

# 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.

