse, reflecting the broader context of non-government organisations across Victoria. The purpose, size, available resources and structure of the non-government organisations varied considerably. The Committee noted that some non-government organisations are small, locally based and resourced by volunteers, while others are vast and operate on an international scale.

The Committee grouped the organisations it was interested to hear from into a number of categories. Based on research and expert evidence it received, it identified the types of non-government organisations most likely to have direct contact with children. These are:

- religious organisations
- out-of-home care
- early education services and independent schools
- child care organisations
- youth services
- recreational and sporting organisations.

Many of these organisations receive government funding and tax exemptions to undertake the services and activities they engage in.

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<sup>62</sup> S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 10.

It is important to consider the features of these varying organisational contexts. The Committee determined that all organisations can be at risk of criminal child abuse.

In addition, as noted in Chapter 7, the Committee was also conscious that the historical interaction of these religious and non-government organisations with children have often been different from the contemporary context. In particular, it identified evolving and changing contexts in religious organisations, out-of-home care and schooling.

#### **Finding 6.4**

There are many types of organisations in which criminal child abuse occurs, and over many decades the nature of the services and programs provided by these organisations have evolved to meet the changing needs of children and the community, including services commenced following closure of institutions providing out-of-home care.

#### **6.5.1. Religious organisations**

Religious organisations engage in a range of activities that involve interaction with children, including the day-to-day activities of ministers of religion in their communities and parishes. It also includes the involvement of religious organisations in what are generally considered secular activities.

The Committee heard evidence that criminal child abuse in religious communities can be particularly difficult to address. Professor of Intercultural Studies at RMIT, Desmond Cahill, explained to the Inquiry that:

Child sexual abuse has existed in all ages and in all cultures and in all religions, invariably shrouded in secrecy and silence and characterised by inadequate responses by religious authorities determined to keep their faith's reputation pristine and irreproachable in a religiously competitive market.<sup>63</sup>

In referring to a study he had undertaken in 1997 relating to child sexual abuse in churches, Professor Patrick Parkinson from Sydney University informed the Inquiry that:

... children were less likely to be protected in churches than almost any other group in society. I did not mean by that, that children were more likely to be abused but that they were less likely to be protected if they disclosed abuse. There is a whole range of reasons ... the fact that there is a tendency to trust adults, people you have known a long time; a policy of forgiveness, which has been a big issue in churches; and the issue of protecting the institution.<sup>64</sup>

Professor Parkinson went on to say that:

The reality is that we have come light years on from 1997. Most churches—I think all churches—have radically changed their attitudes to all of this ... It is important to emphasise that all churches now, including the Catholic Church, are very much safer places than they were. We have, in my view, come a long way, but there is a long way to go.<sup>65</sup>

63 *Transcript of evidence*, Professor Desmond Cahill, p. 22.

64 *Transcript of evidence*, Professor Patrick Parkinson, p. 3.

65 *Transcript of evidence*, Professor Patrick Parkinson, p. 3.

The Committee heard that religious organisations have been traditionally closed and protective of their members, making it challenging to effectively address criminal child abuse. In research conducted by Marie Keenan, she notes that in view of the nature of the work they undertake, ministers of religion are often in situations of unsupervised contact with children. This includes work in parishes, hospitals, schools, youth clubs and youth retreats.<sup>66</sup>

In addition, in relation to the Catholic Church, research suggests that ministers of religion often set themselves apart and set themselves above others. In the past they have operated in contexts with loose accountability structures and with no supervision or support in their duties.<sup>67</sup> The following chapter discusses how allegations of criminal child abuse were handled by religious organisation in the past, particularly the Catholic Church.

### **Religious laws**

In its Inquiry, the Committee sought to understand the ways in which religious laws and procedures might be used to address criminal child abuse within the organisation. This section provides a brief overview of some religious laws with later chapters exploring this in more detail.

The Committee received information from both the Catholic Church regarding canon law and the Rabbinical Council of Victoria (RCV) regarding *halachah*. The Australian Muslim Women's Centre for Human Rights also discussed Islamic law in the context of child abuse.

In its submission to the Inquiry, the Catholic Church explained how canon law applies in the context of civil and criminal law. Box 6.1 details this application of canon law.<sup>68</sup>

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66 M. Keenan (2011) *Child sexual abuse and the Catholic Church: Gender, power, and organizational culture*. USA, Oxford University Press, p. 172.

67 M. Keenan (2011) *Child sexual abuse and the Catholic Church: Gender, power, and organizational culture*, p. 173.

68 *Submission S185*, Catholic Church in Victoria, pp. 7–8.

**Box 6.1: Canon law—the Roman Catholic Church**

Canon law is the body of laws and regulations made or adopted by ecclesiastical authority, for the governance of the Catholic Church and its members.

Canon law is the internal ecclesiastical law governing the Catholic Church (both Latin Rite and Eastern Catholic Churches). Canon law provides the structure and parameters for all governance in the Catholic Church.

The canon law of the Catholic Church is a fully developed legal system, with all of the necessary elements including tribunals, lawyers, judges, a fully articulated legal code and principles of legal interpretation.

The sexual abuse of children is a crime. It is a crime in civil law and it is a crime in canon law. Sexual abuse by clergy or religious has two distinct aspects.

- The first is concerned with the civil and criminal responsibility of individuals, and this, being a matter for the civil authorities, is regulated by the laws of the state where the crime is committed.
- The second is religious in nature and as such comes under the internal responsibility of the Catholic Church, which applies its own legal or canonical system. The Catholic Church has the duty to punish wrongdoers for the grave and grievous damage done to the community of the Catholic Church. Canon law stipulates the norms, procedures and penalties for the relevant Catholic Church Authority to apply. Generally speaking, a bishop is the relevant Catholic Church Authority in relation to parish priests, and the congregation leader (or 'Provincial') is the relevant Catholic Church Authority in relation to members of Orders, Congregations and Societies.

Source: Adapted from *Submission S185*, Catholic Church in Victoria, pp. 7–8.

Chapter 7 discusses in greater detail the role of canon law in the context of criminal child abuse—that is, how it is used to apply internal sanctions to offenders, including laicisation (or removing the authority of ministers of religion) and the extent to which it has been used in both historical and contemporary contexts.

In its submission, the RCV explained that there are two aspects of Jewish law that influence its approach to criminal child abuse matters. These are known in Hebrew as *mesirah* and *arka'ot*, outlined in Box 6.2.<sup>69</sup>

<sup>69</sup> *Submission S138*, Rabbinical Council of Victoria, p. 2.

**Box 6.2: Halachah—Jewish law**

The RCV explained that Jews who betrayed other Jews to the authorities, giving information, whether true or not, that could be used to drum up a charge, were looked upon with special scorn. Consequently, the offence of *mesirah* (literally, ‘handing over’—that is, the handing over of people or even information) became a particularly severe offence within the community. In the context of modern multicultural societies with properly functioning judicial systems, it is recognised that those concerns have no place. The RCV has publicly repudiated these views. Its policy advises that ‘it is *halachically* (that is, within Jewish law) obligatory to make such reports’ to the civil authorities.

*Arka’ot* (non-Jewish courts)

Despite these remarks, there remains within Jewish law an antipathy to bring certain matters before secular courts. It is important to understand which matters these are, and why the antipathy exists. *Halacha* is an all-encompassing system. There is no aspect of human experience that is beyond its scope. For this reason, if a Jew has a financial or business dispute with another Jew, the correct thing for them to do *halachically* is to bring the matter before a Jewish court (*Beth Din*) for a ruling which will be enforceable under the local laws of the country in which the hearing takes place. (In Victoria, such rulings are enforceable under the *Commercial Arbitration Act 2011*.)

To fail to act in such a way is seen as demeaning to *Halacha*, as if to imply that there are situations with which it cannot cope. However, such demands only apply to civil matters. With only one or two exceptions dotted throughout its long history, Jewish authorities outside Israel have never been responsible for judging criminal matters. They have never had the authority to try people for crimes, nor to impose sanctions, nor have they sought such authority. Therefore, the RCV has been vocal in stating that any reticence people may have in bringing or helping to bring criminal matters before non-Jewish courts is thoroughly misplaced.

Source: Adapted from *Submission 138*, Rabbinical Council of Victoria, p. 2.

Unlike the Jewish and Catholic Church laws, the Committee heard that Islamic law does not influence how the Muslim community responds to criminal child abuse. The Australian Muslim Women’s Centre for Human Rights explained to the Inquiry that:

Ninety-seven per cent of what people define as Islamic law is just difference in opinion among Muslim legal scholars, so there is nothing there that would, I think, pose any sort of challenge. Additionally, the welfare of a child is almost sacred in Islam, so you get a very receptive audience. In addition to our experience, which has been that—we have worked on many issues of violence related to women, and it has been very difficult work to do, but when we speak about violence against children people are far more receptive. Again I would say that it is a good place to start with, and I think if you are going to do any sort of training or work in this area, the Muslim community would be very receptive, despite it being taboo.<sup>70</sup>

<sup>70</sup> *Transcript of evidence*, Australian Muslim Women’s Centre for Human Rights, Melbourne, 22 April 2013, p. 8.

### Engagement in secular activities

The major religious bodies in Victoria are involved in the provision of a wide range of socially important services. In many respects these services are essentially secular in character. They include the education of children, the operation of healthcare facilities, homes for older people and the provision of support to a wide range of disadvantaged communities and individuals.

The motivation of these non-government organisations to be involved in these areas may be religious in character—that is, missionary in purpose, serving others and/or charitable in nature. Importantly, however, they are supported by the secular state in undertaking them because of their social value to the community.

How these organisations practise their religious beliefs is not a matter that concerned the Committee, apart from the extent to which these organisations comply with the law. The Committee is, however, specifically concerned with their role in the provision of services and their engagement with children in the community.

Many are registered charities and are permitted to raise money from the public for these activities. They are supported by government through tax concessions and direct funding. Some operate under government contracts to provide services that the State would otherwise have to provide. These charitable activities often add to the esteem in which these organisations are generally held.

The Committee requested specific information regarding religious organisations that receive government funding to undertake community services. In response to this request, DHS advised that in 2011–12 it provided approximately \$327.7 million in funding to religiously affiliated community service organisations.

DHS advised the Committee that it does not specifically collect information regarding religious affiliation from the organisations it funds, so it could not provide a definitive list of organisations with a religious affiliation.

From the information provided, it is evident that a number of community service organisations are affiliated with the Anglican Church, the Catholic Church, the Uniting Church, and the Salvation Army. While the information provided by DHS may not include all religiously affiliated organisations, Table 6.4 provides an estimation of the total amounts received by religious denominations.

**Table 6.4: Estimated total DHS funding received by religious denominations to provide community services, 2011–12**

Religion	2011-12 funding
Catholic Church	\$96.7 million
Uniting Church	\$78.6 million
Anglican Church	\$59.6 million
Salvation Army	\$48.9 million
Other denominations	\$43.9 million
Total	\$327.7 million

Source: Adapted from *Supplementary evidence*, Response to request for information, Department of Human Services, 10 December 2012

Within these religious denominations, organisations affiliated with them that received more than \$20 million from DHS in 2011–12 are outlined in Table 6.5.

**Table 6.5: Specific religious organisations receiving more than \$20 million per annum from DHS to provide community services, 2011–12**

Organisation	Affiliation	2011-12 funding
The Salvation Army Property Trust and Red Shield Housing	Salvation Army	\$48.9 million
Anglicare Victoria	Anglican Church	\$38.0 million
Wesley Mission Victoria	Uniting Church	\$31.0 million
MacKillop Family Services	Roman Catholic Church	\$30.6 million
Melbourne City Mission	Interdenominational	\$23.1 million

Source: Adapted from *Supplementary evidence*, Response to request for information, Department of Human Services, 10 December 2012.

The funding identified by DHS is only one source of information relating to the levels of government funding provided to religious organisations. In addition to charitable and community service provision, many religious denominations also operate schools and receive government funding. Section 6.5.3 discusses schools in more detail.

It is important to recognise that religious organisations are regularly funded and supported to engage in activities of a secular character that would otherwise have to be performed by the secular state. The Committee is of the view that in the performance of those activities, religious organisations should be required to meet the standards applicable to all other organisations and indeed to the State itself.

### 6.5.2. Out-of-home care

The Committee considered the nature of services that provide out-of-home care in situations when parents are unable to continue to provide care for their child/ren. It acknowledged that the government has a duty of care to children in these circumstances.

With the developments in public policy in statutory child protection systems, children who would once have been placed in institutions or orphanages are now commonly placed in out-of-home care arrangements such as foster care and kinship care. Box 6.3 outlines the range of out-of-home care provided.<sup>71</sup>

<sup>71</sup> Steering Committee for the Review of Government Service Provision (2013) *Report on government services 2013*. Canberra, Productivity Commission (Chapter 15).

**Box 6.3: Out-of-home care**

Out-of-home care services provide care for children and young people aged up to 17 years who are placed away from their parents or family home for reasons of safety or family crisis. These reasons include abuse, neglect or harm, illness of a parent and/or the inability of parents to provide adequate care. Placements may be voluntary or made in conjunction with care and protection orders.

Out-of-home care services comprise:

- Residential care—where placement is in a residential building whose purpose is to provide placements for children and where there are paid staff.
- Family group homes—provide care to children in a departmentally or community sector agency provided home. These homes have live-in, non-salaried carers who are reimbursed and/or subsidised for the provision of care.
- Home-based care—where placement is in the home of a carer who is reimbursed (or who has been offered but declined reimbursement) for expenses for the care of the child. This is broken down into the three subcategories: relative/kinship care, foster care and other home-based out-of-home care.
- Independent living—including private board and lead tenant households.
- Other—includes placements that do not fit into the above categories and unknown placement types. This includes boarding schools, hospitals, hotels/motels and the defence force.

Source: Adapted from the Steering Committee for the Review of Government Service Provision (2013) *Report on government services 2013*. Canberra, Productivity Commission, Chapter 15; and Australian Institute of Health and Welfare (AIHW) *Child protection Australia 2011–12*. Canberra, AIHW, Chapter 4.

Out-of-home care is largely provided by non-government organisations in situations in which care by the extended family is not an option. It is an option of last resort.

DHS funds out-of-home care placements and related services through service agreements with individual community service organisations. The number of organisations funded to provide out-of-home care for children and young people changes over time. At the end of June 2013 there were approximately 50 community service organisations in Victoria receiving over \$183 million to provide out-of-home care for children and young people, excluding disability services (which predominantly care for adults but do provide some out-of-home care to children).

DHS advised the Inquiry that at 30 June 2013, there were 6,828 children placed in the out-of-home care system in Victoria. The daily average number in each form of care was:

- kinship care—2,836
- home-based care placements—1,538
- permanent care—1,940
- residential care—514.

DHS also advised that over the last 10 years there has been a 50 per cent increase in the number of children placed in out-of-home care.<sup>72</sup>

The out-of-home care system has been the subject of reform in the last few years, primarily in response to investigations by the Victorian Ombudsman in 2005 and 2010 and the Cummins Inquiry. These inquiries have led to increased regulation through registration, accreditation and monitoring systems. Part D discusses these arrangements further.

### **Changes over time in out-of-home care**

DHS informed the Inquiry that the provision of out-of-home care has changed significantly over the past 60 years. There are no longer any large institutions caring for children that operate in Victoria. DHS told the Inquiry it estimates that the largest group of children who are placed together is six.

Prior to 1970, out-of-home care was run primarily through central reception centres and congregate care institutions, which provided large-scale institutional care.<sup>73</sup> Table 6.6 provides an overview of the changes to out-of-home care in Victoria.

Over the past 150 years more than 100 homes and institutions have provided out-of-home care for children. Of these, over half have been privately owned and operated, with the vast majority being managed by religious organisations.<sup>74</sup> In a submission to the Inquiry, Dr Cate O'Neill from the research project 'Who am I?' at the University of Melbourne, explained that:

Victoria's history is ... distinguishable from other jurisdictions in Australia in the prevalence of institutional care (in large, congregate care settings like orphanages or children's homes) as opposed to other models like foster care or boarding out.<sup>75</sup>

During the 1970s institutional care continued to be a major form of care for children unable to live with their parent/s. The period also saw an increase in alternative care models such as Family Group Homes. DHS told the Committee that:

In the 1970s Allambie was the State's major reception facility for children being removed from their families, and in the mid-1970s there were large numbers of children placed at this facility ... At that time many of the children's homes that had been running through the earlier part of that century ... were all gradually starting to phase down.<sup>76</sup>

Table 6.6 provides a breakdown of the different types of out-of-home care in Victoria and how it changed over time.

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72 *Supplementary evidence*, Response to request for information, Department of Human Services, 10 December 2012, p.6.

73 *Supplementary evidence*, Response to request for information, Department of Human Services, 10 December 2012, p.5.

74 Ombudsman Victoria (2012) *Investigation into the storage and management of ward records by the Department of Human Services*. P.P. No. 109, March 2012, p. 20.

75 *Submission S166*, Who am I? Project, University of Melbourne, p. 5.

76 *Transcript of evidence*, Department of Human Services, Melbourne, 22 October 2012, p. 2.

**Table 6.6: Changes to out-of-home care in Victoria**

<b>Time</b>	<b>Nature of out-of-home care</b>	<b>Service redevelopment</b>
Pre-1970s	<ul style="list-style-type: none"> <li>out-of-home care was provided primarily in institutions such as State run centres (Allambie, Turana, Winlaton and Baltara)</li> <li>the first family group home model appeared in the late 1950s.</li> </ul>	<ul style="list-style-type: none"> <li>central reception centres and congregate care institutions provided large scale care.</li> </ul>
1970s	<ul style="list-style-type: none"> <li>children's homes continued to be extensively used (such as St Cuthbert's Home for Boys, Kildonan Homes for Children, Tally Ho Boy's Training Farm, Christian Brother's facilities and Ballarat Children's Home).</li> </ul>	<ul style="list-style-type: none"> <li>commencement of transition to alternate types of care such as family group homes.</li> </ul>
1980s	<ul style="list-style-type: none"> <li>decrease in institutional care and increase in home based care placements</li> <li>introduction of preventative and family support services.</li> </ul>	<ul style="list-style-type: none"> <li>1985 Statewide Services Redevelopment project to reduce size and function of central institutions</li> <li>State care starting to be seen as last resort.</li> </ul>
1990s	<ul style="list-style-type: none"> <li>closure of Alambie (1990) and Baltara (1992).</li> </ul>	<ul style="list-style-type: none"> <li>increase in family group homes and foster care services</li> <li>increase in placements with extended family.</li> </ul>
2000s	<ul style="list-style-type: none"> <li>out-of-home care currently provided in: <ul style="list-style-type: none"> <li>kinship care</li> <li>foster care</li> <li>residential care</li> <li>permanent care.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>introduction of therapeutic care in foster care and residential care placements</li> <li>2006 Kinship Care Project—Kinship care viewed as the preferable option for children and young people unable to remain in the care of their parents.</li> </ul>

Source: Adapted from *Supplementary evidence*, Presentation, Department of Human Services, 22 October 2012.

### 6.5.3. Early education and non-government schools

The Committee considered early education services and non-government schools in the context of the Inquiry. In the past, approaches to discipline meant that many children were exposed to physical abuse. Attitudes have changed towards disciplinary practices in schools.

In most societies school is considered a normal part of a child's development. Between the ages of 5 and 16, children spend a significant proportion of their time at school, and often a considerable number of years attending the same school. Consequently, they often interact and form bonds with teaching and other staff over that time.

While schools are operated by both government and non-government organisations, the Committee's Terms of Reference require it to focus on non-government schools.

In a 2010 research study, the Centre for Independent Studies identified a significant increase in the number of non-government schools over the past three decades. Notably, more than 90 per cent of these schools are religious schools.<sup>77</sup>

Before the 1980s, 90 per cent of religious schools were Catholic or Anglican schools. In 2006, this percentage had dropped to just over 70 per cent, with the remaining 30 per cent representing minority religions. The most substantive increase was in the number of Islamic schools.

In March 2013, the Australian Bureau of Statistics (ABS) stated that the 2011 Census revealed that the numbers of non-government schools continued to grow at a higher rate than government schools.<sup>78</sup>

### 6.5.4. Child care

There are approximately 4,000 services in Victoria that provide early childhood education and care services to children. These services vary in size and nature. An increasing number of children are attending child care.

The ABS reported that the trend since 1999 has seen an increase in the use of formal child care. From 1999 to 2008 the proportion of children attending formal care increased from 17 to 22 per cent. The use of child care overall has remained steady since this time, with a finding that 48 per cent of children aged up to 11 years attend child care.<sup>79</sup>

Child care services are primarily provided by non-government organisations, both privately and publicly funded. There are a number of different types of child care services provided. Table 6.7 outlines the range of child care services.

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77 J. Buckingham (2010) *The rise of religious schools*. The Centre for Independent Studies (Australia), p. 3.

78 Australian Bureau of Statistics (2013) 4221.0–*Schools, Australia, 2012* Accessed on 12 August 2012 from [www.abs.gov.au](http://www.abs.gov.au).

79 Australian Bureau of Statistics (2010) 4102.0–*Child care, Australian Social Trends. June 2010*. Commonwealth of Australia.

**Table 6.7: Types of child care services**

Type of care	Description
Long day care	<ul style="list-style-type: none"> <li>centre-based child care services providing all-day or part-time care for children (services may cater to specific groups within the general community).</li> <li>long day care primarily provides services for children aged up to five years.</li> <li>some long day care may also provide preschool and kindergarten programs and outside school hours care.</li> <li>the service may operate from stand-alone or shared premises, including those on school grounds.</li> </ul>
Family day care	<ul style="list-style-type: none"> <li>services providing small group care for children in the home environment of a registered carer.</li> <li>care primarily aimed at children aged up to five years, but primary school children may also receive care before and after school, and during school holidays.</li> </ul>
Occasional care	<ul style="list-style-type: none"> <li>services usually provided at a centre on an hourly or sessional basis for short periods or at irregular intervals for parents who need time to attend appointments, take care of personal matters, undertake casual and part-time employment, study or have temporary respite from full-time parenting.</li> <li>these services provide developmental activities for children, and are aimed primarily at children aged up to five years.</li> </ul>
Kindergarten / preschool	<ul style="list-style-type: none"> <li>preschool programs offering structured, play-based learning program delivered by a degree-qualified teacher, aimed at children in the year before they commence full-time schooling.</li> <li>provided by government and privately funded organisations.</li> <li>programs may be delivered in a variety of service settings including separate preschools or kindergartens, long day care centres, or in association with a school.</li> </ul>

Source: Adapted from the Steering Committee for the Review of Government Service Provision (2013) *Report on government services 2013*, Chapter 3: *Early childhood education and care*.

### 6.5.5. Youth groups and programs

Religious and non-government organisations operate a range of youth groups and programs in Victoria. The youth sector is complex and diverse, with services and programs that overlap with the activities outlined in other sections, such as recreation groups and sporting groups.

Many aim to assist young people to become involved with the community, to engage in adventure activities and to provide opportunities to develop skills and experiences to assist in meeting future goals. They include programs that:

- provide opportunities to contribute toward local communities as school students
- help run and perform music shows in local areas

- get involved in the political process (such as the Youth Parliament)
- help young people to participate in arts and cultural events and community radio
- provide adventure activities, camping, and resilience building (such as the Duke of Edinburgh Award and scouting clubs).

In addition, specialised youth programs exist to target young people at risk. These programs are operated by community service organisations (such as Berry Street Victoria and Wesley Mission). They include alcohol and other drug services for young people, mental health services, and programs to divert young people away from the justice system. Some of these include:

- Youth justice support services—which provide a range of services to young people at various stages of the youth justice system.
- Youth outreach and diversion services—to prioritise assessments for young people referred by Victoria Police for offending behaviour.
- Refugee Minor Program—supporting the settlement process and provision of care for unaccompanied minors younger than 18 years.

#### 6.5.6. Recreational and sporting organisations

The Committee considered the role of recreational and sporting organisations in the context of criminal child abuse. These non-government organisations are among the most diverse and unstructured, often small organisations that are supported by parents and volunteers.

According to the 2011 Census data, the rate of participation in an organised sporting activity by children and young people is high. For example, approximately two-thirds of all children aged 9–11 years participate in a sporting activity. The participation rate for children in the 5–8 year bracket was 56 per cent and participation in the 12–14 year age range was 60 per cent. More males (949,000) participated than females (727,000).

In the 12 months to April 2012, when the ABS published its last survey, more than one-third of children aged 5–14 years (35 per cent) participated in at least one organised cultural activity outside of school hours. A cultural activity was defined as one of the following:

- playing a musical instrument
- singing
- dancing
- drama
- organised art and craft.

Nearly half of all females (47 per cent) participated in at least one organised cultural activity compared with 24 per cent of all males.<sup>80</sup>

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80 Australian Bureau of Statistics (April 2012) *4901.0—Cultural activities, children's participation in cultural and leisure activities. Australia*. Commonwealth of Australia.

### 6.5.7. Organisations and criminal child abuse

The prevalence of criminal child abuse in non-government organisations is presently unknown. As emphasised throughout this chapter, however, the overwhelming majority of children are safe in the care of these non-government organisations. The Committee emphasises that it is important to ensure there is a balanced attitude in approaching the issue of criminal child abuse in non-government organisations.

There is a range of non-government organisations that interact directly with children. Some are funded by government to provide specific services with multiple purposes. Others are large, international bodies with a combination of donations and government funding. Some organisations are small, locally based groups with no funding that rely on volunteers. A number are religious organisations and have diverse and complex structures. Furthermore, this is not an exhaustive list of all non-government organisations that regularly interact with children.

The diversity of non-government organisations creates challenges in preventing and responding to criminal child abuse within them. Similarly the nature of offending behaviour and the reality that there is no 'typical' offender can make it difficult for organisations to know how to prevent child abuse. Part D considers the range of strategies that have been identified for preventing criminal child abuse in these organisations.



# Chapter 7

## Past handling of allegations of criminal child abuse

### AT A GLANCE

#### Background

In the past a large portion of institutions and orphanages were operated by religious organisations. Due to the high level of esteem and reverence for ministers of religion and the organisations they represented, children exposed to criminal child abuse in religious organisations were not as well protected as those in other organisational settings.

#### Key findings

- There has been substantial criminal child abuse in the Catholic Church over a long period of time, perpetrated by priests and other members of religious orders in Victoria.
- The environment in institutions, schools and parishes, particularly from the 1950s to the 1980s, gave perpetrators or representatives of religious or other non-government organisations the opportunity to exploit vulnerable children in their care.
- A culture existed in religious organisations that allowed for the occurrence of systemic criminal child abuse.
- The initial formal response to criminal child abuse that the Catholic Church in Victoria and in Australia more broadly adopted in the early 1990s was influenced by its previous approach. The response continued to conceal rather than expose criminal child abuse in the organisation.

Criminal child abuse occurs in all types of organisations that interact directly with children, and particularly in those that have regular contact with children. Chapter 6 focused on the current context and outlined the types of organisations and the challenges in understanding the prevalence and incidence of criminal child abuse in those organisations. This chapter deals with the manner in which criminal child abuse was dealt with by organisations in the past, particularly at a time when religious organisations were directly involved in the care and education of children.

The Committee found that there are unique circumstances for victims of criminal child abuse in religious organisations. The extent of abuse in these settings (compared to other organisations) is difficult to ascertain. But, as outlined in Chapter 6, researchers have suggested that children subjected to criminal abuse are less likely to be protected in religious organisations than in any other similar organisation in society. There are many reasons for this, including the policy of forgiveness and the self-protection of many religious organisations.<sup>81</sup>

Evidence to the Inquiry supports this view. As discussed in Chapter 1 of Part A, victims described their experience when they made an allegation of criminal child abuse to the organisation, and the effect that the organisation's response had on the victim. Organisations also provided evidence and information requested by the Committee about their handling of allegations of suspected child abuse.<sup>82</sup> The evidence and other information received related principally to the Catholic Church, the Anglican Church and the Salvation Army.

The way in which a religious organisation has dealt with reports of suspected criminal child abuse is inextricably linked to victims' desire for justice. The Committee found that in the past, organisations' manner of dealing with such complaints was motivated by self-interest and the protection of the organisation. This approach has continued to influence the response of organisations to allegations of criminal child abuse and may help us understand why victims express grievance about the response.

This chapter explores the manner in which religious organisations—specifically the Catholic Church, the Salvation Army and the Anglican Church—have dealt with complaints of criminal child abuse perpetrated by its representatives. These organisations have been compelled to deal with the issue of criminal child abuse since the 1970s when such abuse became an increasing public concern.

Since the mid to late 1990s, these religious organisations have tried to introduce improved systems for preventing and responding to suspected criminal child abuse. This chapter focuses on the period prior to this time and considers:

- how abuse in organisations was able to occur
- the recognition of child abuse as an issue in religious organisations and in wider society
- religious organisations' understanding of the extent of abuse

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<sup>81</sup> *Transcript of evidence*, Professor Patrick Parkinson, p. 3.

<sup>82</sup> Additionally, the Catholic Church, Salvation Army and Anglican Church provided access to existing complaint files relating to a number of organisations operating within the Church. The following organisations within the Catholic Church provided copies of complaint files: Ballarat Diocese, Melbourne Archdiocese, Order of Hospitaller St John of God, Salesian Del Bosco, Christian Brothers.

- the manner in which organisations responded to complaints and factors that influenced that response (particularly, whether the initial response or treatment of complaints contributed to the continued incidence of criminal child abuse in the Catholic Church)
- the history and circumstances leading to the creation of the formal protocols and procedure currently in place, and factors that influenced these.

## 7.1. The Catholic Church

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Sexual and other criminal offences committed against children are not a new phenomenon. For centuries, conduct of this kind has been condemned as evil by the Catholic Church, other religious bodies and the broader community. As outlined in Chapter 4 in Part B, for a long time such offences have attracted severe penalties under our criminal law.

As outlined in Chapter 2 of Part A, the majority of evidence provided to the Inquiry has concerned the criminal abuse of children in the care of religious personnel of the Catholic Church. The time period extended from the 1930s onwards, with a significant amount of information about abuse perpetrated between the 1950s and 1980s.

The Catholic Church provided a comprehensive written submission to the Inquiry, titled *Facing the truth*. The submission was signed by the Archbishop of Melbourne, the bishops of Sale, Ballarat and Sandhurst, and by representatives of Catholic Religious Australia and Catholic Religious Victoria. As is evident from material in this submission, the attribution of responsibility for various ‘church’ activities is complicated, with no clear, common hierarchal structure. This aspect is explored later in this chapter.

Additionally, the criminal abuse of children in the largest religious denomination in Victoria and Australia has emerged as a significant issue across this country and internationally. As is recognised in *Facing the truth*, the Catholic Church has been attempting to address this issue in the United States, Canada, Ireland, New Zealand and the United Kingdom since the 1980s.<sup>83</sup> Chapter 8 outlines the inquiries that have been undertaken by the Catholic Church into the issue of criminal child abuse.

The Committee received evidence that, in Victoria, the established incidence of criminal child abuse is substantially higher in the Catholic Church than it is in all other denominations combined. Professor Patrick Parkinson of the University of Sydney explained that:

First of all, the prevalence of sexual abuse in churches: we know that there are huge issues with the Catholic Church—huge issues. There have been many, many priests jailed, many brothers jailed, and allegation after allegation is made. There are few allegations in other churches. There are some ... I have looked more informally at what happens in other churches.

If you compare the statistics, I would say conservatively that there is six times as much abuse in the Catholic Church as all the other churches in Australia combined, and I would regard that as a conservative figure ... It gives you a sense of the scale of the problem.<sup>84</sup>

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<sup>83</sup> *Submission S185*, Catholic Church in Victoria, pp. 14–35.

<sup>84</sup> *Transcript of evidence*, Professor Patrick Parkinson, p. 2.

Professor Parkinson went on to explain that this might be partly attributable to the wide range of services provided by the Catholic Church for children in the community, involving a far greater number of children than have been assisted by the other denominations. He continued with the following comment:

Even still, the levels of abuse in the Catholic Church are strikingly out of proportion with any other church, and that is the reality.<sup>85</sup>

In her book *Child sexual abuse and the Catholic Church*, researcher Marie Keenan advised caution, given the lack of empirical studies, in determining whether the incidence of abuse of children is higher for Catholic clergy than it is for representatives of other churches or for other caring professionals around the world. She stated that:

The global reach and structure of the Catholic Church with its centralised features, makes collating data in this organisational context much more possible than in other churches and faith communities and in other professions. While the Congregation of the Doctrine of the Faith of the Catholic Church has the opportunity to gather data on abuse by Catholic clergy worldwide, no comparable centralised institution exists for other churches or faith traditions or for other professional groups, making comparative work almost impossible.<sup>86</sup>

While the Committee received some evidence that data was collected internationally by the Vatican hierarchy, it was not provided with any information as to compliance with that requirement by the hierarchy in Victoria. In his evidence to the Inquiry, Cardinal George Pell stated that, during his time on the Committee of the Doctrine of the Faith from 1990 to 2000, the information was kept secret.<sup>87</sup>

While the majority of public evidence from victims related to abuse in the Catholic Church, the Inquiry also received a considerable number of confidential submissions from those who suffered criminal child abuse at the hands of representatives of the Salvation Army, particularly in its homes and orphanages. The Committee also received submissions relating to the Jehovah's Witnesses, Jewish, Uniting Church, and Anglican Church communities, as well as other religious and non-government organisations.

This emphasis on the Catholic Church should not give any sense of security or comfort to other organisations that they have not, or do not, have such a problem. Many of the reasons for the Catholic Church's delay in recognising this issue (considered later in this chapter) apply equally to the current workings and traditions of other organisations. This relates particularly to the lack of accurate data about complaints, and the lack of procedures or protocols for dealing with allegations of criminal child abuse.<sup>88</sup>

### **Finding 7.1**

There has been substantial criminal child abuse in the Catholic Church over a long period of time, perpetrated by priests and other members of religious orders in Victoria.

<sup>85</sup> *Transcript of evidence*, Professor Patrick Parkinson, pp. 2–3.

<sup>86</sup> M. Keenan (2011) *Child sexual abuse and the Catholic Church: Gender, power, and organizational culture*, p. 9.

<sup>87</sup> *Transcript of evidence*, Catholic Archdiocese of Sydney, Melbourne, 27 May 2013, p. 22.

<sup>88</sup> *Transcript of evidence*, Islamic Council of Victoria, Melbourne, 15 April 2013, p. 7.

## 7.2. Salvation Army and Anglican Church

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The Committee received considerable information relating to the sexual, physical and emotional abuse of children in the care of the Salvation Army from the 1930s to the 1980s with a significant amount of information relating to abuse perpetrated between the 1950s and the 1970s. In a significant majority of this evidence, children were treated in a fashion that could only be described as brutal. The Committee identified a number of Salvation Army homes where abuse could be categorised as prevalent, most notably the Bayswater Boys Home and Box Hill Boys Home. From evidence submitted to the Inquiry and other information secured, the Committee established that abuse was perpetrated not only by Salvation Army officers and employees, but also cottage parents, holiday families and visitors to the homes.

The Salvation Army did not have any policies in place to deal with complaints made by children during this period and the Committee discovered that when children tried to make a complaint this was often met with more brutality.

The submissions received from victims who had been in the care of the Salvation Army and some institutions run by the Anglican Church dealt more with the detail regarding the abuse as opposed to the manner in which a complaint was treated. However, many of the considerations outlined in this chapter regarding the Catholic Church and the reasons why abuse was able to occur apply equally to these organisations, given some similarities in the structure and more importantly, the reverence which the community held these organisations.

## 7.3. How abuse was able to occur within organisations

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A quote often attributed to the philosopher Edmund Burke is apt: 'All that is necessary for evil to prevail is that good men do nothing.' It would be comforting to the Victorian community if that were all that could be said about the Catholic Church's handling of criminal child abuse when complaints were first made.

The Committee discovered, however, that in Victoria and elsewhere there has been not only inaction but action, such as denials, cover-ups and moving offenders around, that led to further child abuse. In its submission to the Inquiry, *Facing the truth*, the Catholic Church indicates that:

Awareness of sexual abuse was slow to percolate through society and the Church ... The realisation gradually developed that the problem was significant and that sexual abuse was perpetrated by people of a range of temperaments, from all walks of life, including clerics and religious.<sup>89</sup>

But in this analysis the Catholic Church failed to recognise its own contribution to the concealment, as opposed to the growing awareness of the problem in broader society.

Rather than being instrumental in exposing the issue and the extent of the problem, the Catholic Church in Victoria, from senior leaders to parish priests:

- minimised and trivialised the problem
- contributed to abuse not being disclosed or not being responded to at all prior to the 1990s
- ensured that the Victorian community remained uninformed of the abuse

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<sup>89</sup> *Submission S185*, Catholic Church in Victoria, p. 13.

- ensured that perpetrators were not held accountable, with the result that some abuse of children by religious, which could have been avoided, tragically continued.

Chapter 6 outlined a number of factors that put organisations at higher risk of criminal child abuse by their personnel. This section considers the following aspects of the past handling of criminal child abuse in religious organisations specifically:

- the trusted role of organisations in caring for children
- culture and power
- hierarchy and structure
- teachings and beliefs
- responses to allegations, including the failure to report
- relocation and movement of offenders.

### **7.3.1. Trust—the role and reputation of religious organisations caring for children**

Religious organisations play a vital role in society, through charitable activities that benefit many vulnerable and disadvantaged people in the community. For example, the Catholic Church has made an important and valuable contribution to providing care and education for children in Victoria, on behalf of the Government. Historically, and until the late 1980s, religious organisations operated orphanages, children’s homes and detention facilities as trusted agents of the community.

Generally, religious organisations have been accorded great respect, including by people who do not identify with any religion. Traditionally, these organisations have advocated for the maintenance of the highest standards of personal conduct and community values.

Because there is a high level of unquestioning trust in representatives of organisations that provide care for children in a residential, educational, spiritual or social context, there is a great sense of betrayal if that trust is breached by a minister of religion. People also feel betrayed by those in the organisation who were aware of the criminal child abuse and did not act.

The Committee considered whether the focus or priority of senior religious leaders has been supporting the ‘good’ that the institution does in society, rather than addressing the abuse or ‘bad’ in the institution. Coupled with that view is a belief that addressing the issue will focus attention on it. This in turn will undermine all the good that the organisation does, thus damaging its reputation. The Committee is of the view that this is akin to the notion of ‘noble-cause corruption’. That is, leaders directed their focus and attention at the institution’s good works to such an extent that they overlooked any questionable or improper behaviour. No doubt the general community’s trust and blind loyalty towards religious personnel extended to the organisation as a whole, making it easier for the organisation to cover up or be secretive about perpetrators’ activities in the interest of protecting the organisation’s reputation and its otherwise good works.

In these circumstances, the combination of unquestioning trust, absolute authority and lack of supervision created a high-risk environment. Today, this type of unconstrained engagement between children and representatives of the Catholic

Church is less extensive. The Committee considers, however, that the dynamics of these risks is still a critical matter.

In 1999, some of these matters were examined in a paper on the nature of child abuse in the Catholic Church. This paper, *Towards understanding*, was prepared for the National Committee for Professional Standards of the Catholic Church, but was not released publicly. The former Executive Officer of Towards Healing, Sr Angela Ryan, provided the paper at the request of the Committee at a public hearing. Box 7.1 outlines the features of the paper.

**Box 7.1: Towards understanding**

*Towards understanding* acknowledged that ‘there was more to the issue of child sexual abuse than the failings of individuals.’<sup>91</sup> Among other things, the research looked at occupational factors and identified that a number were ‘more relevant to priests and religious who offend against children ... some specific occupational-related factors that are peculiar to priests and which intensify and foster an addictive cycle among this group’.<sup>92</sup>

These include the:

- ‘pedestalisation’ of clergy by some members of congregations whose expectations only serve to enhance feelings of sexual obsession and reinforce the need for secrecy
- martyr-like position clergy can project due to their ‘emotional’ poverty, coupled with their willingness to be at the service of the congregation
- trusted positions clergy enjoy as guardians and champions of morality, which places them in dependency relationships with vulnerable people.

The research paper indicated that ‘the risk of offending is increased when the potential perpetrator encounters a person, who by virtue of his or her subordinate position or emotional state, is vulnerable to exploitation’.<sup>93</sup>

One of the significant conclusions of the research concerned the degree of misplaced trust being put in priests and religious, along with the failure to adequately supervise adult-child interactions and activities.<sup>94</sup> Indeed, an ‘almost complete lack of supervision of priests and religious’ was noted, particularly before offences were committed.<sup>95</sup>

Source: Adapted from *Supplementary evidence*, Response to request for information, Sr Angela Ryan, 27 May 2013.

90 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion paper: Towards understanding, a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*. Unpublished, p. 1.

91 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion paper: Towards understanding, a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, p. 15.

92 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion paper: Towards understanding, a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, p. 15.

93 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion paper: Towards understanding, a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, p. 18.

94 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion paper: Towards understanding, a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, p. 40.

Fr Kevin O'Donnell was sentenced on 11 August 1995 for crimes committed while undertaking his parish activities between 1946 and 1977. His Honour Judge Kellam in his sentencing remarks indicated:

Of most significance in the consideration of the seriousness of these offences is the fact they occurred in circumstances of gross abuse of trust. All of the children in question were in some way associated with you by reason of your position at the time as a priest ...

The material before me demonstrates that quite a number of them were children of devout families and had parents who attended church. Their statements to police establish that the position of parish priest held by you at those times was a respected and, in the circumstances then containing, a powerful one.

You were a person of very considerable authority in their young lives. For instance, if you wished young boys to come and assist you in works around the church or the school, it was apparently common practice for the nuns teaching those children to release them from school to do so. You were entrusted by those children and their parents and, indeed, by the nuns who taught many of the children, to care for them in a spiritual, emotional and pastoral sense. That trust was grievously breached on many occasions.<sup>95</sup>

The circumstances of this offending graphically illustrate Fr O'Donnell's power and the opportunities he created to commit horrendous criminal sexual acts against children in his parishes. Fr O'Donnell's offending took place in various church-related contexts, including in the sacristy with altar boys (both before and after celebrating mass), in the presbytery with children from the parish school, chosen by Fr O'Donnell to assist with domestic tasks, repairs or painting in church buildings; and before taking a boy to a Scouts meeting. Other offending occurred at a holiday house in Rosebud, when Fr O'Donnell chose some boys from the parish in Hastings to accompany him on a holiday.

Further, Judge Kellam remarked:

Superficially, throughout your long life of service you appeared to be a dedicated priest who was committed to your parish and its members ... your conduct in respect of the 12 victims who are the subject of the counts before me cast a dark and sinister shadow over their young lives and over your apparent pastoral concern and involvement in the community during many of the years between 1946 and 1977 ... Each count I was told is a representative count ...<sup>96</sup>

### 7.3.2. Culture of abuse?

The Committee asked representatives of the Catholic Church and other organisations whether criminal child abuse was endemic, and/or whether a culture of criminal child abuse existed, in their organisation.

Representatives of the St John of God order accepted that a quarter of the brothers working in relevant institutions had been the subject of complaints covering the period

95 *The Queen v. John Kevin O'Donnell* [1995] County Court of Victoria, (Kellam J), 25.

96 *The Queen v. John Kevin O'Donnell* [1995] County Court of Victoria, (Kellam J), 9.

from the 1960s to the early 1970s.<sup>97</sup> The Deputy Provincial of the Christian Brothers, Br Julian McDonald, acknowledged the culture was problematic at that time:

There were times, certainly, when parents became aware that their child or children had been abused, and there is anecdotal evidence that goes this way: parents turned up at the door of the Brothers' house, wanted to see the community leader or the principal of the school, and said, 'Remove so-and-so because he has done this to my son or we will get the police'. There were times when the police turned up and said, 'Remove so-and-so or we will charge him'. That simply reflects a culture that existed that gave special privilege—and it should not have—to people in religious life and in the priesthood. It was a perception that they were beyond offending.<sup>98</sup>

He also acknowledged the need for change:

We know that now. People, religious people, priests, should resist being put on a pedestal ... any institution, indeed any person, is as sick as its secrets, and there was a culture that kept things secret. We have to address the sickness of the congregation of the Christian Brothers so that nobody is harmed into the future. We have to address our secrets, and you are helping us to do it.<sup>99</sup>

Despite being confronted with information about the level of offending in an organisation, some of those who appeared before the Committee refused to acknowledge that this was partly attributable to the organisation's own culture. In evidence given on behalf of the Salvation Army, Captain Malcolm Roberts said:

From the evidence that we have seen ... I do not see that 'endemic' is the correct word ... I do not agree that there is serious systemic deficiencies and a failure of culture within the Salvation Army or was within the Salvation Army a culture of that type. I believe that the Salvation Army, as a movement, is a movement where the highest standards were the culture amongst people who worked for, or were officers of, the Salvation Army. There may have been those who failed to reach that standard. I do not believe it was a cultural issue; I do not believe it is endemic in the Salvation Army or was ... I would say that within those homes at times, when certain people were in charge or in a position of authority, that could be a culture that existed, but I do not believe it was the culture that existed within homes of the Salvation Army.<sup>100</sup>

It is important to note in this context that while the Committee received few public submissions relating to the Salvation Army, additional evidence provided to the Inquiry pointed to significant issues of child abuse in some Salvation Army children's homes from the 1950s to the 1980s. In addition, 52 files of a potential 474 made available to the Committee revealed complaints of suspected criminal child abuse.<sup>101</sup> Such an amount suggests that there were substantial problems of criminal abuse of children in the organisation. Further, the Committee noted that after representatives appeared at the Inquiry, the Salvation Army issued a public statement, saying that it would consider the calls for an official internal investigation.<sup>102</sup>

97 *Transcript of evidence*, Hospitaller Order of St John of God, Oceania Province, Melbourne, 29 April 2013, p. 25.

98 *Transcript of evidence*, Christian Brothers, Melbourne, 3 March 2013, p. 15.

99 *Transcript of evidence*, Christian Brothers, p. 15.

100 *Transcript of evidence*, Salvation Army, Melbourne, 11 April 2013, p. 4.

101 See Appendix 9.

102 The Salvation Army, 'The Salvation Army appearance before the Victorian Parliamentary Committee's Inquiry into Institutional Responses to Child Sexual Abuse' (Media release, 11 April 2013).

The Committee has no doubt that the problem of criminal child abuse existed in religious organisations. Victims were left susceptible to exploitation by perpetrators due to the context in which such abuse occurred. These perpetrators acted with the authority and respect of parents, the organisation of which they were a member, and society itself. Additionally, this position and status ensured that there was no independent scrutiny or supervision of the manner in which these individuals exercised their power over children. This lack of scrutiny enabled these perpetrators to continue to abuse children in their care.

Chapter 6 notes that many of the activities or services conducted by such organisations are not as widespread as they once were. All institutions or orphanages have ceased operation in Victoria, with alternative care arrangements being offered, though some of these newer services are still administered by religious and other non-government organisations. The Salvation Army was the largest provider for children in institutional homes in Victoria, but ceased running them in the mid-1980s.<sup>103</sup> Also, there are now fewer religious personnel involved in the education and care of children. However, the shift in the type of care provided does not ameliorate the risk to children. Although care providers no longer use the institutional model, the risk of criminal child abuse in current environments, some of which are monitored by religious or other non-government organisations, remains.

Part D discusses the importance of oversight to ensure that organisations are meeting their duty of care, through the establishment of prevention frameworks to create child-safe organisations. It is important to monitor and remain vigilant about the level and type of care children receive and the standards applied to those entrusted with the care of children.

#### **Finding 7.2**

The environment in institutions, schools and parishes, particularly from the 1950s to the 1980s, gave perpetrators or representatives of religious or other non-government organisations the opportunity to exploit vulnerable children in their care.

#### **Finding 7.3**

A culture existed in religious organisations that allowed for the occurrence of systemic criminal child abuse.

### **7.3.3. Structure and responsibility in the Catholic Church**

The Catholic Church cannot be regarded as a single entity with a clear hierarchal structure and direct lines of responsibility and authority. The Catholic Church in Australia is part of the Universal Catholic Church. The Catholic Church in Victoria's submission to the Inquiry, which it titled *Facing the truth*, explains that the pope, as Bishop of Rome, is the immediate superior of all Catholic bishops around the world. But the pope does not govern the bishops; rather, he acts to ensure there is unity in

<sup>103</sup> The Salvation Army, 'The Salvation Army appearance before the Victorian Parliamentary Committee's Inquiry into Institutional Responses to Child Sexual Abuse' (Media release, 11 April 2013).

the Catholic Church's beliefs and teachings throughout the world. At the same time, authority in some religious matters is reserved for the pope.

The Catholic Church in Victoria is divided into four dioceses: the Catholic Archdiocese of Melbourne and the dioceses of Ballarat, Sandhurst and Sale. The archbishop or bishop in each diocese is responsible for all the Catholic Church activities in his area. The power of the bishop is personal, considered to be received from God, and he is therefore not considered a delegate or direct representative of the pope. The responsibility of a bishop is described in *Facing the truth* as follows:

He is ultimately responsible for all Church activity belonging to the Diocese. However, he is not responsible for the activities belonging to the Universal Catholic Church, or for the activities of individual parishes, individual priests or individual members of the Church.

Bishops are also not responsible for the activities of religious institutes established by, and therefore accountable to, the Holy See.<sup>104</sup>

Within each diocese are a number of parishes, and the activities of the parish, including the running of the primary school, are the responsibility of the parish priest. In addition to supervising the religious education and sacraments for the students, the priest sometimes exerts further power and influence in the administration, staffing and control of the school. Chapter 26 of Part H considers the characterisation of the priest in the organisation and the Catholic Church's consequent denial of any legal responsibility for a priest's actions in carrying out his pastoral duties.

There are various other Catholic Church groups operating in Victoria, such as orders, congregations and societies. Some of these groups operate at the invitation of the bishop of the diocese. They perform duties which, most relevant to the Inquiry, include providing education and care to children. Traditionally, these groups have been responsible for running many of the orphanages and schools operating in Victoria.

Although the bishop extends an invitation to these groups to operate in the diocese, the bishop does not have responsibility for their activities or for their supervision in his diocese. The Committee concluded that this is a curious state of affairs. These groupings constitute part of the activities of the 'Church', are perceived as part of the 'Church', and can only operate with the agreement of the bishop, yet he is able to deny any accountability for them. This situation has frustrated a number of victims who approached the relevant archbishop or bishop with allegations of criminal child abuse and were informed that he would take no action because the matter did not fall within his area of responsibility.

Br Julian McDonald, Deputy Provincial of the Christian Brothers, outlined its reporting structure as follows:

We are accountable to our leadership in Rome ... We are what is called a pontifical congregation. That means we are not attached specifically to one bishop in a diocese somewhere. Some congregations were started by bishops or started under the direction of bishops, and they emanated from there. We sought very early in our history approval by Rome to be a pontifical congregation that gave us freedom to accept invitations from bishops anywhere in the world ... We were invited by the

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<sup>104</sup> *Submission S185*, Catholic Church in Victoria, p. 9.

bishop to establish the schools.<sup>105</sup>

Br McDonald indicated that the issue of criminal child abuse was discussed at meetings with the bishop, although a brother was under no obligation to report a specific action to the bishop as he was not their ‘boss’. Instead, matters were reported to their congregational leader in Rome. Br McDonald denied that the Christian Brothers did not take responsibility:

... we pass the buck to nobody. We do not operate independently of everybody else, but we do have our own responsibilities and we must address those responsibilities ourselves; otherwise we are passing the buck. So if an incident of abuse came to light to me as a province leader, I have a serious responsibility to make sure that that is addressed, that pastoral moves are made to address the needs of complainant and victim, and I have a responsibility to make sure that these matters are properly dealt with through systems at arm’s length from the Christian Brothers.<sup>106</sup>

This account illustrates that assigning responsibility for religious personnel in the Catholic Church is not straightforward and is difficult to understand. The fragmented structure makes it extremely challenging for the Catholic Church in Victoria to ensure the appropriate handling of suspected criminal child abuse in a coherent way.

Similarly, the St John of God order advised the Committee:

In terms of the broader stuff, yes, the St John of God Brothers are part of the Catholic Church. We also have a degree of independence. When I was thinking about this this morning actually I thought, ‘How would I explain the relationship?’ It occurred to me it is a bit like the Victorian Parliament, in a sense that there is an Australian Parliament that has its rules and regulations and laws, but sitting underneath that is the Victorian Parliament that has its own culture and laws and regulations. It seems to me some way of trying to describe how the governance of the church organises. As your bailiwick is the Victorian bailiwick, ours is the St John of God bailiwick, and we try to deal with that in the way that we have to, given the specificity of our population and their vulnerability and the difficulty of dealing with people with intellectual disability who may also have behavioural issues and psychiatric problems.<sup>107</sup>

Victims expressed frustration at the lack of a clear pathway to express their grievance or complaint within the Catholic Church. Additionally, if no action was taken on a complaint, who within ‘the Church’ would deal with it? Victims believed that if a complaint related to a member of the Catholic Church, ‘the Church’ had a responsibility to deal with it. In reality, however, such a belief was ill-founded, given the structure of the Catholic Church, its operations and its lines of responsibility.

Following repeated questions from the Committee, Cardinal George Pell accepted that certain members of the Catholic Church hierarchy and leadership had failed to attribute responsibility. Cardinal Pell explained to the Inquiry that this issue continues:

What the former pope said was that some of the bishops and religious superiors covered up. That is quite different from the whole of the Church. He never said that; the whole of the Church is not guilty of that. Some certainly did cover that up, and I am certainly prepared to acknowledge that.<sup>108</sup>

105 *Transcript of evidence*, Christian Brothers, p. 15.

106 *Transcript of evidence*, Christian Brothers, pp. 8–10.

107 *Transcript of evidence*, Hospitaller Order of St John of God, p. 8.

108 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 25.

This statement reveals a reluctance to acknowledge and accept responsibility for the Catholic Church's institutional failure to respond appropriately to allegations of criminal child abuse. The distinction between the Catholic Church being responsible for a cover-up and the reality that some individual bishops and religious superiors were involved in covering up, provides little comfort for victims who attribute responsibility to 'the Church' as one body, rather than to the individual representatives of each part.

To some extent, this problem has its foundation in the role of the Catholic Church and its clergy as both a religious institution and as a provider of services in secular society. One would reasonably anticipate the existence of an appropriate structure for the latter that would provide the levels of accountability ordinarily expected of such operations.

While the Catholic Church structure allows for separate operation of dioceses and religious congregations, it does not appear that leaders, whether bishops or religious superiors, communicated with each other regarding individual cases. This approach was consistent with the adoption of a policy under which information concerning child sexual abuse was strictly quarantined. However, the Committee considered it unlikely that senior leaders in the Catholic Church were not collectively aware of the emergence of criminal child abuse in the organisation as a whole in Victoria.

One explanation provided by Br McDonald from the Christian Brothers was that 'the leadership was not trained in those days to know what the signals for paedophilic behaviour were ... what are the signals, what is the psychosexual profile, etc.'<sup>109</sup>

But there was at least some awareness of the possibility of criminal child abuse. As Br McDonald indicated, rules existed, as conveyed in the Latin phrase *noli me tangere* ('don't touch me'), that a brother should never be alone with a boy.<sup>110</sup> For example, Br McDonald did accept that there was a 'red light flashing' in the form of notations in a visitation report on Br Edward Dowlan in 1975. At a public hearing, a Committee member read this portion of the 1975 Visitation Report to Br McDonald:<sup>111</sup>

Ted is experiencing a difficult year as he prepares for his perpetual profession. He is not at ease in the community which he considers does not provide him with the support he needs. But his needs are personal. He is immature, as shown by spending more than the normal time with boys, rather than with the brothers.<sup>112</sup>

Br McDonald responded:

It is certainly a red light flashing from our perspective now, and should have been a red light flashing then. It is part of a visitation report, and visitation reports were based on a conversation between the provincial visitor, who was normally one of the leadership team or the provincial himself, and he then would have reported whatever was brought to his attention by other brothers in the community or that he noticed himself or that Dowlan himself disclosed to him. So, yes, it is a red flag. How does one address it? I do not know, because I was not in the mind of the leader then, but certainly now ...<sup>113</sup>

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<sup>109</sup> *Transcript of evidence*, Christian Brothers, p. 4.

<sup>110</sup> *Transcript of evidence*, Christian Brothers, p. 4.

<sup>111</sup> Visitation report—This report was compiled annually by a Visitor (someone outside the residence of the Brothers) and was a requirement of Canon Law to ensure that Christian Brothers at that residence were acting in the spirit of their vocations and the rules of the Congregation.

<sup>112</sup> *Transcript of evidence*, Christian Brothers, p. 8.

<sup>113</sup> *Transcript of evidence*, Christian Brothers, p. 8.

The Committee accepts that the structure of the Catholic Church created some impediments within the organisation to achieving effective leadership and management on the matter of criminal child abuse. Although there was a lack of knowledge about aspects of criminal child abuse, the Committee is not prepared to accept this as a general excuse for the failure to deal adequately with the issue. The Committee concluded that Catholic Church leaders had enough information to take action, but failed to do so. Some would argue that Catholic Church leaders directed their strategy for dealing with criminal child abuse in a most effective way, resulting in protection of the institution. However, good leadership in this instance should have been concerned with proper stewardship of the Catholic Church, upholding the rule of law and protecting children.

It is noteworthy that the current Catholic Church leadership in Victoria was critical of former Bishop of the Ballarat Diocese, Ronald Austin Mulkearns, and of the late Archbishop Frank Little of the Catholic Archdiocese of Melbourne, in their handling of criminal child abuse. According to Cardinal Pell, the ‘problems are in the errors of judgement or the inactivity of Church leaders’.<sup>114</sup> Br McDonald from the Christian Brothers remarked:

It is true that there were some mistakes made and they have had devastating consequences on victims. I cannot defend, and I will not try to defend, the indefensible.

Leadership made some mistakes.<sup>115</sup>

The Committee found, however, that while this suggests that personal errors of judgement were made, it is unfair to allow the full blame to rest with these individuals, given that they were acting in accordance with a Catholic Church policy. It was only after information regarding the manner in which complaints had been treated was provided and subjected to potential scrutiny by this Inquiry, that such an acknowledgement from representatives of the Catholic Church was forthcoming.

#### **7.3.4. Power and culture in the Church**

Dr Tom Keating, a childhood victim of criminal abuse by a Christian Brother, presented both written and oral evidence to the Inquiry. He argued that the Catholic Church had sought to identify the psychopathology of individuals as the source of the abuse. However, while not absolving these individuals of responsibility for their crimes, Dr Keating believed it was important to understand the systemic context or culture within which the abuse occurred.

The Committee concluded that aspects of the culture of the Catholic Church are relevant to the issue of criminal child abuse.

As outlined earlier in this chapter, the Catholic Church and its religious personnel were held in high reverence. Consequently, they were trusted implicitly by parents, children and the community. Within the Catholic Church, this reverence and respect was replicated between individuals. In evidence to the Inquiry, Bishop Peter Connors from the Diocese of Ballarat acknowledged the view which existed that a priest could do no wrong.<sup>116</sup> Aligned with this view, there was a brotherhood or bond among clergy, derived from their common calling and relationship with God. It was highly

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<sup>114</sup> *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 19.

<sup>115</sup> *Transcript of evidence*, Christian Brothers, p. 4.

<sup>116</sup> *Transcript of evidence*, Catholic Diocese of Ballarat, Melbourne, 29 April 2013, p. 25.

likely that this was a mutually protective relationship, focused on a shared allegiance to God. This was described by Br McDonald:

The culture of the Christian Brothers was, I would say, Spartan and somewhat repressive at the time when these people to whom you have referred joined the congregation. You were taught to be tough. We were taught to have little connection with family. For instance, we did not go to funerals, weddings or family celebrations. It was a culture that was based on a moral code of ‘Thou shalt not’, so the culture in religious life when these people joined, certainly when I joined, was repressive to that extent.<sup>117</sup>

Br Timothy Graham from St John of God described the relationship between brothers as follows:

When we are talking about the brothers, in a sense we are talking about a community of people. Often congregations are called a religious family, and I guess we have an obligation to those community members—to those family members—to support them in a situation where we are attempting to deal with a very difficult issue in the best possible way we can. Trying to get a handle on this thing called religious life is very difficult for most Catholics, let alone anyone outside of the Catholic Church. Again, the term ‘the religious family’ is often used, and I guess there are many families out there who also have family members who find themselves in difficult problems, who have family members who may be dealing with allegations of abuse themselves. Again, it is a tenuous—what is the word?—a tenuous comparison, but it is the best comparison I can come up with to try and help you understand this thing called religious life and religious congregations.<sup>118</sup>

### **The issue of celibacy**

One aspect of the culture within Catholic Church organisations is celibacy. While research evidence establishes no clear connection between celibacy and child sexual abuse, Cardinal George Pell acknowledged that celibacy might be a contributing factor to the many instances of criminal child abuse in the Catholic Church:

But one of the suggestions is that it is because of the celibacy of the clergy. That might be a factor in some cases. Two final points just at this stage: as we all know, of course, most of the paedophilia is acted out outside institutional settings and by married people, so marriage is no necessary deterrent to the paedophilia; also—and I am sure we will come back to this—the entry procedures, the criteria, the searching and the investigation of candidates back, say, in the middle of last century was much too loose.<sup>119</sup>

The Committee considered the role of celibacy in the sexual abuse of children. Archbishop Denis Hart gave evidence to the Inquiry in respect of Fr Desmond Gannon about the issue of ‘compartmentalisation’ of child sexual abuse with the notion of a priestly vow of celibacy. The psychologist report assessing Fr Gannon in the context of up to 100 instances of child sexual abuse said as follows:

In all areas of formal prayer, private devotions, charity, priestly duties and church life, Father Gannon came across as a very spiritual man. He has developed the prayerful habits of a priest and fulfils his obligation to the divine office, Eucharist, spiritual

117 *Transcript of evidence*, Christian Brothers, p. 3.

118 *Transcript of evidence*, Hospitaller Order of St John of God, p. 13.

119 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 4.

reading, retreats et cetera without difficulty. He finds the promises of obedience, celibacy and living simply ‘easy enough’ to keep.<sup>120</sup>

In response to the notion that Fr Gannon had found his promise of celibacy ‘easy enough to keep’ Archbishop Hart said as follows:

That is right. It shows the disconnect in his mind. In other words, he has got it in a box. He has got what the Church asks of him in this box, and then he has this other box over here where he can do what he likes. This to me says that there is a lack of integration in his sexuality and in his person. That to me underlines the need for proper integration, which is what we do work on very hard these days.<sup>121</sup>

Celibacy has been a tradition and part of the culture in the Catholic Church since the fourth century, and became a requirement for all clergy in the Western Church from the twelfth century.<sup>122</sup>

In line with research evidence, Professor Desmond Cahill explained to the Committee that celibacy is not the direct cause of offending. He did note, however, that celibacy has an important influence on an organisational culture that has led to a narrow, closed and ultimately destructive clericalism (clerical power and influence). The systemic and worldwide pattern of clerical child sexual abuse is but one major symptom of this clericalism.<sup>123</sup>

A number of witnesses raised the question of celibacy, particularly in the context of the Catholic Church’s acceptance of married priests. Mr Peter Johnstone, on behalf of Catholics for Renewal, said that, with respect to married priests:

I have to say this is an excellent example of a command and control system in a very large worldwide organisation that adopts policies and does not find it necessary to explain them. I think that most in the church would say this is an administrative decision of convenience not to have married priests. It might cost a bit more to have to upkeep a family as well, perhaps there might be other reasons; there could be all sorts of things like that. It is convenient to the church not to have married priests. The church has a different position about the ordination of women where they say it is a matter of doctrine and we are not allowed to even talk about it ...<sup>124</sup>

A related topic is the sexual maturity of those recruited for religious life. One aspect of this is the sexual maturity of priests and clergy, given the practice of recruiting teenage boys who were still forming their sexual identities, then cloistering them in seminaries of boys of similar age and celibate men. Br McDonald from the Christian Brothers acknowledged this in his evidence to the Inquiry, saying that ‘It is just unhealthy’.<sup>125</sup>

The Committee also received evidence of sexually inappropriate behaviour in seminaries. Bishop Connors acknowledged in evidence to the Inquiry that there was a cultural problem in a seminary for priests in the Ballarat Diocese in the 1970s.<sup>126</sup>

120 *Transcript of evidence*, Catholic Archdiocese of Melbourne, Melbourne, 20 May 2013, p. 45.

121 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 45.

122 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion Paper: Towards Understanding, A study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, p. 17.

123 *Transcript of evidence*, Professor Desmond Cahill, pp. 7–8.

124 *Transcript of evidence*, Catholics for Renewal Inc., Melbourne, 23 January 2013, p. 15.

125 *Transcript of evidence*, Christian Brothers, p. 5.

126 *Transcript of evidence*, Catholic Diocese of Ballarat, p. 19.

It notes that sexually inappropriate behaviour between ministers of religion is unrelated to the violent crime of child sexual abuse, which is an abuse of power and trust in the context of vulnerable children who do not have the maturity or capacity to consent.

The Committee heard that seminaries and religious houses gave little or no initial training on sexual matters, and in the past did not properly manage the preparation for a celibate life. The Catholic Church pointed out in its submission to the Committee that these organisations take a different approach today, with much more rigorous screening and development for a celibate life.<sup>127</sup> Although these matters were raised in evidence before the Inquiry, the Committee wants to emphasise the importance of keeping matters of adult consensual and non-consensual sexual behaviour separate from considerations of the crime of child sexual abuse.

### 7.3.5. Teachings of the Catholic Church—canon law

As outlined in Chapter 6, canon law is a system of laws and regulations governing the Catholic Church and its members. Within the Church it is given a higher status than state law. It operates as an internal discipline system for dealing with, among other things, criminal child abuse by religious personnel. The Committee considers it important to highlight the following aspects of canon law:

- Canon law has a long-standing historical, cultural and universal role in the Catholic Church. This leads to a risk that the Church might regard itself as distinct and separate from a country's civil legal system, and that this may manifest itself in a belief or understanding that, for clergy, canon law operates in place of civil law.
- The Committee understands that canon law is difficult to apply and is not well utilised. For instance, canon law must be used to laicise (or remove the authority and title) of an offending priest. However, the difficulty of the process of laicisation meant that historically this was not common. Coupled with the first concern, this could result in there being, from the Catholic Church's perspective, no effective judicial form of dealing with criminal child abuse.
- The existence of an internal legal system suggests that senior leaders in the Catholic Church rely heavily on it to manage unacceptable, including potentially criminal, behaviour.

The Committee heard that although a diocesan bishop could revoke the authority of an offending priest, such a course was rarely taken. One reason for this may be an overly legalistic attitude to dealing with managerial matters in the Catholic Church.

As we consider later in this chapter, rather than taking such action, the bishop organised for the offending priest to be 'treated' or 'counselled', then moved him to another parish. Such an approach limited, or even undermined, the organisation's ability to properly protect children and regulate performance and behavioural problems among its members.

The Committee was not able to examine the precise nature of the involvement of the pope, the Vatican and the application of canon law in determining how criminal child abuse was dealt with in Victoria. However, the Committee concluded that these

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<sup>127</sup> *Submission S185*, Catholic Church in Victoria, p. 92. See also *Transcript of evidence*, Catholic Diocese of Ballarat, p. 20.

higher Catholic Church authorities had a substantial influence in Victoria. Cardinal Pell stated:

I think the 1962 statement talked about a particular crime with children, and that is using the confessional to entice children to commit this crime. I think that was the specific instance there. But there is no doubt that it is a foul crime.<sup>128</sup>

Cardinal Pell acknowledged that the pope imposed a requirement that such crimes be treated with strict confidentiality, but added:

That, as you know, was changed later. The reasons for that then were because of the seal of confession, but there were a couple of other reasons. The priest who was attacked because of the seal of confession—they had to receive indirect evidence; he could not break the seal. Also it was to protect the privacy of the person making the allegations. We regard those restrictions now as inappropriate, but they were the three reasons for them at that time, I believe.<sup>129</sup>

### 7.3.6. Failure to report crimes and treatment of offenders

No representatives of the Catholic Church directly reported the criminal conduct of its members to the police. The Committee found that there is simply no justification for this position. As pointed out in Chapter 1 of Part A, the abuse of children was a crime and contrary to the stated policy of the Church in the 1962 *Crimen sollicitationis*. Interestingly, in his evidence to the Inquiry, Br McDonald commented on this policy, stating that it did not take the pope to tell them that abuse of a child is a grave crime.<sup>130</sup>

The Catholic Church's approach to criminal offending by religious personnel led to attempts to treat offenders medically, using the services of psychiatrists, psychologists and counsellors. The Catholic Church established and funded treatment programs. It justified this approach as acting on a compassionate desire to rehabilitate or cure an offender. However, this also meant that the Catholic Church did not report serious criminal behaviour to police and undertook no further investigation.

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128 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 11.

129 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 12.

130 *Transcript of evidence*, Christian Brothers, p. 8.

**Box 7.2: Case study—Fr Paul David Ryan**

One example of this is the treatment by the Ballarat Diocese of Fr Paul David Ryan,<sup>132</sup> as revealed in a letter from Bishop Ronald Mulkearns, Ballarat Diocese to the Catholic Church insurers, dated 30 September 1991:

... a priest against whom allegations of homosexuality were made many years ago. Following these allegations the priest was sent to the United States for treatment by a psychiatrist. Earlier this year a complaint was made about advances to a sixteen year old youth. The family of the youth was satisfied that the priest should be moved from the parish and sent for counselling. There was no involvement of police.

Subsequently the priest concerned has moved again to the United States with a view to taking further psychiatric advice and spiritual counselling ... another ... statement made to the police in which he has made allegations against the ... priest ... relating to a period when he was Chaplain at a Catholic Secondary School some years ago ...<sup>133</sup>

On 30 September 1991 Bishop Mulkearns also wrote a letter about Fr Ryan to Fr Dan Torpy, a priest and psychologist:

The priest ... has been advised by Father Jim Gill SJ to undergo a thirty day retreat and spiritual direction in Rome ... let him know that such an allegation has been made and could possibly come to public light. This may not help him psychologically as he tries to seek further assistance ...<sup>134</sup>

In January 1992, Bishop Mulkearns asked Fr Ryan to attend Villa Louis Martin in Jemez Springs, New Mexico:

... and advise as to what options there might be for him to minister a priest in the United States with sufficient support to enable him to come with the difficulties which he has and the particular strain affecting him at the present time.<sup>135</sup>

Despite people making complaints about Fr Ryan's conduct from the time prior to him being ordained (before 1976) until early 1992, it appears that Bishop Mulkearns continued to place him in different parishes in the Ballarat diocese after he had completed treatments and counselling in the United States.<sup>136</sup> Table 7.1 sets out the chronology of treatment, complaints of criminal child abuse and subsequent convictions against Fr Ryan.

Source: Adapted from *Files relating to Father Paul David Ryan*, provided to the Family and Community Development Committee by the Catholic Ballarat Diocese.

The Committee accepts that the Catholic Church had some genuine attachment to, and belief in, the treatment approach. A number of files provided to the Committee show that the Church spent significant funds on the treatment of offending priests

131 See Table 7.1 regarding Fr Paul David Ryan's appointments.

132 Catholic Diocese of Ballarat, Letter from Bishop Mulkearns to Mr John Taylor, Catholic Insurance Ltd, 30 September 1991, from the files of Fr Paul David Ryan, accessed by the Family and Community Development Committee.

133 Catholic Diocese of Ballarat, Letter from Bishop Mulkearns to Fr. Dan Torpy, 30 September 1991, from the files of Fr Paul David Ryan, accessed by the Family and Community Development Committee.

134 Catholic Diocese of Ballarat, Letter from Bishop Mulkearns to Rev Fr. Peter Lechner, 29 January 1992, from the files of Fr Paul David Ryan, accessed by the Family and Community Development Committee.

135 See Table 7.1 regarding Fr Paul David Ryan placements and history of complaints against him.

and other religious personnel. But it is also evident that, on occasion, the timing of the treatment was orchestrated. In 1992 Bishop Mulkearns wrote a letter about Fr Ryan to a colleague in the United States, indicating that the:

... mother of the boy concerned naturally was quite disturbed but was not anxious to make a public issue of the question, but was certainly anxious that Paul David not be left in that position. It was agreed that he would remain there until after Easter when other Diocesan changes were to be made so that his change would not be seen as completely out of the ordinary.<sup>136</sup>

Although the Catholic Church organised treatment, it did this in a way that ensured no suspicion fell on the perpetrator and that continued to conceal any ongoing behavioural problems from the wider church community and from the families of victims.

The Catholic Church's reliance on advice of this kind and on the 'curing' of offenders had the unfortunate consequence of their being sent to other parishes, to target other vulnerable children, with parishioners kept unaware of the priest's history of offending. Section 7.3.7. includes some examples of this.

**Table 7.1: Chronology of known abuse occurring, complaint, placement and treatment of Fr Paul David Ryan**

Date	Complaint
28 May 1976	Fr Ryan ordained.
May–June, November 1976	Victim 1 abused week before ordination (Ballarat North parish). Information that Fr Ryan had been involved in 'serious' homosexual behaviour with other students for the preceding 18 months—sent for treatment to psychiatrist Dr Eric Seal—recommended to seek further spiritual insight overseas.
February 1977	Fr Ryan attends De Sales Hall School of Theology in Hyatsville, Maryland, USA, for spiritual and psychological treatment. Assisting in parish in Virginia Beach, Virginia USA.
18 June 1978	Complaint made about Fr Ryan by a parishioner in Ballarat North regarding her son (Victim 1)—relates to a period a week after his ordination.
19 April 1979	Returned from the US—(sent home from US priest at parish in Virginia Beach Virginia USA regarding complaint Victim 2—*no record US priest had informed Ballarat Diocese) Concern expressed by Bishop Mulkearns regarding complaint (Victim 1) if place Fr Ryan in Ballarat Diocese—placed at St James Gardenvale under supervision with Fr Ronald Pickering. **Victim 3 and Victim 4—abuse occurred in USA.
April 1980–1984	Fr Ryan assistant parish priest at Warrnambool. Victim 5 (14 year-old boy) abused by Fr Ryan.
1985–1986	Fr Ryan in USA to study (Dayton, Ohio).
24 January 1986	Fr Ryan assistant priest at Terang. Victim 6 abuse by Fr Ryan (16-year-old boy).

<sup>136</sup> Catholic Diocese of Ballarat, Letter from Bishop Mulkearns to Rev Fr. Peter Lechner, 29 January 1992, from the files of Fr Paul David Ryan, accessed by the Family and Community Development Committee.

<b>Date</b>	<b>Complaint</b>
14 January 1989	Fr Ryan parish priest at Peshurst. Victim 6—abuse continued throughout the 1990s.
February 1991	Complaint made regarding Fr Ryan and his conduct with a boy in Peshurst parish— abused Victim 7 over 11 month period—Church delayed transfer until after Easter.
2 May 1991	Fr Ryan resigned from Peshurst.
30 September 1991	Fr Ryan in United States— spiritual retreat in Rome— allegations regarding Fr Ryan at Warrnambool (Victim 5).
December 1991	Fr Ryan at Gardenvale parish with Fr Ronald Pickering.
18 January 1992	Fr Ryan—assistant priest at Ararat. Victim 6 and Victim 7 abused by Fr Ryan.
29 January 1992	Request by Bishop Mulkearns for Fr Ryan to go to Villa Louis Martin, Jemez Springs, New Mexico—rejected.
10 December 1992	Request by Bishop Mulkearns for evaluation of Fr Ryan—St Luke Institute, Maryland USA.
January–June 1993	Fr Ryan continued to reside at Ararat parish house though on indefinite administrative leave—seeing Fr Dan Torpy/psychologist.
26 August 1993	Record of complaint Victim 5.
September–October 1993	Requests to Fr Ryan to attend for interview with Catholic Church insurers.
10 November 1993	Fr Ryan in England (not authorised)—address care of Fr Pickering (at this time Fr Pickering also in England and had been subject of complaints of abuse).
14 January 1994	Fr Ryan in Warrnambool.
3 February 1994	Fr Ryan—Interview with Special Issues Committee of the Catholic Church.
March–June 1995	Fr Ryan notification from USA (1980 Virginia) complaint—Victim 2 and Victim 3—civil settlement.  'In 1979 ... he was accused of having sexually molested one young man Victim 2 and perhaps two others. When this was discovered, Father Gaughan told Father Ryan to leave. Father Gaughan met with several families ... nothing evolved further and things got laid to rest ...'
3 July 1995	Bishop Mulkearns request Fr Ryan apply for laicisation—refused by Fr Ryan.
23 July 2002	Fr Ryan—another notification regarding US complaint Victim 4—civil settlement.
8 September 2006	Fr Ryan charged 5 counts indecent assault —regarding Peshurst (Victim 6 and Victim 7).
18 January 2007	Fr Ryan convicted and sentenced regarding Peshurst (Victim 6 and Victim 7).

Source: *Files relating to Father Paul David Ryan*, provided to the Family and Community Development Committee by the Catholic Ballarat Diocese.

When aspects of the Fr Ryan documents were raised with Bishop Connors, he agreed with the proposition that the Catholic Church ‘facilitated the commission of criminal offences against child victims of sexual assault by providing a known offending priest with positions which allowed him to continue his offending once it was known.’<sup>137</sup>

As well as receiving treatment from medical professionals, perpetrators were encouraged by the Catholic Church to seek spiritual guidance. The choice of the spiritual director remained with the perpetrator. This led to an extraordinary situation in the case of Fr Victor Rubeo. When a complaint was made about his conduct in 1994, Fr Rubeo chose Fr Frank Klep as his spiritual adviser. Fr Klep was convicted of criminal child abuse offences in December 1994, but continued as Fr Rubeo’s spiritual adviser. In explaining this situation, Archbishop Denis Hart stated:

That is the normal practice in the church, of the spiritual freedom of people—not someone who is in charge of them but someone who will give the benefit of their spiritual advice. Of course I know it does not look well in the light of later events—and I would be the first person to say that—but the freedom is there and he made that choice.<sup>138</sup>

Archbishop Hart continued later in his testimony:

I think it was highly inappropriate for a person to choose someone of those proclivities, and it would have my fullest condemnation.

I would certainly say that I believe that to allow that man to be spiritual director was quite wrong and quite harmful. I do not recall—I can say honestly that I do not recall what happened there last year. I would say, however, that since 1994 we have been very, very careful about our responses. The introduction of the Melbourne Response and Towards Healing in 1996 was a real watershed for the church in general. I am embarrassed if that was said last year. It relates to 1994. We have certainly changed for the better since then.<sup>139</sup>

When in 2012 a journalist questioned a representative of the Catholic Archdiocese of Melbourne about this arrangement, acknowledgement that the spiritual director chosen was ‘quite wrong and harmful’ was not forthcoming. Rather, the Archdiocese responded as follows:

2) Why did the late Vicar General Cudmore appoint Father Francis Klep as spiritual director to Father Rubeo in 1994 and 1995, even though Klep had been charged and later convicted of child sex offences?

A. The records of the Archdiocese record Rubeo informing Monsignor Cudmore that he was seeing Father Klep as a spiritual director. The choice of a spiritual director is made by the person seeking spiritual direction.<sup>140</sup>

The Catholic Church used its focus on treating offenders to justify its assertions that ‘we didn’t understand’ and that the Church was on a ‘learning curve’. If this explanation were linked to a lack of understanding about the persistent nature of paedophile activity, the limited usefulness of treatment, and the long-term damage to victims, it may have some credibility. However, when the Catholic Church offers this explanation in a broader context, that includes claims of not knowing about the existence of offending, it is a difficult explanation for the Committee to accept. In

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<sup>137</sup> *Transcript of evidence*, Catholic Diocese of Ballarat, p. 14.

<sup>138</sup> *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 6.

<sup>139</sup> *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 7.

<sup>140</sup> Richard Barker & Nick McKenzie ‘An unbearable secret’, *The Age*, 6 June 2012.

particular, the Committee noted that the Catholic Church did not choose to inform itself by commissioning research into the problem, it did not report allegations to the police and it did not undertake a comprehensive investigation into the extent of criminal child abuse relevant to parts of the Catholic Church.

### 7.3.7. Relocation and movement of priests

The Committee found that the Catholic Church's practice of moving offenders between schools and parishes was not uncommon. The most glaring example is revealed in the material provided by the Ballarat Diocese in relation to Fr Gerald Ridsdale, when a prompt complaint was made about his conduct. In an interview with insurance representatives for the Catholic Church in 1993, Bishop Mulkearns stated:

The first complaint I ever had was when he was at Inglewood in 1975 ...

A Policeman came to see me to say that he was worried about an incident with his son, the policeman's son and Gerald came to see me too. I indicated to the policeman that I would pull him straight out of the parish and have him seek counselling and the Policeman was satisfied with that and did not want to take it any further, because the incident was not a serious one ...

He did not go into detail, but as I understood it was inappropriate behaviour, but not very serious ...<sup>141</sup>

Bishop Mulkearns arranged for Fr Ridsdale to be removed from the parish and to undergo counselling. After various periods of counselling, Bishop Mulkearns appointed Fr Ridsdale to a different parish. Further complaints of criminal child abuse were made. These occurred in Inglewood in 1975, Mortlake in 1982 and Horsham in 1988. Fr Ridsdale was also appointed to parishes in Apollo Bay in 1974–75 and Edenhope in 1977, but apparently Bishop Mulkearns received no complaints about his conduct during those periods until after 1988.

In the interview Bishop Mulkearns said:

... to what extent am I expected to supervise the work of somebody about whom there was not any question at that time. I suppose there was some question because of the incident at Inglewood but I had insisted that he have professional counselling and to my knowledge he was doing that while he was at Edenhope, so I do not know what more I could have done ...

All that I can say to that is that I instructed him to take counselling and then followed the advice of the counsellor ... there was never any case when he was simply moved from one place to another without anything else being done ... there are not many reports ... I have got in writing for example that it was prudent for him to be appointed to Edenhope that was something that was a phone conversation. I did not want to keep too much in writing I suppose ...<sup>142</sup>

Bishop Mulkearns suspended Fr Ridsdale from his duties as a parish priest on 30 June 1988. This is known in the Catholic Church as removing his priestly

141 Catholic Diocese of Ballarat, Transcript of interview between Bishop Mulkearns and Catholic Church Insurance, 15 April 1993, from the files of Gerald Ridsdale, accessed by the Family and Community Development Committee.

142 Catholic Diocese of Ballarat, Transcript of interview between Bishop Mulkearns and Catholic Church Insurance, 15 April 1993, from the files of Gerald Ridsdale, accessed by the Family and Community Development Committee.

‘faculties’. Following this, Fr Ridsdale was sent to New Mexico for ‘rehabilitation’ in 1989. He returned to New South Wales in 1991. In late 1992 police enquiries commenced. Fr Ridsdale was laicised in November 1993 and thereafter was unable to function as a priest.

The documentation provided to the Inquiry by the Ballarat Diocese reveals that 37 complaints were made about the conduct of Fr Ridsdale prior to 1997. The extent of abuse in this Diocese by Fr Ridsdale is most troubling—67 claims of criminal child abuse by him have been accepted by the Catholic Church. He is recognised by the Bishops in the Ballarat Diocese as one of the worst offenders in Australia’s history.<sup>143</sup>

**Table 7.2: Chronology of Fr Gerald Ridsdale**

Date	Complaint
1975	<p>First complaint about Fr Ridsdale—Inglewood parish</p> <p><i>... inappropriate behaviour, but not very serious ... I undertook to take him straight out of there and have him seek appropriate counselling and that is what I did ... then after a period of counselling Father Watson indicated that he thought it was appropriate for him to be put back in a parish and that he would continue counselling and so he was appointed initially Administrator of the Parish of Edenhope in April 1976 and then parish priest of Edenhope in July 1977 ...</i></p> <p><i>The policeman at Inglewood ... No I have not kept his name. He just came into the office and spoke to me. Actually I had spoken to Gerry first. He came to see me and said that the policeman was going to come to see me and I said I had to take action, So when the Policeman actually came, I was able to tell him that I intended to take action and that ‘Gerry had agreed that this was the way to go ... He did not specify what the behaviour was, but my impression, certainly from the policemen who came about his own son was that he was upset about it but it was not a serious offence although serious enough for him to want action taken and serious enough for me to want to take action.</i></p>
1975–1976	Fr Ridsdale appointment to Apollo Bay parish.
1976	Fr Ridsdale appointment to Edenhope parish, with counselling. <i>I never heard of any problems during the time he was at Edenhope. These incidents have surfaced long after he had gone ...</i>
1980	Study leave—National Pastoral Institute, Gardenvale.
January 1981	Fr Ridsdale appointment to Mortlake parish—complaints made. <i>Complaints of inappropriate behaviour with young children... no specific complaints made ... as a result of that taken out of there and again received counselling ...</i> <i>It was at Mortlake that alarm bells started to ring. It wasn’t at Edenhope.</i>
November 1982–December 1985	Catholic Enquiry Centre, Sydney.
1986–1988	Fr Ridsdale assistant priest at Horsham parish— <i>idea being that it was with a Priest that he knew and would not put him in a position of being on his own in Parish ministry ...</i>

<sup>143</sup> *Transcript of evidence, Catholic Diocese of Ballarat, p. 4.*

Date	Complaint
1988	Fr Ridsdale's priestly faculties removed. <i>... it was in 1988 ... at that stage when the problem surfaced again I decided we had to do something. That he had not had any faculty with the Diocese since 1988 and it was at that time that I said to him that it just wasn't on for him to be continuing in any Parish ministry ...</i> <i>So then I arranged to send him to Jamex Springs, it cost about \$70,000 overall. It was not cheap.</i>
1989	Fr Ridsdale sent to New Mexico for 'rehabilitation'.
1991	Fr Ridsdale returned to NSW—police enquiries commenced. <sup>144</sup>
1993	Fr Ridsdale laicised.

Source: Compiled by the Family and Community Development Committee based on Catholic Diocese of Ballarat, Transcript of interview between Bishop Mulkearns and Catholic Church Insurance (CCI), 15 April 1993, from the files of Gerald Ridsdale, accessed by the Family and Community Development Committee.

Similarly, in 1978 in the Catholic Archdiocese of Melbourne, Archbishop Frank Little received a complaint about the conduct of Fr Wilfred Baker, made by respected members of the parish on behalf of a boy's family. Archbishop Little organised for Fr Baker to be moved to another parish, where he continued to offend.<sup>145</sup>

Religious organisations such as the Christian Brothers also adopted this approach, as explained by Mr Shane Wall, Co-executive Officer, Professional Standards Office, Christian Brothers:

... the archives are short on detail but also speak volumes ... I would say the two matters that the archives reveal are [Br] Fitzgerald and [Br] Elmer. With the former ... [t]he reprimand, as such, goes as follows:

He forbade him to have anything to do with the boys ... Since visitation he has allowed some boys to enter his bedroom, even kissing one ...<sup>146</sup>

As Mr Wall admitted:

If we look at [Br] Fitzgerald's history of appointments thereafter, the reprimand is obviously not severe enough, it is not adequate enough and not enough is done because [Br] Fitzgerald receives postings to schools thereafter. That is the first matter, speaking volumes that not enough was done. It is not enough in my view to make excuses as to the era. That speaks volumes.<sup>147</sup>

Mr Wall also remarked on Br Elmer:

The matter of [Br] Elmer is instructive as well. In 1976 there is a visitation report, I presume with a province leader going to the community, and it speaks about [Br] Elmer. It makes the following comment:

Whilst the visitation was in progress, a child welfare officer reported ... that Rex—had been interfering with little boys; this was true and it has been attended to by the provincial.<sup>148</sup>

144 See Table 7.4 regarding sentences imposed.

145 *Submission S104 part 1*, Mr Phil O'Donnell, p. 23.

146 *Transcript of evidence*, Christian Brothers, p. 11.

147 *Transcript of evidence*, Christian Brothers, p. 11.

148 *Transcript of evidence*, Christian Brothers, p. 11.

Mr Wall then read from correspondence indicating that the transfer of Br Elmer to another Christian Brothers school would not take place immediately but at the time at which such movements in the congregation usually took place.<sup>149</sup> This decision, it seemed, was based on Br Elmer's own assurances that he would not reoffend, his good record and the possibility of embarrassment to the Christian Brothers if he were moved immediately.

Representatives from the Christian Brothers were also questioned regarding their treatment of Br Edward G. Dowlan, who was convicted and sentenced in 1996 of criminal child abuse offences. After he had been convicted, a letter was sent to the Christian Brothers from a staff member from St Vincent's Boys Home where the offending occurred. The following portion was read to the representatives of the Christian Brothers by the Committee:

I am writing to you to voice my dismay and anger following last week's revelation about the activities of Brother Dowlan.

While I was deputy director of St Vincent's Boys Home I, and many other staff members, worked 15 to 16-hour days and practically sweated blood to assist the brothers to look after the residents. I accepted with good faith the sudden departure of Brother Elmer from the school and the appointment of Brother Dowlan to fill his position. Indeed, I spent many extra hours, which I could ill afford, assisting Brother Dowlan to understand the nature and behaviours of the boys and the teachers.

As you are probably aware, many of St Vincent's residents had been sexually abused, and often displayed overt and outrageous sexualised behaviour. Furthermore, they expected or requested that this behaviour be reciprocated by the adults in their lives. A major part of our endeavours at St Vincent's was getting these boys to a point where they would expect not to be abused. Now I find that all of this work could have been compromised by the presence of a man like Brother Dowlan.

I take note of your congregation's position that the brothers were unaware of Brother Dowlan's tendencies and activities. I cannot accept this as a reasonable position. I cannot believe that the number of allegations against this man could have been kept from his various communities' and the congregation's superiors. I find that expecting the public to believe this is preposterous. I do not believe this plea of ignorance.<sup>150</sup>

Br Julian McDonald accepted that others in the community may have felt the same way regarding Br Dowlan's activities.

When questioned regarding placements of Br Dowlan, Br Brandon responded:

No, I think that any movement of Brother Dowlan from one community to another was not done on the basis that he had offended in one place and therefore he was given another chance somewhere else. It was done on the basis that he was understood to be struggling a little bit in terms of his own maturity and there was an opportunity for him to develop further in terms of growing up, if you like; and there was a chance to make a new start in life. I do not mean in terms of having offended somewhere and starting with a clean sheet; I do not mean that at all. I mean in terms of just growing as an individual—maturing. That was the basis on which some changes from one community to another were made ...

That is my assessment. That is my personal judgement, that is all.<sup>151</sup>

149 *Transcript of evidence*, Christian Brothers, p. 12.

150 *Transcript of evidence*, Christian Brothers, p. 12.

151 *Transcript of evidence*, Christian Brothers, p. 19.

The knowledge of the relevant catholic body of a complaint against one of its members and its decision to move the suspected perpetrator to another parish or school has had a significant effect on insurance claims that the relevant bodies were able to make. It is pertinent to note in a letter from Catholic Church Insurance (CCI) provided to the Committee after it presented oral evidence, there were five clergy members about whom CCI regarded the Church as having ‘prior knowledge’ of their offending for insurance purposes:

- Fr Wilfred Baker—knowledge 1978—indemnity denied 2004
- Fr Michael Glennon—knowledge 1978—indemnity denied 2004
- Fr Gerard Ridsdale—knowledge 1975—indemnity denied 1999
- Fr Paul Ryan—knowledge 1991—indemnity denied 2007
- Fr Daniel Hourigan—knowledge 1986—indemnity denied 1996.

Additionally, in respect of two other offenders, Fr Nazereno Fasciale and Br Leo Fitzgerald (Christian Brother) the issue of knowledge and indemnity remained unresolved.<sup>152</sup>

The movement of suspected perpetrators was not limited to the Catholic Church. The Committee heard that after complaints had been made regarding the conduct of Rabbi David Kramer at Yeshivah College in 1992, the Jewish school executive paid for his trip to Israel and then the United States, where he continued to teach and offend against children. Police were not informed of the complaints. Rabbi Kramer was subsequently convicted of criminal child abuse in the United States and was imprisoned. On his return to Victoria, he has recently been convicted of offences relating to his time at Yeshivah College between 1989 and 1992.

### 7.3.8. Failure to act on complaint from an internal source

Another issue of concern to the Committee was the Catholic Church’s treatment of complaints or suspicions of criminal child abuse expressed by lay teachers of a parish school. The Catholic Church’s way of handling such allegations that were relayed by staff was consistent with its overall approach of concealing the child abuse issue.

A number of witnesses gave evidence that the Catholic Church had taken no action on reports of a priest’s abusive behaviour in a school. From 1981 to 1986, Mr Graham Sleeman was principal of the Holy Family School in Doveton. In 1986 he resigned in frustration after raising issues about the behaviour of Fr Peter Searson.

Then he began his activities. This was a guy who walked around most of the time carrying a revolver. He had strange attitudes to security ... When Searson arrived, a 13 foot 6 cyclone fence was built around the school and he locked the place. I told him about that. The very first night he put locks on the door and the gates, guess what? We had a break-in.

The reason I tell you that is the fact that I would be working at the school, we would be having meetings with parents and he would lock everyone in the school. This bizarre behaviour went on constantly. He had what I will put as a fetish for confessional. He was constantly wanting classes to go. He demanded class lists and he would tick off

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<sup>152</sup> Ms Marita Wright, Catholic Church Insurance Ltd, Letter to the Family and Community Development Committee, 17 May 2013.

who had been to confession. He would come over to me and say, ‘You know, there are 28 children in this class; I have only had 8 come to confession’, and I would argue with him ...

Some of the children came to me and said, ‘Father’s creepy. I don’t like going to confession with him’. Boys used to say to me, ‘I’m not keen to be an altar boy, father’s creepy’. I think it was his second year there when they were all taken over to confession on a particular day and a young girl came out of the church screaming. I found her and asked her what had happened and she informed me that Father had interfered with her ... There was to-ing and fro-ing and eventually the consultant informed me that he had spoken to Father and it was ‘all a blow-out; he’s doing such a good job in the parish. People are out to get him’ ...

Over the same period of time there was not a day that went by that I would not have a parent—a mother or father—come to me complaining about Father and the way he treated the children. They were frightened of him; they were scared of him. They did not want to go to confession with him. They did not even want to go into the church when he was there. If we had a children’s mass, he would refuse communion to people and children who he thought he did not see at his parish church on Sunday ... I said, ‘I’ve told the authorities. It has gone to the top, and they’ve come back and said they’ve spoken to Father’ ... Therefore we thought, ‘They’ll do something. They wouldn’t let this happen. They’re men of God. They’re honourable’. Therefore you kept working for them and thinking that some day, one day, they would do something ...

Once I resigned, Searson upped his ante and was wanting to take classes to confession every day of the week. It got too much for me, and near the end of November I actually picked him up by the armpits and told him that, if he did not pull his head in, I would kill him ...

I had no support. I had no counselling. No-one cared about me. When I left there, sad to say, I was picked up by the Salesians at Chadstone to coach football, which I did for 12 months before I really became unwell.<sup>153</sup>

Ms Carmel Rafferty, a teacher later at the school, told the Inquiry that she also raised the behaviour of Fr Searson with senior representatives of the Catholic Church, after which she felt her career was jeopardised:

I believe it is their first focus, trying to put down scandal, and possibly their second focus is looking after the perpetrators, but maybe they are interspersed. But in my experience as soon as I bobbed my head up with this problem, which had been worrying them for years, I suppose, up to some degree, they just had to shoot me down because I was another threat obviously to this truth coming out in that situation.<sup>154</sup>

The Committee also received a submission from a lay teacher at St Mary’s School in Geelong, operated by the Christian Brothers. The teacher expressed his frustration with the treatment he received when he reported suspected sexual abuse, having expected that they would be dealt with effectively.<sup>155</sup>

Ms Ann Ryan gave the most detailed account of dealings with the Catholic Church.<sup>156</sup> Her experience of the Catholic Church’s handling of the serial offender Fr Ridsdale is informative. Ms Ryan was a member of the congregation and a teacher at St Colman’s

<sup>153</sup> *Transcript of evidence*, Mr Graeme Sleeman, Melbourne, 23 January 2013, p. 4.

<sup>154</sup> *Transcript of evidence*, Ms Carmel Rafferty, Melbourne, 23 January 2013, p. 12.

<sup>155</sup> *Submission S386*, Mr Robert Thompson.

<sup>156</sup> *Submission S207*, Ms Ann Ryan.

Catholic School in Mortlake when Ridsdale was the parish priest from 1981–82. She observed student behaviour of a sexual nature, which she attributed to curiosity mixed with the onset of puberty. Fr Ridsdale left suddenly towards the end of 1982, with parishioners told that he was emotionally affected by a recent family death and needed time out.

Rumours about Fr Ridsdale's conduct and the reason for his departure began to circulate. Over the next seven years a number of families of Fr Ridsdale's victims contacted Ms Ryan. Some told her that they had visited Bishop Mulkearns, but were made to feel like criminals themselves, as the Bishop was so resistant to their claims. One of the families told her that they had to take their son for medical treatment as he was bleeding from his anus. They also went to their parish priest, who advised them to deal with the issue within the family, avoiding unwanted publicity.

Ms Ryan contacted Bishop Mulkearns, and she provided the Inquiry with the lengthy correspondence between them. She first wrote to him in late 1989, and written exchanges continued over the next five years. She also met with him in Ballarat. Ms Ryan tried unsuccessfully to have the issue raised at a Diocesan Pastoral Council meeting. Ultimately, in 1994, Bishop Mulkearns terminated communication with her. He said that he felt she was questioning his 'truthfulness and integrity'.<sup>157</sup>

Ms Ryan also began lobbying on the subject, which she explained 'drew severe threats of job dismissal and ongoing victimisation by both the then parish priest and the school principal'.<sup>158</sup> She decided to resign from her position.

Bishop Connors, commenting on the situation of Bishop Mulkearns and Mortlake, told the Inquiry:

How could Mortlake have so many victims without it becoming known to the police at that stage and to the bishop himself? It was only when people like Anne Ryan, the principal of the school and a local doctor approached Bishop Mulkearns that they took him out of Mortlake.<sup>159</sup>

Also commenting on how Bishop Mulkearns handled criminal child abuse matters, Archbishop Denis Hart said that "The covering up and the doing nothing means that it is worthy of great condemnation."<sup>160</sup>

Given Fr Ridsdale's history, Ms Ryan's account reveals the high level of risk in failing to investigate further or take appropriate action when claims of criminal child abuse are made.

The Committee is not able to form any conclusions regarding whistleblowers' claims about how the Church treated them, or whether their treatment was caused by, or simply coincided with, their raising concerns about criminal child abuse.

#### **7.4. Investigation by organisations into the extent of the problem**

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Although the Committee found that criminal child abuse has occurred for a significant period of time, it is almost impossible to make an accurate assessment of

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<sup>157</sup> *Submission S207*, Ms Ann Ryan, p. 2.

<sup>158</sup> *Submission S207*, Ms Ann Ryan, p. 4.

<sup>159</sup> *Transcript of evidence*, Catholic Diocese of Ballarat, p. 25.

<sup>160</sup> *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 13.

its extent. The Committee received credible data showing that a significant amount of past criminal child abuse in the Catholic Church has not been revealed. Factors inhibiting the task of determining the extent of the problem include:

- the failure of an organisation to keep records of complaint
- non-disclosure by victims
- the historic nature of abuse if a complaint is ultimately made
- the lack of documentation to substantiate the claim
- the manner in which an organisation treated timely complaints.

These factors are consistent with those affecting other non-government organisations, as discussed in Section 6.2 (on the prevalence and incidence of criminal child abuse in organisations).

These factors also preclude any proper consideration of whether there existed systemic abuse within some of the organisations under consideration, particularly the Catholic Church. Arguably the existence of contemporaneous documentation in the Ballarat Diocese may have provided better insight into how that area in particular was targeted by known offenders.

Part B discusses the experiences and impacts of criminal child abuse as described by those who participated in the Inquiry. The Committee did not scrutinise the conduct alleged in written submissions and oral evidence to determine the accuracy of individual accounts. However, the Committee found that these accounts were entirely consistent with documented and established incidents of criminal child abuse, that they were inherently credible, and that there was no reason to suspect they were the product of any form of collusion.

Given the various religious organisations' acknowledgement of conduct of this nature occurring and the criminal convictions of some of their members for sexual offences against children, one can readily accept in a broad sense the traumatic experiences of some of these children in the care of these organisations.

#### 7.4.1. Catholic Church

The response of the Catholic Archdiocese of Melbourne illustrates the difficulties encountered to accurately assess the extent of this problem prior to the 1990s:

Having searched the records of the Archdiocese and after making inquiries, it is understood that until the early 1990s, Archbishop [Frank] Little dealt personally and confidentially with all allegations of abuse within the Archdiocese and with clergy against whom allegations were made.

It appears from the records of the Archdiocese, and is confirmed by former Vicars-General Connors and Deakin, that until the 1990s Archbishop Little treated allegations of abuse with absolute confidentiality. He did not document the allegations and he kept his own counsel. As best can be determined, he did not confide in anyone about these matters.<sup>161</sup>

At a public hearing on 20 May 2013, Archbishop Hart indicated that, before Archbishop Little handed responsibility for dealing with such complaints to the vicar-general, there were no records. He stated: 'My understanding is ... that Archbishop Little kept

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<sup>161</sup> *Supplementary evidence*, Response to request for information, Catholic Archdiocese of Melbourne, 4 February 2013.

all these things to himself and there were no records.<sup>162</sup> Archbishop Frank Little was Archbishop of Melbourne from 1 July 1974 until 16 July 1996. He died on 7 April 2008.

A similar situation existed in the Ballarat Diocese of the Catholic Church. It was not until the 1990s that complaints of sexual abuse perpetrated by Fr Ridsdale became public. Bishop Mulkearns was Bishop of Ballarat from 1 May 1971 until 30 May 1997. The Diocese did not document complaints made against Fr Ridsdale at the time of the offences. This was revealed in a frank interview with Bishop Mulkearns conducted in 1993 by investigators on behalf of CCI, in which he indicated that he did not record complaints.<sup>163</sup>

The Committee requested the attendance of the former Bishop Mulkearns at a public hearing. The Committee received independent medical evidence, however, that due to his current medical condition, former Bishop Mulkearns would not be able to provide an accurate recollection of events. However, the Committee received a transcript of the 1993 interview, the contents of which were corroborated by documents recording the movements of Fr Ridsdale between parishes, and by his criminal convictions. The Committee concluded that such documentation was the most reliable source of information about the manner in which Bishop Mulkearns treated the complaints about Fr Ridsdale. Bishop Mulkearns admits in the 1993 interview that he ‘did not want to keep much in writing’.<sup>164</sup>

It is worth noting that child abuse is one area in which the pope has intervened, by issuing an instruction to all religious personnel. In 1962, the Holy Office in Rome issued a document entitled *Crimens sollicitationis*. It dealt with various forms of sexual abuse against children, collectively described as *crimen pessimum* (the foulest crime). The instruction indicated that all such offending should be reported to the Vatican and remain confidential.

This direction may explain the approach of both Archbishop Little and Bishop Mulkearns to preserving confidentiality around timely complaints. Keeping such matters confidential also reflected aspects of the culture of the Catholic Church, a matter considered in Chapter 1 of Part A of this Report, and earlier in this chapter.

The combination of these circumstances of papal direction and non-involvement of civil authorities provides some explanation as to why, even today, it is impossible to provide an accurate estimate of the amount of criminal child abuse perpetrated in the Catholic Church. However, with the emergence of this issue and the public attention being directed to it, organisations were compelled to develop processes to deal with the problem.

#### 7.4.2. Other religious organisations

The Anglican Church, in a letter to the Committee dated 8 March 2013, stated:

... it is difficult to provide accurate information regarding the number and nature

162 *Transcript of evidence*, Catholic Archdiocese of Melbourne, pp. 11–12.

163 Catholic Diocese of Ballarat, Transcript of interview between Bishop Mulkearns and Catholic Church Insurance, 15 April 1993, from the files of Gerald Ridsdale, accessed by the Family and Community Development Committee.

164 Catholic Diocese of Ballarat, Transcript of interview between Bishop Mulkearns and Catholic Church Insurance, 15 April 1993, from the files of Gerald Ridsdale, accessed by the Family and Community Development Committee.

of complaints prior to 1990 due to the accepted practices and protocols of the time for the handling of such complaints and the lack of awareness for the need to keep comprehensive records. Whilst unacceptable in modern practice, such matters need to be viewed in the context of the day ...

Prior to 1991 matters of alleged abuse (whether involving children or not) would have been addressed to the level of Assistant Bishop or indeed the Archbishop of the day. Much of the response was likely to have been pastoral in the sense of attempting to appropriately care for both the complainant and the respondent ...

... to the best of our knowledge the more robust processes of modern times has not led to previous complainants seeking to have historic matters reviewed. Whilst we have not specifically sought to communicate to such persons, our processes are well publicised and open to an approach of this nature. The pastoral nature of our processes can often (but not always) mean that the death of the alleged perpetrator can be a determinative factor in proceeding to complaint.<sup>165</sup>

The Salvation Army gave a similar explanation for its lack of record-keeping.

### 7.4.3. Historic nature of abuse and lack of records

The question of record-keeping relates not only to a lack of records of complaints but also—and more fundamentally—to the lack of records of the placement of children in institutions. Such records would corroborate important details provided by victims of criminal child abuse. In a written submission to the Inquiry, Ms Angela Sdrinis, a solicitor from Ryan Carlisle Thomas Lawyers who acts for a significant number of children (now adults) who were placed in institutional care, explained:

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

The State through the Department of Human Services (DHS) holds extensive documentation which relates to the operation of children's homes run by religious and non-government organisations. We also know that this documentation is at risk of being destroyed and indeed much of the relevant documentation may have already been destroyed.<sup>166</sup>

As outlined in Chapter 4 of Part B, the absence of even the most basic records covering the periods in which victims lived in the Salvation Army homes is a cause of considerable anger and frustration for a number of victims who gave evidence to the Inquiry and also in the files reviewed by the Committee. Although there is some limited information in departmental records for State wards, details relating to years of their childhoods have apparently not been kept. Given this situation, victims who complain of abuse occurring in institutions have little or no hope of being able to substantiate aspects of their account of abuse. Even their memory of residing at a particular institution during periods of their life cannot be accurately verified.

<sup>165</sup> *Supplementary evidence*, Response to request for information, Anglican Diocese of Melbourne, 8 March 2013, pp.1–2.

<sup>166</sup> *Submission S195*, Ryan Carlisle Thomas Lawyers, p. 14 (Part A).

## 7.5. Initial response of the Catholic Church—‘Special Issues’

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In December 1988, the Australian Catholic Bishops Conference (ACBC) began to address the issue of criminal child abuse allegations made against religious personnel. It established the ACBC Special Issues Committee Relating to Priests and Religious, for the purpose of creating a protocol to deal with this issue. By August 1990, a final version of the *Protocol for dealing with allegations of criminal behaviour* was issued to bishops and superiors of religious organisations. This was formally adopted in April 1992.

A number of features of this document illustrate the approach of the Catholic Church to the problem of criminal abuse at that time:

- The document was marked ‘Strictly Confidential’. This did not recognise the need for openness and transparency about the issue of complaints of criminal child abuse.
- Complaints were dealt with internally, within the Catholic Church by a Special Issues Committee, rather than externally by police and other relevant authorities. There was no necessity to involve police, even if the complaint involved criminal conduct.
- Priests and religious who were the subject of a complaint were to be placed on administrative leave and have no contact with children.
- No admissions regarding the conduct of the subject of a complaint were to be made to the complainant or victim or to any other person.
- Values to be promoted included acting in a way to prevent or remedy scandal.

Bishop Connors from the Ballarat Diocese described the approach of the 1992 protocol as a:

... very defensive approach, and I think it was due to the fact that the Church was listening to insurers and lawyers who were saying, ‘Admit nothing’ and, at that stage, ‘Never say you are sorry.’ I think that was the difficulty for bishops, because they were taking the wrong advice: never to meet with victims and never to admit something had happened.<sup>167</sup>

When the Committee questioned Cardinal George Pell about this protocol and put to him the suggestion that the Catholic Church’s motive was to protect its treasure, Cardinal Pell responded:

The primary motivation would have been to respect the reputation of the church. There was a fear of scandal. I do not think any damages were paid out until the 1990s or something like that. At least in Australia saving the money was not a significant factor. I am not sure of the 1980s, but, as I said, there was no compensation paid, as far as I can remember.<sup>168</sup>

Cardinal Pell further commented on the cover-up, stating that:

In examining the records now, there is one very clear example—that is with Father Baker—where Archbishop Little did cover up. He swore on oath that he did not know about O’Donnell’s offence before he appointed him to Oakleigh. It is true that Archbishop Little spoke to nobody about this. At the meetings—what we used to call the curia of the assistant bishops—he never once raised the issue, and he

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<sup>167</sup> *Transcript of evidence*, Catholic Diocese of Ballarat, p. 8.

<sup>168</sup> *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 12.

never raised the issue with me personally. I do not know whether I mentioned it with Monsignor Cudmore. Monsignor Cudmore said to me that Archbishop Little never impeded him, but never gave him one word of advice or one word of direction. He seems to have judged these things himself. He erred badly on Baker, but on a man called Glennon, a priest who was jailed, after he was let out of jail the first time the psychiatrist or the psychologist urged Archbishop Little to let him go back to work. Even the governor of the jail wrote a glowing report on Glennon. Archbishop Little refused, and he managed to get him to accept laicisation.<sup>169</sup>

From the perspective of a large number of victims who gave evidence to the Inquiry, the central aim of this initial response of the Catholic Church was to safeguard its own interests, limiting reputational damage and financial cost as much as possible, and avoiding scandal.

As a consequence of this protocol, various dioceses and religious institutions began to keep records about complaints of criminal child abuse and the treatment of alleged offenders. The documentation that the Catholic Archdiocese of Melbourne provided to the Committee provides an insight into the handling of complaints in the early 1990s after the protocol had been adopted.

The adoption of the protocol ensured that complaints were recorded and thus contributed in a positive manner to the exposure of this issue to the wider society. Material provided to the Committee by the Catholic Archdiocese of Melbourne, the Ballarat Diocese and the Christian Brothers revealed a significant number of complaints being recorded prior to 1996, when the more formal Catholic Church processes were adopted. Table 7.3 outlines the numbers of these complaints prior to 1996:

**Table 7.3: Complaints by diocese or religious order**

Diocese/Order	Number of complaints
Catholic Archdiocese of Melbourne	59
Ballarat Diocese	39
Christian Brothers	42

Source: Compiled by the Family and Community Development Committee

However, the confidential recording of complaints and the response processes adopted under the protocol (including failure to notify police and lack of awareness of complaints in the parish or school) delayed the wider society's recognition of criminal child abuse as a grave issue.

### 7.5.1. Initial response of other organisations

Prior to the introduction of the Power and Trust Protocol the Anglican Church took steps to address the issue of criminal child abuse within the organisation. Limited information was available to the Committee but it seems that the first formal measure was taken in December 1990 with the publication of 'A Pastoral Report to Churches on Sexual Violence against Women and Children in the Church Community' followed by the setting up a working group looking into sexual harassment in 1991.

<sup>169</sup> *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 13.

In 1999 the Provincial Council of Victoria developed and adopted a ‘Protocol for Dealing with Sexual Harassment Complaints’ which had the agreement of all Victorian dioceses. In 2000 in the Anglican Diocese of Melbourne a ‘Committee for Dealing with Sexual Harassment’ was established but the members of this Committee resigned in 2002. In 2002 the Archbishop of Melbourne appointed a team to review the Anglican Diocese’s sexual harassment protocols, child protection policy, and its ‘Code of Good Practice for Clergy.’ The review team published its findings and suggested that the code be integrated into a new protocol dealing with complaints of abuse. The resulting protocol in November 2002 was entitled the Power and Trust Protocol.

There was nothing in the material provided by the Salvation Army to suggest to the Committee that they took steps to address the issue of criminal child abuse prior to the introduction of the Care Leaver’s Complaint Process in 1997.

### **7.5.2. Continued failure to investigate allegations and notify potential victims**

When the Catholic Church became aware of allegations, even when these were criminal acts admitted by the perpetrator, it did not take steps to investigate whether there were any other victims or to refer the matter to the police. Nor did it make any attempt to find out the extent of the problem in the Catholic Church.

For example, Vicar-General Monsignor Gerard Cudmore recorded a complaint against Fr Des Gannon on 30 April 1993. When confronted with the complaint, Fr Gannon admitted that the offence had occurred and offered his resignation. In the course of the conversation he also admitted that there had been five or six other victims of criminal child abuse in different parishes. The parishioners were informed that the Archbishop had accepted Fr Gannon’s resignation from the parish on health grounds—the parishioners even organised a collection for him, raising \$3,500. At no stage were parishioners told the real reason for Fr Gannon’s resignation. Nor did the Catholic Church follow up Fr Gannon’s admissions about his other offending.<sup>170</sup>

Similarly for Fr Ronald Pickering—the Catholic Church knew of allegations against him soon after he left Australia for England in May 1993. Despite the Catholic Church’s attempts to have him return and to make him cooperate with the Church’s insurers, the Church took no action to investigate Fr Pickering’s activities in Australia. It was not until 25 March 2002 that a parish notice was circulated at St James in Gardenvale, enquiring whether there were any other victims and inviting them to come forward.<sup>171</sup>

Material was also presented to the Committee from Mr Phil O’Donnell who on 12 June 1996 was parish priest at St Thomas More Belgrave. At that time he wrote to the Vicar-General, Monsignor Cudmore regarding his concerns about Fr Bill Baker, Fr Peter Searson and Fr Kevin O’Donnell and urged him that the ‘Archdiocese of Melbourne take the initiative and conduct an internal investigation of possible child

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170 *Files relating to Father Desmond Gannon*, provided to the Family and Community Development Committee by the Catholic Archdiocese of Melbourne.

171 *Files relating to Father Ronald Pickering*, provided to the Family and Community Development Committee by Catholic Archdiocese of Melbourne.

abuse by priests of this Archdiocese.<sup>172</sup> It does not appear from the material that any such inquiry was undertaken.

Material presented by other religious institutes did not show that they had taken any steps to enquire into the conduct of convicted paedophiles towards other students who attended the various schools where they had taught.

### 7.5.3. Failure to notify police

The 1992 Protocol for Dealing with Allegations of Criminal Behaviour did not require Catholic Church representatives to contact police when alleged criminal conduct came to their attention. In examining the Catholic Church’s approach it must be remembered that the child abuse in question involved serious criminal behaviour carrying significant penalties.

Box 7.3 outlines the relevant part of the protocol.

<b>Box 7.3: Complaints—Protocol</b>
<p><b>6. COMPLAINTS</b></p> <p>6.1 Whenever the competent ecclesial authority receives information of alleged criminal behaviour the matter shall immediately be referred except in circumstances of a most serious and extraordinary nature to the relevant Special Issues Resource Group.</p> <p>6.2 In circumstances of a most serious and extraordinary nature, the competent ecclesial authority shall immediately conduct, through another suitably qualified delegate, an inquiry into the complaint about the alleged criminal behaviour ...</p> <p>6.3 It is possible that a complaint may be made concerning alleged criminal behaviour or the matter may come to the attention of the competent ecclesiastical authority in a number of ways.</p> <p>The complaint may be made</p> <p style="padding-left: 20px;">6.3.1—to the following:</p> <ul style="list-style-type: none"> <li>◆ The bishop, major superior or superior</li> <li>◆ Another cleric or religious</li> <li>◆ Some other person</li> <li>◆ Departmental officers</li> <li>◆ The media.</li> </ul> <p>6.4 Since all the possibilities cannot be foreseen the following general principles apply:</p> <p style="padding-left: 20px;">6.4.1 Each cleric or religious who becomes aware of a complaint, or the possibility of a complaint either against himself, or another cleric or religious, is obliged (subject to any canonical obligation to the contrary) to notify that fact to the competent ecclesial authority who shall immediately refer the matter to the relevant Special Issues Resource Group. Requirements in some States or Territories for mandatory reporting should be taken into account.</p> <p>Source: Adapted from 1992 Protocol for Dealing with Allegations of Criminal Behaviour.</p>

<sup>172</sup> *Supplementary evidence*, Letter to Vicar General Gerard Cudmore, Mr Phil O’Donnell, 18 January 2013.

On 28 September 1994, Monsignor Cudmore appeared before the Victorian Parliamentary Inquiry into Sexual Offences Against Children and Adults, which was conducted by the Crime Prevention Committee. In outlining the obligation to report to police, the report reads:

What does concern the [Crime Prevention] Committee however, is the number of cases which come to the attention of the clergy outside the confessional and which are never reported to the relevant authorities ...

When asked at public hearing how he would react to an admission by a priest that he had sexually abused somebody Monsignor Cudmore replied,

I would obviously be aware that something is seriously wrong and action would have to be taken.<sup>173</sup>

Monsignor Cudmore went on to explain that he would automatically report the case to the Archbishop:

The Committee assumes that the 'action taken' by Monsignor Cudmore would be to report the matter immediately to the police for investigation of a criminal offence. To ensure that this would be the case the protocols which religious organisations adhere to should include immediate notification to police of sexual assault.<sup>174</sup>

Despite the recommendation that police should be notified, the Protocol did not change after publication of the Crime Prevention Committee's report in 1995. The situation remained that complaints were dealt with by the Catholic Church, without any obligation to notify police, despite the serious and criminal nature of allegations. Chapter 23 of Part G further explores this issue.

Similarly, there is no suggestion that the Salvation Army informed police when any complaints were made regarding allegations of child criminal abuse by representatives of the organisation. In evidence to the Inquiry, Captain Malcolm Roberts informed the Committee there was evidence that a Salvation Army officer who served both in Bayswater Boys Home and Box Hill Boys Home was put on sick leave in March 1950 after confessing to the criminal sexual abuse of four boys whilst in Box Hill Boys Home. Captain Roberts confirmed for the Committee that after the confession the officer 'went to jobs with Red Shield Services, that is working with the military at Puckapunyal, and had other jobs.'<sup>175</sup> However, he could not tell the Committee whether the offending officer was reported to the Victoria Police after his confession.<sup>176</sup>

#### 7.5.4. Denial of legal liability

As allegations of criminal child abuse began to emerge, including from solicitors acting for victims, the Catholic Church adopted the position that it was not responsible for the abuse and denied liability. It did so on the basis of the structure of 'responsibility' in the Church.

In correspondence dated 25 February 1994, there were statements to victims from Catholic Church lawyers, such as:

Our client is, of course, gravely concerned at the allegations made against the priest

173 Crime Prevention Committee (1995) *Combating child sexual assault, An integrated model*. Melbourne, Parliament of Victoria, p. 312.

174 Crime Prevention Committee (1995) *Combating child sexual assault, An integrated model*, p. 313.

175 *Transcript of evidence*, Salvation Army, p. 10.

176 *Transcript of evidence*, Salvation Army, p. 10.

but, as you must realise, the Archdiocese, ‘the church’ and ‘the Catholic church’ are not and cannot be responsible for such illegal abhorrent behaviour.<sup>177</sup>

Similarly another victim on 18 October 1996 in October 1996: ‘neither the Archbishop nor the Vicar-General have any legal liability to your client’.<sup>178</sup>

Defence pleadings in civil proceedings contained similar denials of liability. This legalistic approach to victims’ claims persisted, even after current protocols and policies were implemented to deal with the issue of abuse. Even at this time, the Catholic Church’s attitude did little to give victims confidence that their complaints would be met with sympathy or acceptance, or that their issues would be adequately addressed.

This approach was most evident in the account provided by Mrs Chrissie Foster of a meeting that she had with her husband Anthony and Archbishop George Pell regarding Fr. Kevin O’Donnell, a priest of the Melbourne Archdiocese. She recalled as follows:

Anthony said softly, almost whispering: ‘What if my daughter dies? What if my daughter harms herself in such a way that she has a terrible life from now on? Shouldn’t the Church look after her? The Church caused this’.

George Pell countered by saying the Church’s liability would be defended in court.

When Anthony mentioned the Church had known about O’Donnell’s paedophilia for many decades, Archbishop Pell said: ‘That was before my time’...

We believed Archbishop Pell knew O’Donnell assaulted Emma. But Anthony repeated the facts for him, just in case.

‘I hope you can substantiate that in court’, came the words that shook us most. Anthony winced.

‘We are victims’, my husband pleaded. ‘Can’t you understand we feel that way—can’t you understand that many people feel that way?’

The discussion moved quickly to the new scheme for complaints and compensation. Anthony said it was a cost saving measure, unfair and to the victims’ detriment.

‘It might look good on paper but as people involved in this, as victims, it all looks very shallow. Part of the reason is we see this cap and we see these restrictions’.

Archbishop Pell interjected: ‘If you don’t like what we’re doing, take us to court’.

‘We don’t want to. We don’t want to drag the Church through the courts. We don’t want this’, Anthony explained.<sup>179</sup>

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177 Catholic Archdiocese of Melbourne, Letter from Mr A. W Le P Darvall, Corrs Chambers Westgarth to Alwyn Samuel, Solicitor, 25 February 1994, from the files of Father Desmond Gannon, accessed by the Family and Community Development Committee.

178 Catholic Archdiocese of Melbourne, Facsimile from Monsignor Denis Hart to Alwyn Samuel, Solicitor, 18 October 1996, from the files of Father Desmond Gannon, accessed by the Family and Community Development Committee.

179 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, Melbourne, 23 November 2012, pp.4–5.

The Committee noted, however, that a significant number of claims were settled by the Diocese of Ballarat,<sup>180</sup> the Christian Brothers,<sup>181</sup> and the St John of God order.<sup>182</sup> Although these religious organisations denied liability and attached confidentiality to some of these arrangements, an avenue had clearly opened up, through which victims could seek financial compensation from these organisations.

### 7.5.5. Counselling—pastoral support

As outlined in Part B, victims' motivations for disclosing their experience of abuse involved a multitude of reasons. Often their motivation was not initially financial, but involved a desire to ensure that the perpetrator would not reoffend or that the Catholic Church might provide some emotional, spiritual and psychological assistance. Many of the files made available to the Inquiry reveal that during this time the Catholic Church offered, provided and funded counselling to victims when they made a complaint. In some instances, the Catholic Church also provided some financial compensation.

For pastoral support, in February 1996 the Melbourne Archdiocese set up the Pastoral Response Group to deal with abuse issues that arose in parishes.<sup>183</sup> The Committee identified that this is possibly the only aspect of the initial response of the Church to the issue of criminal child abuse that assisted in responding effectively to the needs of victims at the time. The Pastoral Response Group helped a number of parishes when allegations of abuse were made against the parish priest, particularly in Oakleigh regarding Fr O'Donnell and in Doveton regarding Fr Searson.

This group provided a forum for people to come forward for encouragement and support, and a means by which their abuse issues could be addressed. As part of this process, a couple from Oakleigh attended, Mr Anthony and Mrs Chrissie Foster. The Fosters were concerned for the wellbeing of their daughter, who had been a student at Sacred Heart Oakleigh where Fr O'Donnell, by then a convicted paedophile, had been a parish priest. Thus began their involvement in a battle with the Catholic Church that continued for years, aspects of which are discussed later in this Report. In any event, the creation of such a group to look after the pastoral needs of victims of abuse was a positive step and contributed to a number of victims coming forward to report their experiences of criminal child abuse and seek support.

### 7.5.6. Awareness over time of criminal child abuse in the Catholic Church

The Committee concluded that the Catholic Church made a deliberate choice to pursue a course of concealing the problem of criminal child abuse. This choice was motivated by the Church's desire to protect itself.

From the late 1980s, the disclosure of serious criminal child abuse in the Catholic Church (both in Australia and overseas) led to increasing public pressure for this

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180 *Files relating to Gerard Ridsdale*, provided to the Family and Community Development Committee by the Catholic Ballarat Diocese.

181 Files provided to the Family and Community Development Committee by the Christian Brothers.

182 Files provided to the Family and Community Development Committee by Hospitaller Order of St John of God.

183 Catholic Communications, Archdiocese of Melbourne, 'A pastoral response to professional misconduct/clergy sexual abuse' (Media release, 16 February 1996).

problem to be exposed and appropriately addressed. In Ireland and areas of the United States, action was being taken to address the problem. The Catholic Church in Australia and in Victoria could not, and did not, ignore these developments.

A number of successful, high-profile criminal prosecutions had been conducted in Victoria, commencing with the criminal prosecution of Fr Glennon in 1978 and progressing through the 1980s with successful prosecutions of Fr Ridsdale, Fr Gannon, Fr Klep, Fr Rubeo, Fr Anthony Eames, Br Robert Best and Br Dowlan. The media paid a significant degree of attention to these matters. As a consequence, other victims of these and other perpetrators came forward.

**Table 7.4: Prosecutions and sentencing—offenders who were religious personnel**

Offender	Year	Sentence
Fr Michael Glennon	1978	Imprisonment 2 years
	1992	Imprisonment 7 years (6 years minimum)
	2003	Imprisonment 18 years (15 years minimum) <sup>185</sup>
Fr Des Gannon	1995	Imprisonment 12 months
	1997	Sentenced 13 months (wholly suspended)
	2000	Sentenced 3 years (wholly suspended)
	2009	Imprisonment 25 months (14 months minimum)
Fr Frank Klep	1994	Intensive correction order 9 months
	2005	Imprisonment 5 years and 10 months (3 years and 6 months minimum) <sup>186</sup>
Br Edward Dowlan	1996	Imprisonment 6 years and 6 months (4 years minimum) <sup>187</sup>
Fr Anthony Eames	1995	Sentenced 6 months (wholly suspended)
Br Robert Best	1996	Sentenced 9 months (wholly suspended)
	2011	Imprisonment 14 years and 9 months (11 years and 3 months minimum)
Fr Victor Rubeo	1996	Undertaking 2 years with conditions
Fr Gerald Ridsdale	1993	Imprisonment 12 months (3 months minimum)
	1994	Imprisonment 18 years (15 years minimum)
	2006	Minimum term increased by 4 years

Source: Compiled by the Family and Community Development Committee from information received from the Victorian County Court.

Advocacy groups such as Broken Rites emerged to encourage and support victims in revealing their abuse. There was a growing awareness of the long-term damage to victims of criminal child abuse, and some of this damage was seen as being due to the Catholic Church's treatment of allegations that had first been made many years

184 On appeal in 2005. Sentence reduced to minimum of 10 years.

185 On Department of Public Prosecutions (DPP) appeal sentence increased from 3 years with a minimum of 1 year.

186 On appeal sentence reduced from 9 years 8 months with a minimum of 6 years.

earlier. The public paid greater attention to the number of offences and the Catholic Church's failure to address the problem adequately.

The Catholic Church claims that its lack of knowledge about many of the issues associated with this complex problem is no different from the lack of knowledge in society at large. But this position cannot be sustained when we understand that the Catholic Church's reaction, structure, teachings and culture all made a significant contribution to concealment of the problem. Further, some leaders in the Catholic Church had been dealing with this problem for years; knowledge of criminal child abuse in the Church was not limited to a few isolated incidents.

This minimisation or concealment of the problem was due to a number of factors, including the structure of the Catholic Church and lack of accountability, the teachings of the Catholic Church, canon law, leadership policy and, to some extent, the understanding of the issue at the time. Church leaders' approach was motivated by a desire to protect the reputation of the Catholic Church and to 'cure' the offender. They took no action to report, validate or investigate a complaint made by or on behalf of a victim and offered no pastoral support or counselling to those affected; victims were not offered sympathy, but hostility.

The Catholic Church uses many of these factors in recognising and explaining why its response to criminal child abuse was inadequate and slow. As set out in *Facing the truth*:

The Church acknowledges that our early response was inadequate and too slow. Like society and many professionals of the time, the Church lacked insight into the issue of child abuse and as a result:

- took too long to respond decisively and effectively
- was slow to believe victims who alleged abuse by clergy, religious or other Church personnel
- was slow to accept that anyone could commit such crimes, let alone a priest or religious
- believed offenders that they would not reoffend and could be cured, especially when assured of this by offenders
- wrongly believed the denial of predators
- underestimated the long-term devastating harm and effect on victims
- was slow to place central priority on the care for victims
- initially required confidentiality clauses in settlement with some victims
- initially favoured a legal over a pastoral response
- operated in an environment where there was a lack of transparency.<sup>187</sup>

#### 7.5.7. 'Drastic measures'

As illustrated above, society's awareness of criminal child abuse emerged despite the actions of the Catholic Church. The Church's knowledge of the existence of the problem within its own ranks cannot be denied. It is likely that relevant office-holders in the Catholic Church were sometimes well intentioned, although misguided. The risk to children may not have been apparent in some cases, but in others it is almost

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<sup>187</sup> *Submission S185*, Catholic Church in Victoria, pp. 2–3.

inconceivable that relevant office-holders would not have appreciated the risk, had they given this aspect appropriate attention.

However, the magnitude of the problem, along with media pressure and development of other victim support groups that were active in Victoria and elsewhere meant that the issue could not remain concealed within the Catholic Church; more drastic action needed to be taken. The newly appointed Archbishop of Melbourne at the time, George Pell, recognised this. More victims were coming forward and important facts were emerging in the Catholic Archdiocese of Melbourne, each of which was acknowledged by Cardinal Pell:<sup>188</sup>

- Between 1992 and 1996 there had been 47 complaints of criminal child abuse made, against 18 priests.<sup>189</sup>
- The Catholic Archdiocese of Melbourne had not settled or resolved any of the 35 civil claims issued in the Victorian courts for damages or compensation for victims alleging child abuse by priests in the Archdiocese.<sup>190</sup>
- Four notorious paedophile priests—Fr Glennon, Fr Ridsdale, Fr O'Donnell and Fr Gannon—had been convicted of many sexual offences against children.
- Some priests who had been the subject of complaints of conduct amounting to criminal conduct left the country (Fr Pickering and Fr Chalk).
- CCI had not agreed to a request to indemnify the Ballarat and Sale Dioceses against the activities of some of their priests.<sup>191</sup>
- The issue of the sexual abuse of children by priests and members of orders, and allegations of cover-ups, had enveloped the Catholic Church in a worldwide scandal.

#### **Finding 7.4**

The initial formal response to criminal child abuse that the Catholic Church in Victoria and in Australia more broadly adopted in the early 1990s was influenced by its previous approach. The response continued to conceal rather than expose criminal child abuse in the organisation.

## **7.6. Inadequate response**

The criminal abuse of children has existed for a significant period of time in the Catholic Church and other religious and non-government organisations. As members of trusted and respected organisations, perpetrators of abuse in the past could be sure that their activities were not being supervised or monitored and that the children would not, for a variety of reasons, make complaints.

<sup>188</sup> *Transcript of evidence*, Catholic Archdiocese of Sydney, pp. 7–8.

<sup>189</sup> *Supplementary evidence*, Response to request for information, Catholic Archdiocese of Melbourne, 4 February 2013.

<sup>190</sup> Catholic Archdiocese of Melbourne, Minutes of Professional Standards Resource Group, 29 March 1996, from the files accessed by the Family and Community Development Committee.

<sup>191</sup> Ms Marita Wright, Catholic Church Insurance, Letter to the Family and Community Development Committee, 17 May 2013.

Various structures, laws and teachings of the Catholic Church contributed to the concealment of this issue from wider society and civil authorities. The manner in which the Catholic Church responded (or failed to respond) to complaints gave perpetrators the opportunity to commit further abuse. Only when there was growing public awareness of this issue did the Catholic Church attempt to deal with the problem, through a change in policy and formal protocol. However, the steps that the Catholic Church took were still influenced and constrained by the Catholic Church's structures and policies and its concern for its reputation as an institution.

At this time, the Catholic Church should have addressed the problem of criminal child abuse through:

- recognition and research
- dealing with it in an open and transparent way, with appropriate standards set and maintained, including codes of conduct, prevention frameworks and sound processes for handling allegations
- properly caring for and treating the victims
- protecting potential further victims
- holding offenders to account for their actions
- referring cases to the police.

As explained in this chapter, this did not occur. As a result, victims continued to be damaged by both the incidence of criminal child abuse itself and the organisation's response to it. The Catholic Church's response was inadequate and unsatisfactory and did not receive the immediate attention that it required.



# Chapter 8

## Policy development—criminal child abuse in organisations

### AT A GLANCE

#### Background

A number of public inquiries in the 1990s and 2000s contributed to the exposure of criminal child abuse in organisations. These have occurred internationally, nationally and also in Victoria. Policy and legislative responses to criminal child abuse in religious and non-government organisations remains underdeveloped despite some reforms over the past decade.

The previous chapter outlined the Committee's findings in relation to the past handling of suspected criminal child abuse in religious and non-government organisations. Issues relating to abuse in organisations have been the subject of inquiries both in Victoria and more broadly across Australia.

Notably, the occurrence of criminal child abuse in religious organisations has been generally overlooked in such inquiries. Historically, religious organisations have generally enjoyed the trust of their congregations, governments and the broader community. In recent times it has become evident that in many instances, this trust was misplaced. Internationally there has been an increased focus on the Catholic Church specifically. In Victoria, the recent Cummins Inquiry<sup>192</sup> recommended that the handling of criminal child abuse by religious organisations should be formally investigated.

In establishing the Inquiry, the Victorian Government took the opportunity to consider the handling of criminal child abuse in non-government organisations more broadly. This has enabled the Committee to consider other non-religious organisations that interact directly with children (such as recreational, sporting, education and community services).

To date, policy and legislation has primarily focused on the protection of children from abuse within families because that is primarily where child abuse most commonly occurs. For example, the introduction of mandatory reporting in 1993 was a significant development. By making it compulsory to report suspected child abuse or neglect to the Department of Human Services (DHS) child protection services, the Victorian Government has been better positioned to identify, intervene early and, where necessary, remove children from risk of child abuse by their primary carer/s.

There is recognition that while children are generally safe from abuse in non-government organisations today, there is a need to ensure the best systems and processes are in place to ensure they are safe from harm within those organisations.

### **8.1. Case for change—inquiries into criminal child abuse in organisations**

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Public inquiries have highlighted the reality that child abuse occurs in contexts in which children would generally be seen as safe from harm. Over the past decade several inquiries have been held at a state and federal level in Australia.

The issue has also been the subject of attention outside Australia. In the context of recent inquiries in Ireland and the United Kingdom, researcher Dr Anne-Marie McAlinden has stated:

From the late 1990s onwards, a number of cases highlighted the vulnerability of children in environments traditionally considered safe such as orphanages, clubs and schools.<sup>193</sup>

This section outlines the range of inquiries undertaken into criminal child abuse in religious and other organisations and issues directly relevant to the criminal abuse of children in those contexts.

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192 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*.

193 AM. McAlinden (2013) 'An inconvenient truth: barriers to truth recovery in the aftermath of institutional child abuse in Ireland'. *Legal Studies*, Vol. 33, No. 2, pp. 189-214, p. 193.

## 8.2. International inquiries

Inquiries into child abuse have been held across a broad range of countries. They have identified patterns of the criminal abuse of children in organisations and institutions by trusted professionals that are similar to those identified in Australia.

The issue of criminal child abuse in organisational contexts was identified as early as 1936. From the 1990s inquiries into child abuse in organisations increased in frequency. Table 8.1 lists examples of the inquiries that have occurred internationally.

**Table 8.1: Examples of international inquiries into criminal child abuse in organisations**

Inquiry	Country	Year	Name of inquiry
Utting Review	Wales and United Kingdom	1991	Children in the public care: A review of residential child care.
Levy Report	United Kingdom	1991	The pindown experience and the protection of children.
Warner Report	United Kingdom	1992	Choosing with care: The report of the committee of inquiry into the selection, development and management of staff in children's homes.
Gwynedd and Clwyd Report	Wales, United Kingdom	1996	Lost in care: Report of the inquiry into the abuse of children in care in the former country council areas of Gwynedd and Clwyd.
Utting Report	Wales and United Kingdom	1997	People like us: The report of the review of the safeguards for children living away from home.
Kent Report	Scotland	1997	Extraordinary lives: Creating a positive future for looked after children and young people in Scotland.
Department of Health and Social Services and Public Safety	Northern Ireland	1998	Children matter: A review of residential child care services in Northern Ireland.
Waterhouse Report	Wales, United Kingdom	2000	Lost in care: The Waterhouse report of the inquiry into the abuse of children in care in the former County Council areas of Gwynedd and Clewyd.
Law Commission of Canada	Canada	2000	Restoring dignity, responding to child abuse in Canadian institutions.
Committee for health, social services and public safety	Northern Ireland	2000	Report of assembly inquiry into residential and secure accommodation for children in Northern Ireland.
Bichard Report	United Kingdom	2004	Report of the Bichard inquiry.
Ferns Report	Ireland	2005	Investigation into complaints or allegations of child sexual abuse against clergy in the Diocese of Ferns.

<b>Inquiry</b>	<b>Country</b>	<b>Year</b>	<b>Name of inquiry</b>
Ryan Report	Ireland	2009	Report of the commission to inquire into child abuse in institutions from 1940.
Murphy Report	Ireland	2009	Report of investigation into handling of clerical child sexual abuse allegations in the Dublin Archdiocese 1974–2004.
Cloyne Report	Ireland	2011	Report by Commission of Investigation into the handling by Church and State authorities of allegations and suspicions of child sexual abuse against clerics of the Catholic Diocese of Cloyne.
Hart Inquiry	Northern Ireland	2012	Historical institutional abuse inquiry.

Source: Compiled by the Family and Community Development Committee.

The issue of criminal child abuse by ministers of religious, particularly in the Catholic Church, became a key focus in the 1990s. Dr McAlinden noted that within the broader context of abuse in organisations and institutions:

... the sexual and physical abuse of children by members of Catholic religious orders has become the predominant contemporary concern.<sup>194</sup>

In addition to official inquiries commissioned by governments, the Catholic Church has also conducted a number of its own inquiries internationally. A number of these inquiries are listed in Table 8.2.

**Table 8.2: Examples of inquiries conducted by the Catholic Church regarding criminal child abuse**

<b>Inquiry</b>	<b>Country</b>	<b>Year</b>	<b>Full title</b>
Winter Report	Canada	1990	Report of the Archdiocesan Commission of enquiry into the sexual abuse of children by members of the clergy.
John Jay Report	United States	2004	The nature and scope of the problem of sexual abuse of minors by Catholic priest and deacons in the United States.
Cumberlege Commission Report	United Kingdom	2007	Safeguarding with confidence: Keeping children and vulnerable adults safe in the Catholic Church.
Adriaenssens Commission	Belgium	2010	Report into child abuse in the Catholic Church.
Bavarian Inquiry	Germany	2010	Investigation into child sexual abuse in the Regensburg Diocese.
Deetman Inquiry	Netherlands	2011	Inquiry into women who were victims of child sexual abuse by Roman Catholic clergy in the Netherlands.
Benedictine Order	Scotland	2013	Inquiry into child abuse in Catholic Church schools.

Source: Compiled by the Family and Community Development Committee.

<sup>194</sup> A-M. McAlinden (2013) 'An inconvenient truth: barriers to truth recovery in the aftermath of institutional child abuse in Ireland', p. 193.

Internationally, there has been strong public attention given to the recent inquiries in Ireland regarding the issue of child sexual abuse by Catholic clergy. Four inquiries were commissioned by both the Government and the Catholic Church.

These inquiries made a number of findings in regard to the handling of criminal child abuse by both the Catholic Church and state authorities:

- 2005—The Ferns Report found a failure by the Catholic Church to respond appropriately to abuse complaints, failures to report criminal actions to police, and failures to ensure that alleged abusers were kept away from children.
- 2009—The Ryan Report identified that the failure of both the Catholic Church and the state was systemic.
- 2009—The Murphy Report found that clerical abuse in the Catholic Church archdiocese of Dublin had been covered up.
- 2011—The Cloyne Report determined that the Catholic Church response was inadequate and inappropriate. It also highlighted that the lessons of the past had not been learnt in the interim.

### 8.3. Public inquiries in Australia

Since the late 1990s, the Australian Government and many states (including Victoria) have undertaken inquiries into issues relating to the care of children in organisational and institutional contexts, including how allegations of criminal child abuse had been handled by the police. Inquiries in Victoria are discussed in Section 8.4 and examples of inquiries held in other states and nationally are listed in Table 8.3.

**Table 8.3: Examples of inquiries in Australia relating to criminal child abuse in organisations (excluding Victoria)**

Inquiry	State	Year	Full title
Wood Report	NSW	1997	Royal Commission into the NSW Police Service: The paedophile inquiry (volumes 4, 5 and 6).
Human Rights and Equal Opportunity Commission	Australia	1997	Bringing them home: Report of the national Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families.
Kimmins Report	QLD	1999	Inquiry into allegations of misconduct in the investigation of paedophilia in Queensland.
Forde Report	QLD	1999	Report into the current and past administration of orphanages, reformatories and detention centres.
Legislative Council Standing Committee on Social Issues	NSW	2002	Care and support: Final report on child protection services.
Layton Report	SA	2003	Our best investment: A state plan to protect and advance the interests of children, Child Protection Review.

Inquiry	State	Year	Full title
Crime and Misconduct Commission	Qld	2004	Protecting Children: An inquiry into abuse of children in foster care.
Senate Report	Australia	2004	Forgotten Australians: A report on Australian who experienced institutional care as children.
O'Grady Review (Tasmanian Ombudsman)	Tas	2004	Review of claims of abuse from adults in state care as children.
Senate Report	Australia	2005	Protecting vulnerable children: A national challenge.
Mullighan Report	SA	2008	Children in state care commission of inquiry: Allegations of sexual abuse and death from criminal conduct.
Senate Report	Australia	2009	Report of Inquiry into the implementation of recommendations of the Lost Innocents and Forgotten Australians reports.
Blaxell Report	WA	2012	Report on St Andrew's Hostel Katanning: How the system and society failed our children.
Cunneen Inquiry	Australia	2012	Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle.
McClellan Inquiry	Australia	2013	Royal Commission into institutional responses to child sexual abuse.
Carmody Report	Qld	2013	Taking responsibility: A roadmap for Queensland child protection.

Source: Compiled by the Family and Community Development Committee.

State and territory governments have primary responsibility for developing and implementing policy and legislation that protects children from criminal abuse in organisations. At a national level, the Australian Government has a role in promoting consistency in approaches by states and territories.

A range of reforms have occurred in states such as New South Wales (NSW), Queensland and South Australia (SA). For example, following the release of the Wood Report in NSW a new framework for protecting children was established. As part of this framework, for example, the NSW Ombudsman and others were given stronger powers in auditing and overseeing the protection of children within organisations. Following the Layton Report, in 2005 the SA government introduced legislation that required organisations to establish child-safe policies.

Over the past decade, through the Council of Australian Government's (COAG) national policy developments have been introduced to improve the quality of care in the out-of-home care and early childhood education sectors:

- Out-of-home care—the *National framework for protecting Australia's children, 2009–2020* and *National standards for out-of-home care*.
- Early childhood education service—*National quality framework* and *National quality standards*.

The goals to improve quality of care make little reference to protecting children from criminal abuse by personnel in organisations. The national standards inform the standards established in Victoria for both sectors and are discussed further in Parts D and E.

In other sectors, such as sporting organisations, issues relating to criminal child abuse have come to the attention of the public which led to responses by statutory authorities, such as the Australian Sports Commission. This is discussed in Chapter 6.

### 8.3.1. Care leavers

The Committee heard from many former wards of the State and children in out-of-home care who were subjected to criminal child abuse in institutions, such as children's homes and orphanages. Many of these institutions were run by the Victorian Government and are therefore outside the Committee's Terms of Reference. However a large number were also run by non-government organisations contracted by the Government to provide out-of-home care services. These institutions were examined in detail in a Senate Committee report *Forgotten Australians: A report on Australians who experienced institutional care as children*.

Throughout this Inquiry, the Committee heard the stories of care leavers and acknowledges the systemic failure and neglect of this group of child abuse victims. Children were placed into orphanages through no fault of their own. Parents were forced or volunteered to give their children up due to poverty, societal pressure, domestic violence or the death of a parent. The Committee heard of a single father unable to care for his children because he had to work. He thought it best for his children that he paid for them to be cared for by the Catholic Church. Many children who were placed in institutions as babies and at preschool age were not taught to read or write and were often used as child labour in the laundries and farms operated by non-government organisations.

Care leavers told the Inquiry about their experience of criminal child abuse leading to poor outcomes in later life. For care leavers abused in non-government organisations, the impacts of criminal child abuse were discussed in depth in Chapter 4, including the specific consequences of abuse in organisations and institutions. While there has been no detailed collection of data or research regarding what happened to these, the Committee received considerable anecdotal evidence that many of these abused children found their way into destructive addictions, the prison system, homelessness and early death.

While the analysis and recommendations contained in this report are restricted to the Inquiry's Terms of Reference, a number of the issues could be of general application across the community.

In this Inquiry report, recommendations are made to enhance prevention of criminal child abuse in non-government organisations, including out-of-home care settings. It proposes an alternative justice avenue for victims of criminal child abuse who have not been able to achieve appropriate justice outcomes through traditional civil justice avenues, including those who were wards of the State.

## 8.4. Victorian inquiries

Since the 1990s, there have been a number of public inquiries in Victoria that relate to the protection of children from criminal abuse in organisations. Some have been commissioned by the Government and others by independent statutory bodies, such as the Victoria Auditor-General's Office (VAGO) and the Victorian Ombudsman. The statutory child protection system has frequently been the focus of these reviews.

Examples of inquiries relevant to criminal child abuse in organisations undertaken in Victoria are listed in Table 8.4.

**Table 8.4: Examples of public inquiries in Victoria relevant to criminal child abuse in organisations, 1993–2013**

Inquiry	Year	Full title
Fogarty Report	1993	Protective services for children in Victoria: A report.
Parliament of Victoria	1 <sup>st</sup> report 1995	Report of Inquiry into sexual offences against children and adults.
Crime Prevention Committee	2 <sup>nd</sup> report 1996	
Victorian Auditor-General's Office	1996	Protecting Victoria's children: The role of the Department of Human Services.
Law Reform Commission	2004	Sexual offences: Final report.
Victorian Auditor-General's Office	2005	Our children are our future: Improving outcomes for children and young people in out-of-home care.
Ombudsman Report	2006	Improving responses to allegations involving sexual assault.
Ombudsman Report	2009	Own motion investigation into the Department of Human Services child protection program.
Ombudsman Report	2010	Own motion investigation into child protection—Out-of-home care.
Cummins Inquiry	2012	Report of Protecting Victoria's vulnerable children Inquiry.
Parliament of Victoria Family & Community Development Committee	2012–13	Inquiry into handling of child abuse in religious and non-government organisations.
Victorian Auditor-General's Office	2013–14	Residential care services for children.

Source: Compiled by the Family and Community Development Committee.

These inquiries have led to a range of reforms that relate specifically to criminal child abuse in organisations. Most notably, these include the introduction of Working with Children Checks and improved regulation of out-of-home care services. The Victorian Law Reform Commission made recommendations relating to grooming

and increasing the age of consent for sexual activity with a person over whom someone is in a position of care, supervision and authority.

Despite the high levels of trust placed in religious organisations and their significant dealings with children, the Committee noted that apart from the Cummins Inquiry, they have not been specifically included in any Victorian inquiries. The Cummins Inquiry identified that issues relating to harms of criminal child abuse in religious organisations required further investigation. It recommended that:

A formal investigation should be conducted into the processes by which religious organisations respond to the criminal abuse of children by religious personnel within their organisations. Such an investigation should possess the powers to compel the elicitation of witness evidence and of documentary and electronic evidence.<sup>195</sup>

Unlike in other states, the Catholic Church in Victoria and most other religious organisations have not conducted inquiries into the extent of criminal child abuse in their organisations.

## **8.5. Victoria—current system for child safety in organisations**

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The Victorian Government has primary responsibility for determining policy and legislation for protecting children from criminal child abuse in non-government organisations. There are multiple areas of policy and legislation that relate to preventing and responding to criminal child abuse in organisations. A number of authorities have responsibility for different elements of oversight of organisations in this context. This section provides an overview of the:

- policy development in context of criminal abuse of children
- relevant legislation to protect children from criminal child abuse in organisations.
- roles and responsibilities—current oversight.

### **8.5.1. Policy development—protecting children from criminal abuse in organisations**

While there is no overarching policy direction to prevent and respond to the criminal abuse of children in non-government organisations, the Victorian Government has put in place requirements for organisations that it contracts to provide services on its behalf.

Inquiries, media reports and public attention over the past 20 years have led to increased focus on addressing criminal child abuse in particular types of organisations, such as out-of-home care and schools. These are areas in which state governments have a responsibility and duty of care to children.

In Victoria, the most recent inquiry leading to policy development was the Cummins Inquiry. This has informed recent reforms to the out-of-home care sector.

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<sup>195</sup> P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. vii.

### **Out-of-home care—Cummins Inquiry and Victorian policy**

Since 1993 in Victoria, government policy to protect children from child abuse has been largely concerned with preventing and responding to abuse in families, due to the reality that this is where the majority of child abuse occurs.

The recent Cummins Inquiry considered the role of community service organisations in the provision of out-of-home care and directed attention towards the issue of criminal abuse that occurs in religious organisations. In the context of community service organisations, the Cummins Inquiry considered:

- the capacity of community service organisations
- the quality of services in complex human services areas
- regulation and oversight of service provision by community service organisations.

This included the processes for investigation of possible abuse or neglect of children while in the care of community service organisations and the sanctions available to the Government.

#### **Box 8.1: Capacity of community service organisations**

The capacity and structure of community service organisations can impact on or impede the overall quality of service provision being purchased by government, particularly in complex human services areas. These limitations include:

- inadequate capacity among some community service organisations, due to a lack of resources, skills and knowledge and inadequate governance arrangements
- an absence or scarcity of community service organisations in key geographical areas
- limited capacity or willingness of some community service organisations, due to size and other factors, to explore and adopt innovative or new approaches.

The Inquiry considers that these limitations can be exacerbated by an inappropriate or under-developed regulatory framework that governs the relationship between the Department of Human Services and community service organisations, and that does not establish the appropriate standards or expectations for community service organisations or promote a quality improvement approach to service delivery.

Source: Adapted from the Cummins, P, Scott, D & Scales, B (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*, Department of Premier and Cabinet, 2012, p.xxxviii.

The Cummins Inquiry found that:

- the Department of Human Services current approach to monitoring and reviewing community service organisations performance does not do enough to identify, address and prevent the major and unacceptable shortcomings in the quality of out-of-home care
- the regulation and oversight of Victoria's system for protecting vulnerable children need to be strengthened.<sup>196</sup>

In view of these findings, it recommended that the Government establish an independent Commission for Children and Young People with broad monitoring

196 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, pp. 505, 17.

and reporting powers would introduce the regular, specialist oversight of government decisions and services it considered were lacking.

In March 2013, an independent Commission for Children and Young People was established, which is further discussed below.

The Cummins Inquiry also considered the protection of children from criminal child abuse in religious organisations specifically. In the context of religious organisations, it reviewed:

- the application of the *Working with Children Act 2005* (Vic) (WWC Act) to ministers of religion and religious leaders
- internal processes, practices or doctrines that operate to preclude or discourage reporting of criminal abuse to authorities
- reporting criminal child abuse to police.

In addition to recommending a formal investigation into the issue of criminal child abuse in religious organisations, the Cummins Inquiry found that the WWC Act applies to persons in religious organisations who work or volunteer with children and young people. The Working with Children Check (WWCC) is discussed further in Chapter 10 of Part D.

It also separated reporting duty where there is a reasonable suspicion a child or young person who is under 18 is being, or has been, physically or sexually abused by an individual within a religious or spiritual organisation under the *Crimes Act 1958* (Vic).<sup>197</sup> This is discussed further in Part G.

In response to the Cummins Inquiry the Victorian Government developed the *Victoria's vulnerable children strategy 2013–2022*. The Strategy has three broad goals, which are to:

- prevent abuse and neglect
- act earlier when children are vulnerable
- improve outcomes for children in statutory care.

### 8.5.2. Legislative developments for protecting children from criminal abuse

Over the past decade the legislative framework relevant to the protection of children from criminal child abuse in organisations in Victoria has evolved.

New legislation specific to the protection of children has been established in Victoria that protects children from abuse in organisations. In particular, the introduction of the WWCC created new requirements for pre-employment screening to prevent the appointment of people unsuitable to work with children.

Amendments to existing legislation, such as the *Child, Youth and Families Act 2005* (Vic), have also led to increased monitoring of out-of-home care services.

Table 8.5 lists the relevant legislation in Victoria.

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<sup>197</sup> P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 355.

**Table 8.5: Current legislation relating to the protection of children in Victoria**

Legislation	Description
<b>Child focused laws</b>	
<i>Crimes Act 1958</i>	<ul style="list-style-type: none"> <li>Creates offences for indecent acts with or in the presence of a child under the age of 16, persistent sexual abuse of a child and facilitating sexual offences against children.</li> </ul>
<i>Former Child and Young People's Act 1989</i>	<ul style="list-style-type: none"> <li>Amended in 1993 to introduce mandatory reporting of suspected child abuse and neglect by their parent or primary caregiver to DHS child protection.</li> </ul>
<i>Current Children, Youth and Families Act 2005</i>	<ul style="list-style-type: none"> <li>Promotes children's best interests and healthy development and legislative basis for mandatory reporting.</li> <li>Provides the legal framework for Victoria's child protection system and the operation of out-of-home care services. This includes powers to remove children from their families and place them with relatives, foster carers or in residential care facilities.</li> </ul>
<i>Children's Services Act 1996 (Vic)</i> <i>Children's Services Regulations 1996</i>	<ul style="list-style-type: none"> <li>Provides for the regulation of services providing early education and care services: <ul style="list-style-type: none"> <li>all limited hours and short term licensed services</li> <li>a small number of other services that currently hold a standard licence including budget-based services not funded for Child Care Benefits</li> <li>occasional care, early childhood intervention, mobile services, and a small number of school holiday programs.</li> </ul> </li> </ul>
<i>Child Wellbeing and Safety Act 2005</i>	<ul style="list-style-type: none"> <li>Complements the Children Youth &amp; Families Act and sets out principles to guide the provision of services to children and their families, including: <ul style="list-style-type: none"> <li>society as a whole shares responsibility for promoting the safety and wellbeing of children</li> <li>parents are the primary nurturers of the child and government intervention should be limited to that necessary to secure the child's safety and wellbeing</li> <li>government must meet the needs of the child when the child's family is unable to provide adequate care and protection</li> <li>service providers should protect the rights of children and families and to the greatest extent possible encourage their participation in any decision making that affects their lives.</li> </ul> </li> </ul>
<i>Working with Children Check Act 2005</i>	<ul style="list-style-type: none"> <li>Creates a scheme to prevent those who pose a risk to children from working or volunteering with them. All persons who seek to engage in regular, direct and unsupervised work or volunteer activities must undergo a Working with Children Check (WWCC), which assesses criminal history.</li> <li>Persons with relevant convictions are refused a WWCC.</li> </ul>
<i>Education and Training Reform Act 2006</i>	<ul style="list-style-type: none"> <li>Provides for the monitoring, planning and development of the provision of education and training in Victoria.</li> <li>Establishes the Victorian Institute of Teaching (VIT) which registers all teachers to ensure only qualified people are employed in Victorian schools. VIT also investigates and makes findings on instances of serious misconduct, misconduct, serious incompetence or lack of fitness to teach.</li> </ul>

Legislation	Description
<i>Education or Care Services National Law Act 2010</i> <i>Education and Care Services National Regulations 2011 (Vic)</i>	<ul style="list-style-type: none"> <li>• A Victorian Act that is mirrored in other states and territories to provide for a national scheme of regulation.</li> <li>• Provides for the regulation of services providing education and care on a regular basis to children under the age of 13 years which includes: <ul style="list-style-type: none"> <li>• preschools (kindergartens)</li> <li>• long day care</li> <li>• outside school hours care</li> <li>• family day care services.</li> </ul> </li> </ul>
<i>Commission for Children and Young People Act 2012</i>	<ul style="list-style-type: none"> <li>• Replaced the former Office of the Child Safety Commissioner and established the new Commission for Children and Young People (the Commission) along with the role of Principal Commissioner.</li> <li>• The Commission commenced operation on 1 March 2013 as an agency independent of government with powers to table its annual report in Parliament along with the outcomes of any systemic reviews it initiates.</li> </ul>
<b>Community focused laws</b>	
<i>Sex Offenders Registration Act 2004 (Vic)</i>	<ul style="list-style-type: none"> <li>• Allows courts to order that persons convicted of certain sex offences (including sex offences against children) must be registered on the Victoria Police sex offenders register for a period of time after their release from custody.</li> <li>• Offenders registered under the SOR Act are also obliged to inform Victoria Police of any changes to their whereabouts and are prohibited from working in child-related employment.</li> </ul>
<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i>	<ul style="list-style-type: none"> <li>• Specifies that every child has the right to protection in their best interests and without discrimination.</li> <li>• Legislates the rights of children in criminal processes.</li> </ul>
<i>Disability Act 2006 (Vic)</i>	<ul style="list-style-type: none"> <li>• Provides the legal framework for meeting the rights and needs of Victorians with a disability.</li> </ul>
<i>Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)</i>	<ul style="list-style-type: none"> <li>• Creates a scheme for the further detention and/or supervision of some categories of sex offenders who, although they have completed their sentences, are thought to pose an unacceptable risk of committing further sexual offences.</li> </ul>

Source: Compiled by the Family and Community Development Committee.

### 8.5.3. Roles and responsibilities—current oversight

Current oversight of non-government organisations in the context of protecting children from criminal child abuse and responding to allegations is shared across a number of government departments and other authorities.

The Department of Human Services (DHS) and Department of Education and Early Childhood Development (DEECD) have direct responsibilities for setting standards, regulating service provision and overseeing the reporting of critical incidents when an allegation of child abuse is made.

Victoria Police responds to and investigate allegations of criminal child abuse in addition to preparing evidence for prosecutions. The role of police in responding to

allegations and suspected cases of criminal child abuse in organisations is critical and is discussed throughout the Report.

There are also statutory authorities with relevant responsibilities and powers in the context of protecting children from criminal child abuse in organisations and in responding to allegations of criminal child abuse. They have independent authority to oversee and review the activities of government funded organisations and professionals. These are the:

- Victorian Commission for Children and Young People
- Victorian Institute of Teaching
- Victorian Ombudsman and Victorian Auditor-General.

### **Government departments**

The Victorian Government acknowledges that:

... when a child is removed from a family, the State takes on a special role in their protection and care.<sup>198</sup>

In doing so, it recognises that it is responsible for providing safe, stable and secure environments for children; support and services they need to overcome the consequences of the abuse and neglect that led to their removal in the first place; and other assistance to improve their chances of achieving positive life outcomes.<sup>199</sup>

In view of this, specific attention has been directed to the safety of children in out-of-home care. DHS states that:

The law of negligence affects the way the department and CSOs [Community Service Organisations] who deliver services on behalf of the department go about providing services to various parts of the community. It sets minimum standards for the department and those agencies in the way that they deliver these services. The department contracts with many agencies and community organisations to deliver many of its services, such as out-of-home care.<sup>200</sup>

In evidence to the Inquiry, the Secretary of DHS, Ms Gill Callister, explained that the 'service agreement is the mechanism by which we detail the funding provided to an agency and specify the service that has to be delivered'.<sup>201</sup>

To help DHS meet its duty of care obligations, it has established a quality and regulatory framework for the care provided to children in the child protection system. The regulations provide a system of checks and balances to monitor the standards and performance of community service organisations providing care to children and families.

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198 Victorian Government (2013) *Strategy 2013-2022 Victoria's vulnerable children strategy: Our shared responsibility*. Melbourne, p. 19.

199 Victorian Government (2013) *Strategy 2013-2022 Victoria's vulnerable children strategy: Our shared responsibility*, p. 19.

200 Department of Human Services (2009) *Guidelines for responding to quality of care concerns in out-of-home care*. Melbourne, Children Youth & Families Division, DHS, p. 42.

201 *Transcript of evidence*, Department of Human Services, p. 4.

DEECD also has responsibilities for regulating early childhood education and care services, which are expected to comply with relevant national and state laws. They are assessed against standards prescribed in the relevant legislation and accompanying regulations.<sup>202</sup> These are discussed further in Parts D and E of the Report.

### Victorian Institute of Teaching

The Victorian Institute of Teaching (VIT) is a statutory authority for the regulation of the teaching profession in Victoria. The *Education and Training Reform Act 2006* (Vic) (ETR Act) provides the legislative basis for VIT.

VIT registers all teachers working in Victorian government, Catholic and independent schools. To be eligible to practice their profession, teachers in Victoria are required to be registered by the VIT under the ETR Act. In 2012, the total number of registered teachers was 118,765.

VIT is governed by a council comprising 12 members, mostly practising teachers from government, Catholic and independent schools. It has a range of functions, which include:

- registering all teachers to ensure only qualified people are employed in Victorian schools
- working with teachers to develop standards of professional practice
- approving and accrediting pre-service teacher education courses that prepare teachers
- investigating and making findings on instances of serious misconduct, misconduct, serious incompetence or lack of fitness to teach
- setting standards for teachers' conduct.

The role of VIT in protecting children through prevention and monitoring activities is discussed further in Parts D and E.

### Victorian Commission for Children and Young People

In 2012, under the *Commission for Children and Young People Act 2012* (Vic) (CCYP Act), the former Office of the Child Safety Commissioner in DHS was replaced by an Independent Commission for Children and Young People (the Commission). The CCYP Act also created the role of a Principal Commissioner who is responsible for providing advice to ministers, government departments, health services and human services regarding the safety and wellbeing of vulnerable children and young people.

The Commission commenced operation on 1 March 2013 as an agency independent of government with powers to table its annual report in Parliament along with the outcomes of any systemic reviews it initiates.

**Regulation—**  
*one of the key instruments available to government to achieve its social, economic and environment objectives and to respond to community needs. It is commonly held that government regulation involves an intentional measure or intervention by a government agency that seeks to influence the behaviour of individuals, businesses and not-for-profit organisations.<sup>204</sup>*

202 Education and Care Services National Law Regulations 2010 (Vic) and the Children's Services Regulations 1996 (Vic).

203 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 491.

The objective of the Commission is to promote continuous improvement and innovation in policies and practices relating to out-of-home care and to the safety and wellbeing of:

- vulnerable children and young people
- children and young people generally.

The Commission retained a number of its functions and responsibilities from its former role within DHS. These include:

- promoting the interests of vulnerable Victorian children and young people
- conducting inquiries into service provision or omission in regard to children who have died and were known to child protection at the time of their death or 12 months before their death
- promoting child-friendly and child-safe policies and practices in Victoria
- providing advice to the Minister about child safety as requested
- reviewing and reporting on the administration of the *Working with Children Act 2005* (Vic) and educating and informing the community about the Act.

In addition to these responsibilities, the Commission's role has extended to include concerns about children beyond the out-of-home care system. It can conduct inquiries into service provision or omission in regard to:

- a health service, human service or school where there are persistent or recurring systemic concerns
- the safety and wellbeing of an individual or group of vulnerable children and young people.

The authority of the Commission has been extended to enable it to monitor services. This includes:

- monitoring Victoria's out-of-home care system and promoting child inclusive decision making
- monitoring and reporting on the implementation and effectiveness of strategies relevant to the safety and wellbeing of vulnerable children and young people.

In addition, there is scope for the Commission to be authorised to assume other responsibilities it is given within the Act or by any other Act.

### **Victorian Ombudsman and Auditor-General**

Established and operating under powers in the *Ombudsman Act 1973* (Vic), the Victorian Ombudsman is responsible to the Victorian Parliament as an independent officer reporting directly to the Parliament of the day, not the Government.

The Ombudsman's responsibilities include investigating and resolving complaints concerning administrative actions taken in Victorian government departments, public statutory authorities and by officers of municipal councils.

The Victorian Ombudsman has the power to conduct own-motion investigations. It investigates issues and tables reports in Parliament that contain recommendations for public policy and law reform. Some of its investigations have related to the protection of children.

Also an independent officer of the Parliament of the day is the Victorian Auditor-General who, on behalf of Parliament and Victorian taxpayers, examines the management of resources within the public sector. The Auditor-General audits and makes findings and recommendations in relation to a number of related matters, including the effectiveness of organisations in meeting government objectives and improvements in management practices and systems of government organisations.

#### **8.5.4. Other organisations—minimal oversight and regulation**

The Committee identified that there are no specific regulations that monitor the standards and systems in place for a large number of non-government organisations that interact regularly and directly with children. These include recreational, sporting, religious and community youth groups.

The WWC Act provides a key legislative mechanism for capturing these groups by requiring anyone who works with children to apply for a WWCC.

Part D of the Report outlines that there is a need to ensure that the WWCC is one component of a broader suite of protective mechanisms and that it is not solely relied on as a preventative measure. The Committee provides recommendations for ensuring an umbrella of protective measures for preventing and monitoring organisations that engage with children.

