

PART C

CONTEXT



Context—criminal child abuse in organisations and its past handling

The context in which criminal child abuse has occurred is important to understand—that is, the nature of non-government organisations, their past handling of criminal child abuse and the response of governments through formal inquiries and subsequent policy and legislative reform.

Understanding the scale of the problem of criminal child abuse in non-government organisations is a key starting point in identifying a strategy for improving responses to the issue. There is minimal data relating to the extent of child abuse in the broader community and even less information about the prevalence and incidence of the criminal abuse of children in non-government organisations.

With minimal data to determine the scale of criminal child abuse in non-government organisations, the risks can only be speculated. The internal structure and culture of organisations can affect the level of risk of personnel criminally abusing children in their care.

An awareness of the motivations of offenders can assist organisations to reduce the risk of criminal child abuse. Notably, there is no ‘typical’ offender of criminal abuse of children in organisations. Many child sex offenders, for example, appear as regular members of the community who are motivated by good intentions. Offenders range from those who are predatory, those who use grooming tactics to gain access to children to those who are more opportunistic and take advantage of a situation or an opportunity to offend.

Non-government organisations—Inquiry focus

The nature of government organisations that participated in the Inquiry was diverse, reflecting the broader context of non-government organisations across Victoria. The purpose, size, available resources and structure of the organisations varied considerably. They included religious organisations, out-of-home care services, early education services and schools, child care organisations, youth services and recreational and sporting organisations.

There are unique circumstances for victims of criminal child abuse in religious organisations. While the extent of abuse in these settings compared with other organisations is difficult to ascertain, children subjected to criminal abuse are less likely to be protected in religious organisations than any other group in society. There are many reasons for this, including the policy of forgiveness, the self-protection of many religious organisations and their trusted, revered status in society.¹

Non-government organisations continually evolve. The nature of non-government organisations 70 years ago was markedly different from today. The types of services, activities and programs provided by organisations that interact with children have also evolved over time to meet the changing needs of children, their families and communities. While the functions and activities of organisations may change, organisational culture is often more stable and resistant to change. This has implications for how organisations respond to the criminal abuse of children by personnel in their organisations.

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

Past handling of criminal child abuse by organisations

Evidence from victims provided to the Inquiry indicated that the past handling of criminal child abuse by specific non-government organisations, particularly religious organisations, was seriously inadequate.

To understand the past handling of criminal child abuse by religious organisations, the Committee focused particularly on the Catholic Church, the Salvation Army and the Anglican Church. The majority of evidence and other information received focused on these organisations and the Committee felt it was important to gain insight into the handling of abuse by religious organisations specifically.

The Committee identified that the handling of the criminal abuse of children by these organisations in the past was motivated by self-interest and the protection of the organisation. This resulted in serious consequences for the safety and protection of children in religious organisations.

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

- minimised and trivialised the problem
- contributed to criminal child abuse not being disclosed or not being responded to at all prior to the 1990s
- ensured that the Victorian community remained uninformed of the abuse
- ensured that perpetrators were not held accountable, with the result that the abuse of children by some religious personnel which could have been avoided, tragically continued.

The handling of criminal child abuse by the Catholic Church demonstrates that as an organisation it had (and continues to have) many of the internal features of an organisation at high risk of having abuse perpetrated by its personnel. These features include its:

- trusted role in caring for children
- culture and power
- hierarchy and structure
- teachings and beliefs—canon law
- processes for responding to allegations—including the failure to report abuse
- response to alleged offenders—including their relocation and movement.

These features have continued to influence the response of organisations to allegations of criminal child abuse and may provide an understanding as to why victims remain aggrieved.

Reflecting on the past handling of criminal child abuse provides useful insights into how religious organisations have evolved in their approaches, the enduring nature of their organisational culture and the extent to which they have learnt from their past handling.

In addition, the way in which a religious organisation dealt with reports of suspected criminal child abuse is inextricably linked to the desire of victims for justice.

Government directions—policy and legislation

Over the past two decades, governments have given greater attention to the protection of children from abuse. Much of this has related to child abuse that occurs in families when children are at risk of harm by their primary carer/s. Where attention has been directed to children's safety from abuse in organisations, governments have generally focused on the education sector and community services, such as out-of-home care. Religious organisations have been largely overlooked in policies and regulations, which have failed to recognise the duty of such organisations to protect children in their care from criminal abuse.

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

The policy focus of the recent strategy for protecting children in Victoria (*Protecting Victoria's vulnerable children strategy*) is largely on child abuse that occurs within families. The Committee considered that there would be value in reviewing the extent to which existing government policy incorporates child abuse that occurs in organisations so that as far as possible child abuse prevention strategies can be uniform and consistent.

In Victoria, legislative and regulatory developments relating to the protection of children in the context of organisations include the establishment of Working with Children Checks (WWCC) and the creation of an independent Commission for Children and Young People, which has a focus on promoting child-safe organisations.

Chapter 6

Child abuse in organisational contexts

AT A GLANCE

Background

It is acknowledged that criminal abuse of children occurs in organisational contexts such as religious, educational and community organisations. It has occurred in the past and continues to occur today. Understanding the scale of the problem and what constitutes risks to non-government organisations is important in identifying appropriate responses to the issue.

Key findings

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

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

Importantly, the overwhelming majority of people who work in these organisations are not perpetrators of criminal child abuse and most child abuse occurs in families, not organisations. Less frequently children are abused by ‘strangers’.

To improve the handling of criminal child abuse in non-government organisations, it is important to have a clear understanding of:

- the scale of criminal child abuse in organisations—its prevalence and incidence
- organisations at risk and children who are vulnerable to child abuse
- the characteristics of offenders who abuse children in organisations
- the range of non-governmental organisations that directly interact with children.

6.1. Evolving nature of organisations, services and activities

Organisations are not static—they continually evolve. The nature of non-government organisations decades ago was markedly different from such organisations today.

Similarly, the types of services, activities and programs provided by non-government organisations that interact with children are continually evolving to meet the changing needs of children, their families and communities.

Understanding the dynamic and fluid nature of these organisations and the communities they serve is an important component in understanding criminal child abuse in organisational contexts—how it occurred in the past, how it is occurring now and how it might occur in the future.

6.2. Abuse in organisations—scale of the problem

Understanding the scale of the problem of criminal child abuse in non-government organisations is a key starting point in identifying a strategy for improving responses to the issue. Some of the factors that need to be understood include the prevalence and incidence of criminal child abuse in organisations, and the types of abuse that occur.

The Committee identified that for a range of reasons it is difficult to draw conclusions regarding the scale of criminal child abuse in society generally. It is even more challenging to identify its prevalence or incidence in non-government organisations.

The Deputy Director of the Australian Institute of Family Studies (AIFS), Dr Darryl Higgins, explained to the Inquiry that:

... one of the difficulties that we face in Australia is that there is no national prevalence study of child abuse and neglect.²

2 *Transcript of evidence*, Australian Institute of Family Studies, Melbourne, 19 October 2012, p. 2.

Child Family Community Australia³ similarly noted that ‘There has been no methodologically rigorous, nation-wide study of the prevalence or incidence of child abuse and neglect in Australia.’⁴ It did state, however, that:

There are ... a number of recent studies that have either measured one or two maltreatment types in detail, or have superficially measured all individual maltreatment types as part of a larger study.⁵

Dr Higgins suggested to the Inquiry that it is important to ‘understand where child abuse within organisations, be they religious or other community organisations, fits within the broader context of abuse and neglect more generally.’⁶

This section outlines the Committee findings in regard to:

- the extent of criminal child abuse in the broader community
- the scale of criminal child abuse in non-governmental organisations.

6.2.1. Extent of child abuse in the community

The majority of information about child abuse relates to abuse in family or domestic settings. Existing data is often based on notifications and substantiations received by the statutory child protection system.

The Committee identified that it is not possible to gain an accurate picture of the extent of child abuse in the wider community through existing sources of data and research.

There are a number of factors that make the available data and research inadequate for accurately understanding the scale of child abuse in the community. These include:

- minimal research into the prevalence and incidence of child abuse
- low reporting rates and difficulties investigating official reports
- varying definitions of child abuse—physical, emotional and sexual
- greater research attention to child sexual abuse over other forms of criminal child abuse.

In recent research, Professor Stephen Smallbone from the School of Criminology and Criminal Justice at Griffith University and his colleagues identified the difficulties in drawing conclusions about the scale of child sexual abuse using existing data and research. They emphasised that low reporting rates and difficulties associated with investigating child sexual abuse mean that official reports ‘seriously underestimate the scope of the problem.’⁷

Researcher Anne-Marie McAlinden states that research in the United Kingdom has revealed similar low reporting rates:

Recent research shows that fewer than 5 per cent of sex offenders are ever apprehended.

3 Child Family Community Australia is an amalgamation of three previous AIFS clearinghouses: the National Child Protection Clearinghouse, the Australian Family Relationships Clearinghouse, and the Communities and Families Clearinghouse Australia.

4 Child Family Community Australia (2013) *The prevalence of child abuse and neglect fact sheet*. Accessed on 28 July 2013 from www.aifs.gov.au.

5 Child Family Community Australia (2013) *The prevalence of child abuse and neglect*.

6 *Transcript of evidence*, Australian Institute of Family Studies, p. 2.

7 S. Smallbone, W. L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*. Devon, Willan Publishing, pp, 17–18.

Estimates also suggest that only 3 per cent of all cases of child sexual abuse and only 12 per cent of rapes involving children are ever reported to the police.⁸

Other researchers and research institutes have expressed concern regarding the implications for policy development due to unreliable data about the scale of child abuse in the community. For example, the Director of Child Abuse Prevention Research, Professor Chris Goddard, told the Inquiry that developing effective preventative and other interventions requires a strong evidence base. He was firmly of the view that significant improvements need to be made to the collection of data relating to child abuse in the community.⁹

In an analysis of current data used to measure child abuse in society, Professor Goddard and colleagues identified that data on notifications or substantiations of criminal child abuse are not reliable and that changes to data sets reduce the capacity to make comparisons over time.¹⁰

The Australian Institute of Health and Welfare (AIHW) has also identified the limitations of data relating to notifications and substantiations in the child protection system:

National child protection data are only based on those cases reported to departments responsible for child protection and, therefore, are likely to understate the true prevalence of child abuse and neglect across Australia.¹¹

The importance of accurate and reliable data was emphasised in the Protecting Victoria's Vulnerable Children Inquiry (the Cummins Inquiry). While its focus was on the statutory child protection system, it noted that:

Good public policy and planning must be grounded in high-quality information and data, particularly in complex service delivery environments. The Inquiry found a lack of data across several areas relating to Victoria's system for protecting children. There is a lack of ongoing data on major demographic characteristics and presenting issues of vulnerable children and their families, as well as data on the impact of statutory child protection services and other interventions.¹²

Similarly, the Committee concluded that unreliable data and the shortage of information regarding the extent of child abuse in the community have implications for developing and implementing evidence-based interventions and frameworks. The issue was highlighted during the Department of Human Services (DHS) evidence when it was discovered that human error contributed to an inaccuracy in recording information in one particular case.¹³

While it did not make any recommendations that relate specifically to the prevalence of child abuse in the community, the Cummins Inquiry made recommendations

8 A-M. McAlinden (2006) "Setting 'em up': Personal, familial and institutional grooming in the sexual abuse of children". *Social and Legal Studies*, Vol. 15, No. 3, pp. 339–62, p. 347.

9 *Transcript of evidence*, Professor Chris Goddard, Child Abuse Prevention Research Australia, Monash University, Melbourne, 19 October 2012, p. 7.

10 K. Broadley, C. Goddard, & J. Tucci (unpublished) *Surveillance: Towards a child-centred national framework for protecting children*. Child Abuse Prevention Research Australia, Monash Injury Research Institute, Monash University, and Australian Childhood Foundation.

11 Australian Institute of Health and Welfare (2013) *Child protection Australia: 2011–12. Child Welfare series no. 55, Cat. no. CWS43*. Canberra, AIHW, p. 6.

12 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*. Melbourne, Department of Premier and Cabinet, p. xlvii.

13 *Transcript of evidence*, Department of Human Services, Melbourne, 3 June 2013, pp. 12–13.

regarding program areas that require improved data collection to enhance the capacity for evidence-based interventions.

Finding 6.1

Due to a lack of accurate data, the prevalence and incidence of criminal child abuse in the community is currently unknown which has implications for the development of evidence-based interventions and preventative frameworks in non-government organisations.

What we know—estimating prevalence in the broader community

Despite the shortcomings of the data relating to the scale of child abuse in the community, experts and researchers have attempted to estimate its prevalence and incidence using the disparate information available through different data sets and various research studies.

Dr Higgins from the AIFS explained to the Inquiry that in view of the lack of data in Australia, it is necessary to draw on international prevalence studies.¹⁴ In Australia there are no similar prevalence studies and prevalence rates have relied upon the Australian Personal Safety Survey conducted by the Australian Bureau of Statistics (ABS) in 2006. The Cummins Inquiry commissioned Deloitte Access Economics to report on the prevalence and incidence of child abuse and neglect in Victoria. In its best estimate of the prevalence it relied on the Australian Personal Safety Survey.¹⁵

Using the same source to provide an estimate of the prevalence of child abuse, Dr Higgins explained to the Committee that:

... the Australian Personal Safety Survey conducted ... in 2006, ... showed that nearly 1 million adult women reported that they had experienced sexual abuse before the age of 15, so that is about 19 per cent of women and about 5.5 per cent of men.¹⁶

Professor Goddard advised the Inquiry that:

[it is] important to note the reservations about this data ... The ABS survey only asked about physical and sexual abuse. They obviously could not include people who had died because of abuse, and they also excluded people living in institutions.¹⁷

In an analysis of the available research on prevalence rates, Child Family Community Australia reached a similar finding. In 2013, it updated an original review of research on the prevalence of child abuse conducted by the National Child Protection Clearinghouse and made the following broad estimates of the scale of child abuse in Australia:

- physical abuse—prevalence ranges from 8 to 15 per cent (depending on definitions)
- child neglect—ranges from 2 to 12 per cent
- emotional abuse—prevalence ranges from 6 to 17 per cent
- witnessing family violence—between 12 and 23 per cent.¹⁸

14 *Transcript of evidence*, Australian Institute of Family Studies, p. 2.

15 Deloitte Access Economics (2011) *The economic and social cost of child abuse in Victoria, 2009–10. Protecting Victoria's Vulnerable Children Inquiry*. Deloitte Access Economics Pty Ltd, p. 7.

16 *Transcript of evidence*, Australian Institute of Family Studies, p. 2.

17 *Transcript of evidence*, Professor Chris Goddard, p. 4.

18 Child Family Community Australia (2013) *The prevalence of child abuse and neglect*.

Child Family Community Australia also reviewed the more extensive research on child sexual abuse. It concluded that of the more comprehensive studies undertaken, the following prevalence rates were identified:

- Males—prevalence rates of 1.4 to 8.0 per cent for penetrative abuse and 5.7 to 16.0 per cent for non-penetrative abuse.
- Females—prevalence rates of 4.0 to 12.0 per cent for penetrative abuse and 13.9 to 36.0 per cent for non-penetrative abuse.¹⁹

Child Family Community Australia noted a number of limitations in drawing concrete conclusions from available research. These included varying methodologies, differing definitions of child abuse and the specific population samples used in the studies. Despite this, it stated that:

... some findings emerged unequivocally from this review: all five types of child maltreatment occur at significant levels in the Australian community.²⁰

The Committee also heard evidence regarding the incidence of different types of child abuse and noted that sexual abuse generally occurs at lower rates than other forms of abuse. For example, Professor Smallbone from Griffith University explained to the Inquiry that:

... in terms of the incidence of child maltreatment, only about 10 per cent of substantiated notifications of child maltreatment involve sexual abuse, so 90 per cent of the abuse of children is not sexual.²¹

This reflects the national data produced by the AIHW for 2011–12, which indicates that approximately 12 per cent of all substantiated forms of harm that occur are child sexual abuse. Emotional child abuse and neglect occur at higher rates, with criminal child physical abuse occurring in approximately 21 per cent of all cases. In Victoria specifically, the incidence of child abuse with substantiated notifications in 2011–12 was:

- sexual abuse—10 per cent
- physical abuse—29 per cent
- emotional abuse—54 per cent
- neglect—7 per cent.²²

While the Victorian figures may differ slightly from the national figures, as noted in the previous section, the AIHW has indicated there are limitations to the data and in the accuracy of cross-jurisdictional comparisons.

The Committee also heard that many children subject to child abuse experienced more than one form of abuse. It notes that the current estimates do not consider the number of children that experience multiple forms of abuse.

19 Child Family Community Australia (2013) *The prevalence of child abuse and neglect*.

20 Child Family Community Australia (2013) *The prevalence of child abuse and neglect*.

21 *Transcript of evidence*, Professor Stephen Smallbone, Griffith University, Melbourne, 9 November 2012, pp. 2–3.

22 Australian Institute of Health and Welfare (2013) *Child protection Australia: 2011–12*, p. 59.

6.2.2. Scale of criminal child abuse in organisations

While there is minimal data relating to the extent of child abuse in the broader community, the Committee identified that there is even less information about the prevalence and incidence of criminal child abuse in non-government organisational contexts. This shortage of information has significant implications for establishing effective interventions, including preventative measures, in addressing child abuse in these contexts.

The CEO of the Australian Childhood Foundation (ACF), Dr Joe Tucci, advised the Inquiry that:

... child abuse as an umbrella term has almost overlooked the exploitation and harm instigated by volunteers and employees of organisations. I have been a social worker in the field for 20-odd years, and to date the research into that issue has been very scarce. It is not top of mind, and in fact in the systems in Victoria it is not part of the broad child protection response.²³

In its submission, the ACF advised that there is currently no way of accurately knowing the extent of criminal child abuse perpetrated by employees and volunteers in organisations that provide a service or activity to children.²⁴

Dr Higgins from the AIFS also advised the Inquiry that:

... there is often little research available documenting child maltreatment in organisations, so we tend to need to look at what the particular risk factors are at the individual level as well as the organisational level.²⁵

The Committee acknowledges that criminal child abuse in the context of non-government organisations has been generally under-researched and that the small amount of research undertaken has tended to focus on child sexual abuse.²⁶

The Committee noted that the Productivity Commission has started to record figures for 'safety in out-of-home care', but that this data is too broad for the context of this Inquiry.

The Cummins Inquiry recommended that:

The Department of Justice should lead the development of a new body of data in relation to criminal investigation of allegations of child physical and sexual abuse, and in particular the flow of reports from the Department of Human Services to Victoria Police. Victoria Police, the Office of Public Prosecutions, the Department of Human Services and the courts should work with the Department of Justice to identify areas where data collection practices could be improved.²⁷

The Committee notes that available sources, such as critical incident reporting in educational, early childhood and out-of-home care settings, are currently not used to measure patterns of criminal child abuse in organisational settings. It requested if DHS could identify trends or patterns through data it receives from its critical

23 *Transcript of evidence*, Australian Childhood Foundation, Melbourne, 9 November 2012, p. 2.

24 *Submission S224*, Australian Childhood Foundation, p. 2.

25 *Transcript of evidence*, Australian Institute of Family Studies, p. 4.

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

27 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*, p. 337.

incident reporting process.²⁸ DHS advised that due to limitations in reporting using the existing database, it is difficult to draw conclusions in regard to patterns or trends.

Finding 6.2

There has been minimal research into criminal child abuse in organisations and the majority that has been undertaken relates to child sexual abuse, with less known about physical abuse and multiple forms of child abuse.

6.3. Risk—organisations and children

With minimal data to determine the prevalence and incidence of criminal child abuse, the risk of such abuse in organisations can only be speculated. Researchers have stated it is known that:

Children have historically been vulnerable to multiple types, and repeated episodes, of abuse within Australian organisations.²⁹

Children rely on adults to meet their basic needs—they are physically, sexually and psychologically vulnerable and they lack social power.³⁰

The risk of criminal child abuse is a combination of the inherent vulnerability of children, the intrinsic culture of an organisation and the type of activity or service that enables access to children. The interaction of these various elements of risk is multifaceted, complex and nuanced.

Dr Higgins from the AIFS told the Inquiry that:

... the international data are really suggesting that children are likely to be at heightened risk of maltreatment in organisational settings where employees are really acting in the place of parents and have the same kind of expectations and obligations that parents do.³¹

A research project undertaken by the National Child Protection Clearinghouse in 2006 explained that there are two key factors for creating risk in organisations:

... high-risk environments are those contexts that are 'home-like' or where employees have time alone with a child including in their own or the child's home. Being able to make contact with children outside the organised activity or seeking time alone with them, including car rides are therefore high-risk behaviours and situations. Babysitting, foster care, residential institutions and groups that involve sleepovers must be considered high-risk environments for abuse.³²

The report from the above research explains that:

A high-risk environment that is 'homelike', coupled with children who have characteristics that make them especially vulnerable to abuse (very young,

28 Family and Community Development Committee, Correspondence to the Department of Human Services.

29 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, p. 3.

30 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, p. 4.

31 *Transcript of evidence*, Australian Institute of Family Studies, p. 4.

32 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, p. 43.

disabled, previously abused or neglected and so on) would be one of the highest risk environments.³³

An organisation that promotes child-safe environments, Child Wise, outlines three levels of risk relating to criminal child abuse that are important for organisations and the community to be conscious of. Figure 6.1 outlines these risk levels.

Figure 6.1: Risk factors within organisations

Low/acceptable risks Should be monitored and periodically reviewed to ensure they remain acceptable	Medium level risks Requires more intervention to move them to the lower risk end of the continuum	High level risk Requires even greater intervention
Activities that are considered to be low level risk or limited risk:	Examples of medium risk activities are where:	Examples of high risk activities are those which:
<ul style="list-style-type: none"> involve older less dependent, and able bodied children take place in full view of people and in open plan environments have high adult/child ratios have active parent involvement do not involve bodily contact are accompanied by active staff supervision shorter sessions. 	<ul style="list-style-type: none"> children are younger and more dependent view of the activity is obscured there is minimal supervision there is less parent involvement there are policies and procedures but they are not actively implemented they are held in external locations e.g. excursions, walks there are some physical activities with children. 	<ul style="list-style-type: none"> involve very young and/or vulnerable children take place out of sight involve bathing or toileting have low adult/child ratios have no supervision include overnight stays take place in a private home or in isolated settings.

Source: Adapted from Child Wise (2004), *Choose with care, a universal information and training program*, p. 49.

In 2009 a study was undertaken in relation to reported child sexual abuse in the Anglican Church. Youth groups were found to be a key target and accounted for 50 per cent of all cases.³⁴ It revealed that most accused people were either religious personnel or laypeople involved in a form of paid or voluntary youth work.³⁵ The study identified that 41 per cent of the offenders were religious clergy.

In evidence to the Inquiry, Professor Smallbone explained that criminal child abuse in organisations tends to occur in one of four ways:

- Among children themselves—in the context of harassment, bullying, initiation practices and sexual experimentation gone wrong.

33 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, p. 43.

34 P. Parkinson, K. Oates, & A. Jayakody (2009) *Study of reported child sexual abuse in the Anglican Church*, p. 25.

35 P. Parkinson, K. Oates, & A. Jayakody (2009) *Study of reported child sexual abuse in the Anglican Church*, p. 5.

- Between a child and a current employee or volunteer—that is, an adult in a responsible position who develops abuse-related motivations for the first time.
- Between a child and a new employee or volunteer who brings previously established abuse-related interests or motivations into an organisational setting.
- ‘Stranger danger’ problem—that is, a visitor or passer-by may take or lure a child.³⁶

6.3.1. Children—factors increasing vulnerability to abuse

Research evidence has suggested that specific groups of children, or children with particular characteristics, can be more vulnerable to criminal child abuse, particularly in organisational settings. Notably, the majority of this research relates to child sexual abuse, with very little research relating to physical or emotional abuse in organisations.

In evidence to the Inquiry, Dr Tom Keating made a link between power relationships and the potential for criminal child abuse. He told the Committee that:

Without absolving individuals from responsibility for their crimes, it is important to understand the systemic context within which abusive situations arise. We know that abuse occurs in any social care situation where there is a significant power differential. We have seen it with children, with the elderly, with the mentally ill and with the disabled ... Whenever there are situations in which one group has uncontrolled power over others, there will be a proportion of people who will abuse that power.³⁷

In the context of child sexual abuse, researchers have identified some characteristics in children that appear to make them more vulnerable. These findings have emerged from studies with offenders that seek to understand how they have selected victims. For example, one research study suggested that:

Perpetrators are most likely to target victims who are alone, who have family problems and who are physically small ... perhaps more tellingly, they also looked for children who appear to lack confidence and have low self-esteem, and who seem innocent, curious and trusting.³⁸

More broadly, research has suggested that a number of factors can make children vulnerable to child abuse. These can include a child’s age, their gender or a previous experience of child abuse. Children with a disability can also be more vulnerable to abuse.³⁹

The National Society for the Prevention of Cruelty to Children in the United Kingdom reported that 49 per cent of offenders included in a research study chose victims who were lacking in confidence or had low self-esteem.⁴⁰ In the same research, 84 per cent of offenders identified vulnerability in their victims and 79 per cent of

36 *Transcript of evidence*, Professor Stephen Smallbone, p. 3.

37 *Transcript of evidence*, Dr Tom Keating, Melbourne, 10 December 2012, p. 3.

38 M. Elliott, K. Browne, & J. Kilcoyne (1995) ‘Child sexual abuse prevention: What offenders tell us’. *Child Abuse and Neglect*, Vol. 19, No. 5, May 1995, pp. 579–94. Referenced in S. Smallbone, W. L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 135.

39 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, pp. 6–7.

40 M. Erooga, D. Allnock, & P. Telford (2012) *Towards safer organisations II: Using the perspectives of convicted sex offenders to inform organisational safeguarding of children*. London, National Society for the Prevention of Cruelty to Children (NSPCC), p. 54.

offenders reported having manipulated the victim's vulnerability in order to carry out the abuse.⁴¹

The Committee noted that these factors are not necessarily effective in assessing risk, but can provide indicators of potential vulnerabilities.

It is widely acknowledged that adult and adolescent child sexual abuse offenders often seek to establish a non-sexual relationship with a child victim, and very often with a parent as well, before the first incident of criminal child abuse occurs.⁴² Many offenders seek to build trust that involves an emotional connection emerging over time.⁴³ This is understood as 'grooming' behaviour and is discussed further in Chapter 22 in Part G.

6.4. Offenders in organisations

An area of interest to the Inquiry is the research evidence relating to the way offences of criminal child abuse occur in non-government organisations. The Committee noted there is mixed evidence regarding the behaviour of offenders in the context of criminal child abuse. Most researchers are primarily concerned with those offenders who commit child sexual abuse. Less is known and understood about those who commit other forms of criminal child abuse in organisations, including female offenders.

Professor Smallbone and his colleagues have highlighted the mixed evidence emerging from research. They stated that:

A popular assumption is that adult CSA [child sexual abuse] offenders consciously and actively join organisations or seek out relationships with single mothers in order to obtain sexual access to children. The evidence is mixed in this regard.⁴⁴

In view of the mixed findings about the motivations of offenders, they also state that a key challenge:

... is how to distinguish early grooming behaviours from normal care-giving behaviours, and thus how to detect and intervene in CSA before the problem is fully established.⁴⁵

One of the hazards within this challenge is misidentifying legitimate behaviour as grooming. The goal is to specifically distinguish grooming behaviours to avoid 'a high rate of false-positive identification.'⁴⁶

For example, a sports coach who is actively involved in club governance, forms close bonds with children and their families and shows an interest in the child's

41 M. Erooga, D. Allnock, & P. Telford (2012) *Towards safer organisations II: Using the perspectives of convicted sex offenders to inform organisational safeguarding of children*, p. 54.

42 S. Smallbone, W. L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 10.

43 S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 10.

44 S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 10.

45 S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 11.

46 S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 11.

development and emotional welfare is not necessarily grooming the organisation, the families or the children for the purposes of offending.

6.4.1. Characteristics of offenders

It is important to acknowledge that there is no ‘typical’ offender in the context of child sexual abuse. The Committee determined that in view of this, research studies can only generalise and it is not possible to specifically characterise an offender of criminal child abuse.

In evidence to the Inquiry, Professor Smallbone explained this inability to effectively characterise an offender of criminal child abuse, specifically a child sex offender:

I think we have constructed this picture of the predatory sex offender, and people think they are going to be able to recognise them because they are going ... to look strange and behave strangely. People do not really get the idea that not only might they look ordinary but they might actually be ordinary in that sense.⁴⁷

Offenders cannot, therefore, be viewed as a homogenous group who are preoccupied with seeking out opportunities to offend against children.

Researcher Anne-Marie McAlinden emphasised the point that despite popular perceptions, offenders of criminal child abuse are not identifiable by their presentation:

... to invoke the much-used phrase ‘monsters do not get children, nice men do’. Contrary to the media-inspired popular belief, a sex offender is not instantly recognizable as the ‘dirty old man in the raincoat’.⁴⁸

She went on to explain that offenders often strategise by ensuring they appear like a regular community member with virtuous and good intentions:

Part of their skill is to ingratiate themselves with children and infiltrate themselves into unsuspecting families, communities and organizations. To do this successfully, they must pass themselves off as being very nice, usually, men who simply like children.⁴⁹

Research has indicated that many offenders tend to be highly likeable and adopt a pattern of responsible and caring behaviour in public. They endeavour to build a good reputation and to create a strong social perception of themselves as a good and honest person. Dr Higgins from the AIFS also described this to the Inquiry:

The research often tends to talk about perpetrators as being ‘charming’ and people who can easily ingratiate themselves with others, and these are often the characteristics we admire in many organisations. They often tend to be the leaders because people are attracted to that kind of personality, but they often display very deviant attitudes.⁵⁰

Dr Higgins explained to the Committee that these ‘deviant’ attitudes of offenders are often identified retrospectively. That is, they are recognised when offenders describe how they were able to access children and how they were able to subvert the organisation.⁵¹

47 *Transcript of evidence*, Professor Stephen Smallbone, p. 9.

48 A-M. McAlinden (2006) “Setting ‘em up”: Personal, familial and institutional grooming in the sexual abuse of children’, p. 348.

49 A-M. McAlinden (2006) “Setting ‘em up”: Personal, familial and institutional grooming in the sexual abuse of children’, p. 348.

50 *Transcript of evidence*, Australian Institute of Family Studies, p. 5.

51 *Transcript of evidence*, Australian Institute of Family Studies, p. 5.

The evidence does suggest, however, that broad patterns in offending of criminal child abuse can be identified. These are that:

- males are far more likely to perpetrate child sexual abuse than females
- adolescence and early middle age are two distinct risk periods in the onset of child sexual abuse offending.⁵²

Research also contends that while there is no typical offender, three offender ‘types’ can be broadly identified. These relate to two factors—first, their motivations in the context of an offender’s criminal disposition and, second, the environmental factors that might create opportunities to offend. Situational or environmental risk factors can be influenced by the structural components of an organisation and its culture. Table 6.2 outlines these three offender ‘types’.

Table 6.2: Types of offenders

Characteristic	Description
Predatory offenders	<ul style="list-style-type: none"> • Research suggests that this type of offender is the stereotypical fixated, predatory child abuser who offends whenever there is an opportunity and who also seeks to create opportunities for offending.
Opportunistic offenders	<ul style="list-style-type: none"> • Restrain themselves from offending for social and personal reasons, but these weaken from time to time. • They may make excuses for their behaviour or to minimise their offending. For example, they might suggest they were providing intimacy and affection to a vulnerable child as an excuse to continue offending.
Situational offenders	<ul style="list-style-type: none"> • React to the environment they find themselves in. • Crimes can be spontaneous, such as heat-of-the-moment acts of violence or impulsive crimes where temptation and opportunity overcome their self-control. • Given the right situation, they will offend.

Source: Adapted from M. Erooga, D. Allnock, & P. Telford (2012) *Towards safer organisations II: Using the perspectives of convicted sex offenders to inform organisational safeguarding of children*. London, NSPCC, pp.31–32.

In addition, research suggests that offending behaviour varies depending on the type of offender and the situation in which the offending occurs. This is demonstrated in the matrix in Table 6.3.

52 S. Smallbone, W.L.Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 5; *Transcript of evidence*, Professor Stephen Smallbone, p. 2; L.R. Beyer, D.J. Higgins, & L.M. Bromfield (2005) *Understanding organisational risk factors for child maltreatment: A review of literature. A report to the Community Services Ministers’ Advisory Council (CSMAC) Child Safe Organisations Working Group*. Australian Institute of Family Studies, pp. 43–47.

Table 6.3: Behaviour of offenders—offender disposition and situational context

Situation	Offender		
	Situational	Opportunistic	Predatory
Challenging			Manipulates
Tempting		Exploits	
Precipitating	Reacts to		

Source: Adapted from the R. Wortley & S. Smallbone (2006) 'Applying situational principles to sexual offences against children'. In Wortley, R. & Smallbone, S. (Eds.), *Crime prevention studies: Vol. 19. Situational prevention of child sexual abuse*. Monsey, NY, Criminal Justice Press, p. 17.

Finding 6.3

There is no typical offender of criminal child abuse, and many child sex offenders often appear as regular community members with good intentions.

6.4.2. Child sex offenders—religious personnel

While there will be obvious overlap among many of the profile features described above, the Committee heard evidence that there are additional and unique 'dispositional traits of the individual clerical or monastic offender'.⁵³ The majority of the evidence received by the Committee related to child sex offenders in the Catholic Church.

The Committee reviewed extensive research conducted by John Jay College of Criminal Justice in New York in 2004. It suggested that 'certain personality characteristics have been shown to be unique to clergy offenders'.⁵⁴ In its analysis of research conducted on clergy offenders, the John Jay study suggested that offenders appeared to experience:

- loneliness, masturbation conflicts and a wish to be known beyond their role by others
- shyness, loneliness and passivity
- over-controlled hostility compared with non-offending priests.⁵⁵

In research on clergy offenders in the Catholic Church conducted in the 1970s, the findings suggested that 60–70 per cent of offending priests who participated in the study were emotionally immature.⁵⁶

The John Jay study found that among offenders there was:

A failure to appreciate the power differential between minister and parishioner, naivety about sexual issues and desensitisation of the intimacy of the minister/laity relationship all combine to affect victim empathy.⁵⁷

53 *Transcript of evidence*, Professor Desmond Cahill, School of Global, Urban and Social Studies, RMIT University, Melbourne, 22 October 2012, p. 3.

54 John Jay College of Criminal Justice (2004) *The nature and scope of sexual abuse of minors by Catholic priests and deacons in the United States 1950–2002*. Washington DC, United States Conference of Catholic Bishops, p. 181.

55 John Jay College of Criminal Justice (2004) *The nature and scope of sexual abuse of minors by Catholic priests and deacons in the United States 1950–2002*, p. 189.

56 John Jay College of Criminal Justice (2004) *The nature and scope of sexual abuse of minors by Catholic priests and deacons in the United States 1950–2002*, p. 189.

57 John Jay College of Criminal Justice (2004) *The nature and scope of sexual abuse of minors by Catholic priests and deacons in the United States 1950–2002*, p. 189.

6.4.3. Recidivism—child sex offending

Understanding recidivism rates for offending in organisations is an important factor in the context of prevention. The reliance on screening methods relates to the recognition by the community that some offenders of criminal child abuse may reoffend. Importantly, however, as noted above, child sex offending behaviour varies and is often interconnected with the situational context. That is, some offenders may never have offended or never been caught, yet may respond to an ‘opportunity’ to offend. Similarly, research is not conclusive and can only allude to patterns of offending.

The majority of research into recidivism and criminal child abuse relates to child sexual abuse. Recidivism rates in this context can be difficult to determine. Researchers have emphasised that:

We simply do not know how many people may commit one or two CSA offences, never get caught, and never repeat it, although presumably this happens.⁵⁸

Professor Smallbone told the Inquiry research findings suggest that ‘Most of the new offences are going to occur from people who are not on [a] register.’⁵⁹ He explained:

Clearly true recidivism is underestimated because of underreporting and so on, but in criminology there is what is called an 80/20 rule—that is, 20 per cent of offenders are responsible for 80 per cent of crime. That is true, I think, for sex offences as well. For example, I would expect that if you looked at all the sex offenders in prison in Victoria, about 70 to 80 per cent of them would not have a prior record of sex offences anyway, so that raises questions for me too about the limitations, I guess, of many of our efforts to do offender registers, for example ...

In terms of recidivism rates, looking at the problem the other way, about 15 to 25 per cent, at least officially—in terms of official records—of sex offenders will be reconvicted of a sex offence over the next 5 to 15 years.⁶⁰

In the context of clergy offenders, the John Jay study conducted explained that there appeared to be a 10 per cent recidivism rate, but that due to discrepancies in the sample it exercised caution in relying on this figure.

The Committee heard that there is a higher recidivism rate among those offenders who target child male victims as opposed to those who offended against child female victims. Professor Smallbone told the Inquiry:

The capacity of different kinds of offenders to change their attitude, if you like, or to change their behaviour in relation to children in a general sense varies enormously. I come back to the point that people who have offended against boys find it more difficult to stop for one reason or another, or at least they have higher recidivism rates.⁶¹

The Committee noted that offending behaviour and recidivism is complex and difficult to accurately determine.

Based on current assessments, the suggestion is that recidivism is relatively high for previous offenders. In acknowledging that recidivism is a potentially significant issue, prevention strategies have focused on the value of using screening tools.

58 S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 7.

59 *Transcript of evidence*, Professor Stephen Smallbone, p. 6.

60 *Transcript of evidence*, Professor Stephen Smallbone, p. 6.

61 *Transcript of evidence*, Professor Stephen Smallbone, p. 11.

At the same time, situational contexts and the interplay with offender motivations and behaviour indicate that reducing opportunities for first time offending or opportunistic offending through the structures and culture in an organisation is equally important in preventing criminal child abuse.

6.4.4. Child sex offenders engaging in ‘grooming’ behaviour

For a percentage of offenders it appears that there is a premeditated effort to select or ‘groom’ victims in the context of criminal child sexual abuse. Research has found that the pre-abuse circumstances that present the greatest degree of risk are those in which the offender’s role involves a mix of care-taking and authority, as is often found in parental and guardianship roles.⁶²

As described above, some offenders will attempt to position themselves in ways that enable easier access to children. These offenders tend to be ‘predatory offenders’, who are prepared to manipulate a situation to create opportunities for offending. Grooming can occur in a range of ways, including seeking to develop relationships with victims or their families. It can also extend to grooming individuals within organisations.

The Committee considered that a course of conduct described as ‘grooming’ warrants the introduction of a new criminal offence, encompassing conduct where it is accompanied with an intent to facilitate sexual activity with a child. This is considered in more detail in Chapter 22 in Part G.

6.5. Religious and non-government organisations in Victoria

The nature of non-government organisations that participated in the Inquiry was diverse, reflecting the broader context of non-government organisations across Victoria. The purpose, size, available resources and structure of the non-government organisations varied considerably. The Committee noted that some non-government organisations are small, locally based and resourced by volunteers, while others are vast and operate on an international scale.

The Committee grouped the organisations it was interested to hear from into a number of categories. Based on research and expert evidence it received, it identified the types of non-government organisations most likely to have direct contact with children. These are:

- religious organisations
- out-of-home care
- early education services and independent schools
- child care organisations
- youth services
- recreational and sporting organisations.

Many of these organisations receive government funding and tax exemptions to undertake the services and activities they engage in.

⁶² S. Smallbone, W.L. Marshall, & R. Wortley (2008) *Preventing child sexual abuse: Evidence, policy and practice*, p. 10.

It is important to consider the features of these varying organisational contexts. The Committee determined that all organisations can be at risk of criminal child abuse.

In addition, as noted in Chapter 7, the Committee was also conscious that the historical interaction of these religious and non-government organisations with children have often been different from the contemporary context. In particular, it identified evolving and changing contexts in religious organisations, out-of-home care and schooling.

Finding 6.4

There are many types of organisations in which criminal child abuse occurs, and over many decades the nature of the services and programs provided by these organisations have evolved to meet the changing needs of children and the community, including services commenced following closure of institutions providing out-of-home care.

6.5.1. Religious organisations

Religious organisations engage in a range of activities that involve interaction with children, including the day-to-day activities of ministers of religion in their communities and parishes. It also includes the involvement of religious organisations in what are generally considered secular activities.

The Committee heard evidence that criminal child abuse in religious communities can be particularly difficult to address. Professor of Intercultural Studies at RMIT, Desmond Cahill, explained to the Inquiry that:

Child sexual abuse has existed in all ages and in all cultures and in all religions, invariably shrouded in secrecy and silence and characterised by inadequate responses by religious authorities determined to keep their faith's reputation pristine and irreproachable in a religiously competitive market.⁶³

In referring to a study he had undertaken in 1997 relating to child sexual abuse in churches, Professor Patrick Parkinson from Sydney University informed the Inquiry that:

... children were less likely to be protected in churches than almost any other group in society. I did not mean by that, that children were more likely to be abused but that they were less likely to be protected if they disclosed abuse. There is a whole range of reasons ... the fact that there is a tendency to trust adults, people you have known a long time; a policy of forgiveness, which has been a big issue in churches; and the issue of protecting the institution.⁶⁴

Professor Parkinson went on to say that:

The reality is that we have come light years on from 1997. Most churches—I think all churches—have radically changed their attitudes to all of this ... It is important to emphasise that all churches now, including the Catholic Church, are very much safer places than they were. We have, in my view, come a long way, but there is a long way to go.⁶⁵

63 *Transcript of evidence*, Professor Desmond Cahill, p. 22.

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

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

The Committee heard that religious organisations have been traditionally closed and protective of their members, making it challenging to effectively address criminal child abuse. In research conducted by Marie Keenan, she notes that in view of the nature of the work they undertake, ministers of religion are often in situations of unsupervised contact with children. This includes work in parishes, hospitals, schools, youth clubs and youth retreats.⁶⁶

In addition, in relation to the Catholic Church, research suggests that ministers of religion often set themselves apart and set themselves above others. In the past they have operated in contexts with loose accountability structures and with no supervision or support in their duties.⁶⁷ The following chapter discusses how allegations of criminal child abuse were handled by religious organisation in the past, particularly the Catholic Church.

Religious laws

In its Inquiry, the Committee sought to understand the ways in which religious laws and procedures might be used to address criminal child abuse within the organisation. This section provides a brief overview of some religious laws with later chapters exploring this in more detail.

The Committee received information from both the Catholic Church regarding canon law and the Rabbinical Council of Victoria (RCV) regarding *halachah*. The Australian Muslim Women's Centre for Human Rights also discussed Islamic law in the context of child abuse.

In its submission to the Inquiry, the Catholic Church explained how canon law applies in the context of civil and criminal law. Box 6.1 details this application of canon law.⁶⁸

66 M. Keenan (2011) *Child sexual abuse and the Catholic Church: Gender, power, and organizational culture*. USA, Oxford University Press, p. 172.

67 M. Keenan (2011) *Child sexual abuse and the Catholic Church: Gender, power, and organizational culture*, p. 173.

68 *Submission S185*, Catholic Church in Victoria, pp. 7–8.

Box 6.1: Canon law—the Roman Catholic Church

Canon law is the body of laws and regulations made or adopted by ecclesiastical authority, for the governance of the Catholic Church and its members.

Canon law is the internal ecclesiastical law governing the Catholic Church (both Latin Rite and Eastern Catholic Churches). Canon law provides the structure and parameters for all governance in the Catholic Church.

The canon law of the Catholic Church is a fully developed legal system, with all of the necessary elements including tribunals, lawyers, judges, a fully articulated legal code and principles of legal interpretation.

The sexual abuse of children is a crime. It is a crime in civil law and it is a crime in canon law. Sexual abuse by clergy or religious has two distinct aspects.

- The first is concerned with the civil and criminal responsibility of individuals, and this, being a matter for the civil authorities, is regulated by the laws of the state where the crime is committed.
- The second is religious in nature and as such comes under the internal responsibility of the Catholic Church, which applies its own legal or canonical system. The Catholic Church has the duty to punish wrongdoers for the grave and grievous damage done to the community of the Catholic Church. Canon law stipulates the norms, procedures and penalties for the relevant Catholic Church Authority to apply. Generally speaking, a bishop is the relevant Catholic Church Authority in relation to parish priests, and the congregation leader (or 'Provincial') is the relevant Catholic Church Authority in relation to members of Orders, Congregations and Societies.

Source: Adapted from *Submission S185*, Catholic Church in Victoria, pp. 7–8.

Chapter 7 discusses in greater detail the role of canon law in the context of criminal child abuse—that is, how it is used to apply internal sanctions to offenders, including laicisation (or removing the authority of ministers of religion) and the extent to which it has been used in both historical and contemporary contexts.

In its submission, the RCV explained that there are two aspects of Jewish law that influence its approach to criminal child abuse matters. These are known in Hebrew as *mesirah* and *arka'ot*, outlined in Box 6.2.⁶⁹

⁶⁹ *Submission S138*, Rabbinical Council of Victoria, p. 2.

Box 6.2: Halachah—Jewish law

The RCV explained that Jews who betrayed other Jews to the authorities, giving information, whether true or not, that could be used to drum up a charge, were looked upon with special scorn. Consequently, the offence of *mesirah* (literally, ‘handing over’—that is, the handing over of people or even information) became a particularly severe offence within the community. In the context of modern multicultural societies with properly functioning judicial systems, it is recognised that those concerns have no place. The RCV has publicly repudiated these views. Its policy advises that ‘it is *halachically* (that is, within Jewish law) obligatory to make such reports’ to the civil authorities.

Arka’ot (non-Jewish courts)

Despite these remarks, there remains within Jewish law an antipathy to bring certain matters before secular courts. It is important to understand which matters these are, and why the antipathy exists. *Halacha* is an all-encompassing system. There is no aspect of human experience that is beyond its scope. For this reason, if a Jew has a financial or business dispute with another Jew, the correct thing for them to do *halachically* is to bring the matter before a Jewish court (*Beth Din*) for a ruling which will be enforceable under the local laws of the country in which the hearing takes place. (In Victoria, such rulings are enforceable under the *Commercial Arbitration Act 2011*.)

To fail to act in such a way is seen as demeaning to *Halacha*, as if to imply that there are situations with which it cannot cope. However, such demands only apply to civil matters. With only one or two exceptions dotted throughout its long history, Jewish authorities outside Israel have never been responsible for judging criminal matters. They have never had the authority to try people for crimes, nor to impose sanctions, nor have they sought such authority. Therefore, the RCV has been vocal in stating that any reticence people may have in bringing or helping to bring criminal matters before non-Jewish courts is thoroughly misplaced.

Source: Adapted from *Submission 138*, Rabbinical Council of Victoria, p. 2.

Unlike the Jewish and Catholic Church laws, the Committee heard that Islamic law does not influence how the Muslim community responds to criminal child abuse. The Australian Muslim Women’s Centre for Human Rights explained to the Inquiry that:

Ninety-seven per cent of what people define as Islamic law is just difference in opinion among Muslim legal scholars, so there is nothing there that would, I think, pose any sort of challenge. Additionally, the welfare of a child is almost sacred in Islam, so you get a very receptive audience. In addition to our experience, which has been that—we have worked on many issues of violence related to women, and it has been very difficult work to do, but when we speak about violence against children people are far more receptive. Again I would say that it is a good place to start with, and I think if you are going to do any sort of training or work in this area, the Muslim community would be very receptive, despite it being taboo.⁷⁰

⁷⁰ *Transcript of evidence*, Australian Muslim Women’s Centre for Human Rights, Melbourne, 22 April 2013, p. 8.

Engagement in secular activities

The major religious bodies in Victoria are involved in the provision of a wide range of socially important services. In many respects these services are essentially secular in character. They include the education of children, the operation of healthcare facilities, homes for older people and the provision of support to a wide range of disadvantaged communities and individuals.

The motivation of these non-government organisations to be involved in these areas may be religious in character—that is, missionary in purpose, serving others and/or charitable in nature. Importantly, however, they are supported by the secular state in undertaking them because of their social value to the community.

How these organisations practise their religious beliefs is not a matter that concerned the Committee, apart from the extent to which these organisations comply with the law. The Committee is, however, specifically concerned with their role in the provision of services and their engagement with children in the community.

Many are registered charities and are permitted to raise money from the public for these activities. They are supported by government through tax concessions and direct funding. Some operate under government contracts to provide services that the State would otherwise have to provide. These charitable activities often add to the esteem in which these organisations are generally held.

The Committee requested specific information regarding religious organisations that receive government funding to undertake community services. In response to this request, DHS advised that in 2011–12 it provided approximately \$327.7 million in funding to religiously affiliated community service organisations.

DHS advised the Committee that it does not specifically collect information regarding religious affiliation from the organisations it funds, so it could not provide a definitive list of organisations with a religious affiliation.

From the information provided, it is evident that a number of community service organisations are affiliated with the Anglican Church, the Catholic Church, the Uniting Church, and the Salvation Army. While the information provided by DHS may not include all religiously affiliated organisations, Table 6.4 provides an estimation of the total amounts received by religious denominations.

Table 6.4: Estimated total DHS funding received by religious denominations to provide community services, 2011–12

Religion	2011-12 funding
Catholic Church	\$96.7 million
Uniting Church	\$78.6 million
Anglican Church	\$59.6 million
Salvation Army	\$48.9 million
Other denominations	\$43.9 million
Total	\$327.7 million

Source: Adapted from *Supplementary evidence*, Response to request for information, Department of Human Services, 10 December 2012

Within these religious denominations, organisations affiliated with them that received more than \$20 million from DHS in 2011–12 are outlined in Table 6.5.

Table 6.5: Specific religious organisations receiving more than \$20 million per annum from DHS to provide community services, 2011–12

Organisation	Affiliation	2011-12 funding
The Salvation Army Property Trust and Red Shield Housing	Salvation Army	\$48.9 million
Anglicare Victoria	Anglican Church	\$38.0 million
Wesley Mission Victoria	Uniting Church	\$31.0 million
MacKillop Family Services	Roman Catholic Church	\$30.6 million
Melbourne City Mission	Interdenominational	\$23.1 million

Source: Adapted from *Supplementary evidence*, Response to request for information, Department of Human Services, 10 December 2012.

The funding identified by DHS is only one source of information relating to the levels of government funding provided to religious organisations. In addition to charitable and community service provision, many religious denominations also operate schools and receive government funding. Section 6.5.3 discusses schools in more detail.

It is important to recognise that religious organisations are regularly funded and supported to engage in activities of a secular character that would otherwise have to be performed by the secular state. The Committee is of the view that in the performance of those activities, religious organisations should be required to meet the standards applicable to all other organisations and indeed to the State itself.

6.5.2. Out-of-home care

The Committee considered the nature of services that provide out-of-home care in situations when parents are unable to continue to provide care for their child/ren. It acknowledged that the government has a duty of care to children in these circumstances.

With the developments in public policy in statutory child protection systems, children who would once have been placed in institutions or orphanages are now commonly placed in out-of-home care arrangements such as foster care and kinship care. Box 6.3 outlines the range of out-of-home care provided.⁷¹

⁷¹ Steering Committee for the Review of Government Service Provision (2013) *Report on government services 2013*. Canberra, Productivity Commission (Chapter 15).

Box 6.3: Out-of-home care

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

Out-of-home care services comprise:

- Residential care—where placement is in a residential building whose purpose is to provide placements for children and where there are paid staff.
- Family group homes—provide care to children in a departmentally or community sector agency provided home. These homes have live-in, non-salaried carers who are reimbursed and/or subsidised for the provision of care.
- Home-based care—where placement is in the home of a carer who is reimbursed (or who has been offered but declined reimbursement) for expenses for the care of the child. This is broken down into the three subcategories: relative/kinship care, foster care and other home-based out-of-home care.
- Independent living—including private board and lead tenant households.
- Other—includes placements that do not fit into the above categories and unknown placement types. This includes boarding schools, hospitals, hotels/motels and the defence force.

Source: Adapted from the Steering Committee for the Review of Government Service Provision (2013) *Report on government services 2013*. Canberra, Productivity Commission, Chapter 15; and Australian Institute of Health and Welfare (AIHW) *Child protection Australia 2011–12*. Canberra, AIHW, Chapter 4.

Out-of-home care is largely provided by non-government organisations in situations in which care by the extended family is not an option. It is an option of last resort.

DHS funds out-of-home care placements and related services through service agreements with individual community service organisations. The number of organisations funded to provide out-of-home care for children and young people changes over time. At the end of June 2013 there were approximately 50 community service organisations in Victoria receiving over \$183 million to provide out-of-home care for children and young people, excluding disability services (which predominantly care for adults but do provide some out-of-home care to children).

DHS advised the Inquiry that at 30 June 2013, there were 6,828 children placed in the out-of-home care system in Victoria. The daily average number in each form of care was:

- kinship care—2,836
- home-based care placements—1,538
- permanent care—1,940
- residential care—514.

DHS also advised that over the last 10 years there has been a 50 per cent increase in the number of children placed in out-of-home care.⁷²

The out-of-home care system has been the subject of reform in the last few years, primarily in response to investigations by the Victorian Ombudsman in 2005 and 2010 and the Cummins Inquiry. These inquiries have led to increased regulation through registration, accreditation and monitoring systems. Part D discusses these arrangements further.

Changes over time in out-of-home care

DHS informed the Inquiry that the provision of out-of-home care has changed significantly over the past 60 years. There are no longer any large institutions caring for children that operate in Victoria. DHS told the Inquiry it estimates that the largest group of children who are placed together is six.

Prior to 1970, out-of-home care was run primarily through central reception centres and congregate care institutions, which provided large-scale institutional care.⁷³ Table 6.6 provides an overview of the changes to out-of-home care in Victoria.

Over the past 150 years more than 100 homes and institutions have provided out-of-home care for children. Of these, over half have been privately owned and operated, with the vast majority being managed by religious organisations.⁷⁴ In a submission to the Inquiry, Dr Cate O'Neill from the research project 'Who am I?' at the University of Melbourne, explained that:

Victoria's history is ... distinguishable from other jurisdictions in Australia in the prevalence of institutional care (in large, congregate care settings like orphanages or children's homes) as opposed to other models like foster care or boarding out.⁷⁵

During the 1970s institutional care continued to be a major form of care for children unable to live with their parent/s. The period also saw an increase in alternative care models such as Family Group Homes. DHS told the Committee that:

In the 1970s Allambie was the State's major reception facility for children being removed from their families, and in the mid-1970s there were large numbers of children placed at this facility ... At that time many of the children's homes that had been running through the earlier part of that century ... were all gradually starting to phase down.⁷⁶

Table 6.6 provides a breakdown of the different types of out-of-home care in Victoria and how it changed over time.

72 *Supplementary evidence*, Response to request for information, Department of Human Services, 10 December 2012, p.6.

73 *Supplementary evidence*, Response to request for information, Department of Human Services, 10 December 2012, p.5.

74 Ombudsman Victoria (2012) *Investigation into the storage and management of ward records by the Department of Human Services*. P.P. No. 109, March 2012, p. 20.

75 *Submission S166*, Who am I? Project, University of Melbourne, p. 5.

76 *Transcript of evidence*, Department of Human Services, Melbourne, 22 October 2012, p. 2.

Table 6.6: Changes to out-of-home care in Victoria

Time	Nature of out-of-home care	Service redevelopment
Pre-1970s	<ul style="list-style-type: none"> out-of-home care was provided primarily in institutions such as State run centres (Allambie, Turana, Winlaton and Baltara) the first family group home model appeared in the late 1950s. 	<ul style="list-style-type: none"> central reception centres and congregate care institutions provided large scale care.
1970s	<ul style="list-style-type: none"> children's homes continued to be extensively used (such as St Cuthbert's Home for Boys, Kildonan Homes for Children, Tally Ho Boy's Training Farm, Christian Brother's facilities and Ballarat Children's Home). 	<ul style="list-style-type: none"> commencement of transition to alternate types of care such as family group homes.
1980s	<ul style="list-style-type: none"> decrease in institutional care and increase in home based care placements introduction of preventative and family support services. 	<ul style="list-style-type: none"> 1985 Statewide Services Redevelopment project to reduce size and function of central institutions State care starting to be seen as last resort.
1990s	<ul style="list-style-type: none"> closure of Alambie (1990) and Baltara (1992). 	<ul style="list-style-type: none"> increase in family group homes and foster care services increase in placements with extended family.
2000s	<ul style="list-style-type: none"> out-of-home care currently provided in: <ul style="list-style-type: none"> kinship care foster care residential care permanent care. 	<ul style="list-style-type: none"> introduction of therapeutic care in foster care and residential care placements 2006 Kinship Care Project—Kinship care viewed as the preferable option for children and young people unable to remain in the care of their parents.

Source: Adapted from *Supplementary evidence*, Presentation, Department of Human Services, 22 October 2012.

6.5.3. Early education and non-government schools

The Committee considered early education services and non-government schools in the context of the Inquiry. In the past, approaches to discipline meant that many children were exposed to physical abuse. Attitudes have changed towards disciplinary practices in schools.

In most societies school is considered a normal part of a child's development. Between the ages of 5 and 16, children spend a significant proportion of their time at school, and often a considerable number of years attending the same school. Consequently, they often interact and form bonds with teaching and other staff over that time.

While schools are operated by both government and non-government organisations, the Committee's Terms of Reference require it to focus on non-government schools.

In a 2010 research study, the Centre for Independent Studies identified a significant increase in the number of non-government schools over the past three decades. Notably, more than 90 per cent of these schools are religious schools.⁷⁷

Before the 1980s, 90 per cent of religious schools were Catholic or Anglican schools. In 2006, this percentage had dropped to just over 70 per cent, with the remaining 30 per cent representing minority religions. The most substantive increase was in the number of Islamic schools.

In March 2013, the Australian Bureau of Statistics (ABS) stated that the 2011 Census revealed that the numbers of non-government schools continued to grow at a higher rate than government schools.⁷⁸

6.5.4. Child care

There are approximately 4,000 services in Victoria that provide early childhood education and care services to children. These services vary in size and nature. An increasing number of children are attending child care.

The ABS reported that the trend since 1999 has seen an increase in the use of formal child care. From 1999 to 2008 the proportion of children attending formal care increased from 17 to 22 per cent. The use of child care overall has remained steady since this time, with a finding that 48 per cent of children aged up to 11 years attend child care.⁷⁹

Child care services are primarily provided by non-government organisations, both privately and publicly funded. There are a number of different types of child care services provided. Table 6.7 outlines the range of child care services.

77 J. Buckingham (2010) *The rise of religious schools*. The Centre for Independent Studies (Australia), p. 3.

78 Australian Bureau of Statistics (2013) 4221.0–*Schools, Australia, 2012* Accessed on 12 August 2012 from www.abs.gov.au.

79 Australian Bureau of Statistics (2010) 4102.0–*Child care, Australian Social Trends. June 2010*. Commonwealth of Australia.

Table 6.7: Types of child care services

Type of care	Description
Long day care	<ul style="list-style-type: none"> • centre-based child care services providing all-day or part-time care for children (services may cater to specific groups within the general community). • long day care primarily provides services for children aged up to five years. • some long day care may also provide preschool and kindergarten programs and outside school hours care. • the service may operate from stand-alone or shared premises, including those on school grounds.
Family day care	<ul style="list-style-type: none"> • services providing small group care for children in the home environment of a registered carer. • care primarily aimed at children aged up to five years, but primary school children may also receive care before and after school, and during school holidays.
Occasional care	<ul style="list-style-type: none"> • services usually provided at a centre on an hourly or sessional basis for short periods or at irregular intervals for parents who need time to attend appointments, take care of personal matters, undertake casual and part-time employment, study or have temporary respite from full-time parenting. • these services provide developmental activities for children, and are aimed primarily at children aged up to five years.
Kindergarten / preschool	<ul style="list-style-type: none"> • preschool programs offering structured, play-based learning program delivered by a degree-qualified teacher, aimed at children in the year before they commence full-time schooling. • provided by government and privately funded organisations. • programs may be delivered in a variety of service settings including separate preschools or kindergartens, long day care centres, or in association with a school.

Source: Adapted from the Steering Committee for the Review of Government Service Provision (2013) *Report on government services 2013*, Chapter 3: *Early childhood education and care*.

6.5.5. Youth groups and programs

Religious and non-government organisations operate a range of youth groups and programs in Victoria. The youth sector is complex and diverse, with services and programs that overlap with the activities outlined in other sections, such as recreation groups and sporting groups.

Many aim to assist young people to become involved with the community, to engage in adventure activities and to provide opportunities to develop skills and experiences to assist in meeting future goals. They include programs that:

- provide opportunities to contribute toward local communities as school students
- help run and perform music shows in local areas

- get involved in the political process (such as the Youth Parliament)
- help young people to participate in arts and cultural events and community radio
- provide adventure activities, camping, and resilience building (such as the Duke of Edinburgh Award and scouting clubs).

In addition, specialised youth programs exist to target young people at risk. These programs are operated by community service organisations (such as Berry Street Victoria and Wesley Mission). They include alcohol and other drug services for young people, mental health services, and programs to divert young people away from the justice system. Some of these include:

- Youth justice support services—which provide a range of services to young people at various stages of the youth justice system.
- Youth outreach and diversion services—to prioritise assessments for young people referred by Victoria Police for offending behaviour.
- Refugee Minor Program—supporting the settlement process and provision of care for unaccompanied minors younger than 18 years.

6.5.6. Recreational and sporting organisations

The Committee considered the role of recreational and sporting organisations in the context of criminal child abuse. These non-government organisations are among the most diverse and unstructured, often small organisations that are supported by parents and volunteers.

According to the 2011 Census data, the rate of participation in an organised sporting activity by children and young people is high. For example, approximately two-thirds of all children aged 9–11 years participate in a sporting activity. The participation rate for children in the 5–8 year bracket was 56 per cent and participation in the 12–14 year age range was 60 per cent. More males (949,000) participated than females (727,000).

In the 12 months to April 2012, when the ABS published its last survey, more than one-third of children aged 5–14 years (35 per cent) participated in at least one organised cultural activity outside of school hours. A cultural activity was defined as one of the following:

- playing a musical instrument
- singing
- dancing
- drama
- organised art and craft.

Nearly half of all females (47 per cent) participated in at least one organised cultural activity compared with 24 per cent of all males.⁸⁰

80 Australian Bureau of Statistics (April 2012) *4901.0—Cultural activities, children's participation in cultural and leisure activities. Australia*. Commonwealth of Australia.

6.5.7. Organisations and criminal child abuse

The prevalence of criminal child abuse in non-government organisations is presently unknown. As emphasised throughout this chapter, however, the overwhelming majority of children are safe in the care of these non-government organisations. The Committee emphasises that it is important to ensure there is a balanced attitude in approaching the issue of criminal child abuse in non-government organisations.

There is a range of non-government organisations that interact directly with children. Some are funded by government to provide specific services with multiple purposes. Others are large, international bodies with a combination of donations and government funding. Some organisations are small, locally based groups with no funding that rely on volunteers. A number are religious organisations and have diverse and complex structures. Furthermore, this is not an exhaustive list of all non-government organisations that regularly interact with children.

The diversity of non-government organisations creates challenges in preventing and responding to criminal child abuse within them. Similarly the nature of offending behaviour and the reality that there is no 'typical' offender can make it difficult for organisations to know how to prevent child abuse. Part D considers the range of strategies that have been identified for preventing criminal child abuse in these organisations.

Chapter 7

Past handling of allegations of criminal child abuse

AT A GLANCE

Background

In the past a large portion of institutions and orphanages were operated by religious organisations. Due to the high level of esteem and reverence for ministers of religion and the organisations they represented, children exposed to criminal child abuse in religious organisations were not as well protected as those in other organisational settings.

Key findings

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

Criminal child abuse occurs in all types of organisations that interact directly with children, and particularly in those that have regular contact with children. Chapter 6 focused on the current context and outlined the types of organisations and the challenges in understanding the prevalence and incidence of criminal child abuse in those organisations. This chapter deals with the manner in which criminal child abuse was dealt with by organisations in the past, particularly at a time when religious organisations were directly involved in the care and education of children.

The Committee found that there are unique circumstances for victims of criminal child abuse in religious organisations. The extent of abuse in these settings (compared to other organisations) is difficult to ascertain. But, as outlined in Chapter 6, researchers have suggested that children subjected to criminal abuse are less likely to be protected in religious organisations than in any other similar organisation in society. There are many reasons for this, including the policy of forgiveness and the self-protection of many religious organisations.⁸¹

Evidence to the Inquiry supports this view. As discussed in Chapter 1 of Part A, victims described their experience when they made an allegation of criminal child abuse to the organisation, and the effect that the organisation's response had on the victim. Organisations also provided evidence and information requested by the Committee about their handling of allegations of suspected child abuse.⁸² The evidence and other information received related principally to the Catholic Church, the Anglican Church and the Salvation Army.

The way in which a religious organisation has dealt with reports of suspected criminal child abuse is inextricably linked to victims' desire for justice. The Committee found that in the past, organisations' manner of dealing with such complaints was motivated by self-interest and the protection of the organisation. This approach has continued to influence the response of organisations to allegations of criminal child abuse and may help us understand why victims express grievance about the response.

This chapter explores the manner in which religious organisations—specifically the Catholic Church, the Salvation Army and the Anglican Church—have dealt with complaints of criminal child abuse perpetrated by its representatives. These organisations have been compelled to deal with the issue of criminal child abuse since the 1970s when such abuse became an increasing public concern.

Since the mid to late 1990s, these religious organisations have tried to introduce improved systems for preventing and responding to suspected criminal child abuse. This chapter focuses on the period prior to this time and considers:

- how abuse in organisations was able to occur
- the recognition of child abuse as an issue in religious organisations and in wider society
- religious organisations' understanding of the extent of abuse

⁸¹ *Transcript of evidence*, Professor Patrick Parkinson, p. 3.

⁸² Additionally, the Catholic Church, Salvation Army and Anglican Church provided access to existing complaint files relating to a number of organisations operating within the Church. The following organisations within the Catholic Church provided copies of complaint files: Ballarat Diocese, Melbourne Archdiocese, Order of Hospitaller St John of God, Salesian Del Bosco, Christian Brothers.

- the manner in which organisations responded to complaints and factors that influenced that response (particularly, whether the initial response or treatment of complaints contributed to the continued incidence of criminal child abuse in the Catholic Church)
- the history and circumstances leading to the creation of the formal protocols and procedure currently in place, and factors that influenced these.

7.1. The Catholic Church

Sexual and other criminal offences committed against children are not a new phenomenon. For centuries, conduct of this kind has been condemned as evil by the Catholic Church, other religious bodies and the broader community. As outlined in Chapter 4 in Part B, for a long time such offences have attracted severe penalties under our criminal law.

As outlined in Chapter 2 of Part A, the majority of evidence provided to the Inquiry has concerned the criminal abuse of children in the care of religious personnel of the Catholic Church. The time period extended from the 1930s onwards, with a significant amount of information about abuse perpetrated between the 1950s and 1980s.

The Catholic Church provided a comprehensive written submission to the Inquiry, titled *Facing the truth*. The submission was signed by the Archbishop of Melbourne, the bishops of Sale, Ballarat and Sandhurst, and by representatives of Catholic Religious Australia and Catholic Religious Victoria. As is evident from material in this submission, the attribution of responsibility for various ‘church’ activities is complicated, with no clear, common hierarchal structure. This aspect is explored later in this chapter.

Additionally, the criminal abuse of children in the largest religious denomination in Victoria and Australia has emerged as a significant issue across this country and internationally. As is recognised in *Facing the truth*, the Catholic Church has been attempting to address this issue in the United States, Canada, Ireland, New Zealand and the United Kingdom since the 1980s.⁸³ Chapter 8 outlines the inquiries that have been undertaken by the Catholic Church into the issue of criminal child abuse.

The Committee received evidence that, in Victoria, the established incidence of criminal child abuse is substantially higher in the Catholic Church than it is in all other denominations combined. Professor Patrick Parkinson of the University of Sydney explained that:

First of all, the prevalence of sexual abuse in churches: we know that there are huge issues with the Catholic Church—huge issues. There have been many, many priests jailed, many brothers jailed, and allegation after allegation is made. There are few allegations in other churches. There are some ... I have looked more informally at what happens in other churches.

If you compare the statistics, I would say conservatively that there is six times as much abuse in the Catholic Church as all the other churches in Australia combined, and I would regard that as a conservative figure ... It gives you a sense of the scale of the problem.⁸⁴

⁸³ *Submission S185*, Catholic Church in Victoria, pp. 14–35.

⁸⁴ *Transcript of evidence*, Professor Patrick Parkinson, p. 2.

Professor Parkinson went on to explain that this might be partly attributable to the wide range of services provided by the Catholic Church for children in the community, involving a far greater number of children than have been assisted by the other denominations. He continued with the following comment:

Even still, the levels of abuse in the Catholic Church are strikingly out of proportion with any other church, and that is the reality.⁸⁵

In her book *Child sexual abuse and the Catholic Church*, researcher Marie Keenan advised caution, given the lack of empirical studies, in determining whether the incidence of abuse of children is higher for Catholic clergy than it is for representatives of other churches or for other caring professionals around the world. She stated that:

The global reach and structure of the Catholic Church with its centralised features, makes collating data in this organisational context much more possible than in other churches and faith communities and in other professions. While the Congregation of the Doctrine of the Faith of the Catholic Church has the opportunity to gather data on abuse by Catholic clergy worldwide, no comparable centralised institution exists for other churches or faith traditions or for other professional groups, making comparative work almost impossible.⁸⁶

While the Committee received some evidence that data was collected internationally by the Vatican hierarchy, it was not provided with any information as to compliance with that requirement by the hierarchy in Victoria. In his evidence to the Inquiry, Cardinal George Pell stated that, during his time on the Committee of the Doctrine of the Faith from 1990 to 2000, the information was kept secret.⁸⁷

While the majority of public evidence from victims related to abuse in the Catholic Church, the Inquiry also received a considerable number of confidential submissions from those who suffered criminal child abuse at the hands of representatives of the Salvation Army, particularly in its homes and orphanages. The Committee also received submissions relating to the Jehovah's Witnesses, Jewish, Uniting Church, and Anglican Church communities, as well as other religious and non-government organisations.

This emphasis on the Catholic Church should not give any sense of security or comfort to other organisations that they have not, or do not, have such a problem. Many of the reasons for the Catholic Church's delay in recognising this issue (considered later in this chapter) apply equally to the current workings and traditions of other organisations. This relates particularly to the lack of accurate data about complaints, and the lack of procedures or protocols for dealing with allegations of criminal child abuse.⁸⁸

Finding 7.1

There has been substantial criminal child abuse in the Catholic Church over a long period of time, perpetrated by priests and other members of religious orders in Victoria.

⁸⁵ *Transcript of evidence*, Professor Patrick Parkinson, pp. 2–3.

⁸⁶ M. Keenan (2011) *Child sexual abuse and the Catholic Church: Gender, power, and organizational culture*, p. 9.

⁸⁷ *Transcript of evidence*, Catholic Archdiocese of Sydney, Melbourne, 27 May 2013, p. 22.

⁸⁸ *Transcript of evidence*, Islamic Council of Victoria, Melbourne, 15 April 2013, p. 7.

7.2. Salvation Army and Anglican Church

The Committee received considerable information relating to the sexual, physical and emotional abuse of children in the care of the Salvation Army from the 1930s to the 1980s with a significant amount of information relating to abuse perpetrated between the 1950s and the 1970s. In a significant majority of this evidence, children were treated in a fashion that could only be described as brutal. The Committee identified a number of Salvation Army homes where abuse could be categorised as prevalent, most notably the Bayswater Boys Home and Box Hill Boys Home. From evidence submitted to the Inquiry and other information secured, the Committee established that abuse was perpetrated not only by Salvation Army officers and employees, but also cottage parents, holiday families and visitors to the homes.

The Salvation Army did not have any policies in place to deal with complaints made by children during this period and the Committee discovered that when children tried to make a complaint this was often met with more brutality.

The submissions received from victims who had been in the care of the Salvation Army and some institutions run by the Anglican Church dealt more with the detail regarding the abuse as opposed to the manner in which a complaint was treated. However, many of the considerations outlined in this chapter regarding the Catholic Church and the reasons why abuse was able to occur apply equally to these organisations, given some similarities in the structure and more importantly, the reverence which the community held these organisations.

7.3. How abuse was able to occur within organisations

A quote often attributed to the philosopher Edmund Burke is apt: 'All that is necessary for evil to prevail is that good men do nothing.' It would be comforting to the Victorian community if that were all that could be said about the Catholic Church's handling of criminal child abuse when complaints were first made.

The Committee discovered, however, that in Victoria and elsewhere there has been not only inaction but action, such as denials, cover-ups and moving offenders around, that led to further child abuse. In its submission to the Inquiry, *Facing the truth*, the Catholic Church indicates that:

Awareness of sexual abuse was slow to percolate through society and the Church ... The realisation gradually developed that the problem was significant and that sexual abuse was perpetrated by people of a range of temperaments, from all walks of life, including clerics and religious.⁸⁹

But in this analysis the Catholic Church failed to recognise its own contribution to the concealment, as opposed to the growing awareness of the problem in broader society.

Rather than being instrumental in exposing the issue and the extent of the problem, the Catholic Church in Victoria, from senior leaders to parish priests:

- minimised and trivialised the problem
- contributed to abuse not being disclosed or not being responded to at all prior to the 1990s
- ensured that the Victorian community remained uninformed of the abuse

⁸⁹ *Submission S185*, Catholic Church in Victoria, p. 13.

- ensured that perpetrators were not held accountable, with the result that some abuse of children by religious, which could have been avoided, tragically continued.

Chapter 6 outlined a number of factors that put organisations at higher risk of criminal child abuse by their personnel. This section considers the following aspects of the past handling of criminal child abuse in religious organisations specifically:

- the trusted role of organisations in caring for children
- culture and power
- hierarchy and structure
- teachings and beliefs
- responses to allegations, including the failure to report
- relocation and movement of offenders.

7.3.1. Trust—the role and reputation of religious organisations caring for children

Religious organisations play a vital role in society, through charitable activities that benefit many vulnerable and disadvantaged people in the community. For example, the Catholic Church has made an important and valuable contribution to providing care and education for children in Victoria, on behalf of the Government. Historically, and until the late 1980s, religious organisations operated orphanages, children’s homes and detention facilities as trusted agents of the community.

Generally, religious organisations have been accorded great respect, including by people who do not identify with any religion. Traditionally, these organisations have advocated for the maintenance of the highest standards of personal conduct and community values.

Because there is a high level of unquestioning trust in representatives of organisations that provide care for children in a residential, educational, spiritual or social context, there is a great sense of betrayal if that trust is breached by a minister of religion. People also feel betrayed by those in the organisation who were aware of the criminal child abuse and did not act.

The Committee considered whether the focus or priority of senior religious leaders has been supporting the ‘good’ that the institution does in society, rather than addressing the abuse or ‘bad’ in the institution. Coupled with that view is a belief that addressing the issue will focus attention on it. This in turn will undermine all the good that the organisation does, thus damaging its reputation. The Committee is of the view that this is akin to the notion of ‘noble-cause corruption’. That is, leaders directed their focus and attention at the institution’s good works to such an extent that they overlooked any questionable or improper behaviour. No doubt the general community’s trust and blind loyalty towards religious personnel extended to the organisation as a whole, making it easier for the organisation to cover up or be secretive about perpetrators’ activities in the interest of protecting the organisation’s reputation and its otherwise good works.

In these circumstances, the combination of unquestioning trust, absolute authority and lack of supervision created a high-risk environment. Today, this type of unconstrained engagement between children and representatives of the Catholic

Church is less extensive. The Committee considers, however, that the dynamics of these risks is still a critical matter.

In 1999, some of these matters were examined in a paper on the nature of child abuse in the Catholic Church. This paper, *Towards understanding*, was prepared for the National Committee for Professional Standards of the Catholic Church, but was not released publicly. The former Executive Officer of Towards Healing, Sr Angela Ryan, provided the paper at the request of the Committee at a public hearing. Box 7.1 outlines the features of the paper.

Box 7.1: Towards understanding

Towards understanding acknowledged that ‘there was more to the issue of child sexual abuse than the failings of individuals.’⁹¹ Among other things, the research looked at occupational factors and identified that a number were ‘more relevant to priests and religious who offend against children ... some specific occupational-related factors that are peculiar to priests and which intensify and foster an addictive cycle among this group’.⁹²

These include the:

- ‘pedestalisation’ of clergy by some members of congregations whose expectations only serve to enhance feelings of sexual obsession and reinforce the need for secrecy
- martyr-like position clergy can project due to their ‘emotional’ poverty, coupled with their willingness to be at the service of the congregation
- trusted positions clergy enjoy as guardians and champions of morality, which places them in dependency relationships with vulnerable people.

The research paper indicated that ‘the risk of offending is increased when the potential perpetrator encounters a person, who by virtue of his or her subordinate position or emotional state, is vulnerable to exploitation’.⁹³

One of the significant conclusions of the research concerned the degree of misplaced trust being put in priests and religious, along with the failure to adequately supervise adult-child interactions and activities.⁹⁴ Indeed, an ‘almost complete lack of supervision of priests and religious’ was noted, particularly before offences were committed.⁹⁵

Source: Adapted from *Supplementary evidence*, Response to request for information, Sr Angela Ryan, 27 May 2013.

90 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion paper: Towards understanding, a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*. Unpublished, p. 1.

91 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion paper: Towards understanding, a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, p. 15.

92 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion paper: Towards understanding, a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, p. 15.

93 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion paper: Towards understanding, a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, p. 18.

94 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion paper: Towards understanding, a study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, p. 40.

Fr Kevin O'Donnell was sentenced on 11 August 1995 for crimes committed while undertaking his parish activities between 1946 and 1977. His Honour Judge Kellam in his sentencing remarks indicated:

Of most significance in the consideration of the seriousness of these offences is the fact they occurred in circumstances of gross abuse of trust. All of the children in question were in some way associated with you by reason of your position at the time as a priest ...

The material before me demonstrates that quite a number of them were children of devout families and had parents who attended church. Their statements to police establish that the position of parish priest held by you at those times was a respected and, in the circumstances then containing, a powerful one.

You were a person of very considerable authority in their young lives. For instance, if you wished young boys to come and assist you in works around the church or the school, it was apparently common practice for the nuns teaching those children to release them from school to do so. You were entrusted by those children and their parents and, indeed, by the nuns who taught many of the children, to care for them in a spiritual, emotional and pastoral sense. That trust was grievously breached on many occasions.⁹⁵

The circumstances of this offending graphically illustrate Fr O'Donnell's power and the opportunities he created to commit horrendous criminal sexual acts against children in his parishes. Fr O'Donnell's offending took place in various church-related contexts, including in the sacristy with altar boys (both before and after celebrating mass), in the presbytery with children from the parish school, chosen by Fr O'Donnell to assist with domestic tasks, repairs or painting in church buildings; and before taking a boy to a Scouts meeting. Other offending occurred at a holiday house in Rosebud, when Fr O'Donnell chose some boys from the parish in Hastings to accompany him on a holiday.

Further, Judge Kellam remarked:

Superficially, throughout your long life of service you appeared to be a dedicated priest who was committed to your parish and its members ... your conduct in respect of the 12 victims who are the subject of the counts before me cast a dark and sinister shadow over their young lives and over your apparent pastoral concern and involvement in the community during many of the years between 1946 and 1977 ... Each count I was told is a representative count ...⁹⁶

7.3.2. Culture of abuse?

The Committee asked representatives of the Catholic Church and other organisations whether criminal child abuse was endemic, and/or whether a culture of criminal child abuse existed, in their organisation.

Representatives of the St John of God order accepted that a quarter of the brothers working in relevant institutions had been the subject of complaints covering the period

95 *The Queen v. John Kevin O'Donnell* [1995] County Court of Victoria, (Kellam J), 25.

96 *The Queen v. John Kevin O'Donnell* [1995] County Court of Victoria, (Kellam J), 9.

from the 1960s to the early 1970s.⁹⁷ The Deputy Provincial of the Christian Brothers, Br Julian McDonald, acknowledged the culture was problematic at that time:

There were times, certainly, when parents became aware that their child or children had been abused, and there is anecdotal evidence that goes this way: parents turned up at the door of the Brothers' house, wanted to see the community leader or the principal of the school, and said, 'Remove so-and-so because he has done this to my son or we will get the police'. There were times when the police turned up and said, 'Remove so-and-so or we will charge him'. That simply reflects a culture that existed that gave special privilege—and it should not have—to people in religious life and in the priesthood. It was a perception that they were beyond offending.⁹⁸

He also acknowledged the need for change:

We know that now. People, religious people, priests, should resist being put on a pedestal ... any institution, indeed any person, is as sick as its secrets, and there was a culture that kept things secret. We have to address the sickness of the congregation of the Christian Brothers so that nobody is harmed into the future. We have to address our secrets, and you are helping us to do it.⁹⁹

Despite being confronted with information about the level of offending in an organisation, some of those who appeared before the Committee refused to acknowledge that this was partly attributable to the organisation's own culture. In evidence given on behalf of the Salvation Army, Captain Malcolm Roberts said:

From the evidence that we have seen ... I do not see that 'endemic' is the correct word ... I do not agree that there is serious systemic deficiencies and a failure of culture within the Salvation Army or was within the Salvation Army a culture of that type. I believe that the Salvation Army, as a movement, is a movement where the highest standards were the culture amongst people who worked for, or were officers of, the Salvation Army. There may have been those who failed to reach that standard. I do not believe it was a cultural issue; I do not believe it is endemic in the Salvation Army or was ... I would say that within those homes at times, when certain people were in charge or in a position of authority, that could be a culture that existed, but I do not believe it was the culture that existed within homes of the Salvation Army.¹⁰⁰

It is important to note in this context that while the Committee received few public submissions relating to the Salvation Army, additional evidence provided to the Inquiry pointed to significant issues of child abuse in some Salvation Army children's homes from the 1950s to the 1980s. In addition, 52 files of a potential 474 made available to the Committee revealed complaints of suspected criminal child abuse.¹⁰¹ Such an amount suggests that there were substantial problems of criminal abuse of children in the organisation. Further, the Committee noted that after representatives appeared at the Inquiry, the Salvation Army issued a public statement, saying that it would consider the calls for an official internal investigation.¹⁰²

97 *Transcript of evidence*, Hospitaller Order of St John of God, Oceania Province, Melbourne, 29 April 2013, p. 25.

98 *Transcript of evidence*, Christian Brothers, Melbourne, 3 March 2013, p. 15.

99 *Transcript of evidence*, Christian Brothers, p. 15.

100 *Transcript of evidence*, Salvation Army, Melbourne, 11 April 2013, p. 4.

101 See Appendix 9.

102 The Salvation Army, 'The Salvation Army appearance before the Victorian Parliamentary Committee's Inquiry into Institutional Responses to Child Sexual Abuse' (Media release, 11 April 2013).

The Committee has no doubt that the problem of criminal child abuse existed in religious organisations. Victims were left susceptible to exploitation by perpetrators due to the context in which such abuse occurred. These perpetrators acted with the authority and respect of parents, the organisation of which they were a member, and society itself. Additionally, this position and status ensured that there was no independent scrutiny or supervision of the manner in which these individuals exercised their power over children. This lack of scrutiny enabled these perpetrators to continue to abuse children in their care.

Chapter 6 notes that many of the activities or services conducted by such organisations are not as widespread as they once were. All institutions or orphanages have ceased operation in Victoria, with alternative care arrangements being offered, though some of these newer services are still administered by religious and other non-government organisations. The Salvation Army was the largest provider for children in institutional homes in Victoria, but ceased running them in the mid-1980s.¹⁰³ Also, there are now fewer religious personnel involved in the education and care of children. However, the shift in the type of care provided does not ameliorate the risk to children. Although care providers no longer use the institutional model, the risk of criminal child abuse in current environments, some of which are monitored by religious or other non-government organisations, remains.

Part D discusses the importance of oversight to ensure that organisations are meeting their duty of care, through the establishment of prevention frameworks to create child-safe organisations. It is important to monitor and remain vigilant about the level and type of care children receive and the standards applied to those entrusted with the care of children.

Finding 7.2

The environment in institutions, schools and parishes, particularly from the 1950s to the 1980s, gave perpetrators or representatives of religious or other non-government organisations the opportunity to exploit vulnerable children in their care.

Finding 7.3

A culture existed in religious organisations that allowed for the occurrence of systemic criminal child abuse.

7.3.3. Structure and responsibility in the Catholic Church

The Catholic Church cannot be regarded as a single entity with a clear hierarchal structure and direct lines of responsibility and authority. The Catholic Church in Australia is part of the Universal Catholic Church. The Catholic Church in Victoria's submission to the Inquiry, which it titled *Facing the truth*, explains that the pope, as Bishop of Rome, is the immediate superior of all Catholic bishops around the world. But the pope does not govern the bishops; rather, he acts to ensure there is unity in

¹⁰³ The Salvation Army, 'The Salvation Army appearance before the Victorian Parliamentary Committee's Inquiry into Institutional Responses to Child Sexual Abuse' (Media release, 11 April 2013).

the Catholic Church's beliefs and teachings throughout the world. At the same time, authority in some religious matters is reserved for the pope.

The Catholic Church in Victoria is divided into four dioceses: the Catholic Archdiocese of Melbourne and the dioceses of Ballarat, Sandhurst and Sale. The archbishop or bishop in each diocese is responsible for all the Catholic Church activities in his area. The power of the bishop is personal, considered to be received from God, and he is therefore not considered a delegate or direct representative of the pope. The responsibility of a bishop is described in *Facing the truth* as follows:

He is ultimately responsible for all Church activity belonging to the Diocese. However, he is not responsible for the activities belonging to the Universal Catholic Church, or for the activities of individual parishes, individual priests or individual members of the Church.

Bishops are also not responsible for the activities of religious institutes established by, and therefore accountable to, the Holy See.¹⁰⁴

Within each diocese are a number of parishes, and the activities of the parish, including the running of the primary school, are the responsibility of the parish priest. In addition to supervising the religious education and sacraments for the students, the priest sometimes exerts further power and influence in the administration, staffing and control of the school. Chapter 26 of Part H considers the characterisation of the priest in the organisation and the Catholic Church's consequent denial of any legal responsibility for a priest's actions in carrying out his pastoral duties.

There are various other Catholic Church groups operating in Victoria, such as orders, congregations and societies. Some of these groups operate at the invitation of the bishop of the diocese. They perform duties which, most relevant to the Inquiry, include providing education and care to children. Traditionally, these groups have been responsible for running many of the orphanages and schools operating in Victoria.

Although the bishop extends an invitation to these groups to operate in the diocese, the bishop does not have responsibility for their activities or for their supervision in his diocese. The Committee concluded that this is a curious state of affairs. These groupings constitute part of the activities of the 'Church', are perceived as part of the 'Church', and can only operate with the agreement of the bishop, yet he is able to deny any accountability for them. This situation has frustrated a number of victims who approached the relevant archbishop or bishop with allegations of criminal child abuse and were informed that he would take no action because the matter did not fall within his area of responsibility.

Br Julian McDonald, Deputy Provincial of the Christian Brothers, outlined its reporting structure as follows:

We are accountable to our leadership in Rome ... We are what is called a pontifical congregation. That means we are not attached specifically to one bishop in a diocese somewhere. Some congregations were started by bishops or started under the direction of bishops, and they emanated from there. We sought very early in our history approval by Rome to be a pontifical congregation that gave us freedom to accept invitations from bishops anywhere in the world ... We were invited by the

¹⁰⁴ *Submission S185*, Catholic Church in Victoria, p. 9.

bishop to establish the schools.¹⁰⁵

Br McDonald indicated that the issue of criminal child abuse was discussed at meetings with the bishop, although a brother was under no obligation to report a specific action to the bishop as he was not their ‘boss’. Instead, matters were reported to their congregational leader in Rome. Br McDonald denied that the Christian Brothers did not take responsibility:

... we pass the buck to nobody. We do not operate independently of everybody else, but we do have our own responsibilities and we must address those responsibilities ourselves; otherwise we are passing the buck. So if an incident of abuse came to light to me as a province leader, I have a serious responsibility to make sure that that is addressed, that pastoral moves are made to address the needs of complainant and victim, and I have a responsibility to make sure that these matters are properly dealt with through systems at arm’s length from the Christian Brothers.¹⁰⁶

This account illustrates that assigning responsibility for religious personnel in the Catholic Church is not straightforward and is difficult to understand. The fragmented structure makes it extremely challenging for the Catholic Church in Victoria to ensure the appropriate handling of suspected criminal child abuse in a coherent way.

Similarly, the St John of God order advised the Committee:

In terms of the broader stuff, yes, the St John of God Brothers are part of the Catholic Church. We also have a degree of independence. When I was thinking about this this morning actually I thought, ‘How would I explain the relationship?’ It occurred to me it is a bit like the Victorian Parliament, in a sense that there is an Australian Parliament that has its rules and regulations and laws, but sitting underneath that is the Victorian Parliament that has its own culture and laws and regulations. It seems to me some way of trying to describe how the governance of the church organises. As your bailiwick is the Victorian bailiwick, ours is the St John of God bailiwick, and we try to deal with that in the way that we have to, given the specificity of our population and their vulnerability and the difficulty of dealing with people with intellectual disability who may also have behavioural issues and psychiatric problems.¹⁰⁷

Victims expressed frustration at the lack of a clear pathway to express their grievance or complaint within the Catholic Church. Additionally, if no action was taken on a complaint, who within ‘the Church’ would deal with it? Victims believed that if a complaint related to a member of the Catholic Church, ‘the Church’ had a responsibility to deal with it. In reality, however, such a belief was ill-founded, given the structure of the Catholic Church, its operations and its lines of responsibility.

Following repeated questions from the Committee, Cardinal George Pell accepted that certain members of the Catholic Church hierarchy and leadership had failed to attribute responsibility. Cardinal Pell explained to the Inquiry that this issue continues:

What the former pope said was that some of the bishops and religious superiors covered up. That is quite different from the whole of the Church. He never said that; the whole of the Church is not guilty of that. Some certainly did cover that up, and I am certainly prepared to acknowledge that.¹⁰⁸

105 *Transcript of evidence*, Christian Brothers, p. 15.

106 *Transcript of evidence*, Christian Brothers, pp. 8–10.

107 *Transcript of evidence*, Hospitaller Order of St John of God, p. 8.

108 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 25.

This statement reveals a reluctance to acknowledge and accept responsibility for the Catholic Church's institutional failure to respond appropriately to allegations of criminal child abuse. The distinction between the Catholic Church being responsible for a cover-up and the reality that some individual bishops and religious superiors were involved in covering up, provides little comfort for victims who attribute responsibility to 'the Church' as one body, rather than to the individual representatives of each part.

To some extent, this problem has its foundation in the role of the Catholic Church and its clergy as both a religious institution and as a provider of services in secular society. One would reasonably anticipate the existence of an appropriate structure for the latter that would provide the levels of accountability ordinarily expected of such operations.

While the Catholic Church structure allows for separate operation of dioceses and religious congregations, it does not appear that leaders, whether bishops or religious superiors, communicated with each other regarding individual cases. This approach was consistent with the adoption of a policy under which information concerning child sexual abuse was strictly quarantined. However, the Committee considered it unlikely that senior leaders in the Catholic Church were not collectively aware of the emergence of criminal child abuse in the organisation as a whole in Victoria.

One explanation provided by Br McDonald from the Christian Brothers was that 'the leadership was not trained in those days to know what the signals for paedophilic behaviour were ... what are the signals, what is the psychosexual profile, etc.'¹⁰⁹

But there was at least some awareness of the possibility of criminal child abuse. As Br McDonald indicated, rules existed, as conveyed in the Latin phrase *noli me tangere* ('don't touch me'), that a brother should never be alone with a boy.¹¹⁰ For example, Br McDonald did accept that there was a 'red light flashing' in the form of notations in a visitation report on Br Edward Dowlan in 1975. At a public hearing, a Committee member read this portion of the 1975 Visitation Report to Br McDonald:¹¹¹

Ted is experiencing a difficult year as he prepares for his perpetual profession. He is not at ease in the community which he considers does not provide him with the support he needs. But his needs are personal. He is immature, as shown by spending more than the normal time with boys, rather than with the brothers.¹¹²

Br McDonald responded:

It is certainly a red light flashing from our perspective now, and should have been a red light flashing then. It is part of a visitation report, and visitation reports were based on a conversation between the provincial visitor, who was normally one of the leadership team or the provincial himself, and he then would have reported whatever was brought to his attention by other brothers in the community or that he noticed himself or that Dowlan himself disclosed to him. So, yes, it is a red flag. How does one address it? I do not know, because I was not in the mind of the leader then, but certainly now ...¹¹³

¹⁰⁹ *Transcript of evidence*, Christian Brothers, p. 4.

¹¹⁰ *Transcript of evidence*, Christian Brothers, p. 4.

¹¹¹ Visitation report—This report was compiled annually by a Visitor (someone outside the residence of the Brothers) and was a requirement of Canon Law to ensure that Christian Brothers at that residence were acting in the spirit of their vocations and the rules of the Congregation.

¹¹² *Transcript of evidence*, Christian Brothers, p. 8.

¹¹³ *Transcript of evidence*, Christian Brothers, p. 8.

The Committee accepts that the structure of the Catholic Church created some impediments within the organisation to achieving effective leadership and management on the matter of criminal child abuse. Although there was a lack of knowledge about aspects of criminal child abuse, the Committee is not prepared to accept this as a general excuse for the failure to deal adequately with the issue. The Committee concluded that Catholic Church leaders had enough information to take action, but failed to do so. Some would argue that Catholic Church leaders directed their strategy for dealing with criminal child abuse in a most effective way, resulting in protection of the institution. However, good leadership in this instance should have been concerned with proper stewardship of the Catholic Church, upholding the rule of law and protecting children.

It is noteworthy that the current Catholic Church leadership in Victoria was critical of former Bishop of the Ballarat Diocese, Ronald Austin Mulkearns, and of the late Archbishop Frank Little of the Catholic Archdiocese of Melbourne, in their handling of criminal child abuse. According to Cardinal Pell, the ‘problems are in the errors of judgement or the inactivity of Church leaders’.¹¹⁴ Br McDonald from the Christian Brothers remarked:

It is true that there were some mistakes made and they have had devastating consequences on victims. I cannot defend, and I will not try to defend, the indefensible.

Leadership made some mistakes.¹¹⁵

The Committee found, however, that while this suggests that personal errors of judgement were made, it is unfair to allow the full blame to rest with these individuals, given that they were acting in accordance with a Catholic Church policy. It was only after information regarding the manner in which complaints had been treated was provided and subjected to potential scrutiny by this Inquiry, that such an acknowledgement from representatives of the Catholic Church was forthcoming.

7.3.4. Power and culture in the Church

Dr Tom Keating, a childhood victim of criminal abuse by a Christian Brother, presented both written and oral evidence to the Inquiry. He argued that the Catholic Church had sought to identify the psychopathology of individuals as the source of the abuse. However, while not absolving these individuals of responsibility for their crimes, Dr Keating believed it was important to understand the systemic context or culture within which the abuse occurred.

The Committee concluded that aspects of the culture of the Catholic Church are relevant to the issue of criminal child abuse.

As outlined earlier in this chapter, the Catholic Church and its religious personnel were held in high reverence. Consequently, they were trusted implicitly by parents, children and the community. Within the Catholic Church, this reverence and respect was replicated between individuals. In evidence to the Inquiry, Bishop Peter Connors from the Diocese of Ballarat acknowledged the view which existed that a priest could do no wrong.¹¹⁶ Aligned with this view, there was a brotherhood or bond among clergy, derived from their common calling and relationship with God. It was highly

¹¹⁴ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 19.

¹¹⁵ *Transcript of evidence*, Christian Brothers, p. 4.

¹¹⁶ *Transcript of evidence*, Catholic Diocese of Ballarat, Melbourne, 29 April 2013, p. 25.

likely that this was a mutually protective relationship, focused on a shared allegiance to God. This was described by Br McDonald:

The culture of the Christian Brothers was, I would say, Spartan and somewhat repressive at the time when these people to whom you have referred joined the congregation. You were taught to be tough. We were taught to have little connection with family. For instance, we did not go to funerals, weddings or family celebrations. It was a culture that was based on a moral code of ‘Thou shalt not’, so the culture in religious life when these people joined, certainly when I joined, was repressive to that extent.¹¹⁷

Br Timothy Graham from St John of God described the relationship between brothers as follows:

When we are talking about the brothers, in a sense we are talking about a community of people. Often congregations are called a religious family, and I guess we have an obligation to those community members—to those family members—to support them in a situation where we are attempting to deal with a very difficult issue in the best possible way we can. Trying to get a handle on this thing called religious life is very difficult for most Catholics, let alone anyone outside of the Catholic Church. Again, the term ‘the religious family’ is often used, and I guess there are many families out there who also have family members who find themselves in difficult problems, who have family members who may be dealing with allegations of abuse themselves. Again, it is a tenuous—what is the word?—a tenuous comparison, but it is the best comparison I can come up with to try and help you understand this thing called religious life and religious congregations.¹¹⁸

The issue of celibacy

One aspect of the culture within Catholic Church organisations is celibacy. While research evidence establishes no clear connection between celibacy and child sexual abuse, Cardinal George Pell acknowledged that celibacy might be a contributing factor to the many instances of criminal child abuse in the Catholic Church:

But one of the suggestions is that it is because of the celibacy of the clergy. That might be a factor in some cases. Two final points just at this stage: as we all know, of course, most of the paedophilia is acted out outside institutional settings and by married people, so marriage is no necessary deterrent to the paedophilia; also—and I am sure we will come back to this—the entry procedures, the criteria, the searching and the investigation of candidates back, say, in the middle of last century was much too loose.¹¹⁹

The Committee considered the role of celibacy in the sexual abuse of children. Archbishop Denis Hart gave evidence to the Inquiry in respect of Fr Desmond Gannon about the issue of ‘compartmentalisation’ of child sexual abuse with the notion of a priestly vow of celibacy. The psychologist report assessing Fr Gannon in the context of up to 100 instances of child sexual abuse said as follows:

In all areas of formal prayer, private devotions, charity, priestly duties and church life, Father Gannon came across as a very spiritual man. He has developed the prayerful habits of a priest and fulfils his obligation to the divine office, Eucharist, spiritual

117 *Transcript of evidence*, Christian Brothers, p. 3.

118 *Transcript of evidence*, Hospitaller Order of St John of God, p. 13.

119 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 4.

reading, retreats et cetera without difficulty. He finds the promises of obedience, celibacy and living simply ‘easy enough’ to keep.¹²⁰

In response to the notion that Fr Gannon had found his promise of celibacy ‘easy enough to keep’ Archbishop Hart said as follows:

That is right. It shows the disconnect in his mind. In other words, he has got it in a box. He has got what the Church asks of him in this box, and then he has this other box over here where he can do what he likes. This to me says that there is a lack of integration in his sexuality and in his person. That to me underlines the need for proper integration, which is what we do work on very hard these days.¹²¹

Celibacy has been a tradition and part of the culture in the Catholic Church since the fourth century, and became a requirement for all clergy in the Western Church from the twelfth century.¹²²

In line with research evidence, Professor Desmond Cahill explained to the Committee that celibacy is not the direct cause of offending. He did note, however, that celibacy has an important influence on an organisational culture that has led to a narrow, closed and ultimately destructive clericalism (clerical power and influence). The systemic and worldwide pattern of clerical child sexual abuse is but one major symptom of this clericalism.¹²³

A number of witnesses raised the question of celibacy, particularly in the context of the Catholic Church’s acceptance of married priests. Mr Peter Johnstone, on behalf of Catholics for Renewal, said that, with respect to married priests:

I have to say this is an excellent example of a command and control system in a very large worldwide organisation that adopts policies and does not find it necessary to explain them. I think that most in the church would say this is an administrative decision of convenience not to have married priests. It might cost a bit more to have to upkeep a family as well, perhaps there might be other reasons; there could be all sorts of things like that. It is convenient to the church not to have married priests. The church has a different position about the ordination of women where they say it is a matter of doctrine and we are not allowed to even talk about it ...¹²⁴

A related topic is the sexual maturity of those recruited for religious life. One aspect of this is the sexual maturity of priests and clergy, given the practice of recruiting teenage boys who were still forming their sexual identities, then cloistering them in seminaries of boys of similar age and celibate men. Br McDonald from the Christian Brothers acknowledged this in his evidence to the Inquiry, saying that ‘It is just unhealthy’.¹²⁵

The Committee also received evidence of sexually inappropriate behaviour in seminaries. Bishop Connors acknowledged in evidence to the Inquiry that there was a cultural problem in a seminary for priests in the Ballarat Diocese in the 1970s.¹²⁶

120 *Transcript of evidence*, Catholic Archdiocese of Melbourne, Melbourne, 20 May 2013, p. 45.

121 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 45.

122 The Australian Catholic Bishops’ Conference and the Australian Conference of Leaders of Religious Institutes (1999) *Discussion Paper: Towards Understanding, A study of factors specific to the Catholic Church which might lead to sexual abuse by priests and religious*, p. 17.

123 *Transcript of evidence*, Professor Desmond Cahill, pp. 7–8.

124 *Transcript of evidence*, Catholics for Renewal Inc., Melbourne, 23 January 2013, p. 15.

125 *Transcript of evidence*, Christian Brothers, p. 5.

126 *Transcript of evidence*, Catholic Diocese of Ballarat, p. 19.

It notes that sexually inappropriate behaviour between ministers of religion is unrelated to the violent crime of child sexual abuse, which is an abuse of power and trust in the context of vulnerable children who do not have the maturity or capacity to consent.

The Committee heard that seminaries and religious houses gave little or no initial training on sexual matters, and in the past did not properly manage the preparation for a celibate life. The Catholic Church pointed out in its submission to the Committee that these organisations take a different approach today, with much more rigorous screening and development for a celibate life.¹²⁷ Although these matters were raised in evidence before the Inquiry, the Committee wants to emphasise the importance of keeping matters of adult consensual and non-consensual sexual behaviour separate from considerations of the crime of child sexual abuse.

7.3.5. Teachings of the Catholic Church—canon law

As outlined in Chapter 6, canon law is a system of laws and regulations governing the Catholic Church and its members. Within the Church it is given a higher status than state law. It operates as an internal discipline system for dealing with, among other things, criminal child abuse by religious personnel. The Committee considers it important to highlight the following aspects of canon law:

- Canon law has a long-standing historical, cultural and universal role in the Catholic Church. This leads to a risk that the Church might regard itself as distinct and separate from a country's civil legal system, and that this may manifest itself in a belief or understanding that, for clergy, canon law operates in place of civil law.
- The Committee understands that canon law is difficult to apply and is not well utilised. For instance, canon law must be used to laicise (or remove the authority and title) of an offending priest. However, the difficulty of the process of laicisation meant that historically this was not common. Coupled with the first concern, this could result in there being, from the Catholic Church's perspective, no effective judicial form of dealing with criminal child abuse.
- The existence of an internal legal system suggests that senior leaders in the Catholic Church rely heavily on it to manage unacceptable, including potentially criminal, behaviour.

The Committee heard that although a diocesan bishop could revoke the authority of an offending priest, such a course was rarely taken. One reason for this may be an overly legalistic attitude to dealing with managerial matters in the Catholic Church.

As we consider later in this chapter, rather than taking such action, the bishop organised for the offending priest to be 'treated' or 'counselled', then moved him to another parish. Such an approach limited, or even undermined, the organisation's ability to properly protect children and regulate performance and behavioural problems among its members.

The Committee was not able to examine the precise nature of the involvement of the pope, the Vatican and the application of canon law in determining how criminal child abuse was dealt with in Victoria. However, the Committee concluded that these

¹²⁷ *Submission S185*, Catholic Church in Victoria, p. 92. See also *Transcript of evidence*, Catholic Diocese of Ballarat, p. 20.

higher Catholic Church authorities had a substantial influence in Victoria. Cardinal Pell stated:

I think the 1962 statement talked about a particular crime with children, and that is using the confessional to entice children to commit this crime. I think that was the specific instance there. But there is no doubt that it is a foul crime.¹²⁸

Cardinal Pell acknowledged that the pope imposed a requirement that such crimes be treated with strict confidentiality, but added:

That, as you know, was changed later. The reasons for that then were because of the seal of confession, but there were a couple of other reasons. The priest who was attacked because of the seal of confession—they had to receive indirect evidence; he could not break the seal. Also it was to protect the privacy of the person making the allegations. We regard those restrictions now as inappropriate, but they were the three reasons for them at that time, I believe.¹²⁹

7.3.6. Failure to report crimes and treatment of offenders

No representatives of the Catholic Church directly reported the criminal conduct of its members to the police. The Committee found that there is simply no justification for this position. As pointed out in Chapter 1 of Part A, the abuse of children was a crime and contrary to the stated policy of the Church in the 1962 *Crimen sollicitationis*. Interestingly, in his evidence to the Inquiry, Br McDonald commented on this policy, stating that it did not take the pope to tell them that abuse of a child is a grave crime.¹³⁰

The Catholic Church's approach to criminal offending by religious personnel led to attempts to treat offenders medically, using the services of psychiatrists, psychologists and counsellors. The Catholic Church established and funded treatment programs. It justified this approach as acting on a compassionate desire to rehabilitate or cure an offender. However, this also meant that the Catholic Church did not report serious criminal behaviour to police and undertook no further investigation.

128 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 11.

129 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 12.

130 *Transcript of evidence*, Christian Brothers, p. 8.

Box 7.2: Case study—Fr Paul David Ryan

One example of this is the treatment by the Ballarat Diocese of Fr Paul David Ryan,¹³² as revealed in a letter from Bishop Ronald Mulkearns, Ballarat Diocese to the Catholic Church insurers, dated 30 September 1991:

... a priest against whom allegations of homosexuality were made many years ago. Following these allegations the priest was sent to the United States for treatment by a psychiatrist. Earlier this year a complaint was made about advances to a sixteen year old youth. The family of the youth was satisfied that the priest should be moved from the parish and sent for counselling. There was no involvement of police.

Subsequently the priest concerned has moved again to the United States with a view to taking further psychiatric advice and spiritual counselling ... another ... statement made to the police in which he has made allegations against the ... priest ... relating to a period when he was Chaplain at a Catholic Secondary School some years ago ...¹³³

On 30 September 1991 Bishop Mulkearns also wrote a letter about Fr Ryan to Fr Dan Torpy, a priest and psychologist:

The priest ... has been advised by Father Jim Gill SJ to undergo a thirty day retreat and spiritual direction in Rome ... let him know that such an allegation has been made and could possibly come to public light. This may not help him psychologically as he tries to seek further assistance ...¹³⁴

In January 1992, Bishop Mulkearns asked Fr Ryan to attend Villa Louis Martin in Jemez Springs, New Mexico:

... and advise as to what options there might be for him to minister a priest in the United States with sufficient support to enable him to come with the difficulties which he has and the particular strain affecting him at the present time.¹³⁵

Despite people making complaints about Fr Ryan's conduct from the time prior to him being ordained (before 1976) until early 1992, it appears that Bishop Mulkearns continued to place him in different parishes in the Ballarat diocese after he had completed treatments and counselling in the United States.¹³⁶ Table 7.1 sets out the chronology of treatment, complaints of criminal child abuse and subsequent convictions against Fr Ryan.

Source: Adapted from *Files relating to Father Paul David Ryan*, provided to the Family and Community Development Committee by the Catholic Ballarat Diocese.

The Committee accepts that the Catholic Church had some genuine attachment to, and belief in, the treatment approach. A number of files provided to the Committee show that the Church spent significant funds on the treatment of offending priests

131 See Table 7.1 regarding Fr Paul David Ryan's appointments.

132 Catholic Diocese of Ballarat, Letter from Bishop Mulkearns to Mr John Taylor, Catholic Insurance Ltd, 30 September 1991, from the files of Fr Paul David Ryan, accessed by the Family and Community Development Committee.

133 Catholic Diocese of Ballarat, Letter from Bishop Mulkearns to Fr. Dan Torpy, 30 September 1991, from the files of Fr Paul David Ryan, accessed by the Family and Community Development Committee.

134 Catholic Diocese of Ballarat, Letter from Bishop Mulkearns to Rev Fr. Peter Lechner, 29 January 1992, from the files of Fr Paul David Ryan, accessed by the Family and Community Development Committee.

135 See Table 7.1 regarding Fr Paul David Ryan placements and history of complaints against him.

and other religious personnel. But it is also evident that, on occasion, the timing of the treatment was orchestrated. In 1992 Bishop Mulkearns wrote a letter about Fr Ryan to a colleague in the United States, indicating that the:

... mother of the boy concerned naturally was quite disturbed but was not anxious to make a public issue of the question, but was certainly anxious that Paul David not be left in that position. It was agreed that he would remain there until after Easter when other Diocesan changes were to be made so that his change would not be seen as completely out of the ordinary.¹³⁶

Although the Catholic Church organised treatment, it did this in a way that ensured no suspicion fell on the perpetrator and that continued to conceal any ongoing behavioural problems from the wider church community and from the families of victims.

The Catholic Church's reliance on advice of this kind and on the 'curing' of offenders had the unfortunate consequence of their being sent to other parishes, to target other vulnerable children, with parishioners kept unaware of the priest's history of offending. Section 7.3.7. includes some examples of this.

Table 7.1: Chronology of known abuse occurring, complaint, placement and treatment of Fr Paul David Ryan

Date	Complaint
28 May 1976	Fr Ryan ordained.
May–June, November 1976	Victim 1 abused week before ordination (Ballarat North parish). Information that Fr Ryan had been involved in 'serious' homosexual behaviour with other students for the preceding 18 months—sent for treatment to psychiatrist Dr Eric Seal—recommended to seek further spiritual insight overseas.
February 1977	Fr Ryan attends De Sales Hall School of Theology in Hyatsville, Maryland, USA, for spiritual and psychological treatment. Assisting in parish in Virginia Beach, Virginia USA.
18 June 1978	Complaint made about Fr Ryan by a parishioner in Ballarat North regarding her son (Victim 1)—relates to a period a week after his ordination.
19 April 1979	Returned from the US—(sent home from US priest at parish in Virginia Beach Virginia USA regarding complaint Victim 2—*no record US priest had informed Ballarat Diocese) Concern expressed by Bishop Mulkearns regarding complaint (Victim 1) if place Fr Ryan in Ballarat Diocese—placed at St James Gardenvale under supervision with Fr Ronald Pickering. **Victim 3 and Victim 4—abuse occurred in USA.
April 1980–1984	Fr Ryan assistant parish priest at Warrnambool. Victim 5 (14 year-old boy) abused by Fr Ryan.
1985–1986	Fr Ryan in USA to study (Dayton, Ohio).
24 January 1986	Fr Ryan assistant priest at Terang. Victim 6 abuse by Fr Ryan (16-year-old boy).

¹³⁶ Catholic Diocese of Ballarat, Letter from Bishop Mulkearns to Rev Fr. Peter Lechner, 29 January 1992, from the files of Fr Paul David Ryan, accessed by the Family and Community Development Committee.

Date	Complaint
14 January 1989	Fr Ryan parish priest at Peshurst. Victim 6—abuse continued throughout the 1990s.
February 1991	Complaint made regarding Fr Ryan and his conduct with a boy in Peshurst parish— abused Victim 7 over 11 month period—Church delayed transfer until after Easter.
2 May 1991	Fr Ryan resigned from Peshurst.
30 September 1991	Fr Ryan in United States— spiritual retreat in Rome— allegations regarding Fr Ryan at Warrnambool (Victim 5).
December 1991	Fr Ryan at Gardenvale parish with Fr Ronald Pickering.
18 January 1992	Fr Ryan—assistant priest at Ararat. Victim 6 and Victim 7 abused by Fr Ryan.
29 January 1992	Request by Bishop Mulkearns for Fr Ryan to go to Villa Louis Martin, Jemez Springs, New Mexico—rejected.
10 December 1992	Request by Bishop Mulkearns for evaluation of Fr Ryan—St Luke Institute, Maryland USA.
January–June 1993	Fr Ryan continued to reside at Ararat parish house though on indefinite administrative leave—seeing Fr Dan Torpy/psychologist.
26 August 1993	Record of complaint Victim 5.
September–October 1993	Requests to Fr Ryan to attend for interview with Catholic Church insurers.
10 November 1993	Fr Ryan in England (not authorised)—address care of Fr Pickering (at this time Fr Pickering also in England and had been subject of complaints of abuse).
14 January 1994	Fr Ryan in Warrnambool.
3 February 1994	Fr Ryan—Interview with Special Issues Committee of the Catholic Church.
March–June 1995	Fr Ryan notification from USA (1980 Virginia) complaint—Victim 2 and Victim 3—civil settlement. 'In 1979 ... he was accused of having sexually molested one young man Victim 2 and perhaps two others. When this was discovered, Father Gaughan told Father Ryan to leave. Father Gaughan met with several families ... nothing evolved further and things got laid to rest ...'
3 July 1995	Bishop Mulkearns request Fr Ryan apply for laicisation—refused by Fr Ryan.
23 July 2002	Fr Ryan—another notification regarding US complaint Victim 4—civil settlement.
8 September 2006	Fr Ryan charged 5 counts indecent assault —regarding Peshurst (Victim 6 and Victim 7).
18 January 2007	Fr Ryan convicted and sentenced regarding Peshurst (Victim 6 and Victim 7).

Source: *Files relating to Father Paul David Ryan*, provided to the Family and Community Development Committee by the Catholic Ballarat Diocese.

When aspects of the Fr Ryan documents were raised with Bishop Connors, he agreed with the proposition that the Catholic Church ‘facilitated the commission of criminal offences against child victims of sexual assault by providing a known offending priest with positions which allowed him to continue his offending once it was known.’¹³⁷

As well as receiving treatment from medical professionals, perpetrators were encouraged by the Catholic Church to seek spiritual guidance. The choice of the spiritual director remained with the perpetrator. This led to an extraordinary situation in the case of Fr Victor Rubeo. When a complaint was made about his conduct in 1994, Fr Rubeo chose Fr Frank Klep as his spiritual adviser. Fr Klep was convicted of criminal child abuse offences in December 1994, but continued as Fr Rubeo’s spiritual adviser. In explaining this situation, Archbishop Denis Hart stated:

That is the normal practice in the church, of the spiritual freedom of people—not someone who is in charge of them but someone who will give the benefit of their spiritual advice. Of course I know it does not look well in the light of later events—and I would be the first person to say that—but the freedom is there and he made that choice.¹³⁸

Archbishop Hart continued later in his testimony:

I think it was highly inappropriate for a person to choose someone of those proclivities, and it would have my fullest condemnation.

I would certainly say that I believe that to allow that man to be spiritual director was quite wrong and quite harmful. I do not recall—I can say honestly that I do not recall what happened there last year. I would say, however, that since 1994 we have been very, very careful about our responses. The introduction of the Melbourne Response and Towards Healing in 1996 was a real watershed for the church in general. I am embarrassed if that was said last year. It relates to 1994. We have certainly changed for the better since then.¹³⁹

When in 2012 a journalist questioned a representative of the Catholic Archdiocese of Melbourne about this arrangement, acknowledgement that the spiritual director chosen was ‘quite wrong and harmful’ was not forthcoming. Rather, the Archdiocese responded as follows:

2) Why did the late Vicar General Cudmore appoint Father Francis Klep as spiritual director to Father Rubeo in 1994 and 1995, even though Klep had been charged and later convicted of child sex offences?

A. The records of the Archdiocese record Rubeo informing Monsignor Cudmore that he was seeing Father Klep as a spiritual director. The choice of a spiritual director is made by the person seeking spiritual direction.¹⁴⁰

The Catholic Church used its focus on treating offenders to justify its assertions that ‘we didn’t understand’ and that the Church was on a ‘learning curve’. If this explanation were linked to a lack of understanding about the persistent nature of paedophile activity, the limited usefulness of treatment, and the long-term damage to victims, it may have some credibility. However, when the Catholic Church offers this explanation in a broader context, that includes claims of not knowing about the existence of offending, it is a difficult explanation for the Committee to accept. In

¹³⁷ *Transcript of evidence*, Catholic Diocese of Ballarat, p. 14.

¹³⁸ *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 6.

¹³⁹ *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 7.

¹⁴⁰ Richard Barker & Nick McKenzie ‘An unbearable secret’, *The Age*, 6 June 2012.

particular, the Committee noted that the Catholic Church did not choose to inform itself by commissioning research into the problem, it did not report allegations to the police and it did not undertake a comprehensive investigation into the extent of criminal child abuse relevant to parts of the Catholic Church.

7.3.7. Relocation and movement of priests

The Committee found that the Catholic Church's practice of moving offenders between schools and parishes was not uncommon. The most glaring example is revealed in the material provided by the Ballarat Diocese in relation to Fr Gerald Ridsdale, when a prompt complaint was made about his conduct. In an interview with insurance representatives for the Catholic Church in 1993, Bishop Mulkearns stated:

The first complaint I ever had was when he was at Inglewood in 1975 ...

A Policeman came to see me to say that he was worried about an incident with his son, the policeman's son and Gerald came to see me too. I indicated to the policeman that I would pull him straight out of the parish and have him seek counselling and the Policeman was satisfied with that and did not want to take it any further, because the incident was not a serious one ...

He did not go into detail, but as I understood it was inappropriate behaviour, but not very serious ...¹⁴¹

Bishop Mulkearns arranged for Fr Ridsdale to be removed from the parish and to undergo counselling. After various periods of counselling, Bishop Mulkearns appointed Fr Ridsdale to a different parish. Further complaints of criminal child abuse were made. These occurred in Inglewood in 1975, Mortlake in 1982 and Horsham in 1988. Fr Ridsdale was also appointed to parishes in Apollo Bay in 1974–75 and Edenhope in 1977, but apparently Bishop Mulkearns received no complaints about his conduct during those periods until after 1988.

In the interview Bishop Mulkearns said:

... to what extent am I expected to supervise the work of somebody about whom there was not any question at that time. I suppose there was some question because of the incident at Inglewood but I had insisted that he have professional counselling and to my knowledge he was doing that while he was at Edenhope, so I do not know what more I could have done ...

All that I can say to that is that I instructed him to take counselling and then followed the advice of the counsellor ... there was never any case when he was simply moved from one place to another without anything else being done ... there are not many reports ... I have got in writing for example that it was prudent for him to be appointed to Edenhope that was something that was a phone conversation. I did not want to keep too much in writing I suppose ...¹⁴²

Bishop Mulkearns suspended Fr Ridsdale from his duties as a parish priest on 30 June 1988. This is known in the Catholic Church as removing his priestly

141 Catholic Diocese of Ballarat, Transcript of interview between Bishop Mulkearns and Catholic Church Insurance, 15 April 1993, from the files of Gerald Ridsdale, accessed by the Family and Community Development Committee.

142 Catholic Diocese of Ballarat, Transcript of interview between Bishop Mulkearns and Catholic Church Insurance, 15 April 1993, from the files of Gerald Ridsdale, accessed by the Family and Community Development Committee.

‘faculties’. Following this, Fr Ridsdale was sent to New Mexico for ‘rehabilitation’ in 1989. He returned to New South Wales in 1991. In late 1992 police enquiries commenced. Fr Ridsdale was laicised in November 1993 and thereafter was unable to function as a priest.

The documentation provided to the Inquiry by the Ballarat Diocese reveals that 37 complaints were made about the conduct of Fr Ridsdale prior to 1997. The extent of abuse in this Diocese by Fr Ridsdale is most troubling—67 claims of criminal child abuse by him have been accepted by the Catholic Church. He is recognised by the Bishops in the Ballarat Diocese as one of the worst offenders in Australia’s history.¹⁴³

Table 7.2: Chronology of Fr Gerald Ridsdale

Date	Complaint
1975	<p>First complaint about Fr Ridsdale—Inglewood parish</p> <p><i>... inappropriate behaviour, but not very serious ... I undertook to take him straight out of there and have him seek appropriate counselling and that is what I did ... then after a period of counselling Father Watson indicated that he thought it was appropriate for him to be put back in a parish and that he would continue counselling and so he was appointed initially Administrator of the Parish of Edenhope in April 1976 and then parish priest of Edenhope in July 1977 ...</i></p> <p><i>The policeman at Inglewood ... No I have not kept his name. He just came into the office and spoke to me. Actually I had spoken to Gerry first. He came to see me and said that the policeman was going to come to see me and I said I had to take action, So when the Policeman actually came, I was able to tell him that I intended to take action and that ‘Gerry had agreed that this was the way to go ... He did not specify what the behaviour was, but my impression, certainly from the policemen who came about his own son was that he was upset about it but it was not a serious offence although serious enough for him to want action taken and serious enough for me to want to take action.</i></p>
1975–1976	Fr Ridsdale appointment to Apollo Bay parish.
1976	Fr Ridsdale appointment to Edenhope parish, with counselling. <i>I never heard of any problems during the time he was at Edenhope. These incidents have surfaced long after he had gone ...</i>
1980	Study leave—National Pastoral Institute, Gardenvale.
January 1981	<p>Fr Ridsdale appointment to Mortlake parish—complaints made.</p> <p><i>Complaints of inappropriate behaviour with young children... no specific complaints made ... as a result of that taken out of there and again received counselling ...</i></p> <p><i>It was at Mortlake that alarm bells started to ring. It wasn’t at Edenhope.</i></p>
November 1982–December 1985	Catholic Enquiry Centre, Sydney.
1986–1988	Fr Ridsdale assistant priest at Horsham parish— <i>idea being that it was with a Priest that he knew and would not put him in a position of being on his own in Parish ministry ...</i>

¹⁴³ *Transcript of evidence, Catholic Diocese of Ballarat, p. 4.*

Date	Complaint
1988	Fr Ridsdale's priestly faculties removed. <i>... it was in 1988 ... at that stage when the problem surfaced again I decided we had to do something. That he had not had any faculty with the Diocese since 1988 and it was at that time that I said to him that it just wasn't on for him to be continuing in any Parish ministry ...</i> <i>So then I arranged to send him to Jamex Springs, it cost about \$70,000 overall. It was not cheap.</i>
1989	Fr Ridsdale sent to New Mexico for 'rehabilitation'.
1991	Fr Ridsdale returned to NSW—police enquiries commenced. ¹⁴⁴
1993	Fr Ridsdale laicised.

Source: Compiled by the Family and Community Development Committee based on Catholic Diocese of Ballarat, Transcript of interview between Bishop Mulkearns and Catholic Church Insurance (CCI), 15 April 1993, from the files of Gerald Ridsdale, accessed by the Family and Community Development Committee.

Similarly, in 1978 in the Catholic Archdiocese of Melbourne, Archbishop Frank Little received a complaint about the conduct of Fr Wilfred Baker, made by respected members of the parish on behalf of a boy's family. Archbishop Little organised for Fr Baker to be moved to another parish, where he continued to offend.¹⁴⁵

Religious organisations such as the Christian Brothers also adopted this approach, as explained by Mr Shane Wall, Co-executive Officer, Professional Standards Office, Christian Brothers:

... the archives are short on detail but also speak volumes ... I would say the two matters that the archives reveal are [Br] Fitzgerald and [Br] Elmer. With the former ... [t]he reprimand, as such, goes as follows:

He forbade him to have anything to do with the boys ... Since visitation he has allowed some boys to enter his bedroom, even kissing one ...¹⁴⁶

As Mr Wall admitted:

If we look at [Br] Fitzgerald's history of appointments thereafter, the reprimand is obviously not severe enough, it is not adequate enough and not enough is done because [Br] Fitzgerald receives postings to schools thereafter. That is the first matter, speaking volumes that not enough was done. It is not enough in my view to make excuses as to the era. That speaks volumes.¹⁴⁷

Mr Wall also remarked on Br Elmer:

The matter of [Br] Elmer is instructive as well. In 1976 there is a visitation report, I presume with a province leader going to the community, and it speaks about [Br] Elmer. It makes the following comment:

Whilst the visitation was in progress, a child welfare officer reported ... that Rex—had been interfering with little boys; this was true and it has been attended to by the provincial.¹⁴⁸

144 See Table 7.4 regarding sentences imposed.

145 *Submission S104 part 1*, Mr Phil O'Donnell, p. 23.

146 *Transcript of evidence*, Christian Brothers, p. 11.

147 *Transcript of evidence*, Christian Brothers, p. 11.

148 *Transcript of evidence*, Christian Brothers, p. 11.

Mr Wall then read from correspondence indicating that the transfer of Br Elmer to another Christian Brothers school would not take place immediately but at the time at which such movements in the congregation usually took place.¹⁴⁹ This decision, it seemed, was based on Br Elmer's own assurances that he would not reoffend, his good record and the possibility of embarrassment to the Christian Brothers if he were moved immediately.

Representatives from the Christian Brothers were also questioned regarding their treatment of Br Edward G. Dowlan, who was convicted and sentenced in 1996 of criminal child abuse offences. After he had been convicted, a letter was sent to the Christian Brothers from a staff member from St Vincent's Boys Home where the offending occurred. The following portion was read to the representatives of the Christian Brothers by the Committee:

I am writing to you to voice my dismay and anger following last week's revelation about the activities of Brother Dowlan.

While I was deputy director of St Vincent's Boys Home I, and many other staff members, worked 15 to 16-hour days and practically sweated blood to assist the brothers to look after the residents. I accepted with good faith the sudden departure of Brother Elmer from the school and the appointment of Brother Dowlan to fill his position. Indeed, I spent many extra hours, which I could ill afford, assisting Brother Dowlan to understand the nature and behaviours of the boys and the teachers.

As you are probably aware, many of St Vincent's residents had been sexually abused, and often displayed overt and outrageous sexualised behaviour. Furthermore, they expected or requested that this behaviour be reciprocated by the adults in their lives. A major part of our endeavours at St Vincent's was getting these boys to a point where they would expect not to be abused. Now I find that all of this work could have been compromised by the presence of a man like Brother Dowlan.

I take note of your congregation's position that the brothers were unaware of Brother Dowlan's tendencies and activities. I cannot accept this as a reasonable position. I cannot believe that the number of allegations against this man could have been kept from his various communities' and the congregation's superiors. I find that expecting the public to believe this is preposterous. I do not believe this plea of ignorance.¹⁵⁰

Br Julian McDonald accepted that others in the community may have felt the same way regarding Br Dowlan's activities.

When questioned regarding placements of Br Dowlan, Br Brandon responded:

No, I think that any movement of Brother Dowlan from one community to another was not done on the basis that he had offended in one place and therefore he was given another chance somewhere else. It was done on the basis that he was understood to be struggling a little bit in terms of his own maturity and there was an opportunity for him to develop further in terms of growing up, if you like; and there was a chance to make a new start in life. I do not mean in terms of having offended somewhere and starting with a clean sheet; I do not mean that at all. I mean in terms of just growing as an individual—maturing. That was the basis on which some changes from one community to another were made ...

That is my assessment. That is my personal judgement, that is all.¹⁵¹

149 *Transcript of evidence*, Christian Brothers, p. 12.

150 *Transcript of evidence*, Christian Brothers, p. 12.

151 *Transcript of evidence*, Christian Brothers, p. 19.

The knowledge of the relevant catholic body of a complaint against one of its members and its decision to move the suspected perpetrator to another parish or school has had a significant effect on insurance claims that the relevant bodies were able to make. It is pertinent to note in a letter from Catholic Church Insurance (CCI) provided to the Committee after it presented oral evidence, there were five clergy members about whom CCI regarded the Church as having ‘prior knowledge’ of their offending for insurance purposes:

- Fr Wilfred Baker—knowledge 1978—indemnity denied 2004
- Fr Michael Glennon—knowledge 1978—indemnity denied 2004
- Fr Gerard Ridsdale—knowledge 1975—indemnity denied 1999
- Fr Paul Ryan—knowledge 1991—indemnity denied 2007
- Fr Daniel Hourigan—knowledge 1986—indemnity denied 1996.

Additionally, in respect of two other offenders, Fr Nazereno Fasciale and Br Leo Fitzgerald (Christian Brother) the issue of knowledge and indemnity remained unresolved.¹⁵²

The movement of suspected perpetrators was not limited to the Catholic Church. The Committee heard that after complaints had been made regarding the conduct of Rabbi David Kramer at Yeshivah College in 1992, the Jewish school executive paid for his trip to Israel and then the United States, where he continued to teach and offend against children. Police were not informed of the complaints. Rabbi Kramer was subsequently convicted of criminal child abuse in the United States and was imprisoned. On his return to Victoria, he has recently been convicted of offences relating to his time at Yeshivah College between 1989 and 1992.

7.3.8. Failure to act on complaint from an internal source

Another issue of concern to the Committee was the Catholic Church’s treatment of complaints or suspicions of criminal child abuse expressed by lay teachers of a parish school. The Catholic Church’s way of handling such allegations that were relayed by staff was consistent with its overall approach of concealing the child abuse issue.

A number of witnesses gave evidence that the Catholic Church had taken no action on reports of a priest’s abusive behaviour in a school. From 1981 to 1986, Mr Graham Sleeman was principal of the Holy Family School in Doveton. In 1986 he resigned in frustration after raising issues about the behaviour of Fr Peter Searson.

Then he began his activities. This was a guy who walked around most of the time carrying a revolver. He had strange attitudes to security ... When Searson arrived, a 13 foot 6 cyclone fence was built around the school and he locked the place. I told him about that. The very first night he put locks on the door and the gates, guess what? We had a break-in.

The reason I tell you that is the fact that I would be working at the school, we would be having meetings with parents and he would lock everyone in the school. This bizarre behaviour went on constantly. He had what I will put as a fetish for confessional. He was constantly wanting classes to go. He demanded class lists and he would tick off

¹⁵² Ms Marita Wright, Catholic Church Insurance Ltd, Letter to the Family and Community Development Committee, 17 May 2013.

who had been to confession. He would come over to me and say, ‘You know, there are 28 children in this class; I have only had 8 come to confession’, and I would argue with him ...

Some of the children came to me and said, ‘Father’s creepy. I don’t like going to confession with him’. Boys used to say to me, ‘I’m not keen to be an altar boy, father’s creepy’. I think it was his second year there when they were all taken over to confession on a particular day and a young girl came out of the church screaming. I found her and asked her what had happened and she informed me that Father had interfered with her ... There was to-ing and fro-ing and eventually the consultant informed me that he had spoken to Father and it was ‘all a blow-out; he’s doing such a good job in the parish. People are out to get him’ ...

Over the same period of time there was not a day that went by that I would not have a parent—a mother or father—come to me complaining about Father and the way he treated the children. They were frightened of him; they were scared of him. They did not want to go to confession with him. They did not even want to go into the church when he was there. If we had a children’s mass, he would refuse communion to people and children who he thought he did not see at his parish church on Sunday ... I said, ‘I’ve told the authorities. It has gone to the top, and they’ve come back and said they’ve spoken to Father’ ... Therefore we thought, ‘They’ll do something. They wouldn’t let this happen. They’re men of God. They’re honourable’. Therefore you kept working for them and thinking that some day, one day, they would do something ...

Once I resigned, Searson upped his ante and was wanting to take classes to confession every day of the week. It got too much for me, and near the end of November I actually picked him up by the armpits and told him that, if he did not pull his head in, I would kill him ...

I had no support. I had no counselling. No-one cared about me. When I left there, sad to say, I was picked up by the Salesians at Chadstone to coach football, which I did for 12 months before I really became unwell.¹⁵³

Ms Carmel Rafferty, a teacher later at the school, told the Inquiry that she also raised the behaviour of Fr Searson with senior representatives of the Catholic Church, after which she felt her career was jeopardised:

I believe it is their first focus, trying to put down scandal, and possibly their second focus is looking after the perpetrators, but maybe they are interspersed. But in my experience as soon as I bobbed my head up with this problem, which had been worrying them for years, I suppose, up to some degree, they just had to shoot me down because I was another threat obviously to this truth coming out in that situation.¹⁵⁴

The Committee also received a submission from a lay teacher at St Mary’s School in Geelong, operated by the Christian Brothers. The teacher expressed his frustration with the treatment he received when he reported suspected sexual abuse, having expected that they would be dealt with effectively.¹⁵⁵

Ms Ann Ryan gave the most detailed account of dealings with the Catholic Church.¹⁵⁶ Her experience of the Catholic Church’s handling of the serial offender Fr Ridsdale is informative. Ms Ryan was a member of the congregation and a teacher at St Colman’s

153 *Transcript of evidence*, Mr Graeme Sleeman, Melbourne, 23 January 2013, p. 4.

154 *Transcript of evidence*, Ms Carmel Rafferty, Melbourne, 23 January 2013, p. 12.

155 *Submission S386*, Mr Robert Thompson.

156 *Submission S207*, Ms Ann Ryan.

Catholic School in Mortlake when Ridsdale was the parish priest from 1981–82. She observed student behaviour of a sexual nature, which she attributed to curiosity mixed with the onset of puberty. Fr Ridsdale left suddenly towards the end of 1982, with parishioners told that he was emotionally affected by a recent family death and needed time out.

Rumours about Fr Ridsdale's conduct and the reason for his departure began to circulate. Over the next seven years a number of families of Fr Ridsdale's victims contacted Ms Ryan. Some told her that they had visited Bishop Mulkearns, but were made to feel like criminals themselves, as the Bishop was so resistant to their claims. One of the families told her that they had to take their son for medical treatment as he was bleeding from his anus. They also went to their parish priest, who advised them to deal with the issue within the family, avoiding unwanted publicity.

Ms Ryan contacted Bishop Mulkearns, and she provided the Inquiry with the lengthy correspondence between them. She first wrote to him in late 1989, and written exchanges continued over the next five years. She also met with him in Ballarat. Ms Ryan tried unsuccessfully to have the issue raised at a Diocesan Pastoral Council meeting. Ultimately, in 1994, Bishop Mulkearns terminated communication with her. He said that he felt she was questioning his 'truthfulness and integrity'.¹⁵⁷

Ms Ryan also began lobbying on the subject, which she explained 'drew severe threats of job dismissal and ongoing victimisation by both the then parish priest and the school principal'.¹⁵⁸ She decided to resign from her position.

Bishop Connors, commenting on the situation of Bishop Mulkearns and Mortlake, told the Inquiry:

How could Mortlake have so many victims without it becoming known to the police at that stage and to the bishop himself? It was only when people like Anne Ryan, the principal of the school and a local doctor approached Bishop Mulkearns that they took him out of Mortlake.¹⁵⁹

Also commenting on how Bishop Mulkearns handled criminal child abuse matters, Archbishop Denis Hart said that "The covering up and the doing nothing means that it is worthy of great condemnation."¹⁶⁰

Given Fr Ridsdale's history, Ms Ryan's account reveals the high level of risk in failing to investigate further or take appropriate action when claims of criminal child abuse are made.

The Committee is not able to form any conclusions regarding whistleblowers' claims about how the Church treated them, or whether their treatment was caused by, or simply coincided with, their raising concerns about criminal child abuse.

7.4. Investigation by organisations into the extent of the problem

Although the Committee found that criminal child abuse has occurred for a significant period of time, it is almost impossible to make an accurate assessment of

¹⁵⁷ *Submission S207*, Ms Ann Ryan, p. 2.

¹⁵⁸ *Submission S207*, Ms Ann Ryan, p. 4.

¹⁵⁹ *Transcript of evidence*, Catholic Diocese of Ballarat, p. 25.

¹⁶⁰ *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 13.

its extent. The Committee received credible data showing that a significant amount of past criminal child abuse in the Catholic Church has not been revealed. Factors inhibiting the task of determining the extent of the problem include:

- the failure of an organisation to keep records of complaint
- non-disclosure by victims
- the historic nature of abuse if a complaint is ultimately made
- the lack of documentation to substantiate the claim
- the manner in which an organisation treated timely complaints.

These factors are consistent with those affecting other non-government organisations, as discussed in Section 6.2 (on the prevalence and incidence of criminal child abuse in organisations).

These factors also preclude any proper consideration of whether there existed systemic abuse within some of the organisations under consideration, particularly the Catholic Church. Arguably the existence of contemporaneous documentation in the Ballarat Diocese may have provided better insight into how that area in particular was targeted by known offenders.

Part B discusses the experiences and impacts of criminal child abuse as described by those who participated in the Inquiry. The Committee did not scrutinise the conduct alleged in written submissions and oral evidence to determine the accuracy of individual accounts. However, the Committee found that these accounts were entirely consistent with documented and established incidents of criminal child abuse, that they were inherently credible, and that there was no reason to suspect they were the product of any form of collusion.

Given the various religious organisations' acknowledgement of conduct of this nature occurring and the criminal convictions of some of their members for sexual offences against children, one can readily accept in a broad sense the traumatic experiences of some of these children in the care of these organisations.

7.4.1. Catholic Church

The response of the Catholic Archdiocese of Melbourne illustrates the difficulties encountered to accurately assess the extent of this problem prior to the 1990s:

Having searched the records of the Archdiocese and after making inquiries, it is understood that until the early 1990s, Archbishop [Frank] Little dealt personally and confidentially with all allegations of abuse within the Archdiocese and with clergy against whom allegations were made.

It appears from the records of the Archdiocese, and is confirmed by former Vicars-General Connors and Deakin, that until the 1990s Archbishop Little treated allegations of abuse with absolute confidentiality. He did not document the allegations and he kept his own counsel. As best can be determined, he did not confide in anyone about these matters.¹⁶¹

At a public hearing on 20 May 2013, Archbishop Hart indicated that, before Archbishop Little handed responsibility for dealing with such complaints to the vicar-general, there were no records. He stated: 'My understanding is ... that Archbishop Little kept

¹⁶¹ *Supplementary evidence*, Response to request for information, Catholic Archdiocese of Melbourne, 4 February 2013.

all these things to himself and there were no records.¹⁶² Archbishop Frank Little was Archbishop of Melbourne from 1 July 1974 until 16 July 1996. He died on 7 April 2008.

A similar situation existed in the Ballarat Diocese of the Catholic Church. It was not until the 1990s that complaints of sexual abuse perpetrated by Fr Ridsdale became public. Bishop Mulkearns was Bishop of Ballarat from 1 May 1971 until 30 May 1997. The Diocese did not document complaints made against Fr Ridsdale at the time of the offences. This was revealed in a frank interview with Bishop Mulkearns conducted in 1993 by investigators on behalf of CCI, in which he indicated that he did not record complaints.¹⁶³

The Committee requested the attendance of the former Bishop Mulkearns at a public hearing. The Committee received independent medical evidence, however, that due to his current medical condition, former Bishop Mulkearns would not be able to provide an accurate recollection of events. However, the Committee received a transcript of the 1993 interview, the contents of which were corroborated by documents recording the movements of Fr Ridsdale between parishes, and by his criminal convictions. The Committee concluded that such documentation was the most reliable source of information about the manner in which Bishop Mulkearns treated the complaints about Fr Ridsdale. Bishop Mulkearns admits in the 1993 interview that he ‘did not want to keep much in writing’.¹⁶⁴

It is worth noting that child abuse is one area in which the pope has intervened, by issuing an instruction to all religious personnel. In 1962, the Holy Office in Rome issued a document entitled *Crimens sollicitationis*. It dealt with various forms of sexual abuse against children, collectively described as *crimen pessimum* (the foulest crime). The instruction indicated that all such offending should be reported to the Vatican and remain confidential.

This direction may explain the approach of both Archbishop Little and Bishop Mulkearns to preserving confidentiality around timely complaints. Keeping such matters confidential also reflected aspects of the culture of the Catholic Church, a matter considered in Chapter 1 of Part A of this Report, and earlier in this chapter.

The combination of these circumstances of papal direction and non-involvement of civil authorities provides some explanation as to why, even today, it is impossible to provide an accurate estimate of the amount of criminal child abuse perpetrated in the Catholic Church. However, with the emergence of this issue and the public attention being directed to it, organisations were compelled to develop processes to deal with the problem.

7.4.2. Other religious organisations

The Anglican Church, in a letter to the Committee dated 8 March 2013, stated:

... it is difficult to provide accurate information regarding the number and nature

162 *Transcript of evidence*, Catholic Archdiocese of Melbourne, pp. 11–12.

163 Catholic Diocese of Ballarat, Transcript of interview between Bishop Mulkearns and Catholic Church Insurance, 15 April 1993, from the files of Gerald Ridsdale, accessed by the Family and Community Development Committee.

164 Catholic Diocese of Ballarat, Transcript of interview between Bishop Mulkearns and Catholic Church Insurance, 15 April 1993, from the files of Gerald Ridsdale, accessed by the Family and Community Development Committee.

of complaints prior to 1990 due to the accepted practices and protocols of the time for the handling of such complaints and the lack of awareness for the need to keep comprehensive records. Whilst unacceptable in modern practice, such matters need to be viewed in the context of the day ...

Prior to 1991 matters of alleged abuse (whether involving children or not) would have been addressed to the level of Assistant Bishop or indeed the Archbishop of the day. Much of the response was likely to have been pastoral in the sense of attempting to appropriately care for both the complainant and the respondent ...

... to the best of our knowledge the more robust processes of modern times has not led to previous complainants seeking to have historic matters reviewed. Whilst we have not specifically sought to communicate to such persons, our processes are well publicised and open to an approach of this nature. The pastoral nature of our processes can often (but not always) mean that the death of the alleged perpetrator can be a determinative factor in proceeding to complaint.¹⁶⁵

The Salvation Army gave a similar explanation for its lack of record-keeping.

7.4.3. Historic nature of abuse and lack of records

The question of record-keeping relates not only to a lack of records of complaints but also—and more fundamentally—to the lack of records of the placement of children in institutions. Such records would corroborate important details provided by victims of criminal child abuse. In a written submission to the Inquiry, Ms Angela Sdrinis, a solicitor from Ryan Carlisle Thomas Lawyers who acts for a significant number of children (now adults) who were placed in institutional care, explained:

One of the issues faced by victims of past abuse is the destruction or loss of documentary evidence. In the case of wards of the state and/or residents of children's homes, it is apparent that the Government and various institutions are failing in their duty to preserve documentation which may be crucial in establishing that a claimant has been a victim of criminal abuse and/or in the prosecution of the alleged perpetrator.

The State through the Department of Human Services (DHS) holds extensive documentation which relates to the operation of children's homes run by religious and non-government organisations. We also know that this documentation is at risk of being destroyed and indeed much of the relevant documentation may have already been destroyed.¹⁶⁶

As outlined in Chapter 4 of Part B, the absence of even the most basic records covering the periods in which victims lived in the Salvation Army homes is a cause of considerable anger and frustration for a number of victims who gave evidence to the Inquiry and also in the files reviewed by the Committee. Although there is some limited information in departmental records for State wards, details relating to years of their childhoods have apparently not been kept. Given this situation, victims who complain of abuse occurring in institutions have little or no hope of being able to substantiate aspects of their account of abuse. Even their memory of residing at a particular institution during periods of their life cannot be accurately verified.

¹⁶⁵ *Supplementary evidence*, Response to request for information, Anglican Diocese of Melbourne, 8 March 2013, pp.1–2.

¹⁶⁶ *Submission S195*, Ryan Carlisle Thomas Lawyers, p. 14 (Part A).

7.5. Initial response of the Catholic Church—‘Special Issues’

In December 1988, the Australian Catholic Bishops Conference (ACBC) began to address the issue of criminal child abuse allegations made against religious personnel. It established the ACBC Special Issues Committee Relating to Priests and Religious, for the purpose of creating a protocol to deal with this issue. By August 1990, a final version of the *Protocol for dealing with allegations of criminal behaviour* was issued to bishops and superiors of religious organisations. This was formally adopted in April 1992.

A number of features of this document illustrate the approach of the Catholic Church to the problem of criminal abuse at that time:

- The document was marked ‘Strictly Confidential’. This did not recognise the need for openness and transparency about the issue of complaints of criminal child abuse.
- Complaints were dealt with internally, within the Catholic Church by a Special Issues Committee, rather than externally by police and other relevant authorities. There was no necessity to involve police, even if the complaint involved criminal conduct.
- Priests and religious who were the subject of a complaint were to be placed on administrative leave and have no contact with children.
- No admissions regarding the conduct of the subject of a complaint were to be made to the complainant or victim or to any other person.
- Values to be promoted included acting in a way to prevent or remedy scandal.

Bishop Connors from the Ballarat Diocese described the approach of the 1992 protocol as a:

... very defensive approach, and I think it was due to the fact that the Church was listening to insurers and lawyers who were saying, ‘Admit nothing’ and, at that stage, ‘Never say you are sorry.’ I think that was the difficulty for bishops, because they were taking the wrong advice: never to meet with victims and never to admit something had happened.¹⁶⁷

When the Committee questioned Cardinal George Pell about this protocol and put to him the suggestion that the Catholic Church’s motive was to protect its treasure, Cardinal Pell responded:

The primary motivation would have been to respect the reputation of the church. There was a fear of scandal. I do not think any damages were paid out until the 1990s or something like that. At least in Australia saving the money was not a significant factor. I am not sure of the 1980s, but, as I said, there was no compensation paid, as far as I can remember.¹⁶⁸

Cardinal Pell further commented on the cover-up, stating that:

In examining the records now, there is one very clear example—that is with Father Baker—where Archbishop Little did cover up. He swore on oath that he did not know about O’Donnell’s offence before he appointed him to Oakleigh. It is true that Archbishop Little spoke to nobody about this. At the meetings—what we used to call the curia of the assistant bishops—he never once raised the issue, and he

¹⁶⁷ *Transcript of evidence*, Catholic Diocese of Ballarat, p. 8.

¹⁶⁸ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 12.

never raised the issue with me personally. I do not know whether I mentioned it with Monsignor Cudmore. Monsignor Cudmore said to me that Archbishop Little never impeded him, but never gave him one word of advice or one word of direction. He seems to have judged these things himself. He erred badly on Baker, but on a man called Glennon, a priest who was jailed, after he was let out of jail the first time the psychiatrist or the psychologist urged Archbishop Little to let him go back to work. Even the governor of the jail wrote a glowing report on Glennon. Archbishop Little refused, and he managed to get him to accept laicisation.¹⁶⁹

From the perspective of a large number of victims who gave evidence to the Inquiry, the central aim of this initial response of the Catholic Church was to safeguard its own interests, limiting reputational damage and financial cost as much as possible, and avoiding scandal.

As a consequence of this protocol, various dioceses and religious institutions began to keep records about complaints of criminal child abuse and the treatment of alleged offenders. The documentation that the Catholic Archdiocese of Melbourne provided to the Committee provides an insight into the handling of complaints in the early 1990s after the protocol had been adopted.

The adoption of the protocol ensured that complaints were recorded and thus contributed in a positive manner to the exposure of this issue to the wider society. Material provided to the Committee by the Catholic Archdiocese of Melbourne, the Ballarat Diocese and the Christian Brothers revealed a significant number of complaints being recorded prior to 1996, when the more formal Catholic Church processes were adopted. Table 7.3 outlines the numbers of these complaints prior to 1996:

Table 7.3: Complaints by diocese or religious order

Diocese/Order	Number of complaints
Catholic Archdiocese of Melbourne	59
Ballarat Diocese	39
Christian Brothers	42

Source: Compiled by the Family and Community Development Committee

However, the confidential recording of complaints and the response processes adopted under the protocol (including failure to notify police and lack of awareness of complaints in the parish or school) delayed the wider society's recognition of criminal child abuse as a grave issue.

7.5.1. Initial response of other organisations

Prior to the introduction of the Power and Trust Protocol the Anglican Church took steps to address the issue of criminal child abuse within the organisation. Limited information was available to the Committee but it seems that the first formal measure was taken in December 1990 with the publication of 'A Pastoral Report to Churches on Sexual Violence against Women and Children in the Church Community' followed by the setting up a working group looking into sexual harassment in 1991.

¹⁶⁹ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 13.

In 1999 the Provincial Council of Victoria developed and adopted a ‘Protocol for Dealing with Sexual Harassment Complaints’ which had the agreement of all Victorian dioceses. In 2000 in the Anglican Diocese of Melbourne a ‘Committee for Dealing with Sexual Harassment’ was established but the members of this Committee resigned in 2002. In 2002 the Archbishop of Melbourne appointed a team to review the Anglican Diocese’s sexual harassment protocols, child protection policy, and its ‘Code of Good Practice for Clergy.’ The review team published its findings and suggested that the code be integrated into a new protocol dealing with complaints of abuse. The resulting protocol in November 2002 was entitled the Power and Trust Protocol.

There was nothing in the material provided by the Salvation Army to suggest to the Committee that they took steps to address the issue of criminal child abuse prior to the introduction of the Care Leaver’s Complaint Process in 1997.

7.5.2. Continued failure to investigate allegations and notify potential victims

When the Catholic Church became aware of allegations, even when these were criminal acts admitted by the perpetrator, it did not take steps to investigate whether there were any other victims or to refer the matter to the police. Nor did it make any attempt to find out the extent of the problem in the Catholic Church.

For example, Vicar-General Monsignor Gerard Cudmore recorded a complaint against Fr Des Gannon on 30 April 1993. When confronted with the complaint, Fr Gannon admitted that the offence had occurred and offered his resignation. In the course of the conversation he also admitted that there had been five or six other victims of criminal child abuse in different parishes. The parishioners were informed that the Archbishop had accepted Fr Gannon’s resignation from the parish on health grounds—the parishioners even organised a collection for him, raising \$3,500. At no stage were parishioners told the real reason for Fr Gannon’s resignation. Nor did the Catholic Church follow up Fr Gannon’s admissions about his other offending.¹⁷⁰

Similarly for Fr Ronald Pickering—the Catholic Church knew of allegations against him soon after he left Australia for England in May 1993. Despite the Catholic Church’s attempts to have him return and to make him cooperate with the Church’s insurers, the Church took no action to investigate Fr Pickering’s activities in Australia. It was not until 25 March 2002 that a parish notice was circulated at St James in Gardenvale, enquiring whether there were any other victims and inviting them to come forward.¹⁷¹

Material was also presented to the Committee from Mr Phil O’Donnell who on 12 June 1996 was parish priest at St Thomas More Belgrave. At that time he wrote to the Vicar-General, Monsignor Cudmore regarding his concerns about Fr Bill Baker, Fr Peter Searson and Fr Kevin O’Donnell and urged him that the ‘Archdiocese of Melbourne take the initiative and conduct an internal investigation of possible child

170 *Files relating to Father Desmond Gannon*, provided to the Family and Community Development Committee by the Catholic Archdiocese of Melbourne.

171 *Files relating to Father Ronald Pickering*, provided to the Family and Community Development Committee by Catholic Archdiocese of Melbourne.

abuse by priests of this Archdiocese.¹⁷² It does not appear from the material that any such inquiry was undertaken.

Material presented by other religious institutes did not show that they had taken any steps to enquire into the conduct of convicted paedophiles towards other students who attended the various schools where they had taught.

7.5.3. Failure to notify police

The 1992 Protocol for Dealing with Allegations of Criminal Behaviour did not require Catholic Church representatives to contact police when alleged criminal conduct came to their attention. In examining the Catholic Church’s approach it must be remembered that the child abuse in question involved serious criminal behaviour carrying significant penalties.

Box 7.3 outlines the relevant part of the protocol.

Box 7.3: Complaints—Protocol
<p>6. COMPLAINTS</p> <p>6.1 Whenever the competent ecclesial authority receives information of alleged criminal behaviour the matter shall immediately be referred except in circumstances of a most serious and extraordinary nature to the relevant Special Issues Resource Group.</p> <p>6.2 In circumstances of a most serious and extraordinary nature, the competent ecclesial authority shall immediately conduct, through another suitably qualified delegate, an inquiry into the complaint about the alleged criminal behaviour ...</p> <p>6.3 It is possible that a complaint may be made concerning alleged criminal behaviour or the matter may come to the attention of the competent ecclesiastical authority in a number of ways.</p> <p>The complaint may be made</p> <p>6.3.1—to the following:</p> <ul style="list-style-type: none"> ♦ The bishop, major superior or superior ♦ Another cleric or religious ♦ Some other person ♦ Departmental officers ♦ The media. <p>6.4 Since all the possibilities cannot be foreseen the following general principles apply:</p> <p>6.4.1 Each cleric or religious who becomes aware of a complaint, or the possibility of a complaint either against himself, or another cleric or religious, is obliged (subject to any canonical obligation to the contrary) to notify that fact to the competent ecclesial authority who shall immediately refer the matter to the relevant Special Issues Resource Group. Requirements in some States or Territories for mandatory reporting should be taken into account.</p> <p>Source: Adapted from 1992 Protocol for Dealing with Allegations of Criminal Behaviour.</p>

¹⁷² *Supplementary evidence*, Letter to Vicar General Gerard Cudmore, Mr Phil O’Donnell, 18 January 2013.

On 28 September 1994, Monsignor Cudmore appeared before the Victorian Parliamentary Inquiry into Sexual Offences Against Children and Adults, which was conducted by the Crime Prevention Committee. In outlining the obligation to report to police, the report reads:

What does concern the [Crime Prevention] Committee however, is the number of cases which come to the attention of the clergy outside the confessional and which are never reported to the relevant authorities ...

When asked at public hearing how he would react to an admission by a priest that he had sexually abused somebody Monsignor Cudmore replied,

I would obviously be aware that something is seriously wrong and action would have to be taken.¹⁷³

Monsignor Cudmore went on to explain that he would automatically report the case to the Archbishop:

The Committee assumes that the 'action taken' by Monsignor Cudmore would be to report the matter immediately to the police for investigation of a criminal offence. To ensure that this would be the case the protocols which religious organisations adhere to should include immediate notification to police of sexual assault.¹⁷⁴

Despite the recommendation that police should be notified, the Protocol did not change after publication of the Crime Prevention Committee's report in 1995. The situation remained that complaints were dealt with by the Catholic Church, without any obligation to notify police, despite the serious and criminal nature of allegations. Chapter 23 of Part G further explores this issue.

Similarly, there is no suggestion that the Salvation Army informed police when any complaints were made regarding allegations of child criminal abuse by representatives of the organisation. In evidence to the Inquiry, Captain Malcolm Roberts informed the Committee there was evidence that a Salvation Army officer who served both in Bayswater Boys Home and Box Hill Boys Home was put on sick leave in March 1950 after confessing to the criminal sexual abuse of four boys whilst in Box Hill Boys Home. Captain Roberts confirmed for the Committee that after the confession the officer 'went to jobs with Red Shield Services, that is working with the military at Puckapunyal, and had other jobs.'¹⁷⁵ However, he could not tell the Committee whether the offending officer was reported to the Victoria Police after his confession.¹⁷⁶

7.5.4. Denial of legal liability

As allegations of criminal child abuse began to emerge, including from solicitors acting for victims, the Catholic Church adopted the position that it was not responsible for the abuse and denied liability. It did so on the basis of the structure of 'responsibility' in the Church.

In correspondence dated 25 February 1994, there were statements to victims from Catholic Church lawyers, such as:

Our client is, of course, gravely concerned at the allegations made against the priest

173 Crime Prevention Committee (1995) *Combating child sexual assault, An integrated model*. Melbourne, Parliament of Victoria, p. 312.

174 Crime Prevention Committee (1995) *Combating child sexual assault, An integrated model*, p. 313.

175 *Transcript of evidence*, Salvation Army, p. 10.

176 *Transcript of evidence*, Salvation Army, p. 10.

but, as you must realise, the Archdiocese, ‘the church’ and ‘the Catholic church’ are not and cannot be responsible for such illegal abhorrent behaviour.¹⁷⁷

Similarly another victim on 18 October 1996 in October 1996: ‘neither the Archbishop nor the Vicar-General have any legal liability to your client’.¹⁷⁸

Defence pleadings in civil proceedings contained similar denials of liability. This legalistic approach to victims’ claims persisted, even after current protocols and policies were implemented to deal with the issue of abuse. Even at this time, the Catholic Church’s attitude did little to give victims confidence that their complaints would be met with sympathy or acceptance, or that their issues would be adequately addressed.

This approach was most evident in the account provided by Mrs Chrissie Foster of a meeting that she had with her husband Anthony and Archbishop George Pell regarding Fr. Kevin O’Donnell, a priest of the Melbourne Archdiocese. She recalled as follows:

Anthony said softly, almost whispering: ‘What if my daughter dies? What if my daughter harms herself in such a way that she has a terrible life from now on? Shouldn’t the Church look after her? The Church caused this’.

George Pell countered by saying the Church’s liability would be defended in court.

When Anthony mentioned the Church had known about O’Donnell’s paedophilia for many decades, Archbishop Pell said: ‘That was before my time’...

We believed Archbishop Pell knew O’Donnell assaulted Emma. But Anthony repeated the facts for him, just in case.

‘I hope you can substantiate that in court’, came the words that shook us most. Anthony winced.

‘We are victims’, my husband pleaded. ‘Can’t you understand we feel that way—can’t you understand that many people feel that way?’

The discussion moved quickly to the new scheme for complaints and compensation. Anthony said it was a cost saving measure, unfair and to the victims’ detriment.

‘It might look good on paper but as people involved in this, as victims, it all looks very shallow. Part of the reason is we see this cap and we see these restrictions’.

Archbishop Pell interjected: ‘If you don’t like what we’re doing, take us to court’.

‘We don’t want to. We don’t want to drag the Church through the courts. We don’t want this’, Anthony explained.¹⁷⁹

177 Catholic Archdiocese of Melbourne, Letter from Mr A. W Le P Darvall, Corrs Chambers Westgarth to Alwyn Samuel, Solicitor, 25 February 1994, from the files of Father Desmond Gannon, accessed by the Family and Community Development Committee.

178 Catholic Archdiocese of Melbourne, Facsimile from Monsignor Denis Hart to Alwyn Samuel, Solicitor, 18 October 1996, from the files of Father Desmond Gannon, accessed by the Family and Community Development Committee.

179 *Transcript of evidence*, Mr Anthony & Mrs Chrissie Foster, Melbourne, 23 November 2012, pp.4–5.

The Committee noted, however, that a significant number of claims were settled by the Diocese of Ballarat,¹⁸⁰ the Christian Brothers,¹⁸¹ and the St John of God order.¹⁸² Although these religious organisations denied liability and attached confidentiality to some of these arrangements, an avenue had clearly opened up, through which victims could seek financial compensation from these organisations.

7.5.5. Counselling—pastoral support

As outlined in Part B, victims' motivations for disclosing their experience of abuse involved a multitude of reasons. Often their motivation was not initially financial, but involved a desire to ensure that the perpetrator would not reoffend or that the Catholic Church might provide some emotional, spiritual and psychological assistance. Many of the files made available to the Inquiry reveal that during this time the Catholic Church offered, provided and funded counselling to victims when they made a complaint. In some instances, the Catholic Church also provided some financial compensation.

For pastoral support, in February 1996 the Melbourne Archdiocese set up the Pastoral Response Group to deal with abuse issues that arose in parishes.¹⁸³ The Committee identified that this is possibly the only aspect of the initial response of the Church to the issue of criminal child abuse that assisted in responding effectively to the needs of victims at the time. The Pastoral Response Group helped a number of parishes when allegations of abuse were made against the parish priest, particularly in Oakleigh regarding Fr O'Donnell and in Doveton regarding Fr Searson.

This group provided a forum for people to come forward for encouragement and support, and a means by which their abuse issues could be addressed. As part of this process, a couple from Oakleigh attended, Mr Anthony and Mrs Chrissie Foster. The Fosters were concerned for the wellbeing of their daughter, who had been a student at Sacred Heart Oakleigh where Fr O'Donnell, by then a convicted paedophile, had been a parish priest. Thus began their involvement in a battle with the Catholic Church that continued for years, aspects of which are discussed later in this Report. In any event, the creation of such a group to look after the pastoral needs of victims of abuse was a positive step and contributed to a number of victims coming forward to report their experiences of criminal child abuse and seek support.

7.5.6. Awareness over time of criminal child abuse in the Catholic Church

The Committee concluded that the Catholic Church made a deliberate choice to pursue a course of concealing the problem of criminal child abuse. This choice was motivated by the Church's desire to protect itself.

From the late 1980s, the disclosure of serious criminal child abuse in the Catholic Church (both in Australia and overseas) led to increasing public pressure for this

180 *Files relating to Gerard Ridsdale*, provided to the Family and Community Development Committee by the Catholic Ballarat Diocese.

181 Files provided to the Family and Community Development Committee by the Christian Brothers.

182 Files provided to the Family and Community Development Committee by Hospitaller Order of St John of God.

183 Catholic Communications, Archdiocese of Melbourne, 'A pastoral response to professional misconduct/clergy sexual abuse' (Media release, 16 February 1996).

problem to be exposed and appropriately addressed. In Ireland and areas of the United States, action was being taken to address the problem. The Catholic Church in Australia and in Victoria could not, and did not, ignore these developments.

A number of successful, high-profile criminal prosecutions had been conducted in Victoria, commencing with the criminal prosecution of Fr Glennon in 1978 and progressing through the 1980s with successful prosecutions of Fr Ridsdale, Fr Gannon, Fr Klep, Fr Rubeo, Fr Anthony Eames, Br Robert Best and Br Dowlan. The media paid a significant degree of attention to these matters. As a consequence, other victims of these and other perpetrators came forward.

Table 7.4: Prosecutions and sentencing—offenders who were religious personnel

Offender	Year	Sentence
Fr Michael Glennon	1978	Imprisonment 2 years
	1992	Imprisonment 7 years (6 years minimum)
	2003	Imprisonment 18 years (15 years minimum) ¹⁸⁵
Fr Des Gannon	1995	Imprisonment 12 months
	1997	Sentenced 13 months (wholly suspended)
	2000	Sentenced 3 years (wholly suspended)
	2009	Imprisonment 25 months (14 months minimum)
Fr Frank Klep	1994	Intensive correction order 9 months
	2005	Imprisonment 5 years and 10 months (3 years and 6 months minimum) ¹⁸⁶
Br Edward Dowlan	1996	Imprisonment 6 years and 6 months (4 years minimum) ¹⁸⁷
Fr Anthony Eames	1995	Sentenced 6 months (wholly suspended)
Br Robert Best	1996	Sentenced 9 months (wholly suspended)
	2011	Imprisonment 14 years and 9 months (11 years and 3 months minimum)
Fr Victor Rubeo	1996	Undertaking 2 years with conditions
Fr Gerald Ridsdale	1993	Imprisonment 12 months (3 months minimum)
	1994	Imprisonment 18 years (15 years minimum)
	2006	Minimum term increased by 4 years

Source: Compiled by the Family and Community Development Committee from information received from the Victorian County Court.

Advocacy groups such as Broken Rites emerged to encourage and support victims in revealing their abuse. There was a growing awareness of the long-term damage to victims of criminal child abuse, and some of this damage was seen as being due to the Catholic Church's treatment of allegations that had first been made many years

184 On appeal in 2005. Sentence reduced to minimum of 10 years.

185 On Department of Public Prosecutions (DPP) appeal sentence increased from 3 years with a minimum of 1 year.

186 On appeal sentence reduced from 9 years 8 months with a minimum of 6 years.

earlier. The public paid greater attention to the number of offences and the Catholic Church's failure to address the problem adequately.

The Catholic Church claims that its lack of knowledge about many of the issues associated with this complex problem is no different from the lack of knowledge in society at large. But this position cannot be sustained when we understand that the Catholic Church's reaction, structure, teachings and culture all made a significant contribution to concealment of the problem. Further, some leaders in the Catholic Church had been dealing with this problem for years; knowledge of criminal child abuse in the Church was not limited to a few isolated incidents.

This minimisation or concealment of the problem was due to a number of factors, including the structure of the Catholic Church and lack of accountability, the teachings of the Catholic Church, canon law, leadership policy and, to some extent, the understanding of the issue at the time. Church leaders' approach was motivated by a desire to protect the reputation of the Catholic Church and to 'cure' the offender. They took no action to report, validate or investigate a complaint made by or on behalf of a victim and offered no pastoral support or counselling to those affected; victims were not offered sympathy, but hostility.

The Catholic Church uses many of these factors in recognising and explaining why its response to criminal child abuse was inadequate and slow. As set out in *Facing the truth*:

The Church acknowledges that our early response was inadequate and too slow. Like society and many professionals of the time, the Church lacked insight into the issue of child abuse and as a result:

- took too long to respond decisively and effectively
- was slow to believe victims who alleged abuse by clergy, religious or other Church personnel
- was slow to accept that anyone could commit such crimes, let alone a priest or religious
- believed offenders that they would not reoffend and could be cured, especially when assured of this by offenders
- wrongly believed the denial of predators
- underestimated the long-term devastating harm and effect on victims
- was slow to place central priority on the care for victims
- initially required confidentiality clauses in settlement with some victims
- initially favoured a legal over a pastoral response
- operated in an environment where there was a lack of transparency.¹⁸⁷

7.5.7. 'Drastic measures'

As illustrated above, society's awareness of criminal child abuse emerged despite the actions of the Catholic Church. The Church's knowledge of the existence of the problem within its own ranks cannot be denied. It is likely that relevant office-holders in the Catholic Church were sometimes well intentioned, although misguided. The risk to children may not have been apparent in some cases, but in others it is almost

¹⁸⁷ *Submission S185*, Catholic Church in Victoria, pp. 2–3.

inconceivable that relevant office-holders would not have appreciated the risk, had they given this aspect appropriate attention.

However, the magnitude of the problem, along with media pressure and development of other victim support groups that were active in Victoria and elsewhere meant that the issue could not remain concealed within the Catholic Church; more drastic action needed to be taken. The newly appointed Archbishop of Melbourne at the time, George Pell, recognised this. More victims were coming forward and important facts were emerging in the Catholic Archdiocese of Melbourne, each of which was acknowledged by Cardinal Pell:¹⁸⁸

- Between 1992 and 1996 there had been 47 complaints of criminal child abuse made, against 18 priests.¹⁸⁹
- The Catholic Archdiocese of Melbourne had not settled or resolved any of the 35 civil claims issued in the Victorian courts for damages or compensation for victims alleging child abuse by priests in the Archdiocese.¹⁹⁰
- Four notorious paedophile priests—Fr Glennon, Fr Ridsdale, Fr O'Donnell and Fr Gannon—had been convicted of many sexual offences against children.
- Some priests who had been the subject of complaints of conduct amounting to criminal conduct left the country (Fr Pickering and Fr Chalk).
- CCI had not agreed to a request to indemnify the Ballarat and Sale Dioceses against the activities of some of their priests.¹⁹¹
- The issue of the sexual abuse of children by priests and members of orders, and allegations of cover-ups, had enveloped the Catholic Church in a worldwide scandal.

Finding 7.4

The initial formal response to criminal child abuse that the Catholic Church in Victoria and in Australia more broadly adopted in the early 1990s was influenced by its previous approach. The response continued to conceal rather than expose criminal child abuse in the organisation.

7.6. Inadequate response

The criminal abuse of children has existed for a significant period of time in the Catholic Church and other religious and non-government organisations. As members of trusted and respected organisations, perpetrators of abuse in the past could be sure that their activities were not being supervised or monitored and that the children would not, for a variety of reasons, make complaints.

¹⁸⁸ *Transcript of evidence*, Catholic Archdiocese of Sydney, pp. 7–8.

¹⁸⁹ *Supplementary evidence*, Response to request for information, Catholic Archdiocese of Melbourne, 4 February 2013.

¹⁹⁰ Catholic Archdiocese of Melbourne, Minutes of Professional Standards Resource Group, 29 March 1996, from the files accessed by the Family and Community Development Committee.

¹⁹¹ Ms Marita Wright, Catholic Church Insurance, Letter to the Family and Community Development Committee, 17 May 2013.

Various structures, laws and teachings of the Catholic Church contributed to the concealment of this issue from wider society and civil authorities. The manner in which the Catholic Church responded (or failed to respond) to complaints gave perpetrators the opportunity to commit further abuse. Only when there was growing public awareness of this issue did the Catholic Church attempt to deal with the problem, through a change in policy and formal protocol. However, the steps that the Catholic Church took were still influenced and constrained by the Catholic Church's structures and policies and its concern for its reputation as an institution.

At this time, the Catholic Church should have addressed the problem of criminal child abuse through:

- recognition and research
- dealing with it in an open and transparent way, with appropriate standards set and maintained, including codes of conduct, prevention frameworks and sound processes for handling allegations
- properly caring for and treating the victims
- protecting potential further victims
- holding offenders to account for their actions
- referring cases to the police.

As explained in this chapter, this did not occur. As a result, victims continued to be damaged by both the incidence of criminal child abuse itself and the organisation's response to it. The Catholic Church's response was inadequate and unsatisfactory and did not receive the immediate attention that it required.

Chapter 8

Policy development—criminal child abuse in organisations

AT A GLANCE

Background

A number of public inquiries in the 1990s and 2000s contributed to the exposure of criminal child abuse in organisations. These have occurred internationally, nationally and also in Victoria. Policy and legislative responses to criminal child abuse in religious and non-government organisations remains underdeveloped despite some reforms over the past decade.

The previous chapter outlined the Committee's findings in relation to the past handling of suspected criminal child abuse in religious and non-government organisations. Issues relating to abuse in organisations have been the subject of inquiries both in Victoria and more broadly across Australia.

Notably, the occurrence of criminal child abuse in religious organisations has been generally overlooked in such inquiries. Historically, religious organisations have generally enjoyed the trust of their congregations, governments and the broader community. In recent times it has become evident that in many instances, this trust was misplaced. Internationally there has been an increased focus on the Catholic Church specifically. In Victoria, the recent Cummins Inquiry¹⁹² recommended that the handling of criminal child abuse by religious organisations should be formally investigated.

In establishing the Inquiry, the Victorian Government took the opportunity to consider the handling of criminal child abuse in non-government organisations more broadly. This has enabled the Committee to consider other non-religious organisations that interact directly with children (such as recreational, sporting, education and community services).

To date, policy and legislation has primarily focused on the protection of children from abuse within families because that is primarily where child abuse most commonly occurs. For example, the introduction of mandatory reporting in 1993 was a significant development. By making it compulsory to report suspected child abuse or neglect to the Department of Human Services (DHS) child protection services, the Victorian Government has been better positioned to identify, intervene early and, where necessary, remove children from risk of child abuse by their primary carer/s.

There is recognition that while children are generally safe from abuse in non-government organisations today, there is a need to ensure the best systems and processes are in place to ensure they are safe from harm within those organisations.

8.1. Case for change—inquiries into criminal child abuse in organisations

Public inquiries have highlighted the reality that child abuse occurs in contexts in which children would generally be seen as safe from harm. Over the past decade several inquiries have been held at a state and federal level in Australia.

The issue has also been the subject of attention outside Australia. In the context of recent inquiries in Ireland and the United Kingdom, researcher Dr Anne-Marie McAlinden has stated:

From the late 1990s onwards, a number of cases highlighted the vulnerability of children in environments traditionally considered safe such as orphanages, clubs and schools.¹⁹³

This section outlines the range of inquiries undertaken into criminal child abuse in religious and other organisations and issues directly relevant to the criminal abuse of children in those contexts.

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

193 AM. McAlinden (2013) 'An inconvenient truth: barriers to truth recovery in the aftermath of institutional child abuse in Ireland'. *Legal Studies*, Vol. 33, No. 2, pp. 189-214, p. 193.

8.2. International inquiries

Inquiries into child abuse have been held across a broad range of countries. They have identified patterns of the criminal abuse of children in organisations and institutions by trusted professionals that are similar to those identified in Australia.

The issue of criminal child abuse in organisational contexts was identified as early as 1936. From the 1990s inquiries into child abuse in organisations increased in frequency. Table 8.1 lists examples of the inquiries that have occurred internationally.

Table 8.1: Examples of international inquiries into criminal child abuse in organisations

Inquiry	Country	Year	Name of inquiry
Utting Review	Wales and United Kingdom	1991	Children in the public care: A review of residential child care.
Levy Report	United Kingdom	1991	The pindown experience and the protection of children.
Warner Report	United Kingdom	1992	Choosing with care: The report of the committee of inquiry into the selection, development and management of staff in children's homes.
Gwynedd and Clwyd Report	Wales, United Kingdom	1996	Lost in care: Report of the inquiry into the abuse of children in care in the former country council areas of Gwynedd and Clwyd.
Utting Report	Wales and United Kingdom	1997	People like us: The report of the review of the safeguards for children living away from home.
Kent Report	Scotland	1997	Extraordinary lives: Creating a positive future for looked after children and young people in Scotland.
Department of Health and Social Services and Public Safety	Northern Ireland	1998	Children matter: A review of residential child care services in Northern Ireland.
Waterhouse Report	Wales, United Kingdom	2000	Lost in care: The Waterhouse report of the inquiry into the abuse of children in care in the former County Council areas of Gwynedd and Clewyd.
Law Commission of Canada	Canada	2000	Restoring dignity, responding to child abuse in Canadian institutions.
Committee for health, social services and public safety	Northern Ireland	2000	Report of assembly inquiry into residential and secure accommodation for children in Northern Ireland.
Bichard Report	United Kingdom	2004	Report of the Bichard inquiry.
Ferns Report	Ireland	2005	Investigation into complaints or allegations of child sexual abuse against clergy in the Diocese of Ferns.

Inquiry	Country	Year	Name of inquiry
Ryan Report	Ireland	2009	Report of the commission to inquire into child abuse in institutions from 1940.
Murphy Report	Ireland	2009	Report of investigation into handling of clerical child sexual abuse allegations in the Dublin Archdiocese 1974–2004.
Cloyne Report	Ireland	2011	Report by Commission of Investigation into the handling by Church and State authorities of allegations and suspicions of child sexual abuse against clerics of the Catholic Diocese of Cloyne.
Hart Inquiry	Northern Ireland	2012	Historical institutional abuse inquiry.

Source: Compiled by the Family and Community Development Committee.

The issue of criminal child abuse by ministers of religious, particularly in the Catholic Church, became a key focus in the 1990s. Dr McAlinden noted that within the broader context of abuse in organisations and institutions:

... the sexual and physical abuse of children by members of Catholic religious orders has become the predominant contemporary concern.¹⁹⁴

In addition to official inquiries commissioned by governments, the Catholic Church has also conducted a number of its own inquiries internationally. A number of these inquiries are listed in Table 8.2.

Table 8.2: Examples of inquiries conducted by the Catholic Church regarding criminal child abuse

Inquiry	Country	Year	Full title
Winter Report	Canada	1990	Report of the Archdiocesan Commission of enquiry into the sexual abuse of children by members of the clergy.
John Jay Report	United States	2004	The nature and scope of the problem of sexual abuse of minors by Catholic priest and deacons in the United States.
Cumberlege Commission Report	United Kingdom	2007	Safeguarding with confidence: Keeping children and vulnerable adults safe in the Catholic Church.
Adriaenssens Commission	Belgium	2010	Report into child abuse in the Catholic Church.
Bavarian Inquiry	Germany	2010	Investigation into child sexual abuse in the Regensburg Diocese.
Deetman Inquiry	Netherlands	2011	Inquiry into women who were victims of child sexual abuse by Roman Catholic clergy in the Netherlands.
Benedictine Order	Scotland	2013	Inquiry into child abuse in Catholic Church schools.

Source: Compiled by the Family and Community Development Committee.

¹⁹⁴ A-M. McAlinden (2013) 'An inconvenient truth: barriers to truth recovery in the aftermath of institutional child abuse in Ireland', p. 193.

Internationally, there has been strong public attention given to the recent inquiries in Ireland regarding the issue of child sexual abuse by Catholic clergy. Four inquiries were commissioned by both the Government and the Catholic Church.

These inquiries made a number of findings in regard to the handling of criminal child abuse by both the Catholic Church and state authorities:

- 2005—The Ferns Report found a failure by the Catholic Church to respond appropriately to abuse complaints, failures to report criminal actions to police, and failures to ensure that alleged abusers were kept away from children.
- 2009—The Ryan Report identified that the failure of both the Catholic Church and the state was systemic.
- 2009—The Murphy Report found that clerical abuse in the Catholic Church archdiocese of Dublin had been covered up.
- 2011—The Cloyne Report determined that the Catholic Church response was inadequate and inappropriate. It also highlighted that the lessons of the past had not been learnt in the interim.

8.3. Public inquiries in Australia

Since the late 1990s, the Australian Government and many states (including Victoria) have undertaken inquiries into issues relating to the care of children in organisational and institutional contexts, including how allegations of criminal child abuse had been handled by the police. Inquiries in Victoria are discussed in Section 8.4 and examples of inquiries held in other states and nationally are listed in Table 8.3.

Table 8.3: Examples of inquiries in Australia relating to criminal child abuse in organisations (excluding Victoria)

Inquiry	State	Year	Full title
Wood Report	NSW	1997	Royal Commission into the NSW Police Service: The paedophile inquiry (volumes 4, 5 and 6).
Human Rights and Equal Opportunity Commission	Australia	1997	Bringing them home: Report of the national Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families.
Kimmins Report	QLD	1999	Inquiry into allegations of misconduct in the investigation of paedophilia in Queensland.
Forde Report	QLD	1999	Report into the current and past administration of orphanages, reformatories and detention centres.
Legislative Council Standing Committee on Social Issues	NSW	2002	Care and support: Final report on child protection services.
Layton Report	SA	2003	Our best investment: A state plan to protect and advance the interests of children, Child Protection Review.

Inquiry	State	Year	Full title
Crime and Misconduct Commission	Qld	2004	Protecting Children: An inquiry into abuse of children in foster care.
Senate Report	Australia	2004	Forgotten Australians: A report on Australian who experienced institutional care as children.
O'Grady Review (Tasmanian Ombudsman)	Tas	2004	Review of claims of abuse from adults in state care as children.
Senate Report	Australia	2005	Protecting vulnerable children: A national challenge.
Mullighan Report	SA	2008	Children in state care commission of inquiry: Allegations of sexual abuse and death from criminal conduct.
Senate Report	Australia	2009	Report of Inquiry into the implementation of recommendations of the Lost Innocents and Forgotten Australians reports.
Blaxell Report	WA	2012	Report on St Andrew's Hostel Katanning: How the system and society failed our children.
Cunneen Inquiry	Australia	2012	Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle.
McClellan Inquiry	Australia	2013	Royal Commission into institutional responses to child sexual abuse.
Carmody Report	Qld	2013	Taking responsibility: A roadmap for Queensland child protection.

Source: Compiled by the Family and Community Development Committee.

State and territory governments have primary responsibility for developing and implementing policy and legislation that protects children from criminal abuse in organisations. At a national level, the Australian Government has a role in promoting consistency in approaches by states and territories.

A range of reforms have occurred in states such as New South Wales (NSW), Queensland and South Australia (SA). For example, following the release of the Wood Report in NSW a new framework for protecting children was established. As part of this framework, for example, the NSW Ombudsman and others were given stronger powers in auditing and overseeing the protection of children within organisations. Following the Layton Report, in 2005 the SA government introduced legislation that required organisations to establish child-safe policies.

Over the past decade, through the Council of Australian Government's (COAG) national policy developments have been introduced to improve the quality of care in the out-of-home care and early childhood education sectors:

- Out-of-home care—the *National framework for protecting Australia's children, 2009–2020* and *National standards for out-of-home care*.
- Early childhood education service—*National quality framework* and *National quality standards*.

The goals to improve quality of care make little reference to protecting children from criminal abuse by personnel in organisations. The national standards inform the standards established in Victoria for both sectors and are discussed further in Parts D and E.

In other sectors, such as sporting organisations, issues relating to criminal child abuse have come to the attention of the public which led to responses by statutory authorities, such as the Australian Sports Commission. This is discussed in Chapter 6.

8.3.1. Care leavers

The Committee heard from many former wards of the State and children in out-of-home care who were subjected to criminal child abuse in institutions, such as children's homes and orphanages. Many of these institutions were run by the Victorian Government and are therefore outside the Committee's Terms of Reference. However a large number were also run by non-government organisations contracted by the Government to provide out-of-home care services. These institutions were examined in detail in a Senate Committee report *Forgotten Australians: A report on Australians who experienced institutional care as children*.

Throughout this Inquiry, the Committee heard the stories of care leavers and acknowledges the systemic failure and neglect of this group of child abuse victims. Children were placed into orphanages through no fault of their own. Parents were forced or volunteered to give their children up due to poverty, societal pressure, domestic violence or the death of a parent. The Committee heard of a single father unable to care for his children because he had to work. He thought it best for his children that he paid for them to be cared for by the Catholic Church. Many children who were placed in institutions as babies and at preschool age were not taught to read or write and were often used as child labour in the laundries and farms operated by non-government organisations.

Care leavers told the Inquiry about their experience of criminal child abuse leading to poor outcomes in later life. For care leavers abused in non-government organisations, the impacts of criminal child abuse were discussed in depth in Chapter 4, including the specific consequences of abuse in organisations and institutions. While there has been no detailed collection of data or research regarding what happened to these, the Committee received considerable anecdotal evidence that many of these abused children found their way into destructive addictions, the prison system, homelessness and early death.

While the analysis and recommendations contained in this report are restricted to the Inquiry's Terms of Reference, a number of the issues could be of general application across the community.

In this Inquiry report, recommendations are made to enhance prevention of criminal child abuse in non-government organisations, including out-of-home care settings. It proposes an alternative justice avenue for victims of criminal child abuse who have not been able to achieve appropriate justice outcomes through traditional civil justice avenues, including those who were wards of the State.

8.4. Victorian inquiries

Since the 1990s, there have been a number of public inquiries in Victoria that relate to the protection of children from criminal abuse in organisations. Some have been commissioned by the Government and others by independent statutory bodies, such as the Victoria Auditor-General's Office (VAGO) and the Victorian Ombudsman. The statutory child protection system has frequently been the focus of these reviews.

Examples of inquiries relevant to criminal child abuse in organisations undertaken in Victoria are listed in Table 8.4.

Table 8.4: Examples of public inquiries in Victoria relevant to criminal child abuse in organisations, 1993–2013

Inquiry	Year	Full title
Fogarty Report	1993	Protective services for children in Victoria: A report.
Parliament of Victoria	1 st report 1995	Report of Inquiry into sexual offences against children and adults.
Crime Prevention Committee	2 nd report 1996	
Victorian Auditor-General's Office	1996	Protecting Victoria's children: The role of the Department of Human Services.
Law Reform Commission	2004	Sexual offences: Final report.
Victorian Auditor-General's Office	2005	Our children are our future: Improving outcomes for children and young people in out-of-home care.
Ombudsman Report	2006	Improving responses to allegations involving sexual assault.
Ombudsman Report	2009	Own motion investigation into the Department of Human Services child protection program.
Ombudsman Report	2010	Own motion investigation into child protection—Out-of-home care.
Cummins Inquiry	2012	Report of Protecting Victoria's vulnerable children Inquiry.
Parliament of Victoria Family & Community Development Committee	2012–13	Inquiry into handling of child abuse in religious and non-government organisations.
Victorian Auditor-General's Office	2013–14	Residential care services for children.

Source: Compiled by the Family and Community Development Committee.

These inquiries have led to a range of reforms that relate specifically to criminal child abuse in organisations. Most notably, these include the introduction of Working with Children Checks and improved regulation of out-of-home care services. The Victorian Law Reform Commission made recommendations relating to grooming

and increasing the age of consent for sexual activity with a person over whom someone is in a position of care, supervision and authority.

Despite the high levels of trust placed in religious organisations and their significant dealings with children, the Committee noted that apart from the Cummins Inquiry, they have not been specifically included in any Victorian inquiries. The Cummins Inquiry identified that issues relating to harms of criminal child abuse in religious organisations required further investigation. It recommended that:

A formal investigation should be conducted into the processes by which religious organisations respond to the criminal abuse of children by religious personnel within their organisations. Such an investigation should possess the powers to compel the elicitation of witness evidence and of documentary and electronic evidence.¹⁹⁵

Unlike in other states, the Catholic Church in Victoria and most other religious organisations have not conducted inquiries into the extent of criminal child abuse in their organisations.

8.5. Victoria—current system for child safety in organisations

The Victorian Government has primary responsibility for determining policy and legislation for protecting children from criminal child abuse in non-government organisations. There are multiple areas of policy and legislation that relate to preventing and responding to criminal child abuse in organisations. A number of authorities have responsibility for different elements of oversight of organisations in this context. This section provides an overview of the:

- policy development in context of criminal abuse of children
- relevant legislation to protect children from criminal child abuse in organisations.
- roles and responsibilities—current oversight.

8.5.1. Policy development—protecting children from criminal abuse in organisations

While there is no overarching policy direction to prevent and respond to the criminal abuse of children in non-government organisations, the Victorian Government has put in place requirements for organisations that it contracts to provide services on its behalf.

Inquiries, media reports and public attention over the past 20 years have led to increased focus on addressing criminal child abuse in particular types of organisations, such as out-of-home care and schools. These are areas in which state governments have a responsibility and duty of care to children.

In Victoria, the most recent inquiry leading to policy development was the Cummins Inquiry. This has informed recent reforms to the out-of-home care sector.

¹⁹⁵ P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. vii.

Out-of-home care—Cummins Inquiry and Victorian policy

Since 1993 in Victoria, government policy to protect children from child abuse has been largely concerned with preventing and responding to abuse in families, due to the reality that this is where the majority of child abuse occurs.

The recent Cummins Inquiry considered the role of community service organisations in the provision of out-of-home care and directed attention towards the issue of criminal abuse that occurs in religious organisations. In the context of community service organisations, the Cummins Inquiry considered:

- the capacity of community service organisations
- the quality of services in complex human services areas
- regulation and oversight of service provision by community service organisations.

This included the processes for investigation of possible abuse or neglect of children while in the care of community service organisations and the sanctions available to the Government.

Box 8.1: Capacity of community service organisations

The capacity and structure of community service organisations can impact on or impede the overall quality of service provision being purchased by government, particularly in complex human services areas. These limitations include:

- inadequate capacity among some community service organisations, due to a lack of resources, skills and knowledge and inadequate governance arrangements
- an absence or scarcity of community service organisations in key geographical areas
- limited capacity or willingness of some community service organisations, due to size and other factors, to explore and adopt innovative or new approaches.

The Inquiry considers that these limitations can be exacerbated by an inappropriate or under-developed regulatory framework that governs the relationship between the Department of Human Services and community service organisations, and that does not establish the appropriate standards or expectations for community service organisations or promote a quality improvement approach to service delivery.

Source: Adapted from the Cummins, P, Scott, D & Scales, B (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*, Department of Premier and Cabinet, 2012, p.xxxviii.

The Cummins Inquiry found that:

- the Department of Human Services current approach to monitoring and reviewing community service organisations performance does not do enough to identify, address and prevent the major and unacceptable shortcomings in the quality of out-of-home care
- the regulation and oversight of Victoria's system for protecting vulnerable children need to be strengthened.¹⁹⁶

In view of these findings, it recommended that the Government establish an independent Commission for Children and Young People with broad monitoring

196 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, pp. 505, 17.

and reporting powers would introduce the regular, specialist oversight of government decisions and services it considered were lacking.

In March 2013, an independent Commission for Children and Young People was established, which is further discussed below.

The Cummins Inquiry also considered the protection of children from criminal child abuse in religious organisations specifically. In the context of religious organisations, it reviewed:

- the application of the *Working with Children Act 2005* (Vic) (WWC Act) to ministers of religion and religious leaders
- internal processes, practices or doctrines that operate to preclude or discourage reporting of criminal abuse to authorities
- reporting criminal child abuse to police.

In addition to recommending a formal investigation into the issue of criminal child abuse in religious organisations, the Cummins Inquiry found that the WWC Act applies to persons in religious organisations who work or volunteer with children and young people. The Working with Children Check (WWCC) is discussed further in Chapter 10 of Part D.

It also separated reporting duty where there is a reasonable suspicion a child or young person who is under 18 is being, or has been, physically or sexually abused by an individual within a religious or spiritual organisation under the *Crimes Act 1958* (Vic).¹⁹⁷ This is discussed further in Part G.

In response to the Cummins Inquiry the Victorian Government developed the *Victoria's vulnerable children strategy 2013–2022*. The Strategy has three broad goals, which are to:

- prevent abuse and neglect
- act earlier when children are vulnerable
- improve outcomes for children in statutory care.

8.5.2. Legislative developments for protecting children from criminal abuse

Over the past decade the legislative framework relevant to the protection of children from criminal child abuse in organisations in Victoria has evolved.

New legislation specific to the protection of children has been established in Victoria that protects children from abuse in organisations. In particular, the introduction of the WWCC created new requirements for pre-employment screening to prevent the appointment of people unsuitable to work with children.

Amendments to existing legislation, such as the *Child, Youth and Families Act 2005* (Vic), have also led to increased monitoring of out-of-home care services.

Table 8.5 lists the relevant legislation in Victoria.

197 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 355.

Table 8.5: Current legislation relating to the protection of children in Victoria

Legislation	Description
Child focused laws	
<i>Crimes Act 1958</i>	<ul style="list-style-type: none"> Creates offences for indecent acts with or in the presence of a child under the age of 16, persistent sexual abuse of a child and facilitating sexual offences against children.
<i>Former Child and Young People's Act 1989</i>	<ul style="list-style-type: none"> Amended in 1993 to introduce mandatory reporting of suspected child abuse and neglect by their parent or primary caregiver to DHS child protection.
<i>Current Children, Youth and Families Act 2005</i>	<ul style="list-style-type: none"> Promotes children's best interests and healthy development and legislative basis for mandatory reporting. Provides the legal framework for Victoria's child protection system and the operation of out-of-home care services. This includes powers to remove children from their families and place them with relatives, foster carers or in residential care facilities.
<i>Children's Services Act 1996 (Vic)</i> <i>Children's Services Regulations 1996</i>	<ul style="list-style-type: none"> Provides for the regulation of services providing early education and care services: <ul style="list-style-type: none"> all limited hours and short term licensed services a small number of other services that currently hold a standard licence including budget-based services not funded for Child Care Benefits occasional care, early childhood intervention, mobile services, and a small number of school holiday programs.
<i>Child Wellbeing and Safety Act 2005</i>	<ul style="list-style-type: none"> Complements the Children Youth & Families Act and sets out principles to guide the provision of services to children and their families, including: <ul style="list-style-type: none"> society as a whole shares responsibility for promoting the safety and wellbeing of children parents are the primary nurturers of the child and government intervention should be limited to that necessary to secure the child's safety and wellbeing government must meet the needs of the child when the child's family is unable to provide adequate care and protection service providers should protect the rights of children and families and to the greatest extent possible encourage their participation in any decision making that affects their lives.
<i>Working with Children Check Act 2005</i>	<ul style="list-style-type: none"> Creates a scheme to prevent those who pose a risk to children from working or volunteering with them. All persons who seek to engage in regular, direct and unsupervised work or volunteer activities must undergo a Working with Children Check (WWCC), which assesses criminal history. Persons with relevant convictions are refused a WWCC.
<i>Education and Training Reform Act 2006</i>	<ul style="list-style-type: none"> Provides for the monitoring, planning and development of the provision of education and training in Victoria. Establishes the Victorian Institute of Teaching (VIT) which registers all teachers to ensure only qualified people are employed in Victorian schools. VIT also investigates and makes findings on instances of serious misconduct, misconduct, serious incompetence or lack of fitness to teach.

Legislation	Description
<i>Education or Care Services National Law Act 2010</i> <i>Education and Care Services National Regulations 2011 (Vic)</i>	<ul style="list-style-type: none"> • A Victorian Act that is mirrored in other states and territories to provide for a national scheme of regulation. • Provides for the regulation of services providing education and care on a regular basis to children under the age of 13 years which includes: <ul style="list-style-type: none"> • preschools (kindergartens) • long day care • outside school hours care • family day care services.
<i>Commission for Children and Young People Act 2012</i>	<ul style="list-style-type: none"> • Replaced the former Office of the Child Safety Commissioner and established the new Commission for Children and Young People (the Commission) along with the role of Principal Commissioner. • The Commission commenced operation on 1 March 2013 as an agency independent of government with powers to table its annual report in Parliament along with the outcomes of any systemic reviews it initiates.
Community focused laws	
<i>Sex Offenders Registration Act 2004 (Vic)</i>	<ul style="list-style-type: none"> • Allows courts to order that persons convicted of certain sex offences (including sex offences against children) must be registered on the Victoria Police sex offenders register for a period of time after their release from custody. • Offenders registered under the SOR Act are also obliged to inform Victoria Police of any changes to their whereabouts and are prohibited from working in child-related employment.
<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i>	<ul style="list-style-type: none"> • Specifies that every child has the right to protection in their best interests and without discrimination. • Legislates the rights of children in criminal processes.
<i>Disability Act 2006 (Vic)</i>	<ul style="list-style-type: none"> • Provides the legal framework for meeting the rights and needs of Victorians with a disability.
<i>Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)</i>	<ul style="list-style-type: none"> • Creates a scheme for the further detention and/or supervision of some categories of sex offenders who, although they have completed their sentences, are thought to pose an unacceptable risk of committing further sexual offences.

Source: Compiled by the Family and Community Development Committee.

8.5.3. Roles and responsibilities—current oversight

Current oversight of non-government organisations in the context of protecting children from criminal child abuse and responding to allegations is shared across a number of government departments and other authorities.

The Department of Human Services (DHS) and Department of Education and Early Childhood Development (DEECD) have direct responsibilities for setting standards, regulating service provision and overseeing the reporting of critical incidents when an allegation of child abuse is made.

Victoria Police responds to and investigate allegations of criminal child abuse in addition to preparing evidence for prosecutions. The role of police in responding to

allegations and suspected cases of criminal child abuse in organisations is critical and is discussed throughout the Report.

There are also statutory authorities with relevant responsibilities and powers in the context of protecting children from criminal child abuse in organisations and in responding to allegations of criminal child abuse. They have independent authority to oversee and review the activities of government funded organisations and professionals. These are the:

- Victorian Commission for Children and Young People
- Victorian Institute of Teaching
- Victorian Ombudsman and Victorian Auditor-General.

Government departments

The Victorian Government acknowledges that:

... when a child is removed from a family, the State takes on a special role in their protection and care.¹⁹⁸

In doing so, it recognises that it is responsible for providing safe, stable and secure environments for children; support and services they need to overcome the consequences of the abuse and neglect that led to their removal in the first place; and other assistance to improve their chances of achieving positive life outcomes.¹⁹⁹

In view of this, specific attention has been directed to the safety of children in out-of-home care. DHS states that:

The law of negligence affects the way the department and CSOs [Community Service Organisations] who deliver services on behalf of the department go about providing services to various parts of the community. It sets minimum standards for the department and those agencies in the way that they deliver these services. The department contracts with many agencies and community organisations to deliver many of its services, such as out-of-home care.²⁰⁰

In evidence to the Inquiry, the Secretary of DHS, Ms Gill Callister, explained that the 'service agreement is the mechanism by which we detail the funding provided to an agency and specify the service that has to be delivered'.²⁰¹

To help DHS meet its duty of care obligations, it has established a quality and regulatory framework for the care provided to children in the child protection system. The regulations provide a system of checks and balances to monitor the standards and performance of community service organisations providing care to children and families.

198 Victorian Government (2013) *Strategy 2013-2022 Victoria's vulnerable children strategy: Our shared responsibility*. Melbourne, p. 19.

199 Victorian Government (2013) *Strategy 2013-2022 Victoria's vulnerable children strategy: Our shared responsibility*, p. 19.

200 Department of Human Services (2009) *Guidelines for responding to quality of care concerns in out-of-home care*. Melbourne, Children Youth & Families Division, DHS, p. 42.

201 *Transcript of evidence*, Department of Human Services, p. 4.

DEECD also has responsibilities for regulating early childhood education and care services, which are expected to comply with relevant national and state laws. They are assessed against standards prescribed in the relevant legislation and accompanying regulations.²⁰² These are discussed further in Parts D and E of the Report.

Victorian Institute of Teaching

The Victorian Institute of Teaching (VIT) is a statutory authority for the regulation of the teaching profession in Victoria. The *Education and Training Reform Act 2006* (Vic) (ETR Act) provides the legislative basis for VIT.

VIT registers all teachers working in Victorian government, Catholic and independent schools. To be eligible to practice their profession, teachers in Victoria are required to be registered by the VIT under the ETR Act. In 2012, the total number of registered teachers was 118,765.

VIT is governed by a council comprising 12 members, mostly practising teachers from government, Catholic and independent schools. It has a range of functions, which include:

- registering all teachers to ensure only qualified people are employed in Victorian schools
- working with teachers to develop standards of professional practice
- approving and accrediting pre-service teacher education courses that prepare teachers
- investigating and making findings on instances of serious misconduct, misconduct, serious incompetence or lack of fitness to teach
- setting standards for teachers' conduct.

The role of VIT in protecting children through prevention and monitoring activities is discussed further in Parts D and E.

Victorian Commission for Children and Young People

In 2012, under the *Commission for Children and Young People Act 2012* (Vic) (CCYP Act), the former Office of the Child Safety Commissioner in DHS was replaced by an Independent Commission for Children and Young People (the Commission). The CCYP Act also created the role of a Principal Commissioner who is responsible for providing advice to ministers, government departments, health services and human services regarding the safety and wellbeing of vulnerable children and young people.

The Commission commenced operation on 1 March 2013 as an agency independent of government with powers to table its annual report in Parliament along with the outcomes of any systemic reviews it initiates.

Regulation—
one of the key instruments available to government to achieve its social, economic and environment objectives and to respond to community needs. It is commonly held that government regulation involves an intentional measure or intervention by a government agency that seeks to influence the behaviour of individuals, businesses and not-for-profit organisations.²⁰⁴

202 Education and Care Services National Law Regulations 2010 (Vic) and the Children's Services Regulations 1996 (Vic).

203 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 491.

The objective of the Commission is to promote continuous improvement and innovation in policies and practices relating to out-of-home care and to the safety and wellbeing of:

- vulnerable children and young people
- children and young people generally.

The Commission retained a number of its functions and responsibilities from its former role within DHS. These include:

- promoting the interests of vulnerable Victorian children and young people
- conducting inquiries into service provision or omission in regard to children who have died and were known to child protection at the time of their death or 12 months before their death
- promoting child-friendly and child-safe policies and practices in Victoria
- providing advice to the Minister about child safety as requested
- reviewing and reporting on the administration of the *Working with Children Act 2005* (Vic) and educating and informing the community about the Act.

In addition to these responsibilities, the Commission's role has extended to include concerns about children beyond the out-of-home care system. It can conduct inquiries into service provision or omission in regard to:

- a health service, human service or school where there are persistent or recurring systemic concerns
- the safety and wellbeing of an individual or group of vulnerable children and young people.

The authority of the Commission has been extended to enable it to monitor services. This includes:

- monitoring Victoria's out-of-home care system and promoting child inclusive decision making
- monitoring and reporting on the implementation and effectiveness of strategies relevant to the safety and wellbeing of vulnerable children and young people.

In addition, there is scope for the Commission to be authorised to assume other responsibilities it is given within the Act or by any other Act.

Victorian Ombudsman and Auditor-General

Established and operating under powers in the *Ombudsman Act 1973* (Vic), the Victorian Ombudsman is responsible to the Victorian Parliament as an independent officer reporting directly to the Parliament of the day, not the Government.

The Ombudsman's responsibilities include investigating and resolving complaints concerning administrative actions taken in Victorian government departments, public statutory authorities and by officers of municipal councils.

The Victorian Ombudsman has the power to conduct own-motion investigations. It investigates issues and tables reports in Parliament that contain recommendations for public policy and law reform. Some of its investigations have related to the protection of children.

Also an independent officer of the Parliament of the day is the Victorian Auditor-General who, on behalf of Parliament and Victorian taxpayers, examines the management of resources within the public sector. The Auditor-General audits and makes findings and recommendations in relation to a number of related matters, including the effectiveness of organisations in meeting government objectives and improvements in management practices and systems of government organisations.

8.5.4. Other organisations—minimal oversight and regulation

The Committee identified that there are no specific regulations that monitor the standards and systems in place for a large number of non-government organisations that interact regularly and directly with children. These include recreational, sporting, religious and community youth groups.

The WWC Act provides a key legislative mechanism for capturing these groups by requiring anyone who works with children to apply for a WWCC.

Part D of the Report outlines that there is a need to ensure that the WWCC is one component of a broader suite of protective mechanisms and that it is not solely relied on as a preventative measure. The Committee provides recommendations for ensuring an umbrella of protective measures for preventing and monitoring organisations that engage with children.

