

PART F

RESPONDING TO REPORTS AND ALLEGATIONS OF PAST CHILD ABUSE IN ORGANISATIONS



The Committee identified that through the advocacy efforts of victims groups and victims themselves, there is greater awareness of the harm caused by criminal child abuse in organisations that occurred in the past. There is also recognition that victims can take years or decades to disclose abuse.

In response to this increased awareness, many organisations have established their own processes for responding to allegations of child abuse by personnel in their organisations reported to them by victims. The Committee heard that these non-government processes for allegations of past child abuse offer four main outcomes for claimants:

- pastoral care
- counselling
- financial compensation
- an apology.

In the absence of an independent, alternative avenue of justice, these processes have often been the only option for adult victims of past child abuse to gain any form of financial or other compensation.

Victims' views on internal processes for handling allegations of past child abuse in organisations

The Committee heard that many victims of past child abuse went through internal processes established by mainly religious non-government organisations for victims of past abuse by their personnel.

While some non-government organisations gave evidence to the Committee that there were victims for whom these approaches were satisfactory, the overwhelming message in both oral and written submissions to the Inquiry was that most organisational responses do not adequately meet the needs of victims of criminal child abuse in achieving justice.

The Committee considered that some non-government approaches were designed to be an independent alternative form of justice for victims, but that victims did not see them this way. Some victims felt that these processes were the only choice available to them and opted to settle for a smaller amount than they felt entitled to. Mr Philip Nagle explained his experience:

It came down to that they had a piece of paper there, which I believe was a deed of release, and said, 'However, if you sign this, you won't need to go to court, you won't need to get solicitors and that will be it.' At that stage my family were just—it was killing all of us. So we just did; we just signed it. We just felt like we had no other choice. We were not given any other options. We did not seek any legal advice. We just did what they said, and that was it ...

It was just inadequate. I mean, it was just wrong. As you go along in life and you get a bit older, it just eats away at you. You just think, 'Well, hey, how can they do that?' That is what I am saying. They were just ticking the box. They just wanted us to go away, and we were dealt with. It is not right. So, yes, I think it needs to be on our terms, not their terms.¹

¹ *Transcript of evidence*, Mr Philip Nagle, Ballarat, 7 December 2012, pp. 2,4.

Some Inquiry participants explained that the organisational processes have been extremely difficult for victims. Dr Poznanski, for example spoke of the experience of his clients who had been through the Catholic Church's Towards Healing and Melbourne Response processes:

As a psychologist, I am often exposed to clients' despair and helplessness that comes from their experience of the Towards Healing and Melbourne Response processes as being protracted and also legally oriented rather than processes that place an expression of compassion and concern for the client at the heart of the espoused towards healing objective.²

Many victims felt that internal processes for responding to allegations of past child abuse were not independent. They called for these processes to be made more accountable. For example, Mr Saric told the Inquiry about the Catholic Church processes:

The main problem with this system is that it acts as judge, jury and executioner with no reference to secular authorities or systems. The two processes are privatised. The church is not accountable to any secular authority and there is no external review of the processes ...³

² *Transcript of evidence*, Dr Joseph Poznanski, Melbourne, 1 March 2013, p. 3.

³ *Transcript of evidence*, Mr Joseph Saric, Geelong, 15 February 2013, p. 3.

Chapter 19

Processes for responding to allegations of past criminal child abuse

AT A GLANCE

Background

As a consequence of an increased awareness of the incidence of criminal child abuse occurring within organisations, systems or processes have been adopted by a number of organisations to respond to allegations of child abuse that occurred in the past.

The Committee identified that there is a range of non-government processes for resolving claims in relation to criminal child abuse. These have usually been developed in response to a significant number of past abuse allegations. In the context of past abuse, organisations generally refer to ‘complaints’ processes and often those that use them as ‘complainants’. Alongside victims of child abuse and allegations, these terms are used interchangeably throughout this part of the Report.

The Committee heard that these non-government processes for allegations of past child abuse offer four main outcomes for claimants:

- pastoral care
- counselling
- financial compensation
- an apology.

Table 19.1 outlines some of the approaches that organisations have developed to resolve claims by victims of criminal child abuse. Some of these approaches apply to allegations of both past and current child abuse, however most apply mainly to allegations of past child abuse. A more detailed discussion of the Catholic Church, Anglican Church, Salvation Army, Berry Street and Uniting Church processes can be found in Chapters 20 and 21.

Table 19.1: Examples of processes to respond to allegations of past criminal child abuse

Organisation	Process	Outcomes
Anglican Church	<ul style="list-style-type: none"> • Focus on the pastoral and restorative nature of the process as the overriding outcome. (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> • Focus on what victims need and can include, for example, counselling, an apology, payment for a specific course or charity, and financial compensation. • Professional psychological counselling organised through the Office of Professional Standards. Number of sessions is based on need and not limited.⁴
Anglicare	<ul style="list-style-type: none"> • Complaint referred to Director of Professional Standards for the Anglican Diocese of Melbourne. • If settlement reached, a Deed of Release is agreed between Anglicare Victoria, the victim and their legal representative. 	<ul style="list-style-type: none"> • Where appropriate, a verbal and written apology is offered directly to the former client. • Agreed settlements with regard to financial assistance are usually reached during discussions. • In some cases, payments for medical expenses have been made.⁵

Source: Compiled by the Family and Community Development Committee.

4 *Submission S244*, Anglican Diocese of Melbourne, p. 27; *Transcript of evidence*, Anglican Diocese of Melbourne, Melbourne, 22 April 2013, p. 14.
 5 *Submission S146*, Anglicare Victoria, pp. 20–21.

Organisation	Process	Outcomes
Baptist Union	<ul style="list-style-type: none"> • Process limited to sexual abuse. • Overseen by the Professional Standards Group. • Advisor appointed to ensure the victim receives pastoral care. • Each case determined on an individual basis. 	<ul style="list-style-type: none"> • Both monetary and other forms of compensation available.⁶ • Pastoral care. • Victims encouraged to access an independent counsellor. Baptist Union funds initial, and sometimes long-term, sessions.⁷
Berry Street	<ul style="list-style-type: none"> • Policy contains a procedure for complaints by adult care leavers. • Directors determine conduct of investigation and offer of reparation. • Designated person appointed to meet with complainant to discuss the complaint and their needs. • Process or outcome can be reviewed at the request of the claimant within one month. • Complaints procedure reviewed every three years and investigations audited every five years.⁸ (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> • Reparation may include acknowledgement, an apology, assistance with support services, financial payment, actions to prevent re-occurrence of abuse. • Where no investigation required, counselling may be funded (generally up to 25 sessions or \$3,000).
Catholic Church Catholic Archdiocese of Melbourne Melbourne Response	<ul style="list-style-type: none"> • Independent Commissioner makes finding that abuse occurred. • Victims referred to a hearing before Compensation Panel. • Compensation Panel determines ex gratia payment to be offered. (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> • Compensation limited to \$75,000. • Letter of apology provided with the letter advising of payment offer. • Counselling provided through Carelink. Number of sessions on a needs basis.

6 *Submission S210A*, Baptist Union of Victoria, p. 5.

7 *Submission S210*, Baptist Union of Victoria, p. 4.

8 *Submission S262*, Berry Street, p. 13; Berry Street (2012) *Complaints—adult care leavers policy*. Richmond, Berry Street, p. 6.

Organisation	Process	Outcomes
Catholic Church (other than Catholic Archdiocese of Melbourne) Towards Healing	<ul style="list-style-type: none"> Victim's first contact is with a 'contact person'. Assessors consider complaint and determine whether it is substantiated. Victims referred to facilitation and/or pastoral meeting. Victims can request a review of decision. (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> Ex gratia payment offered at facilitation meeting—can include an apology or other support depending on individual's need. Guidelines state that the Director of Professional Standards can arrange for an offer of funding for counselling.⁹
Girl Guides	<ul style="list-style-type: none"> Complaints regarding a serious breach of the Girl Guides Code of Conduct may be required to follow grievance procedure and appeals process. Grievance procedure includes formal meeting between the person alleged to have breached the rules and the supervisor. Grievance procedure does not specify how a victim would be involved in the process. 	<ul style="list-style-type: none"> No provision for monetary or other forms of compensation or counselling.¹⁰
The Salvation Army	<ul style="list-style-type: none"> Generally complaints resolved through negotiation of settlement with legal representatives. (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> Financial settlement negotiated. Apology letter sent to victim. The Care Leaver Complaint process refers to counselling that can be offered to victims who approach the Salvation Army directly rather than through their legal representatives.¹¹ The provision for future counselling is included in the ex gratia payment awarded to victims and it is then at the victims discretion whether they want to obtain counselling.

9 Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia*, Alexandria NSW, National Committee of Professional Standards, p. 19, paragraph 38.4.

10 *Supplementary evidence*, Response to request for information, Girl Guides Australia (Victoria), 8 March 2013.

11 *Supplementary evidence*, Official minutes: Care leaver complaint process, Salvation Army, Australia Southern Territory, 17 July 2013.

Organisation	Process	Outcomes
Scouts Victoria	<ul style="list-style-type: none"> Inappropriate Conduct or Behaviour Policy sets out procedure for managing allegations of misconduct. Complaints are handled directly by Chief Commissioner or his delegated nominee at the State Office. 	<ul style="list-style-type: none"> Scouts Victoria does not pay compensation to complainants. Any claims for compensation are handled by the Association's insurers.¹²
Seventh Day Adventist Church	<ul style="list-style-type: none"> Official church-conducted investigation. Support and redress offered on a case-by-case basis. 	<ul style="list-style-type: none"> Discretionary offers of compensation. Subsidy for a number of counselling sessions (initially seven, but may be expanded). Telephone support through Safe Place Services during and after church-conducted investigation. Proposal to introduce supports for congregations affected by child abuse.¹³
Uniting Church in Australia	<ul style="list-style-type: none"> Process depends on who the alleged offender is and where the abuse took place (see Chapter 15.5 of Part E). A senior person from the Synod attends mediation and settlement with the Synod's solicitor. Aim to minimise the use of bureaucratic and adversarial legal processes wherever possible. Most units or agencies have an appeal and/or dispute resolution process in place if the complainant or respondent is not satisfied with the process. (see Chapter 20 for further detail). 	<ul style="list-style-type: none"> Apology offered in person at mediation and settlement meeting. Most cases resolved through financial settlement. Victims offered support through Bethel Pastoral Centre. Church funds psychological services over a period of time.¹⁴

¹² *Submission S200A*, Scouts Australia (Victoria), p. 5.

¹³ *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 285.

¹⁴ *Submission S164*, Uniting Church in Australia, p. 23.

Organisation	Process	Outcomes
Wesley Mission	<ul style="list-style-type: none"> • Care leavers are linked up with support agencies such as Find and Connect and Open Place, where further support is identified or requested. • For those wishing to pursue compensation, information is provided on the process to follow. • No information provided on the process. 	<ul style="list-style-type: none"> • No information provided on the outcomes.
Yeshivah Centre	<ul style="list-style-type: none"> • No process for financial or other compensation or counselling. • Each case dealt with on an individual basis. 	<ul style="list-style-type: none"> • Not aware of outcomes for victims, other than public apology.

Source: Compiled by the Family and Community Development Committee.

Chapter 20

Case studies—processes of religious and other non-government organisations for responding to allegations of past criminal child abuse

AT A GLANCE

Background

In the mid-1990s, the Catholic Church created two systems for responding to allegations of criminal child abuse: the Melbourne Response (applicable only to the Catholic Archdiocese of Melbourne) and Towards Healing, both of which are still currently operating.

Other organisations, including the Anglican Church, the Salvation Army, the Uniting Church and Berry Street, have developed their own processes for responding to allegations of past criminal child abuse and providing financial and other compensation for the harm victims suffered while in their care.

Key finding

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

In order to understand how non-government organisational processes are structured, administered and operated, the Committee requested and had access to the files of a number of non-government organisations which had dealt with significant numbers of allegations of past abuse.

The files analysed by the Committee included those of the Independent Commissioner for the Melbourne Response, the relevant Towards Healing files, Salvation Army files and Melbourne Anglican Church files. Additionally the Committee was provided with copies of or access to a number of files relating to complaints of past criminal child abuse regarding members of Catholic religious organisations namely the Christian Brothers, Salesians of Don Bosco, Hospitaller Order of St John of God, Ballarat Diocese and the Catholic Archdiocese of Melbourne. Representatives of Melbourne Response, Towards Healing, the relevant parts of the Catholic Church, the Salvation Army and the Anglican Church also appeared before the Committee. Refer to list of public hearings in Appendix 14.

This section of the Report details the processes adopted by the Catholic Church, Anglican Church and the Salvation Army as outlined in the information received from these organisations and the Committee's analysis of their files. In addition the processes of Berry Street and the Uniting Church are also analysed.

20.1. Catholic Church processes

The Catholic Church operates two different processes, both of which continue to function:

- The response of the Catholic Archdiocese of Melbourne (known as the Melbourne Response) was established in October 1996, to deal with complaints about priests, religious and lay workers under the control of the Archbishop of Melbourne.¹⁵
- Towards Healing was established in March 1997 to deal with complaints that arose in other dioceses (Ballarat, Sale and Sandhurst) in Victoria and religious institutes operating in Victoria.¹⁶

The Catholic Church created these processes to formalise the way in which these two parts of the organisation would deal with complaints. They are internal mechanisms, intended to provide compensation, counselling and support, funded by the Catholic Church.

Through the Melbourne Response and Towards Healing, the Catholic Church sought to do more than the Catholic Church protocol of 1992.¹⁷ However, the Catholic Church's manner of dealing with such allegations in the past influenced:

- the way these new protocols were created and administered
- victims' preparedness to accept that the Catholic Church was genuine in its motives.

15 See *Submission S185*, Catholic Church in Victoria. Annexure 3, p.11.

16 Towards Healing related to all other dioceses and religious institutes in Australia. For the purposes of this Inquiry the relevant signatories are bishops of each diocese in Victoria and religious superiors. See *Submission S185*, Catholic Church in Victoria.

17 Discussed in Chapter 7 of Part C.

No Catholic Church representative provided the Committee with any explanation for the need to have two separate systems.¹⁸ It is important to note that victims understand that they have been offended against by a member of ‘the Church’. They do not necessarily know (or care) whether the perpetrator was a member of a particular diocese or order. The Committee was provided with information that the Catholic Church’s dual structure for responding to complaints of past abuse was confusing and disconcerting to some victims, many of whom, given the nature of the abuse they had suffered and its effects on them, doubted the legitimacy of any church-based complaints process.

The Catholic Church’s stated objective in setting up these systems was to provide healing and reparation to victims.¹⁹ But because these protocols addressed claims privately and internally, victims and others remained concerned that the Catholic Church was protecting its own interests. These doubts grew even stronger as victims became dissatisfied with the internal processes. This uneasy co-existence of the Church’s claims of altruism (to help victims sensitively, pastorally and materially) and victims’ cynicism (feeling that the Catholic Church was protecting its own wealth and reputation) is a defining feature of both systems.

The Committee believes that both processes have delivered some benefits to a number of victims of abuse. Victims have received apologies, money and other assistance, which they may not have been able to obtain by any other existing method. In general their complaints have been listened to with genuine sympathy. From the Committee’s examination of the files it is evident that a number of victims were satisfied with their experience of the process and they felt that it enabled them heal to some extent. However, the evidence before the Committee highlighted the limitations of the system and that the processes have failed many victims.

20.1.1. Melbourne Response and Towards Healing

The Melbourne Response is the complaints process set up in 1996 by the then Catholic Archbishop of Melbourne, George Pell, for victims of abuse perpetrated by religious personnel in the Catholic Archdiocese of Melbourne. As outlined earlier in this Report, the Archbishop was under pressure to provide a solution to the problem of handling complaints of criminal child abuse perpetrated by members of the Archdiocese.²⁰

The core elements of the Melbourne Response are:

- An Independent Commissioner to receive and inquire into allegations of sexual or other abuse by priests, religious and lay people under the control of the Archbishop of Melbourne.
- The Independent Commissioner also makes recommendations to the Archbishop as to how to deal with the offender.
- A Compensation Panel to recommend *ex gratia* compensation to be paid by the Archdiocese to victims of abuse. If an offer is accepted, a Deed of Release is signed by the parties.
- Carelink to co-ordinate the provision of free counselling and professional support services for victims ... and their families arising from their abuse and related issues.

18 See *Submission S185*, Catholic Church in Victoria, p. 77.

19 *Submission S185*, Catholic Church in Victoria, p. 1.

20 See Chapter 1 of Part A and Chapter 7 of Part C.

- A Pastoral Response Team to provide victims and parish communities with spiritual support and counselling at the parish level.²¹

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. *Facing the truth* outlines the reasons given by the Catholic Archdiocese of Melbourne for creating the Melbourne Response:

Cardinal Pell established the Melbourne Response in an attempt to lessen the sufferings of the victims of abuse and their families, by enabling a prompt and independent investigation of their complaints and access to compensation.²²

The Committee received very limited written information from the Catholic Archdiocese of Melbourne about the creation of this process. It is apparent however that the Professional Standards Resource Group in the Catholic Church regarded its establishment as strictly confidential.²³ It is also apparent that there was no consultation with victims or victim groups.

Cardinal George Pell in his evidence to the Committee indicated that victim groups were not involved in setting up the Melbourne Response:

Not at that stage because there was no—we were in I am not saying uncharted territory but it was new territory ...²⁴

Cardinal Pell indicated that they were well aware of victims' perspectives:

We regularly had people doing that—for example, Helen Last and Monsignor Cudmore. We were well aware of the perspectives of victims. They were not at those particular meetings, but their approach was certainly considered as we set this up, and it was to help them that we set it up.²⁵

Mr Peter O'Callaghan QC was appointed as the Independent Commissioner in October 1996. His role was to consider allegations and determine whether child abuse had occurred.²⁶ Mr David Curtain QC, the current Chairman of the Compensation Panel, was appointed in 2004.²⁷ Ms Sue Sharkey, a registered psychologist is the Co-ordinator of Carelink.²⁸ Since 2009, the consulting psychiatrist to Carelink is Dr Susan Brann.²⁹

In Victoria, Towards Healing deals with complaints made against clergy of the Victorian dioceses of Ballarat, Sale and Sandhurst, as well as against religious orders such as the Christian Brothers, the Salesians and other religious orders, both

21 *Submission S185*, Catholic Church in Victoria, pp. 52–53.

22 *Submission S185*, Catholic Church in Victoria, p. 53.

23 Catholic Archdiocese of Melbourne, Minutes of the Professional Standards Resource Group (Province of Victoria), 29 March 1996, provided to the Family and Community Development Committee, 18 February 2013.

24 *Transcript of evidence*, Catholic Archdiocese of Sydney, Melbourne, 27 May 2013, p. 16.

25 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 17.

26 Until 2012, other independent commissioners have been temporarily appointed if Mr Peter O'Callaghan QC was unavailable—on 1 August 2012 Mr Jeff Gleeson SC was appointed Independent Commissioner.

27 Other heads of the Compensation Panel were Mr Alex Chernov QC, Mr David Habersberger QC and Ms Susan Crennan QC. See *Transcript of evidence*, Compensation Panel, Melbourne Response, Melbourne, 3 May 2013, p. 4.

28 Ms Sue Sharkey Co-ordinator: 1996–2001; 2003–current.

29 Professor Richard Ball (1996–2006) and Dr Michelle Pathe (2006–2009) were the previous psychiatrists at Carelink.

male and female. The vast majority of allegations relate to abuse perpetrated in the 1960s and 1970s, typically in the contexts of the parish church, church schools, and orphanages. The process was adopted in March 1997 and is governed by *Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia*.³⁰ This document was modified in December 2000, June 2003, and January 2010.

The core elements of Towards Healing are:

- Contact persons receive complaints of abuse, explain the procedures for addressing the complaint.
- Assessors investigate complaints of abuse, examine the areas of dispute and advise the Director of Professional Standards of their findings.
- Facilitators facilitate a communication process, which may include a meeting between the victim and the Church Authority³¹ and endeavour to mediate an agreement between a victim and the Church Authority about what the Church Authority can and should do to assist the victim to move ‘Towards Healing’.
- Consultative Panels advise the Church Authorities at significant stages of the Towards Healing process.
- Reviewers review the Towards Healing process or the findings of the assessment if requested by the complainant, accused or the Church Authority.³²

Towards Healing differs from the Melbourne Response in that a number of people are appointed to carry out the roles of contact persons, assessors and facilitators. A Director of Professional Standards is appointed to oversee the Towards Healing process in Victoria.

Both systems therefore provide:

- consideration and investigation by an organisation established by the Catholic Church that is separate from the relevant diocese or Church Authority (unlike the previous situation, in which allegations were made to the Vicar-General)
- an alternative to the courts for seeking financial compensation
- a means of apologising
- opportunities for counselling and support, including pastoral support
- a process to make recommendations to the relevant diocese or Church Authority about suspected and/or proven perpetrators.

30 Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia*.

31 See Glossary.

32 *Submission S185*, Catholic Church in Victoria, p. 66.

Box 20.1: Catholic Church response to complaints of criminal child abuse—how the systems work

Melbourne Response:

1. Victim making a claim is referred to the Independent Commissioner, who performs the investigation into the complaint.
2. Upon receipt of a complaint of sexual abuse the Independent Commissioner recommends to the Archbishop the alleged perpetrator be placed on administrative leave—he has a discretion in respect to other kinds of complaints.
3. The Independent Commissioner makes a finding regarding whether the abuse has occurred.
4. The Independent Commissioner refers the victim to Carelink and to the Compensation Panel.
5. The Independent Commissioner gives the victim an Application for Compensation form to sign.
6. The Independent Commissioner and Carelink (or other professional) prepare reports for the Compensation Panel. The latter report relates to the victim's condition—the treatment, counselling and support received and such other matters as Carelink and the Compensation Panel consider appropriate.
7. The victim signs a release authorising information to be obtained by the Compensation Panel.
8. The victim attends before the Compensation Panel.
9. The solicitors for the Church send a 'letter of offer' advising the victim of the amount of 'ex gratia' payment that the Compensation Panel has recommended. Accompanying this letter is an apology from the Archbishop of Melbourne.
10. If the offer is accepted, then the solicitors prepare a Deed of Release to be signed by the parties (victim and Church).
11. Counselling continues if required.³³

³³ Based on information contained in *Submission S185*, Catholic Church in Victoria.

Towards Healing:

1. Following initial contact, documentation is posted out by the Director of Professional Standards to inform the victim of the steps involved in the Towards Healing process.
2. The Director of Professional Standards appoints a contact person to follow up the victim's complaint and either receive their written and signed complaint, or assist them to prepare a 'contact report' outlining the details of the complaint to be confirmed by their signature. The contact person can act as a support person through the Towards Healing process.
3. The signed contact report is sent to the Director of Professional Standards for consideration and referred to the Church Authority for review.
4. Upon receipt of a complaint, the Director can make a recommendation concerning the funding of counselling or other such assistance for the victim, pending the outcome of the process.
5. The Director of Professional Standards may recommend that the alleged perpetrator to be placed on administrative leave pending investigation.
6. The Director of Professional Standards appoints two assessors (in some cases one) to conduct an 'assessment'. Under Towards Healing, assessors are required to investigate the facts of a case to the extent that it is possible to do so where there is a significant dispute or uncertainty as to the facts, or where there is a need for further information regarding the complaint.
7. The assessors draft a report, which contains the details of the relevant evidence, conclusions and recommendations, and provides this to the Director of Professional Standards and the Church Authority.
8. Sometimes a victim is required to undergo a psychiatric assessment.
9. The Director of Professional Standards informs the victim and the accused of the findings of the assessment report.
10. Following the assessment, the Director of Professional Standards can refer the victim to a facilitation and/or pastoral meeting.
11. The Director of Professional Standards may also recommend that the relevant Church Authority take disciplinary action with respect to the person who is the subject of a complaint.
12. A facilitation meeting can take place. Representatives from the relevant Church Authority, the victim and a facilitator attend the meeting. This process often involves an offer of an ex gratia payment to the victim.
13. A pastoral meeting can be held with the victim, representative of the relevant Church Authority and a facilitator.
14. A review of the outcome may be conducted. If any party is dissatisfied with the process or findings on assessment, a request can be made for an independent review.

Source: Compiled by the Family and Community Development Committee.

20.2 The Anglican Church

From 1994, the Anglican Church in Melbourne has established and further developed its processes and procedures to respond to complaints of child abuse.³⁴ In 2002, the protocol *Power and trust in the church* was introduced and it established a Professional Standards Committee (PSC) to appraise, investigate and make recommendations to the Archbishop in respect of complaints. A Director of Professional Standards (DPS) was also created to act as its executive officer.

In 2010 a new version of the *Power and the trust in the church* protocol was introduced to provide further guidance on procedures following the implementation of the *Professional Standards Act 2009* by the Anglican Church. It outlines procedures for responding to abuse, harassment and other misconduct within the Church.³⁵ This was published by the Anglican Diocese of Melbourne and applies also to the Wangaratta and Ballarat Dioceses. The following structures were set up:

- Professional Standards Board (PSB)—receives referrals from the PSC and has an adjudicative role in determining the outcomes of a complaint and the fitness of a church worker for service in the Church.
- Professional Standards Review Board (PSRB)—hears any application for review of a decision of the PSB.

There are various professional criteria for membership of the PSC, PSB and the PSRB, including requirements that some are not members of the Anglican Church.

The Anglican protocol commences as follows:

The Office of Professional Standards is established by the Archbishop to provide support to people who make complaints about abuse and other misconduct by Anglican clergy, church officers, church employees and volunteers in the Anglican Province of Victoria. The Director of Professional Standards is as independent as possible from the Church but is paid by the Church.³⁶

The Director of Professional Standards:

- is independent of Church administration and structures
- has investigative skills and qualifications or experience in legal practice or procedure or in counselling or an associated area
- is neither a member of clergy nor married to a member of the clergy.³⁷

Ms Claire Sargent, a registered psychologist, has served as the Director of Professional Standards since 2004. Her functions are set out in the Anglican Church submission:

109. The *Professional Standards Act* allows of the appointment of the Director (s.19) and establishes the core functions (s.20) as follows:

34 For a history of the process see *Submission S244*, Anglican Diocese of Melbourne. Appendix B.

35 Other dioceses Gippsland and Bendigo have similar though not identical protocols.

36 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*. Canterbury, Anglican Diocese of Melbourne, p. 2.

37 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 2, section 3.

- to receive any complaint on behalf of the PSC and in his or her discretion to make a complaint against a church worker
- to manage the implementation of the protocol in respect to any complaint
- to be the executive officer of the PSC
- to attend meetings of the PSC except for any part of a meeting that deals with conditions of employment, remuneration or performance of the Director
- to provide a central focus in matters involving personal ethics and behaviour including advice about appropriate standards and enforcement
- to provide or arrange care of treatment of parties to the process of any protocol
- to provide input into any education or vocational training programs for members of the Diocese, including those involved in managing or providing pastoral care and other community services
- to provide advice to complainants and Church workers about the operations of the protocol, with particular emphasis on helping Church workers in authority to understand and discharge their responsibilities under any protocol
- to keep proper records of complaints, decisions, meetings, employment screening, details, police checks and people affected by allegations of misconduct
- to consult and cooperate with Church associated organisations to promote consistency between them and Diocesan protection policies and procedures
- in cases of alleged illegal behaviour to support the complainant in making a report to Victoria Police and Child Protection Service Victoria
- to report to the PSC on any recommended changes to the Protocol and any other changes to Church processes, structures and educational programmes that would reduce the risk of abuse in a Diocese.
- Such specific functions and duties as may be prescribed in this or any other Act or as may be determined by the PSC.
- Such specific functions and duties as may be prescribed in this or any other Act or as may be determined by the Archbishop in Council.

110. The DPS meets with the PSC on approximately a six week cycle and has statutory obligations to report to both PSC and through the PSC to the Archbishop-in-Council. The DPS also reports on an annual basis to the Synod of the Diocese.³⁸

The Anglican protocol states that its focus is on outcomes for the complainant:

At all times, the process of Professional Standards must be to ensure that allegations of abuse and misconduct are appropriately and effectively resolved. For the Diocese this means a strong focus on a pastoral response to both the complainant and the respondent seeking in difficult circumstances a just and fair outcome.

In our experience dealing with allegations of past abuse can, on rare occasions lead to complainants seeking financial compensation ... While financial settlement of matters may be an outcome, the Diocese is concerned to ensure that the pastoral and restorative nature of the process is the overriding outcome. While accepting that each complaint comes in unique and difficult circumstances, in our view the focus of either the complainant or the Church should not be a monetary consideration.³⁹

38 *Submission S244*, Anglican Diocese of Melbourne, p. 23.

39 *Submission S244*, Anglican Diocese of Melbourne, p. 27.

The Anglican Church also indicated that pastoral support and counselling would be made available on an ongoing basis after the resolution of the claim.⁴⁰

Box 20.2: Anglican Church approach to claims of criminal child abuse—how the system works

1. Victims are provided with a counsellor who advises them on the process, seeks to learn what they wish to achieve, and obtains their informed consent to proceed with a formal complaint.
2. If informed consent is provided the respondent is notified of the complaint (if alive) and the matter is investigated by the PSC. There is a focus on a pastoral response to both the complainant and the respondent ‘seeking in difficult circumstances to produce a just and fair outcome’ while minimising any harm posed by the respondent while the complaint is dealt with.
3. If the PSC considers that the investigation has raised questions as to the respondent’s fitness for ministry or whether they should be subject to restrictions (if applicable), then the matter is referred to the PSB for adjudication.
4. If upon investigation the complaint is substantiated with no disciplinary ramifications for the respondent, then the DPS negotiates settlement of the matter with the complainant or their solicitors. Complainants can seek financial compensation. Regardless of whether a financial settlement results, the pastoral and restorative nature of the process is noted as ‘the overriding outcome’.
5. The PSB considers the evidence provided by the PSC and makes recommendations on appropriate next steps.
6. The complainant (through the PSC), or the respondent, may apply for a fresh administrative review of the PSB’s decision by the PSRB.
7. The PSB and PSRB’s recommendations are authorised by the Archbishop.

Source: Compiled by the Family and Community Development Committee.

20.3 Berry Street

Berry Street is a not-for-profit, non-government and non-church based organisation that has been supporting Victorian children and families since 1877. It is Victoria’s largest child welfare organisation offering a range of services including foster care and residential care for children.

Berry Street provided the Committee with a detailed complaints handling process for adult care leavers. This process is set out in its Berry Street policy: *Complaints—adult care leavers*. It noted that its approach to reparations for past abuse is guided by the *Principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*.⁴¹

40 *Transcript of evidence*, Anglican Diocese of Melbourne, p. 12.

41 UN General Assembly (2006) *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*. Resolution / adopted by the General Assembly, 21 March 2006.

Berry Street also provided the Committee with its policy on handling misconduct allegations. The policy notes that ‘the outcome of an investigation will vary depending on the findings. It may include disciplinary action of an employee (up to and including termination of employment), an apology, training, changes in reporting responsibility, changes to placement arrangements, etc.’⁴²

Box 20.3: Berry Street approach to claims

1. A Designated Person (Deputy CEO/Director of Services or as determined by the CEO) meets with the complainant to discuss the complaint and what supports they require.
2. The Berry Street Board of Directors is responsible for determining the most appropriate response to the complaint and any reparations offered.
3. Claimant may request a review of the process or outcome within one month. Review is undertaken by a person appointed by Berry Street’s CEO.

Source: Compiled by the Family and Community Development Committee.

Berry Street explained that victims can achieve a broad range of outcomes from the claims process. Its submission noted that the reparations it makes to care leavers include (but are not limited to):

- acknowledging any failures in Berry Street’s duty of care
- formal apology in a format and in a manner agreed with the complainant
- assistance with access to support services
- financial payment
- remedial actions to prevent the re-occurrence of any acts of abuse against Berry Street clients.⁴³

20.4 The Salvation Army

The Salvation Army provided the Committee with policies and instructions that it considers have been designed to ensure a consistent approach across the organisation. The policy provided is the Care Leaver Complaint Process (See Box 20.4).

The Territorial Legal Secretary of the Salvation Army, Captain Malcolm Roberts, told the Committee that:

In dealing with victims of abuse, what we have found in Victoria is that most victims—and that is nearly all of them—come to us with a lawyer. Our process involves not the legal system so much. We do not expect proceedings to be issued in court. We do not carry out an investigation into what we are told. We receive a complaint, we deal with a lawyer, we reach a settlement, and that settlement is something that we believe is fair and just, which is argued with lawyers on both sides. We are not taking advantage of a person who is unrepresented, and we reach a settlement and we pay compensation that is to deal with their whole sort of position at that time and taking into account the abuse that they have suffered.⁴⁴

42 Berry Street (2010) *Policy on handling misconduct allegations*. Richmond, Berry Street, p. 4.

43 *Submission S262*, Berry Street, p. 41 (Appendices).

44 *Transcript of evidence*, Salvation Army, Melbourne, 11 April 2013, p. 12.

Box 20.4: The Salvation Army response to claims

For complaints received directly by phone, there is an internal complaint handling process which involves:

1. Initial meeting to listen to and confirm the victim's account, request a statutory declaration, explain next steps, offer counselling, and advise the victim that they can engage a solicitor and should report the abuse to police (This is not evident in the files as there are no recommendations regarding police referrals).
2. Investigation, including research into residency of care leavers and the amount of payment/other services to be offered as a final resolution to the matter (through reference to similar claims). The Salvation Army at this point can pass the complaint to their solicitors for handling.
3. Meeting with complainant to agree an outcome.
4. Preparation of a Deed of Release and sending to complainant.
5. After signed Deed of Release received from complainant, apology letter is sent to complainant with a copy of Deed of Settlement.

For complaints received by letter or through solicitors:

1. Letter to be forwarded to the Salvation Army solicitors.
2. Solicitors conduct research (statutory declaration, psychiatric/psychological/medical reports, wardship file, interviews).
3. Solicitors meet with complainant and provide the Salvation Army a summary of the complaint, evidence, assessment and recommended solution/settlement payment.
4. The Salvation Army instructs solicitors about any additional details, and maximum payment authorised for settlement of the claim. Any proposed payment over \$50,000 requires referral to Territorial Finance Committee.
5. Solicitors conduct settlement conference. Solicitors to contact the Salvation Army during a break in the conference to seek further instructions if the settlement sought exceeds the authorised amount. Solicitors advise the Salvation Army of the outcome, present a copy of the Deed of Release and provide payment instructions when available from complainant.
6. Standard letter of apology is sent to complainant at end of the process.
7. The Salvation Army finalises payment.

Source: Compiled by the Family and Community Development Committee.

20.5 Uniting Church

In its submission, the Uniting Church explained that it encourages victims to seek legal advice and to be legally represented in settlement negotiations. It explained that the process generally involves an exchange of documents, a psychiatric assessment of the victim and a meeting with the victim, their lawyers and, in some cases, the State, 'to talk about the case to explore whether settlement is possible'.⁴⁵ The Uniting Church

⁴⁵ *Submission S164*, Uniting Church in Australia, p. 21.

notes that where a victim does not wish to involve lawyers, they are encouraged to have a support person present as part of their meeting.⁴⁶

Similar to the Salvation Army, the Uniting Church told the Committee that their approach is to respond to complaints by engaging solicitors to negotiate a private settlement.⁴⁷ The Uniting Church approach is complicated by the fact that many victims were care leavers and the Victorian Government is often a party to the negotiated settlement. At least one victim told the Committee that his approach with the Uniting Church process had been a positive one.⁴⁸

The Committee notes that the Uniting Church conceded that their Culture of Safety Unit had identified gaps in internal referral systems and a lack of procedure for aftercare.

Finding 20.1

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

46 *Submission S164*, Uniting Church in Australia, p. 21.

47 *Submission S241*, The Salvation Army, Australia Southern Territory, p. 4.

48 *Transcript of evidence*, Mr Hugh McGowan, Melbourne, 4 February 2013, p. 5.

Chapter 21

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

AT A GLANCE

Background

The Committee accessed the files relevant to the systems used by the Catholic Church, the Anglican Archdiocese of Melbourne and the Salvation Army. It also viewed complaint files relating to individuals within Catholic Church orders in Victoria. Its analysis and findings from reviewing these files has informed the Committee's recommendations in Parts G and H of this Report.

Key findings

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

As indicated in the previous chapters of this Report, a number of organisations have developed mechanisms or processes for dealing with complaints of criminal child abuse relating to allegations of past child abuse. A significant amount of information regarding the workings of these processes was made available to the Committee from the relevant parts of the different organisations.

However, the overwhelming majority of information about how victims experience these organisational responses came from submissions and oral evidence given by victims involved in the Catholic Church processes, which have been operating for 15 years. From that information a number of themes have emerged that are applicable to any organisational response to criminal child abuse. These include:

- the real and perceived degree of independence of the people investigating victims' claims
- lack of recognition of secondary victims
- confidentiality and police involvement
- financial compensation—the role of the victim in this part of the process, the mechanism for seeking compensation, the amounts offered and the role of the organisation
- apology—the genuineness or otherwise of the perpetrator and the organisation
- the level of counselling and support provided by the organisation
- pastoral support
- the organisation's relationship with the perpetrator and the attitudes of the hierarchy.

It is important to note that these issues cannot be looked at in isolation. A combination of such matters has contributed to a general feeling of dissatisfaction with how the Catholic Church has dealt with complaints of abuse. We need to consider this dissatisfaction in the context of the whole of the Catholic Church response, particularly the Catholic Church's treatment of perpetrators once allegations are proven. This issue is the responsibility of the Catholic Church and not part of either Towards Healing or the Melbourne Response.

Victims involved in these processes are often very damaged and fragile. Many do not trust the Catholic Church to set up a system that will help them and focus on them, when they attribute responsibility for some of the harm they have suffered to the Catholic Church in addition to the individual perpetrator.

One issue to consider is the reason for the higher level of dissatisfaction with these particular processes compared with others, such as the Anglican Church response. Why is it that the Catholic Church processes, purportedly designed to achieve a fair and just outcome for victims, have resulted in such anger by some of its participants?

21.1. Actual and perceived independence in the investigation phase

This section of the Report considers the actual and perceived independence of the processes for undertaking investigations relating to claims. It reviews those used by the Catholic Church (the Melbourne Response and Towards Healing) and also those processes used by the Salvation Army and the Anglican Diocese of Melbourne.

21.1.1. Independence—Melbourne Response and the Independent Commissioner

All of the Melbourne Response files are located in the chambers of Mr Peter O’Callaghan QC and the Committee was provided with full access to them. The files clearly show that in the vast majority of cases Mr O’Callaghan QC genuinely believed the victim’s account and made a concerted effort to work with the victim to clarify the details of abuse. He attempted to assist and encourage the victims, rather than challenge their claims, so that they could receive some recognition, counselling and money if desired. There was an acceptance of most claims even on the basis of minimal information or only a basic verification of the facts. Mr O’Callaghan QC told the Committee:

... there is very little fakery in respect of sexual abuse. At the time of my appointment, because money was involved, I had the perception that there may be a number of bogus applicants, and that has not occurred at all. I have no doubt as to the veracity of the complaints which have been made. People do not, for obvious reasons, simulate or make up that they have been sexually abused, but, ... of course I hope I have been solicitous of these people, whom I have seen in all sorts and sizes.⁴⁹

The Committee received evidence containing criticisms that the Melbourne Response lacked independence. It acknowledges that a number of witnesses representing the Catholic Church and the Melbourne Response, including Mr O’Callaghan QC, strongly refuted this suggestion.⁵⁰ The Committee acknowledges that there were no indications in its review of the Melbourne Response files that the Catholic Church leadership influenced the findings of Mr O’Callaghan QC. However, the Committee considers that in order to meet the needs of victims, perceived independence is as critical as actual independence.

Given the circumstances that existed at the time of the creation of the Melbourne Response⁵¹ it was in the interests of both the victims and the Catholic Church to provide this alternative system. It could be argued that because of the many barriers to civil litigation (discussed in Part H of this Report) victims would have got nothing if the Catholic Church had not instituted the Melbourne Response and Towards Healing.⁵² However, by creating the Melbourne Response, the Catholic Archdiocese of Melbourne created a mechanism by which it could control or limit the damage to its finances and its reputation while continuing to rely on technical legal defences to deflect legal claims in the courts, as described in Part H of the Report. The financial exposure and damage to the reputation of the Catholic Church would conceivably be much greater if the Melbourne Response had not been in place. The Melbourne Response solved the significant problem facing the Catholic Church and the necessity for action to be taken, as discussed in Chapter 7 of Part C. The Committee considered that the role of Independent Commissioner is part of an internal process which was established, and has been implemented, for the dual purpose of providing compensation to victims and minimising damage to the Catholic Church. It determined therefore that it could not be seen as independent.

Mr O’Callaghan QC and Mr Jeff Gleeson SC were appointed by the most senior Catholic Church member in Melbourne, the Archbishop of Melbourne. They are

49 *Transcript of evidence*, Melbourne Response, Melbourne, 30 April 2013, p. 12.

50 *Transcript of evidence*, Melbourne Response, pp. 6, 8–10.

51 See Chapter 7 of Part C.

52 See Part H regarding barriers to litigation.

paid to perform that role by the Catholic Archdiocese of Melbourne. Each person who has acted in that role is a senior and respected member of the Victorian Bar.⁵³ Mr O’Callaghan QC spoke of his role as follows:

On independence, I am a member and have remained a member of the Victorian Bar and barristers necessarily are independent of their appointers. They are independent of their clients. They often advise clients about things which the client does not want to hear. Similarly, royal commissioners are often appointed by governments. I am not a royal commissioner. I never said I was, but I was akin to a royal commissioner in the sense that a government appoints a royal commission—take the present Victorian government for instance. The analogy is that the government appointing me was the Archdiocese of Melbourne. Now use of the words ‘independent commissioner’ was to convey just simply that. I do not accept that there has been as much puzzlement as is being put forward about what people, or victims, thought I was or what I was doing. Your legal advisers have seen my files. As I say, there are some excerpts in this submission and I will be also submitting other files which make clear my independence.⁵⁴

In regard to where he receives payment from, Mr O’Callaghan QC stated that:

... of being paid by the appointor does not—and it is a grave allegation against me when it is made—destroy my independence. That is, I am allegedly a cat’s paw of my appointor. Now, if there has been a conflict of interest, I have not perceived it and I do not think anyone rationally should and what is more, if I am covering up—if that is what I am accused of—I have found 97 per cent of complaints which have come to me established. That does not appear to be anything other than the exercise of an independent assessment of the matters that have come before me.⁵⁵

Victim dissatisfaction with the role of the Independent Commissioner is somewhat surprising when 97 per cent of complaints were accepted. However, victims involved in the Melbourne Response process perceived the role of the Independent Commissioner as a much broader one than was in fact the case. The Committee accepts what Mr O’Callaghan QC said in evidence:

Let me make this very clear: there is no doubt about my abhorrence of child sexual abuse, sexual abuse generally, and I have to say this, that no matter how solicitously a complaint is handled, how adequate compensation might be, or [an] apology might be, the provision of free counselling and psychological support, the one thing that cannot be eradicated in many cases is the indelible imprint which the fact of the sexual abuse has left upon the person and which has blighted his or her life from the time it happened and which continues to do so. I do not want to repeat that often, but you can please accept that this is the acceptance of how I have seen paedophiles and their activities and the degradation that they wreak upon their victims.⁵⁶

Although this statement recognises the significant damage suffered by victims of abuse, it touches on some of the other issues relating to the Melbourne Response that have been raised by victims. Clearly Mr O’Callaghan QC was not influenced to favour the Catholic Church when considering whether abuse occurred. But the question remains: why is there such a level of dissatisfaction with the process when so many claims were accepted or findings were made against members of the Catholic

53 Others who have fulfilled the role of Independent Commissioner are Mr Paul Guest QC, Mr Paul Lacava QC and Mr James Elliot SC.

54 *Transcript of evidence*, Melbourne Response, pp. 6–7.

55 *Transcript of evidence*, Melbourne Response, p. 9.

56 *Transcript of evidence*, Melbourne Response, p. 4.

Church? Mr O'Callaghan QC and Mr Gleeson SC did not accept that there was a high level of dissatisfaction with the process.⁵⁷

When questioned regarding the creation of Melbourne Response, Cardinal Pell refused to accept that it was 'in-house'. He stated:

It was hardly in-house. We held a press conference to announce the institution of these three measures. They were publicised in every parish and school in the diocese. The sort of implication that this was somehow done under the table by half-reputable bishops who wanted to keep everything quiet is totally misleading, and that is evidenced by the quality of the people who consented to work on our committees ...

It was in no sense an in-house matter. I would once again request that I be given permission to explain the role of Mr O'Callaghan in that because he was given the almost total responsibility of doing the day-to-day handling of those issues, and the suggestion that somehow he was not independent is, I think, totally misleading and unfair to one of the most senior members of the bar who is constrained by the principles of the bar to be independent. No-one would suggest that the judges are not independent because they are paid by the government when they sit on and judge cases to do with the government. Mr O'Callaghan was given complete independence. There is no evidence that either myself or Archbishop Hart interfered in any way in his decision making, and the suggestion that somehow he was not independent I totally reject.⁵⁸

Such a response misunderstands the criticism made as to the 'independence' or the system being 'in-house'. The dissatisfaction with Mr O'Callaghan QC and the Melbourne Response is not on the basis of his findings of abuse. Rather it stems from him being the person 'who has total responsibility for the day-to-day handling of ... issues',⁵⁹ the only person who is able to keep a victim informed of the progress of their case, and being the face of a system with an inherent tension. Even if it is accepted that victims are the number one priority, that does not change the essentially problematic character of the system that benefitted its creators, by limiting its financial exposure and protecting its reputation.

The point can be illustrated as follows. A very detailed written and oral submission was provided to the Committee by Mr Anthony and Mrs Chrissie Foster. One of the many issues raised by them was their perception of the role of the Independent Commissioner through their involvement with Melbourne Response.⁶⁰ It is important to set out some undisputed facts and dates to understand the concerns they expressed. Mr O'Callaghan QC provided the Inquiry with his lengthy file regarding the Foster family.

- Mr O'Callaghan QC found in his role as Independent Commissioner that Ms Emma Foster was a victim of abuse (3 October 1997).
- Ms Emma Foster was offered \$50,000 (the maximum amount) by the Compensation Panel. This offer was made as a 'realistic alternative to litigation which would have otherwise been strenuously defended'⁶¹ (8 June 1998).

57 *Transcript of evidence*, Melbourne Response, p. 7.

58 *Transcript of evidence*, Catholic Archdiocese of Sydney, pp. 10–11.

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

60 *Submission S037*, Mr Anthony and Mrs Chrissie Foster, pp. 5–6; *Transcript of evidence*, Mr Anthony and Mrs Chrissie Foster, Melbourne, 23 November 2012, pp. 14–15.

61 This wording was used in the Melbourne Response letters of offer prior to November 2002. See Section 21.4 regarding letters of offer from Melbourne Response.

- Ms Emma Foster accepted the offer however due to her age (under 18 years) it was necessary for her parents and the Catholic Archdiocese of Melbourne to enter a Trust Deed regarding the funds. The Trust Deed was provided to the Fosters on 8 February 1999.
- Ms Katie Foster (Emma's sister) also revealed abuse. Mr O'Callaghan QC met with the Foster family regarding Emma's claim (the Trust Deed had not yet been signed) and verbally indicated that he would make a finding of abuse in respect of Katie (6 May 1999).
- Solicitors for the Fosters requested a written finding from Mr O'Callaghan QC that Katie was a victim of abuse (9 February 2000).
- Mr O'Callaghan QC wrote to the solicitors for the Catholic Archdiocese of Melbourne inquiring whether it was appropriate that he should contact the Foster family to 'flush out' their intentions. At that stage, the Trust Deed regarding Emma had not been signed and no written finding regarding Katie had been provided.

A portion of a letter sent by Mr O'Callaghan QC to Mr Richard Leder, at Corrs Chambers Westgarth (solicitors for the Catholic Archdiocese of Melbourne) on 23 February 2000, was read to Mr O'Callaghan QC by the Committee:

I would like your views as to whether it is appropriate in effect to try to flush out the real intention of the Fosters. A reading of the correspondence only reinforces the possibility that they may have another agenda and my oblique reference to other information is reflective of that. On the other hand, if they write back and say they insist upon my making a finding in relation to the complaint which has been lodged, I will feel obliged to do so. They would say we will decide what we are going to do when we have the finding, and such an option is contemplated by the archdiocese system.⁶²

In evidence to the Inquiry, Mr O'Callaghan QC explained:

I have expressed time and again my sympathy for the Foster family. You have got the Foster file, where this has no doubt come from. So if you have any worries about how I handled the Foster complaint, I suggest you go back to the file. But in this context, as it appears from the file, I was wanting to know whether they were coming to see me merely to get a finding so that they would go on to take proceedings, and I expressed to their solicitors that they were perfectly entitled to do what they wished. It was only in respect to Katie that I was asked for a finding, and I said, 'What is the reason for it?', and there it was. But with respect to Emma, if you go to the file, you will find I think a 50-page report which I made to the compensation panel ...

And that was because I perceived the imminence of legal proceedings, which I think in a letter to William Winter and Higgs I said:

In the light of the above and also because of other information I have received, my query is whether Emma proposes to reject the offer and presumably pursue other remedies. Let me hasten to say that whether or not this occurs is not a matter which concerns me in my capacity as independent commissioner. I do not, as I cannot, discourage or encourage any course of action decided upon by Emma and her advisers.⁶³

When asked if he went through this process with others:

If I did, it was on rare occasions. The justification for this is because of what appeared

⁶² *Transcript of evidence*, Melbourne Response, p. 15.

⁶³ *Transcript of evidence*, Melbourne Response, p. 15.

to be the position of going outside my role. Can I say that when Mrs Foster mistakenly says I went out to get Emma to sign, I did not. I was going out to see Katie and also Emma, but to tell them about the trust deed, because Emma had signed her acceptance and she was to turn 18, and it was obvious that if they were going to accept that money, then it was desirable that there be a trust deed before she turned 18.

My concern to talk about the trust deed was that I said, 'If she is going to sign it, she should do it quickly before she turns 18, because once she has turned 18 the essential rationale of the trust deed goes.'⁶⁴

This explanation does little to explain 'whether it is appropriate to flush out the real intention of the Fosters.' It was an attempt to ascertain for the Catholic Archdiocese of Melbourne solicitors whether the Fosters were going to accept the offer made to Emma and their intentions in respect of the finding regarding Katie. This appears to be beyond the role of investigator—he had already made a detailed finding in respect of Emma and a verbal finding for Katie.

This also reflects the inherent tension in the system—the Catholic Archdiocese of Melbourne lawyers had indicated if the offer regarding Emma, the maximum \$50,000, was not accepted, that litigation would be 'strenuously defended'.⁶⁵ Presumably the same applied to Katie's claim. It was against the financial interest of the Catholic Archdiocese of Melbourne and a threat to its reputation for the Fosters to go outside their system.⁶⁶ The Foster family issued claims against the Catholic Archdiocese of Melbourne and settled their claim for a global figure of \$750,000.

Despite Mr O'Callaghan QC maintaining that he did no more than carry out his role and that the Fosters were entitled to use his finding outside the Melbourne Response process, he does not appear to be acting only in the role of the Independent Commissioner investigating complaints in this example.

One issue raised by victims regarding the Melbourne Response procedure was the circumstances of their first contact with Mr O'Callaghan QC. For many victims this was the first time that they had revealed their abuse and some felt intimidated by meeting a senior legal counsel in his chambers in the city. Victims expressed concern that they were not given support (or made aware that they could have support) at this first meeting. This lack of support was especially significant given the legal and formal status of the Independent Commissioner and the fragile and frequently damaged state of the victims. Some victims reported concerns about their accounts being tape-recorded but did not feel that they were able to object.

One victim wrote to Mr O'Callaghan QC expressing her concerns after her first meeting with him and read the letter to the Inquiry:

While I accept that the Diocesan powers that be [sic] probably chose the venue as a symbol that they were taking these matters seriously it had the reverse effect on me. As a victim, whether you accept that or not, the venue and excessive decor turned me off as I got out of the lift. It spoke of power, money, and opulence and had the effect of making me feel ... inferior. The common waiting room with no privacy also suggested that the selectors of the venue had no concept about the huge amount of

64 *Transcript of evidence*, Melbourne Response, pp. 15–16.

65 This wording was used in the Melbourne Response letters of offer prior to November 2002. See Section 21.4.1 regarding letters of offer from Melbourne Response.

66 *Transcript of evidence*, Mr Anthony and Mrs Chrissie Foster, Melbourne, 23 November 2012.

courage it takes to get to the venue, if they had then a quiet space to prepare oneself would have been provided.

The first image of you sitting behind the desk and the view behind is another intimidating factor. The most disturbing action was that you leant back to switch on your tape recorder without even introductions so I could speak my name into the tape like a criminal. I know this is common practice for you, but not a thing I would ever do to a person I was counselling and whose trust I wished to obtain.

Then there were the questions. I know you are a kindly person. You would not even realise the legalistic way you ask questions. The questions you asked me on our first meeting, when I had stated that I was not there to make a complaint, I found very distressing. They were more intrusive than my counsellor had asked after three sessions ...

I cannot tell my family, and have never been able to do so, even though my sister once told me that my mother suspected the abuse ... why couldn't I tell her ...

It was because of the ... shame.

So I came to you with only my counsellor's knowledge and no-one to turn to ...

I realise that there needs to be legal involvement in this process. I would argue, however, that you should not be the first contact person. It needs someone with expert counselling skills. Then having established the story in a calm and gentle manner can perhaps accompany the person to talk with you.⁶⁷

Another victim said:

That year, I rang Peter O'Callaghan QC to begin the process of the Melbourne Response. I found this meeting in his imposing chambers a daunting experience. I didn't have a support person during the interview which he was taping and I was not advised to when I made the appointment. He asked questions and I answered them ...⁶⁸

Fr Kevin Dillon is the parish priest at St Mary's Basilica in Geelong and has had experience working with victims of criminal child abuse. He told the Inquiry that the Melbourne Response process is adversarial and lacks support and follow-up. He suggested that the introduction of a Queen's Counsel (QC) at the beginning of the process was 'fairly intimidating', and that he had been denied permission to support victims through the process. He commented: 'It is an adversarial approach—certainly in the perception of the victims—that lies very close to the heart of all that has been so bad.'⁶⁹

Others felt overwhelmed and did not understand all that was being said to them by Mr O'Callaghan QC.

Basically because they were asking us questions there that—I will go back. I had a couple of conversations with O'Callaghan also. I am not the world's smartest person, but he is a lawyer and that sort of stuff. This basically bamboozles us. I did not have a lawyer.⁷⁰

Sometimes victims were confused about matters such as confidentiality. At the initial interview, and in subsequent conversations with Mr O'Callaghan QC, what is said is confidential, unless the victim desires otherwise. The confidentiality restrictions of

67 *Submission S456*, Name withheld.

68 *Submission S484*, Name withheld.

69 *Transcript of evidence*, Fr Kevin Dillon, Geelong, 15 February 2013, p. 3.

70 *Submission S478*, Name withheld.

the Melbourne Response are complicated and do not remain the same through all stages of the process,⁷¹ so some victims became confused about the confidentiality restrictions placed on them, believing that they were subject to more severe restrictions than those stated to them. This aspect of confidentiality is considered in the context of the Compensation Panel.⁷²

Criticisms of Mr O’Callaghan QC arose most often when the role of investigating a claim was extended or changed. It is not surprising that there is such role confusion as the Independent Commissioner is the only person available to inform victims about the process. Many victims mistakenly thought he was there for them and relied on him for support and assistance through other parts of the process. While this may be a positive for some victims, it has misled others, so they have misunderstood or misinterpreted his role in the Melbourne Response process.

The confusion became more evident for a victim who was required to attend a hearing and the role of Mr O’Callaghan QC shifted to being like that of a judge. Hearings can be a traumatic experience for victims. They add an adversarial and legalistic flavour to the process which both victims and the Catholic Archdiocese of Melbourne were trying to avoid.⁷³

Mr Jeff Gleeson SC indicated to the Inquiry:

The majority of the contested hearings, certainly in recent times, have been conducted at the County Court facilities in a private and secure room ... It has some formality so that there is not the intimacy that might add to or compound the apprehension that the victim has ... As counsel assisting, my job was to make all of those arrangements and make sure that on the day nothing went wrong, so I would be shuttling between rooms and saying, ‘You stay there until they’re in the lift’, and so on ...

I do what I can to humanise the legal representation ...⁷⁴

In my former role as counsel assisting I would typically have a discussion with the complainant about legal representation pretty early on in our discussions. I would like the committee to understand that with contested hearings I have many, many discussions with the victims. I go on the journey with them over days, weeks and months. We email each other, we speak together on the phone, they come into my chambers and we talk about the case and about a lot of things. One of the very early things they say is, ‘Do I need a lawyer?’. I say, ‘You’re perfectly entitled to have a lawyer. It would make my job a lot easier if you did, but it’s up to you. You don’t need one. I will assist you, but you must understand that I am not your lawyer, so that if you tell me something’—and I try to give them a good example.

What the commission needs is balance—both sides of the story. So in the cases, which are the majority, where the respondent—the accused—has legal representation and

71 Different parts of Melbourne Response are subject to different confidentiality restrictions and dependent upon what stage of the process you are at e.g hearings are always confidential, though the results of a compensation hearing are not confidential, after a victim has accepted the proposed settlement offer.

72 See section 21.4.

73 Archbishop Denis Hart of the Catholic Archdiocese of Melbourne, for example, told the Inquiry that he believed the Melbourne Response was ‘established precisely to provide an alternative to the burden and the struggle and the difficulty of the legal process’ *Transcript of evidence*, Catholic Archdiocese of Melbourne, Melbourne, 20 May 2013, p. 48.

74 *Transcript of evidence*, Melbourne Response, p. 31.

they cross-examine the complainant, the role of counsel assisting tends to be much more as an advocate for the victim, in the interests of balance. I would then typically not cross-examine the victim but try to get clarification if there is uncertainty, but I would cross-examine the respondent. I have to say that that can happen in a reasonably robust manner ...

It has got a lot of similar aspects to a private closed court hearing, yes.⁷⁵

When challenged by the Committee that this approach to contested hearings did not appear to be conciliatory and that it was quasi-legal, Mr O'Callaghan QC responded:

Can I just say this: I appreciate that in the limited number of cases in which there is a denial and the claimant wants to continue through the Melbourne Response, he or she meets in, I submit, a fair and compassionate way the same situation that he or she would meet when standing on the floor of the Magistrates Court.⁷⁶

Mr Gleeson SC also responded:

The first thing to note is that there have been I think 16 contested hearings in total. That is 16 out of over 500, so they are a very small minority. We sincerely wish that we never had to have a contested hearing, but unfortunately there are occasions when there is no alternative ...

What we have is a situation a little like democracy: the process of a contested hearing is the worst way of determining facts, apart from all the others. It is the only way that we can do it. Given that we have to do it, we then try to do it in a very sensitive way, where there is certainly not this raging cross-examination where a victim is subjected to ridicule and abuse. Mr O'Callaghan would not tolerate it for a moment. It is conducted properly but fairly.⁷⁷

The potential for further damage to be caused to a victim engaged in this process is obvious and it is questionable whether it would ever be appropriate to set up this quasi-legal system to determine disputed complaints, particularly in circumstances where the individual victim has chosen to avoid the civil and criminal litigation path. For example, one victim reported feeling disempowered in the process and explained that she was given limited information regarding the process that was to be adopted.⁷⁸

As part of the Melbourne Response, Mr O'Callaghan QC is required to interact with the Catholic Archdiocese of Melbourne for various legitimate reasons, such as referrals, to ascertain the details of a perpetrator's history, to ascertain a perpetrator's current status and whereabouts, and to make recommendations about a particular perpetrator. Mr O'Callaghan QC does assist victims both during and after the Compensation Panel process, and refers them to Carelink for counselling. In some cases, victims who complain to the Melbourne Response need urgent financial assistance or other aid and this is often arranged through Mr O'Callaghan QC in conjunction with the Catholic Archdiocese of Melbourne and/or its solicitors.

Some victims came to rely on Mr O'Callaghan QC and seemed genuinely grateful for the assistance he personally provided. While this is a positive thing, it does conflict with the fact that he is not, and can never be, a victim's personal legal representative. Providing assistance is outside the terms of his appointment to 'enquire into

⁷⁵ *Transcript of evidence*, Melbourne Response, p. 32.

⁷⁶ *Transcript of evidence*, Melbourne Response, p. 33.

⁷⁷ *Transcript of evidence*, Melbourne Response, pp. 33–34.

⁷⁸ *Submission S485*, Name withheld.

allegations of sexual abuse'.⁷⁹ While it is not suggested that Mr O'Callaghan QC would abuse the goodwill he garners, this conflict of roles could mislead a victim to misunderstand, or misinterpret, his role in the Melbourne Response process.

Some victims were satisfied at the end of the investigatory process but became disgruntled during other stages of the process. Some victims viewed Mr O'Callaghan QC as the 'face' of the Melbourne Response, so they directed their dissatisfaction with the process as a whole at him, even if some aspects of the process were not in fact his responsibility or within his control. While many people showed their appreciation for the Melbourne Response and, in particular, Mr O'Callaghan QC's assistance throughout the process, some victims (particularly after meeting with the Compensation Panel and receiving an ex gratia payment offer) had a more cynical and negative view of the process:

We were referred to Carelink by Mr Peter O'Callaghan. I found Mr O'Callaghan to be kind and easy to talk to about this distressing subject. Overall Carelink have been fine for us and I have no complaints. Professor Ball was very good to my husband and treated him holistically with great respect. My husband received \$22,000 compensation and I am 100% certain that we were told it was a confidential settlement and that at no time in the future could we seek further compensation if we accepted this one off grant. Our correspondence is files [sic] away and I do not have the mental strength to go look for the documents which we signed at that time.

To this day I think the amount we received for the devastation caused to my husband, myself and my children, is an insult. We have survived but only just. During the worst of our turmoil, our GP was convinced that XXX would suicide one day and I expected this also.⁸⁰

Arguably, Mr O'Callaghan QC, in trying to assist everyone and being adviser and helper to all, potentially eroded the appearance of his being independent, and the legitimacy and fairness of the Melbourne Response as perceived by victims. For this reason, the Independent Commissioner should not offer assistance to or be called upon by the Catholic Archdiocese of Melbourne or their solicitors, to answer a variety of questions and liaise. He should become, and be seen to be, truly independent.

21.1.2. Independence—Towards Healing: contact, assessment phase

In referring to Towards Healing, in the Catholic Church submission to the Inquiry, which it titled *Facing the truth* states that 'independence is critical to any Church process dealing with people who have been abused'.⁸¹ Despite this assertion, many aspects of Towards Healing are not independent and are the cause of some victims' dissatisfaction with the process. Towards Healing is a system set up by the Catholic Church to investigate the Church. The victim has no control or influence over who is appointed as their contact person or assessor.

Sr Angela Ryan said in evidence to the Committee, regarding victims' perception of Towards Healing:

I am very sad that there is dissatisfaction. I accept that. We are listening very carefully to what the complaints are so that things can be sorted out. I believe, too, that not all

79 *Submission S185*, Catholic Church in Victoria. Annexure 3.

80 *Submission S063*, Marita van Gemert, pp. 1–2.

81 *Submission S185*, Catholic Church in Victoria, p. 64.

victims who come through Towards Healing are dissatisfied, but I think we are dealing in an area where it is very difficult for people who have been abused. Somebody said to me perhaps even our term ‘Towards Healing’ sets an unrealistic situation, that people may believe that if they come to Towards Healing, it will all go away. Abuse is not in that vein; it is not with that sort of effect on people, so we really cannot do that. I think people first want their complaint validated, want to be believed, want to know what has happened to the person who is the abuser, but especially want to know what has been done so that it will not happen again. ...

I think that any time that people who are victims are in a situation where they need to bring out what has happened to them and go back to those times, that that will re-traumatise them. I am really sorry, and I am so sorry for those victims.⁸²

In commenting on the independence of the process Sr Ryan said:

Let us define what is independent about it and what is not. I am part of the Church, obviously, and we do have people who are from the Church at various stages. The part that is an independent assessment is that it is not the church authority, the diocese or the congregation that investigates the complaint. It is outside that. It is the director of professional standards who organises the assessment of the complaint, and that part is definitely an independent assessment.⁸⁴

Sr Ryan understood why some victims may not see the process as independent:

I do understand that. In the office I answer my phone as ‘Angela’. But if it is a victim, within two or three sentences, as soon as I know it is a victim, I make sure they know I am a nun and I say to them, ‘I am a nun. Would you like me to get somebody else to talk with you?’ So I certainly do not try to force that on them. I would have to say that I do not recall anybody who said, ‘Well, I want to stop now.’ In fact some have said, ‘They say you are all right’.⁸⁵

The Committee determined that there is more flexibility in the appointment of assessors and contact people in Towards Healing than under the Melbourne Response. The real issue for the assessment stage of Towards Healing is the substantiation of claims and a lack of consistency in the approach of assessors. Assessors use the civil standard of proof or the *Briginshaw* test in considering a claim.⁸⁶ It is therefore no easier to prove a claim under this process than it is in the civil courts, and in some cases it is more difficult. At the very least, it would be preferable for assessors to have the option that, where the arguments of the victim and the accused are equally balanced, the matter should proceed to facilitation (on the positive basis that the victim’s claims are believed).

The **standard of proof** in *Briginshaw*⁸³ is different from the criminal standard, beyond reasonable doubt, the civil standard, on the balance of probabilities or to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved.

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. Before accepting the truth of evidence of a particular allegation, the tribunal should give consideration to the nature of the allegation and the likely consequences.

82 *Transcript of evidence*, Towards Healing, Melbourne, 3 May 2013, p. 3.

83 *Dixon J in Briginshaw V Briginshaw* [1938] HCA 34; (1938) 60 CLR 336.

84 *Transcript of evidence*, Towards Healing, p. 3.

85 *Transcript of evidence*, Towards Healing, p. 4.

86 The standard of proof has evolved over time with changes in December 1996, December 2000, January 2010 and in 2012.

Some victims complained more generally about the attitude of assessors, being concerned that some assessors were not properly qualified to deal with victims.

One victim said:⁸⁷

But I will say this process came as a shock compared to the previous stages. Here were two men, after several months without a word, expecting me to be available in the middle of the morning with only three days notice. The communication by telephone was awkward. I was put on the spot. This appointment should have been arranged through the administrator. They came full of questions. They were critical that my memory was not linear, detailed and certain. This challenge shut me up. Again I was not heard. In hindsight the meeting should have been conducted elsewhere. Two older men challenging me in my home left me somewhat vulnerable and defensive.

Finally, the assessment summary that was provided contained the following comment: ‘proof of allegations on the balance of probabilities requires there to be something that tips the balance in favour of the allegations being proven’; I have got no problem with that. But ‘The more serious the allegation the more that is required to tip the balance’ does not make sense. It is illogical, and reading it confirmed to me how poorly skilled these personnel were. I felt as if the whole process was half-hearted in terms of seeking a sophisticated, professional outcome. I felt as if I was not taken seriously. I came for help and left feeling even more frustrated.⁸⁸

In regard to her brother, one witness said:

XXX did make contact with the Catholic Church earlier than that. He did go through the Professional Standards Towards Healing program. He was interviewed—I felt more like he was interrogated—by two gentlemen in Carlton. They produced a report for the church which stated that because of lack of corroboration and lack of further evidence it would go no further. They sent him for a psychiatric assessment with a Dr Kornan, who stated that XXX did certainly show signs of post-traumatic stress and that he was very reliable in his recollection, but then so was the person who XXX had claimed had committed the assault. That was sort of left at that. On psychiatric advice XXX let it go.⁸⁹

21.1.3. Independence—Anglican Church

The Anglican Church’s submission to the Inquiry includes the following statement:

The experience of this Diocese and other church communities around the world in responding to complaints of abuse is that the handling of complaints should be, and be perceived to be independent of and as far removed from the influence of the clergy hierarchy (except insofar as care of respondents is concerned).⁹⁰

The Anglican Church process is structured so that roles are strictly defined, reducing the potential for confusion. The whole response is overseen by the Director of Professional Standards. However, in contrast to the Independent Commissioner of the Melbourne Response, the Director of Professional Standards does not have an investigative role.⁹¹

87 *Dixon J in Briginshaw V Briginshaw* [1938] HCA 34; (1938) 60 CLR 336.

88 *Transcript of evidence*, Mr Jim Commadeur, Melbourne, 23 November 2012, p. 3.

89 *Transcript of evidence*, Mrs Mary Doyle, Melbourne, 15 March 2013, p. 4.

90 *Submission S244*, Anglican Diocese of Melbourne, p. 13.

91 See Section 20.2 for further details about the functions of the Director.

The structure of the Professional Standards Committee (PSC) and Professional Standards Board (PSB) ensures that the deliberative and decision-making process is separate from the appraisal and investigative process.

It was difficult for the Committee to assess victims' satisfaction with the Anglican Church response because few submissions were received from victims who had engaged with the Anglican protocol. The lack of evidence could be due to the comparatively low number of claims against members of the Anglican Church in the Diocese of Melbourne. The Committee viewed 32 claims during its review of files from the Anglican Diocese of Melbourne. The files reviewed did not indicate dissatisfaction by victims with the overall process.

21.1.4. Independence—the Salvation Army

Captain Malcolm Roberts told the Inquiry that the Salvation Army does not dispute the claims of victims, but instead takes them at face value:

I will just say there that we do not investigate those claims, we take the word of what is given to us. All we expect in dealing with claims is that we have virtually a stat dec which sets out the facts. We check the facts, we make sure that they were in the home and that the person that they say abused them was in the home, but we do not actually investigate those homes. We do not put those people through any sort of adversarial process.⁹²

The Salvation Army told the Committee that it responds to complaints by engaging solicitors to negotiate a private settlement.⁹³ This approach was confirmed through the Committee's review of the Salvation Army files, which showed that the majority of complaints were directed to and managed by the lawyers representing the Salvation Army. This was certainly true in cases where the complainants engaged the services of a legal representative to handle the claim.⁹⁴ In these circumstances, the complainant's lawyers contacted the Salvation Army's lawyers directly and sent all documentation relating to the claim to them. The Salvation Army's lawyers then investigated the complaint, met with the complainant and their legal representative and made a recommendation to the Salvation Army regarding the appropriate settlement amount. Once the Salvation Army confirmed the amount it was willing to settle for, the lawyers held a settlement conference with the complainant and their legal representative to negotiate the settlement.

If the Salvation Army receives a complaint, and the complainant does not have legal representation or indicates that they do not want legal representation, the Salvation Army can decide to handle the complaint internally or pass the handling of the complaint to their solicitors. Although the Salvation Army states its lawyers are instructed to act independently in investigating the complaint and assessing a quantum of liability, it is unlikely that a complainant would perceive them to be acting independently.

The Committee received few comments regarding individual victims' views about their involvement in this process. Mr Brian Cherrie informed the Inquiry that the

⁹² *Transcript of evidence*, Salvation Army, p. 13.

⁹³ *Transcript of evidence*, Salvation Army, p. 13.

⁹⁴ Of the 50 files reviewed 78 per cent of complainants engaged the services of a legal representative to assist in the handling of the claim.

settlement process is all handled by lawyers, indicating it is a very legal process. Ms Angela Sdrinis from Ryan Carlisle Thomas Lawyers explained that from a solicitors perspective, the Salvation Army were willing to negotiate but within a limited settlement process.

However, victims advocate group, Broken Rites indicated otherwise in its submission:

Victims have had, and continue to have, serious difficulties when they approach the Salvation Army. This religious organisation projects a public image that emphasises compassion and community service, and this is emphasised in its regular campaigns for financial support from the public. In our experience, its response to victims has often been secretive, uncooperative, mean-spirited and legalistic.

The Salvation Army appears not to have any response protocols and instead each claimant must resort to legal process. Many victims have been unable to get any documents covering their time in institutional “care”. Often the person is told that the documents cannot be found, do not exist or have been destroyed because of fires, floods etc. We consider the Salvation Army’s willingness to have claims contested in the courts is a ploy, with its representatives knowing that many people will not have the financial means to access the court system.⁹⁵

Finding 21.1

The processes for responding to complaints used by non-government organisations are not truly independent of the organisations.

21.2. Approach to secondary victims—Melbourne Response and Towards Healing

Under the terms of Melbourne Response, the Independent Commissioner does not recognise the claims of secondary victims, although some have received counselling through Carelink. The basis of this is explained in correspondence from the Independent Commissioner to Mr Anthony and Mrs Chrissie Foster, who had made an application for compensation to the Compensation Panel:

I, as the Independent Commissioner, make findings in respect of those persons who have been victims of sexual abuse, and which findings are accepted by the Compensation Panel.

I must advise you that I have made no finding that either or both of you were victims of sexual abuse within the meaning of the terms and conditions of my appointment. The only persons who can be classified as victims of sexual abuse are those who have been actually abused. In a limited number of instances when another person such as a parent, has been so proximate in point of time and place that person is also classified as a victim.

For instance, the parent who witnessed the assault upon his or her child.

However, in yours, as in many other cases, whilst the discovery of the abuse is a traumatic and distressing occurrence, this does not make that person a victim within

95 *Submission S218*, Broken Rites (Australia) Collective Inc., p. 18.

the meaning of the terms and conditions of my appointment.⁹⁶

Victims affected by the actions of criminal child abusers need assistance, an apology and compensation from the Catholic Church. Some may argue that the floodgates will open if compensation is given to secondary victims. But at present a vast array of 'passively abused' victims are excluded from receiving compensation or a satisfactory resolution to their pain. Many link this grievance to the operation of the Melbourne Response and Towards Healing.

The parents of a victim told the Inquiry:

Our hearts are heavy with pain and sadness. The ripple effect is a life sentence for victims and their families. As the victims suffer, so do the families. The list of suffering is long and different for each member of the family. As parents, the sense of failure is overwhelming ...

As for getting help when we thought that the children were being abused, I rang Towards Healing, this great big program that was set up by the bishops.

... but it was hard work to get XXX to a counsellor, because we rang Towards Healing wanting help and advice. We said, 'Please help us. Our children were at XXX school when XXX was there. He has now been put in jail for XX years for crimes he committed on other children. We are concerned about ours'. Towards Healing said to us, 'We're not here to help the parents; it's only for the victims'. No help ...

That is why we are here today to speak about the ripple effect. Some victims still cannot come out.

So you have this great ripple effect of the parents, the children, the wives, then the children. Then you have society ...

No, we cannot make it sound any worse than what it is, actually.

The one thing I really do want to emphasise is that it is not just the victims; it is the ripple effect that will go on forever.

As XXX said, the ripple effect on the whole family just continues. Here I am, I am one of the toughest blokes around and I am a blubbing idiot ...

I rang Towards Healing to say, 'Please could you help us. What can we do as parents?'. They said, 'We don't do that'. That is important. I would have liked that help then.⁹⁷

Another couple indicated:

When our children needed us most, we were not there.

We were always looking after them.

We were there, but we did not know the situation. I cannot add any more to that ...

So then he used to visit periodically, maybe once or twice a fortnight. But it always seemed to be when I was working night shift. My hours were 7.00 pm to 7.00 am, so I was away. He would always come after the 7.30 pm of that evening.

So to find out what was going on was gut-wrenching to me when it all came out and surfaced. It took a while to sort of come to terms with it, and, did this really happen? Of course I believed the children, of course I did; but I still could not get it into my mind that this was actually happening and a person in his position committing these acts.⁹⁸

96 Letter to Mr Anthony and Mrs Chrissie Foster dated 17 November 1998 from Peter O'Callaghan QC, Independent Commissioner, Melbourne Response.

97 *Submission S451*, Name withheld.

98 *Submission S482*, Name withheld.

Another witness told the Inquiry:

I suppose I partly came to talk about mum and dad's trauma too. Mum never really got over the fact that she felt that she did not protect Anthony, that she did not respond at the time. And that was her deepest hurt. And of course being a mother myself, and also being a teacher of 35 years, it is unbelievable that people that you look after and protect— you feel you have not done your job.⁹⁹

In contrast, the Catholic Archdiocese of Melbourne has on occasion awarded funds to a different kind of secondary victim or 'whistleblower'. This has been done outside the Melbourne Response process, although Mr Peter O'Callaghan QC has been instrumental in resolving these cases. Although Mr O'Callaghan QC's assistance in respect of these other individuals was well intentioned and generous, his helpful approach may have served to confuse other secondary victims who were 'outside' the Melbourne Response and the role of the Independent Commissioner. These claims (those of Ms Carmel Rafferty, Mr Graeme Sleeman and Mr Phil O'Donnell) related to Fr Peter Searson and his activities in Sunbury and Doveton parishes.¹⁰⁰

These individuals had raised their concerns with the Catholic Archdiocese of Melbourne at the time that they arose, but the Archdiocese had taken no action. As a consequence they raised them again, with Mr O'Callaghan QC in his capacity as Independent Commissioner for Melbourne Response when that process had commenced. Mr Sleeman was principal of the parish primary school in Doveton and raised complaints with the Catholic Archdiocese of Melbourne regarding Fr Searson, but nothing was done. Mr Sleeman ultimately resigned from the school and suffered significant emotional harm and financial loss, which he attributed to his treatment by the Catholic Church when his complaint was made. He told the Inquiry:

I have to say here that although I have mixed feelings about Mr O'Callaghan, he actually gave me support that I believe nobody else got. He paid me for eight years when I could not work. He said it was out of his pocket. When I challenged him about it he said, 'The Church knows nothing about it. I will get into trouble if they find out about it'. I believe in his own way he saw that some injustice had been committed. He interviewed me. He was also the one who approved my getting psychiatric care from my doctor ...

In about 2005 a payment was made to me, which gave me a chance to put a deposit on a house. I have heard all the references to the fact that we had to sign deeds of release, and I was in the same boat. As far as I am concerned I will go to my grave. I had a gun held to my head; we were virtually bankrupt, we had nothing. If someone came to you and offered you a price that was equivalent to the deposit on a house and the only condition was to sign a piece of paper, what would you do? I think I would have been certified if I had said, 'No, I am not going to do that'. It is probably the only time that I have perhaps compromised my values a little bit. I never thought that something like this would happen, so if the Church wants to sue me, let it, because I reckon it would make a good story.¹⁰¹

99 *Transcript of evidence*, Ms Anne Murray, Ballarat, 28 February 2013, p. 9.

100 *Transcript of evidence*, Ms Carmel Rafferty, Melbourne, 23 January 2013; *Transcript of evidence*, Mr Graeme Sleeman, Melbourne, 23 January 2013, p. 6; *Transcript of evidence*, Mr Phil O'Donnell, Melbourne, 23 January 2013.

101 *Transcript of evidence*, Mr Graeme Sleeman, p. 6.

Payments were similarly made to another teacher who had complained about Fr Searson, with Mr O’Callaghan QC being instrumental in securing funds from the Catholic Church.¹⁰² These payments were kept as quiet as possible through the use of confidentiality clauses within the terms of the Deeds of Release.

Under Towards Healing, secondary victims are not part of the facilitation process and do not receive payments from the relevant Church Authority. On discussing the assistance to secondary victims under Towards Healing, Sr Angela Ryan said:

I myself have sat down with many parents, especially mothers, who have been very distressed. On Sunday I am travelling to country Victoria to meet a mother who has just found out that her child, now a man, was abused. I have said I will go and talk with her so that we can work out what happens from there. So we would try to do that. The director of professional standards—especially when it comes to the end of the process with the facilitation, that would be part of what can be done. We probably have not done it well in a lot of cases. I apologise and I am sorry where we have not done it well. We should be trying to help people.¹⁰³

No information was available to the Committee about the treatment of secondary victims by the Salvation Army or the Anglican Church.

Finding 21.2

There is no existing recognition of or support for secondary victims of criminal child abuse in the systems used by organisations to respond to allegations of such conduct.

21.3. Confidentiality and police

An issue that has arisen during this Inquiry relates to the confidential nature of a complaint and the necessity or desirability of the organisation contacting the police to report the incident. The Committee were informed of the dilemma facing organisations which is set out as follows:

At its heart, this difficult matter requires a balance to be struck between:

- the rights of a victim
- the responsibility of society to protect its citizens and punish offenders
- the right to the presumption of innocence.¹⁰⁴

This issue of confidentiality and police reporting is considered in detail in Chapter 23 of Part G of the Report.

21.4. Compensation

This section of the Report considers the approaches to financial and other forms of compensation used by the Melbourne Response, Towards Healing, the Salvation Army and the Anglican Diocese of Melbourne.

¹⁰² *Transcript of evidence*, Ms Carmel Rafferty.

¹⁰³ *Transcript of evidence*, Towards Healing, p. 5.

¹⁰⁴ *Submission S185*, Catholic Church in Victoria, p. 112.

21.4.1. Compensation—Melbourne Response

Within the Melbourne Response, the Committee considered the following components relevant to financial and other forms of compensation:

- Compensation Panel
- cap on financial compensation and its justification
- approach to legal advice
- approach to apology.

Compensation Panel

As outlined in Chapter 20, the Committee found that Inquiry participants who participated in the Catholic Church protocols did not feel their needs were adequately met. One of the criticisms was that compensation payments were low compared with what might have been available through successful civil litigation. The relatively modest amount of compensation was acknowledged by the Catholic Church in its evidence to the Committee. Mr David Curtain QC, Chairman of the Melbourne Response Compensation Panel, for example, acknowledged that the amount awarded through the Compensation Panel ‘is a lot less than you would get from the court if you could prove your case.’¹⁰⁵ Similarly, Cardinal George Pell indicated that ‘the compensation side of Towards Healing is quite underdeveloped.’¹⁰⁶

In regard to the Melbourne Response, Archbishop Denis Hart of the Catholic Archdiocese of Melbourne told the Inquiry that:

I do believe that our system is established precisely to provide an alternative to the burden and the struggle and the difficulty of the legal process.¹⁰⁷

However, a number of Inquiry participants told the Committee that they felt that the Melbourne Response process, and in particular the Compensation Panel, was too legalistic.¹⁰⁸

The Melbourne Response Compensation Panel, for example, appeared to operate as a determinative form of alternative dispute resolution, whereby a dedicated body hears and decides the amount of compensation to be awarded to a victim. However, the Committee found that the members of the panel are appointed by the Catholic Archdiocese of Melbourne itself, and the victim has no power of veto over the members of the Compensation Panel. In this way, the Melbourne Response Compensation Panel lacks an impartial facilitator, which is a necessary feature of alternative dispute resolution processes.

Under the Melbourne Response process, once the Independent Commissioner has found that abuse has occurred, the victim can apply for an ex gratia payment from the Compensation Panel. However, this is not a compensation payment—it does not accurately reflect the level of harm suffered by a victim or serve as an admission that the Catholic Archdiocese of Melbourne is legally liable to compensate the victim.

105 *Transcript of evidence*, Compensation Panel, p. 10.

106 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 55.

107 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 48.

108 *Transcript of evidence*, Dr Joseph Poznanski, p. 3; *Transcript of evidence*, Mr James Boyle, Melbourne, 15 March 2013, p. 8; *Submission S188*, Ms Robin Henderson.

These conditions were recognised by the Chairman of the Compensation Panel, Mr Curtain QC, in evidence to the Inquiry:

This is not suggested to compensate, and I tell victims, ‘This is a financial recognition of the wrong that’s done to you. You will also receive, unless you wish not to—and some expressly wish not to—a letter of apology from the archbishop. You will also have access to counselling. It’s a package. The money is a part of it’. Quite interestingly, some people focus on the money and some people who have got the most hideous abuse are very grateful for the apology. People have different approaches to it, and that is the human condition.¹⁰⁹

And later:

No, it is not suggested to give full compensation. If I said compensate, I meant it does not give full compensation. I think I have explained that clearly ...

Of course it is compensatory, but it is not full compensation ...

That is my point: it is never full compensation. So when you talk to me about full compensation, please understand I accept fully it is never enough, but I never suggested that this was full compensation in the Melbourne Response.¹¹⁰

The use of the term ‘Compensation Panel’ to provide *ex gratia* compensation is confusing to those who do not understand that the payments are not full compensation for their suffering. Similarly, the Melbourne Response labelling of compensation as ‘*ex gratia*’ emphasises that in making such payments the Catholic Archdiocese of Melbourne admits no legal responsibility for failing to take reasonable steps to prevent the abuse of victims, or for its contribution to any damage suffered.

The Committee noted from evidence to the Inquiry that victims felt they had been ‘grilled’ by the Compensation Panel. They perceived it as a panel of professionals lacking the pastoral care they had hoped for in seeking redress. One victim, whose perpetrator had already been convicted of the abuse said:

You are sitting in front of all these people who would just basically stare at you, asking you questions which were totally irrelevant to what I was feeling.

‘Were you really raped then?’. No, I was not—it is in court. It is on the documents — the whole works. I cannot remember too much more on that, but I just came out with this horrible feeling. Actually I do remember a little bit.¹¹¹

Victims reported that they did not feel involved as active participants in the process, which operated as an adjudication rather than a negotiation of settlement. The Compensation Panel does not give victims information about the amounts awarded in previous cases, or how it arrives at each decision. For example, one victim stated:

Yes, it was like I had put my case again. I had four people on the opposite side. You are a victim anyhow, and I can assure you ... did not make a victim feel any better. In fact it was more of a power play on his behalf, basically saying, ‘There have been other people who have been abused a great deal. We are quite conscious of what you have been through but the fact is that not everybody gets the top amount of money’. And that is fine, but it was just that not caring, you know. You have come to a compensation panel, they have read your file of what has gone on in your life, and I could not believe it ...

109 *Transcript of evidence*, Compensation Panel, p. 6.

110 *Transcript of evidence*, Compensation Panel, pp. 8–9.

111 *Submission S478*, Name withheld.

it was just cold, callous, calculating. I felt like he and the others just wanted to get out ... that is exactly how I felt. That is it ...

They were questioning my worth ...

I felt, and this is a feeling— it was like they have seen so much abuse and I, personally, have read so much abuse of these poor people, that what has happened to me was not as significant as others. That is what compensation is about, but to be so blunt in his decision making and his way of speaking to me, and how— I do not know whether you have heard from others, of his manner, but it is nowhere near appropriate for people. It is nowhere near appropriate ...

I was not happy with the process at all ... asked to provide me with written documentation on how the compensation panel arrived at this amount. He stated he would not give me any written or oral reason for his decision. He suggested that I take civil action if I wanted more compensation ...

I have read so much of victims suing the church, and how the church went to great lengths to elongate the process to make it more costly, financially, mentally and emotionally difficult for the victim. Realistically, a victim does not have much choice when the facts are laid out. The church knows this. I believe the ex-gratia payment, or compensation, given to a victim is to stop the church being sued further. As a victim, I believe that compensation given just means that I have given up my rights to sue the church. I feel many other victims feel this way.¹¹²

Mr Curtain QC did not recognise these victims' perception of the operation of the panel's operations, as the following comment to the Inquiry demonstrated:

But can I stress this: it is not just that. We tell the victim also that counselling is available—that is important to many of them—and we tell the victim that that counselling will be available as long as it is of some benefit to them. We also tell the victim that they do not have to tell us anything about the case—they do not have to repeat anything; they do not have to re-prove it. I feel very strongly about that, because coming from a common-law background I know that it is difficult for victims, say, in an accident or an assault, to repeat the circumstances, but in this situation, as in many others, that is the only way we can find out about it, so we have to do it. We usually do it by the paperwork, by the interview with the psychiatrist. I say, 'We've read all the material. If there's anything glaringly wrong that you think might give us the wrong impression, please let us know. But if it's just the name of your pet puppy or something like that, we don't care'. Then we say, 'If you'd like to say anything, to correct anything, to change anything, to add or subtract anything, please feel free to, but you don't have to say anything'.¹¹³

Victims who are dissatisfied with the amount of compensation offered are not able to negotiate a different outcome or appeal the decision. The only avenue appears to be to contact the Chairman of the Compensation Panel.¹¹⁴ When questioned about the review or appeal process, Mr Curtain QC said:

If you mean a body outside the Church, I believe no. I believe the Church would be looking at what is paid out and have details of that, and if that is a review, then I am sure that has happened, but I have never been subject to scrutiny or anything like

112 *Submission S485*, Name withheld.

113 *Transcript of evidence*, Compensation Panel, p. 5.

114 See also Section 21.7: Review and/or appeal.

that. I am in a position where if anybody felt they had a complaint about me, they would be welcome to make it. Everybody knows my number.¹¹⁵

Section 21.7.1 discusses the appeal process in greater detail.

Cap of \$75,000 and justification

In the Committee's examination of the files, it identified settlements in the Melbourne Response process that ranged from \$15,000 to \$50,000. It was informed that the limit for an ex gratia payment from the Compensation Panel has been increased to \$75,000. Mr Curtain QC indicated that average awards were between the upper \$50,000s and \$75,000.¹¹⁶ The Committee heard that the Melbourne Response compensation cap was based on the maximum award available to victims of crime through the Victorian Victims of Crime Compensation Tribunal (VOCAT).¹¹⁷ Cardinal George Pell made the following remark to the Inquiry regarding the setting of the cap:

It was certainly based on justice. I would remind you that the cap that the Melbourne Response put on those payments was paralleled by the cap on the government's offer to the victims of crimes, which was then \$50,000. I have seen the list, right across Australia, of the caps that governments put on these compensation payments. I am not sure if there are any today that are much above \$50,000. In other words, our response was comparable to what was done right across the nation.¹¹⁸

Cardinal Pell was challenged on the grounds that the critical difference between state compensation and the Melbourne Response is that the State is not responsible for the crimes in respect of which awards are made under VOCAT, whereas the Catholic Church was partly responsible for abuse perpetrated by its personnel. In response, he disputed that the Catholic Church was always responsible for the crimes:

Once again, that needs to be clarified. I am not responsible in law for the crimes that someone, say, a priest or an employee of the Catholic Church, has committed—technically. I am technically responsible if I was warned about this person and did nothing ...

In that case the bishop is clearly guilty. But let me say, if a crime was committed by a Melbourne priest when I was archbishop, before my time, technically we might not have been liable, but we always paid compensation because we acknowledged the moral obligation that followed.¹¹⁹

However, there were many instances where the Church clearly had a responsibility and it was not just a situation of moral obligation. Additionally the amounts paid out are difficult to reconcile with the Church's recognition of the level of damage suffered by victims and a moral responsibility to provide funds, where funds are not commensurate with the damage suffered.

Mr Curtain QC from the Compensation Panel said:

The maximum that can be awarded now is \$75,000. It used to be \$55,000 and we suggested some years ago that it be increased. It was, as I understand it, historically related to what victims of crime could be awarded by the court, and it is an interesting parallel because victims of crime are awarded money not by the perpetrator but by another person. In

¹¹⁵ *Transcript of evidence*, Compensation Panel, p. 5.

¹¹⁶ *Transcript of evidence*, Compensation Panel, p. 10.

¹¹⁷ See Chapter 27 of Part H regarding compensation schemes through VOCAT.

¹¹⁸ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 18.

¹¹⁹ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 18.

this case, the money does not come from the perpetrator; it comes from the Church which accepts a moral responsibility but does not have a legal responsibility.

I might come back to that later, if you like, and I know that people have different views about it, but every person who has come before our panel is in a circumstance where I believe they would be unable to successfully bring a claim, either because of the impecuniosity of the perpetrator or the death of the perpetrator or because they would not be able to establish the requisite link between the Church and the perpetrator. Can I say I understand completely that people think that should not be the case, but that is what we are dealing with here.¹²⁰

The significant legal and practical barriers that prevent victims from succeeding in a civil claim against religious and other non-government organisations including the Catholic Church are considered in Part H of this Report. These barriers contribute to the sense of hopelessness that many victims experience, and their feeling that they have no option but to accept the Compensation Panel's offer as there are no viable alternatives. The Committee challenged leaders of the Catholic Church on their preparedness to review some of the decisions, the funds granted and the amount of compensation.

When questioned by the Committee about the amount of compensation, Cardinal Pell indicated:

What is important and is to repeat, [sic] I think: we are always ready to pay whatever the law of the land says about compensation, and we want to do that, in an Australian context, like any other Australian group.¹²¹

When asked if the Catholic Church would do that retrospectively he responded:

Yes, we have. We have tried to do that since we have paid the compensation.¹²²

In responding to a Committee query as to whether payments would be revisited he indicated that 'if there were a good case. I can only speak for Sydney.'¹²³

When challenged about the morality of paying victims of abuse \$75,000 Cardinal Pell stated:

The church has never claimed that it would be unable to pay appropriate compensation. Our compensation is low in comparison with the United States. I suspect that with the vast majority of the world we would compare quite favourably, but whatever about that we are prepared to—it goes without saying: we will pay whatever the law recommends as appropriate compensation.

Also, if I could just repeat, and as you said, many of the victims are not particularly interested in money. The more important thing is due process, justice and help with getting on with their lives ...

The church will continue to fulfil its obligations as they are defined in Australian society and will continue to try to help the victims ...

I do not believe we have a moral obligation to match the unusual figures from the United States. I myself, in my bailiwick, certainly in Sydney I would— in Sydney I do not have an inflexible cap ...

We do not need to sell investments at the moment to pay our damages. Whatever

120 *Transcript of evidence*, Compensation Panel, p. 6.

121 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 28.

122 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 28.

123 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 28.

damages and compensation there are, we will be fully able to do so.¹²⁴

The Committee considers that basing levels of church-funded compensation on a state-funded scheme to help victims of crime fails to acknowledge the Church's responsibility in allowing the abuse to take place and its contribution to damage suffered by victims as a consequence of the actions of its representatives. The State's acceptance of a social obligation to assist a victim of crime is an entirely different matter from that of a religious organisation which has contributed to the offence through its own deficiencies of process or otherwise.

Confidentiality

Mr David Curtain QC from the Compensation Panel did not accept that the application for compensation contains a confidentiality provision that was legalistic and difficult for victims to understand:

Not at all. I tell each victim who appears before our panel that the proceedings are confidential. I explain that by that I mean that no member of the panel will ever discuss what happens in that meeting outside the room—and we never do. However, I make it clear to each victim who appears that that does not impose any confidentiality on them, that they are free to say whatever they wish about the process and about the panel. I tell them they can sing it from the rooftops after they leave the building and I say to them specifically, 'I tell you this' because it has been said that their silence has been bought, and that is not the case. I particularly emphasise that there is no confidentiality imposed upon them, and they could not possibly think it was a legalistic approach ...

From time to time I have had a victim contact me afterwards—and they regularly contact me before, as well as after, because I give them my direct line to do it—expressing dissatisfaction with the amount. I cannot think of an instance where it was not confined to the amount. There are not many of them, but I am not surprised that people are disappointed if they do not get the maximum.¹²⁵

Contrary to this view, Inquiry participants told the Committee that they perceived compensation received through the Melbourne Response as 'hush money'. This was due to the inclusion of confidentiality clauses in documents that victims were required to sign, namely the Application Form for Compensation, which reads:

I, XXX ...

Apply for ex gratia compensation from the Archbishop and Archdiocese of Melbourne in respect of sexual abuse committed against me as found by the Independent Commissioner appointed by the Archbishop, and I make this application on the following basis: ...

(d) neither I nor any person acting on my behalf, or any member of the Panel or the Archbishop or any person acting on behalf of the Archbishop or the Archdiocese will (save as required by law)

(i) disclose to any person;

(ii) rely or seek to rely in any arbitral or judicial proceeding (whether or not such proceeding relates to the subject matter of the application) on

Any communication statement or information whether oral or documentary made or provided in the course of the Panel's deliberations; ...

¹²⁴ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 29.

¹²⁵ *Transcript of evidence*, Compensation Panel, p. 2.

(f) I and each member of the Panel and the Archbishop and his advisers will, unless otherwise compelled by law, preserve total confidentiality in relation to all matters arising in the course of or in relation to the Panel's deliberations, whether documentary or oral, that may be provided to the Panel or to me.¹²⁶

Although the Committee is not aware of any cases of a victim being prosecuted for a breach of these confidentiality clauses, the perception of victims nevertheless remained that they were not to talk about the abuse if they wanted compensation.

The Committee noted that the correspondence to victims offering compensation makes it clear that the victim is not bound by confidentiality.

Legal advice

The Melbourne Response process does not include the provision of independent legal advice to victims at any stage. Mr Curtain QC commented:

Criticism is made of the absence of provision by the Church of legal support. In my opinion, this is to misunderstand the process. It is not adversary but conciliatory and victims do generally not perceive a need for legal representation. It is understood that a lawyer would say that lawyers should be present in all forms of compensation, but that is not a complaint made by victims. What is important to the panel is meeting the victim and making an informed assessment of the victim and his or her circumstances. Our task is to help the victims articulate their positions and the effect the abuse has had on them. The process has parallels with that involving victims of crime in that the compensation is not paid by the perpetrator.¹²⁷

Melbourne Response claims are finalised by the signing of a Deed of Release. The terms of the Deed of Release used by the Melbourne Response process are shown in Box 21.1. Given that signing the Deed of Release settles any potential legal claim/s the victim has against the Catholic Church (and often the alleged perpetrator) in respect of that abuse, the need for independent legal advice is obvious.

However, requests for the Melbourne Response to pay for legal costs of a victim involved in the process have been refused by the Chairman of the Compensation Panel. In a letter to Father Kevin Dillon regarding costs, Mr David Curtain QC indicated:

I believe the process is set up so that the opposite is true, that is that victims do not need to seek legal counsel.¹²⁸

126 Pro forma—example of Portion of Application for Compensation Form Melbourne Response.

127 *Transcript of evidence*, Compensation Panel, p. 18.

128 *Submission S325*, Father Kevin Dillon. Attachment 5.

129 Pro forma—Deed of Release.

Box 21.1: Terms of Deed of Release—Melbourne Response

1. In consideration of matters aforesaid, and subject to paragraph 6, the Applicant hereby releases and forever discharges the Archbishop, any person who has in the past been the Archbishop of the Catholic Archdiocese of Melbourne from all actions, claims, demands, causes of action and costs howsoever arising or of whatsoever nature arising out of, connected with or in relation to the abuse ...
5. In consideration of the matters aforesaid, the Applicant agrees and warrants that subject to paragraph 6 he will bring no action and make no claim for damages or compensation howsoever arising or of whatsoever nature arising out of or connected with the Abuse ...
8. This deed does not affect any entitlement that the Applicant may have to the services of or to services supplied through Carelink, nor does it oblige the Archbishop or any person who may in the future be the Archbishop of the Catholic Archdiocese of Melbourne to cause any such services to be supplied ...
7. This deed may be pleaded by the Archbishop and by any person who was is or becomes the Archbishop of the Catholic Archdiocese of Melbourne in bar to any action, claim or demand now or hereafter commenced or made by any person arising out of or connected with the Abuse.¹²⁹

Source: Melbourne Response Pro Forma Deed of Release, provided to the Family and Committee Development Committee by the Catholic Archdiocese of Melbourne.

Victims also expressed concern about the terms of the letter of offer. They felt obliged to accept this because if they did not take the offer they would get nothing. The letter of offer used wording indicating that achieving an outcome outside the process would be difficult for victims. An example of the wording used in letters of offer prior to November 2002 is shown below.

Dear XXX ...

The Compensation Offer together with the services that remain available through Carelink, are offered to XXX by the Archbishop in the hope that they will assist XXX recovery and **provide a realistic alternative to litigation that will otherwise be strenuously defended**. Importantly, it is also hoped that XXX will in time be able to put the abuse XXX has suffered behind her, and focus on the future. Enclosed is a personal letter to XXX from the Archbishop ...

If XXX rejects the offer now, XXX will remain bound by the terms of the application for compensation form and in particular, may not disclose or rely upon this offer which is, of course, put on a without prejudice basis.¹³⁰

One victim described his reaction to reading the letter of offer from the Melbourne Response:

My offer of a \$30 000 ex gratia payment was something that I could not appeal!! Also, I was firmly instructed by the Archbishop of Melbourne, George Pell, that they would 'strenuously deny' any further attempts for financial recognition, for the lifetime of emotional pain, suffering, shame, guilt, humiliation, time spent in counselling, time

¹³⁰ Pro forma letter of offer pre November 2002. [Committee emphasis] Refer to Appendix 11.

away from my family and work, post-traumatic stress, anxiety ...¹³¹

In response to a request by the Committee for further clarification, the victim indicated:

It was not said to me; it was just a standard letter that came out. Unfortunately I do not have it with me anymore. I was fairly vigilant in keeping a lot of things, but the absolute letter which came out with the offer I do not have still. The thing was it was a standard letter that I have seen other victims receive. The only thing that was different was the name and the dollar amount, but they all had 'We will strenuously deny this in court', or 'strenuously defend our situation'...

Well, I knew I could not do anything else, because we had been fighting for so many years. The different lawyers that I had been with had been trying all kinds of angles and in the end they just said, 'Look, we don't know who we can sue; they just don't exist as a legal entity'.¹³²

Another victim indicated:

Yes, Pell— I should not say anything else. He decided to put this commission together, I think the Melbourne Response is what they were calling it. XXX and I were together with these lawyers, and at the end of the day it was just costing us, costing us and costing us. At the end I think it cost me about 12 grand, even without leaving work, flying from Perth to Melbourne and that sort of stuff. I was basically going broke. That is basically what it came down to at the end of the day. I thought I had tossed everything away, but I found these about two weeks ago. I got a lawyer there. This is basically between my lawyer and this horrible mob of lawyers called Corrs Chambers Westgarth. There is a bloke called Mr Leder— Richard Leder or whatever his name is. From there, because we were basically going broke and running out of money, we were forced to go to a panel. Actually, I will just give you another quick one here. This paragraph here— that is what we are against.

This is through— I am not too sure. It is either Cudmore or O'Callaghan via Pell, because it is from Pell. The second last thing there is basically saying, 'Listen, we will give you compensation, but if you try to take us to court, we are going to strenuously defend any actions there', which they have been doing for the last four years.

... so basically we still could not take them to court because they were going to make us go even more broke. I might go through the response part of things. When I saw Mr O'Callaghan I said to him, 'You got all the documents there. If we put a bloke in jail, what more do you want?'. That sort of thing, you know? They then went to this other panel, and they asked me all these stupid questions there. A bloke is in jail, so they knew exactly what happened to this bloke there.¹³³

This approach was consistent with that adopted prior to the introduction of the Melbourne Response.¹³⁴

The Committee noted that the language of the letter of offer of compensation changed in 2002. However, a large number of victims had already received a letter expressed in the terms quoted above. Given the significant legal and practical

131 *Submission S458*, Name withheld.

132 *Submission S458*, Name withheld.

133 *Submission S478*, Name withheld.

134 See Section 7.5.3 in Part C.

barriers to an individual succeeding in a civil claim against the Catholic Church, victims understood that if they did not accept the Church's offer they would face a legal battle in pursuing their claim. This approach is relevant to the issue discussed later in this chapter regarding victims' views of the actions of the Catholic Church in Section 21.10.5.

Apology

The Committee found that the way in which victims received an apology through the Melbourne Response process caused some victims to doubt whether the apology was genuine. For example, a number of victims criticised the practice of the Melbourne Response sending a letter of apology in conjunction with a letter of offer for compensation which stated that if a claim were taken to court it would be 'strenuously defended'. Accompanying the letter of apology, such expressions in a letter from solicitors for the Catholic Archdiocese of Melbourne created a perception that the apology was not genuine. Although the terms of the letter of offer have changed, it remains an issue for victims that an apology is only forthcoming after an offer of compensation has been made, rather than as soon as a finding of abuse has been made.

Blaming the offenders has been a core feature of the apologies the Catholic Church has issued for the abuse, frequently described as a 'rotten apple' problem. People criticised the terms of the apology as not recognising the Catholic Church's role or contribution to the damage suffered by the victim:

On behalf of the Catholic Church and personally, I apologise to you and to those around you for the wrongs and hurt you have suffered at the hands of XXX. Whether or not you choose to accept the enclosed offer, I offer you my prayers.¹³⁵

The many Ridsdale and O'Donnell victims and their families would have received little comfort from this type of apology, as it fails to acknowledge in any way the Church's role in their offending. The focus of the apology is on the offender's conduct and behaviour rather than the responsibility of the Catholic Church for the conduct of its personnel. It is not surprising that this kind of limited apology was not accepted as genuine, and arguably contributed to further distress for the victim, particularly those who suffered at the hands of a perpetrator who was at the time of the abuse known to the Catholic Church.

Refusal to acknowledge the Catholic Church's culpability remained the Church's position until this Committee called its senior representatives. Initial apologies were expressed in terms of the actions of the priest or religious as opposed to any recognition of the culpability of the organisation.

Archbishop Denis Hart acknowledged that the first time he apologised for the Catholic Church's role in covering up abuse and its contribution to the damage suffered by victims of abuse was before the Committee:

I acknowledge that our incapacity to see and to react to this situation in a timely way has given rise to the need for this Inquiry. I understand that the community is looking for someone to take responsibility for the terrible acts that occurred. I take responsibility.

I am appalled by the actions of these criminals against the weakest and most

¹³⁵ Pro forma apology.

defenceless in our community. I renew my apology on behalf of the Church, and I apologise to the children who were the victims. No-one can know the pain that their families have suffered, and I apologise to them too, as well as apologising to the community.

I apologise unreservedly for one of the darkest periods in our Church's history. We failed to recognise that abuse was occurring. We failed to recognise that we had paedophiles in our midst. We failed to really listen to people when they came forward to complain. We failed to do what is right. For these failings and the hurt and suffering that followed, I apologise.¹³⁶

Ultimately, in their evidence to the Inquiry, officials admitted that the Catholic Church had effectively facilitated the commission of offences. Notably Cardinal Pell conceded to the Committee that:

There is no doubt about it that lives have been blighted. There is no doubt about it that these crimes have contributed to too many suicides, and that is an ultimate tragedy.¹³⁷

21.4.2 Compensation—Towards Healing

The Towards Healing processes that the Committee considered in its provision of financial and other forms of compensation include its facilitation process, its approach to providing apologies to victims and its advice regarding legal representation.

Facilitation

Towards Healing offers victims financial assistance, which is negotiated in a facilitation meeting between the victim and the Church Authority. Towards Healing does not have a monetary cap, and is more similar to a civil settlement. Facilitation is described as a 'communication' between the Church Authority and the victim. However, it really is mediation, organised in order to settle a victim's case.

A facilitator appointed under Towards Healing has little influence over the proceedings, as this person merely 'facilitates' communication between the two parties. It appears that the facilitator usually, if not always, expressly informs the parties that any discussions are confidential and conducted on a without-prejudice basis.

Facilitation occurs either after the substantiation of a complaint or if a Church Authority decides to proceed straight to facilitation. If a victim's complaint is found to be unsubstantiated, the victim is often referred to a pastoral meeting.

The Committee, after examining the files, found that facilitations generally seemed to proceed quite well, and the overall feeling was one of usefulness and positivity, rather than complaint.

The facilitation usually involves:

- the Church Authority apologising for the abuse perpetrated by one of its members
- negotiation of an ex gratia payment in exchange for the victim signing a Deed of Release that extinguishes any future liability of the Church Authority.

¹³⁶ *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 51.

¹³⁷ *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 14; *Transcript of evidence*, Catholic Diocese of Ballarat, Melbourne, 29 April 2013, p. 14.

Apology

In regard to the apology, one victim told the Inquiry:

The other thing that I got which really upset me was a very generic apology, a legally safe apology and one which I have since found out was almost like one that is photocopied and they just change the name here and there. I have pushed for a more sincere apology that really related to what actually happened but never got that.

I kept asking the same thing. I told you about how it all started with me. A priest abused my brother, who then started abusing me almost identically. I found all this out later, and I put two and two together. I have done a bit of track work on that priest, who was sent back to the USA, and I have got where he has been since he was ordained until he supposedly died. He has been shifted around so many times, name changes and everything, but I cannot find anything much more about him.¹³⁸

As with the Melbourne Response, many victims doubted whether the apology they received from the Catholic Church through Towards Healing was genuine. Mr Russell Clark, for example, felt that he had received a ‘run-of-the-mill’ apology, which did not help him to deal with the abuse he had suffered.¹³⁹

Legal representation and insurance

The Committee noted the following in regard to Towards Healing and its approach to legal representation by victims:

- Solicitors, support persons and other interested parties (such as Catholic Church Insurance (CCI) or the Church Authority’s insurance representative) can be present at the facilitation.
- Victims were not necessarily aware of an insurer’s involvement until they attended facilitation. Consequently, the exact nature of an insurer’s involvement was unknown to the victim until this point, or if the insurer organised a psychiatric assessment of the victim.
- The involvement of CCI and whether the victim is legally represented, seem to influence the level of ex gratia payment awarded. The outcome is also highly dependent on the attitude of the relevant bishop or religious superior, with some of these individuals being more defensive than others. This has led to inconsistencies in approach.

The Committee found that after December 2012 the Church gave victims a small amount of money to seek legal advice relating to the Deed of Release. Before this time, similar issues arose as with the Compensation Panel—victims did not necessarily receive legal advice before signing Deeds of Release. The Committee noted that some Church Authorities include a denial of liability in the Deed of Release. As to legal representation and the facilitation process one witness told the Inquiry that:

[the Provincial leader] came in with a solicitor. I was there by myself—actually, I had my brother with me. We were there together. We had no representation. They proceeded to tell us how what happened was not that bad and very much tried to play down that we had any right to even be talking to them about a claim. It came down to that they had a piece of paper there, which I believe was a deed of release, and

¹³⁸ *Submission S464*, Name withheld.

¹³⁹ *Submission S078*, Mr Russell Clark, p. 2.

said, 'However, if you sign this, you won't need to go to court, you won't need to get solicitors and that will be it'. At that stage my family were just—it was killing all of us. So we just did; we just signed it. We just felt like we had no other choice. We were not given any other options. We did not seek any legal advice. We just did what they said, and that was it ...

It was just inadequate. I mean, it was just wrong. As you go along in life and you get a bit older, it just eats away at you. You just think, 'Well, hey, how can they do that?'. That is what I am saying. They were just ticking the box. They just wanted us to go away, and we were dealt with. It is not right. So, yes, I think it needs to be on our terms, not their terms.¹⁴⁰

Many victims told the Inquiry they had no choice but to accept the compensation offered through Towards Healing. For example, Mr Russell Clark told the Committee that when he expressed dissatisfaction with the amount offered, he was told 'you either take it or you get nothing.'¹⁴¹ Like many victims, Mr Clark needed medical treatment and had little money, so he accepted the compensation amount offered. He was not told that the decision could be appealed.¹⁴²

One victim described his involvement in the Towards Healing process as follows:

My life since the age of 12 has been qualified by the internal conflict of silence yet knowing. All my endeavours in life have been compromised by a fear that the forward steps would expose the past—a past that I was told never to speak about. I have tried to speak, and it is on my initial submission that I focus when I say the Towards Healing protocol has had an adverse healing impact; it was as if 'they' did not let me speak—'they' did not listen.

Could I say, too, to the well meaning who say they speak for me when they say I will be further traumatised by this or any other inquiry, to be told what I will feel, for me, strips me of a sense of self. Do not tell me what I will feel. Listen, and let me speak.

I would like to elaborate a little on my earlier submission by addressing in more detail my experience with Towards Healing and how it left me feeling. The first complaint I made in 2003 resulted in the home visit of a quiet, encouraging and patient man who took my statement without imposing himself in any way. He listened, and he spoke only to clarify my words. I found this a most rewarding experience. I then received a telephone call to advise that, as my complaint had been accepted, the matter would proceed directly to facilitation. My written submission to this inquiry details my experience here, but perhaps it does not convey how it left me feeling. Can I say here the paedophiles in my case imposed themselves on me physically and verbally. I cowered, subordinated. The actions of this Towards Healing facilitator were, I think, designed to keep me subordinated and certainly on the back foot. A loud person in a noisy cafe, he imposed, told me what would be good for me and told me what not to expect. He spoke; I did not get the opportunity ...

He tried to win me over. Again he did most of the speaking. He tried to draw me into his life. It left me feeling like I had no place other than if I was to accept his way. He had no understanding of the fundamental devastation caused by the physical sexual imposition of an adult man on a 12-year-old boy in the early stages of puberty. If he

140 *Transcript of evidence*, Mr Philip Nagle, p. 4.

141 *Submission S078*, Mr Russell Clark, p. 3.

142 *Submission S078*, Mr Russell Clark, p. 3.

did, he would have just stopped and listened. As it was, he thought he had the answer for me. He tried too to defend the actions of the paedophile. I felt like a battery toy hitting a wall, trying to climb, falling back and going again, going again, trying over and over ...¹⁴³

Another victim told the Committee

The reason we agreed to a settlement and got the release signed was that I wanted someone to apologise to my parents ... We wanted them to meet my parents ... We were just sick of it. Ninety per cent of our wider social group were Catholic. We lost enormous numbers of our people. We had people coming to us and saying, 'Why don't you just forget it? It happened so long ago. What are you dragging the church through this for? Not all of the church is like that. They are good men. They do good things. How dare you besmirch the church', and all those sorts of things.¹⁴⁴

A review of the Towards Healing files confirmed that although some claims appeared to have been resolved satisfactorily, there were many others where a level of dissatisfaction was evident. This was despite evidence showing that the process had accepted the accounts of the majority of victims.

As with every other part of the Towards Healing process, facilitation meetings and their purpose have been refined over time. Generally the changes that have taken place since the inception of Towards Healing have been regarded as positive.

21.4.3 Compensation—the Salvation Army

Lawyers for the Salvation Army are involved in the settlement of claims for compensation. Many of these claims are against both the Salvation Army and the State Government, because the Salvation Army provided care for wards of the State. Resolution of a claim therefore generally involves a number of parties and retains a legalistic approach to compensation. If the Salvation Army receives a complaint from someone without legal representation, the Committee's file review indicated that the Salvation Army can choose to handle the complaint internally or pass it to their solicitor for handling.

If it chooses to handle the complaint internally the complaint is sent to the Professional Standards of the Personnel Department and an internal investigation into the complaint is completed and a preliminary decision regarding appropriate settlement is made.

If the Salvation Army passes the complaint to its solicitors for handling, the complaint is handled in the same way as if the complainant were legally represented.

Legal representation

The Committee's review of the files confirmed that the majority of victims who approach the Salvation Army were legally represented.

Although the Care Leaver Complaint Process states that the Salvation Army will encourage self-represented complainants to obtain independent legal advice, it is not clear in the files reviewed by the Committee if this always occurred.

¹⁴³ *Transcript of evidence*, Mr Jim Commadeur, p. 2.

¹⁴⁴ *Submission S454*, Name withheld.

For those who do not engage legal representatives, the files revealed that the amount of financial compensation offered during internal negotiation of settlement with the Salvation Army was considerably lower than compensation offers negotiated with Salvation Army's legal representatives.¹⁴⁵

For example, in one claim where a settlement of \$10,000 was reached, a memo was sent by the Salvation Army to the Secretary of the Territorial Finance Committee stating that the settlement was complete but it was in the lower range of settlements previously approved in these matters. A further example of diminished monetary compensation was a settlement where a complainant received just \$500 to enable him to pay his airfare interstate.

Apology

The Committee established from the files reviewed that a generic apology was provided to the victim after completion of their settlement. It heard that some victims felt the Salvation Army's apology was inadequate. Mr Brian Cherrie, for example, provided the Committee with the apology he received from the Salvation Army, which stated:

I wish to express the Salvation Army's apology for the sexual and physical abuse which you say occurred.¹⁴⁶

He explained that, instead of providing a genuine acknowledgement of the abuse, this wording suggested that the Salvation Army questioned whether the abuse took place at all. He told the Inquiry:

I was pretty disgusted. Part of the deal was the written apology, but the written apology in my view is ridiculous; it is just the way it is written. It is like doubting what happened, and there are just too many claims.¹⁴⁷

The Committee found in its review of the Salvation Army's files that this was the standard response provided to victims. The Salvation Army does not investigate instances of abuse, but neither does it appear to really accept that the abuse occurred. An example of the Salvation Army apology is provided in Appendix 11.

21.4.4 Compensation—Anglican Church

The Anglican Church can and has provided financial payment as part of its process. However, as previously indicated, financial compensation is not the focus of this system. As explained in evidence to the Committee:

Yes, we have; that is the short answer. But not all of those people and not all of those 46 people who have made a complaint about child abuse have wanted a financial settlement. There are many different things that people seek as a result of coming forward, and we should not assume that a financial settlement is what everybody is looking for. We try to tailor our Response to what the person is looking for, so we actually ask them. Your Committee has asked, 'What does justice look like?' We ask people, 'What do you need? What are you hoping to achieve? What would help you towards your future?', and all sorts of different things come out of that. Any figure that we might talk of as a financial settlement does not include significant, for example, counselling costs that we offer.

145 For further detail about compensation, refer to Appendix 9.

146 *Transcript of evidence*, Mr Brian Cherrie, Melbourne, 4 February 2013, p. 7.

147 *Transcript of evidence*, Mr Brian Cherrie, p. 6.

As soon as somebody rings up, I offer them counselling from an independent, professional, registered psychologist, and we undertake support for that person while they are in the decision-making process about whether they are going to make a complaint. There are many things that people might want. They might want to [sic] apology. For example, someone might want an apology, some counselling and payment of a specific education course or payment to a specific charity. We would assist people in that way, and that would not show up in our figures of financial reparation ...

We have had settlements that have exceeded the cap of \$25,000, without doubt ...

We have a very longstanding relationship with our insurers, Ansvar, who I believe have appeared before the Inquiry. We believe we have a very open and engaging relationship with them, particularly on this matter, where of course they, like us, are very interested in managing risk going forward. So they have been particularly useful to us in providing ideas about how we appropriately manage risk in these important areas.¹⁴⁸

Finding 21.3

The approach to financial compensation by the organisations reviewed often did not provide a clear explanation of the basis on which an organisation makes a financial payment, how the amount awarded was determined and obligations regarding confidentiality.

Finding 21.4

Organisations rarely encourage participants in the process to seek independent legal advice before reaching any agreements that might affect their subsequent legal rights.

Finding 21.5

Organisations tend to provide generic apologies that do not focus on the specific circumstances of the individual and the role played by both the perpetrator and the organisation in regard to the damage suffered by the victim.

21.5. Counselling and therapy

The Melbourne Response, *Towards Healing* and the Anglican Church's response all include an element of counselling and therapy for victims of criminal child abuse, as outlined in Table 21.1.

¹⁴⁸ *Transcript of evidence*, Anglican Diocese of Melbourne, p. 13.

Table 21.1: Counselling—Melbourne Response, Towards Healing, Anglican Church and Salvation Army

Organisation	Counselling
Anglican Church	Professional psychological counselling organised through the Office of Professional Standards. Number of sessions is based on need and not limited. ¹⁴⁹
Catholic Church Melbourne Archdiocese	Counselling provided through Carelink. The number of sessions is on a needs basis. ¹⁵⁰
Catholic Church other than Melbourne Archdiocese Towards Healing	Guidelines state that the Director of Professional Standards can arrange for an offer of funding for counselling. ¹⁵¹
Salvation Army	The Care Leaver Complaint process refers to counselling that can be offered to victims who approach the Salvation Army directly rather than through their legal representatives. ¹⁵² The provision for future counselling is included in the ex gratia payment awarded to victims and it is then at the victims discretion whether they want to obtain counselling. ¹⁵³ Little evidence of counselling was present in Committee's analysis of the files. ¹⁵⁴

Source: Compiled by the Family and Community Development Committee.

As noted in Table 21.1, the Salvation Army process limits the offer of counselling to those who approach it directly and go through its internal process. Given that the Committee identified that limited counselling was made available to victims in the Salvation Army files it examined, its approach to counselling is not discussed in this section of the Report.

21.5.1. Counselling—Melbourne Response

In the Melbourne Response, ongoing counselling is provided through Carelink.¹⁵⁵ The Independent Commissioner supports victims to receive Carelink counselling services at any stage of the Melbourne Response process, including before he has made any determination and if a victim decides to cease involvement with other parts of Melbourne Response. There does not appear to be any limit on the amount of counselling offered.

In each case where the Independent Commissioner makes a finding in favour of the victim, the victim is referred to Carelink, typically for the purpose of obtaining a psychological report to aid the deliberations of the Compensation Panel. Carelink

149 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*. Section 1.5(b).

150 *Submission S185*, Catholic Church in Victoria. Appendix 1.

151 Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia*, p. 19, paragraph 38.4.

152 *Supplementary evidence*, Official minutes: Care leaver complaint process, Salvation Army, Australia Southern Territory, 17 July 2013.

153 *Supplementary evidence*, Letter from Nevett Ford to the Chair of the Family and Community Development Committee, 17 July 2013.

154 Refer to Appendix 9 of this Report.

155 See for example *Transcript of evidence*, Dr Joseph Poznanski, p. 5.

also decides on a treatment plan for the victim, and either arranges for experts to carry it out or offers counselling itself, with the aim of assisting the victim (and their family). Carelink appears to be reasonably flexible and makes a genuine effort to accommodate each victim's particular needs, including requests for treatment by the victim's own psychiatrist or psychologist, or other outside treatment. The Catholic Archdiocese of Melbourne has little or no control over the counselling a victim receives (other than controlling the purse strings generally).

Criticisms of Carelink relate to a complaint that the costs are borne by private insurance and Medicare rather than by the Catholic Church. People have also criticised Carelink as being too closely affiliated with the Catholic Church. This criticism is linked to the view of victims that the Catholic Church is part of the Melbourne Response process and their difficulty accepting the assertion that the process is independent of the Church.

In its review of the files, the Committee found that most victims indicated that they were satisfied with the services Carelink provided, although some reported having difficulties with, and a dislike of, Carelink and its representatives.

The Committee found that overall, despite some negative reports, the organisation of Carelink and the work it does are a beneficial part of the Melbourne Response process.

21.5.2. Counselling—Towards Healing

The Towards Healing guidelines state that the Director of Professional Standards can arrange for counselling to be funded as part of the compensation offer made at facilitation. However, despite the provisions of Towards Healing,¹⁵⁶ the process rarely included counselling—certainly less often than under the Melbourne Response.

Generally, it appears that the monetary award was also meant to meet the costs of any counselling that the victim might need. In practice very few of the facilitated awards specified an amount for counselling. Typically, when counselling was provided, between five and ten sessions were included in the offer, and victims had to approach the Church Authority to request additional sessions.

One witness said:

... these families are people of the highest integrity. They are not in it just to receive some sort of compensation. I think they have exhibited immense bravery. I do not know how they live out their lives, because they have just been trashed. It is the indifference that they are treated with. All they want is for their pain to be acknowledged—for recognition of it—and not to be treated with indifference. To think you could have six counselling sessions and just go on and get over it. There has to be more. It has to be an ongoing, lifelong commitment to them, like you would give to any other person

¹⁵⁶ Upon receipt of a complaint, the Director can make a recommendation concerning the funding of counselling or other such assistance for the victim pending the outcome of the process. The Church Authority will also 'strive to assist in the psychological and spiritual healing of those persons who, as well as the victims, have been seriously affected by incidents of abuse'. In the event the Church Authority is satisfied of the truth of the complaint, 'the Church Authority shall respond to the needs of the victim in such ways as are demanded by justice and compassion. Responses may include the provision of counselling services or the payment of counselling costs'. The Church Authority should also consider 'what steps need to be taken to assist affected people through the provision of counselling or other pastoral support.'

with a disability. They have to be protected right through their lives ...¹⁵⁷

Mr Peter Blenkiron argued that the premise of Towards Healing was flawed. He explained that one of the significant problems is the lack of ongoing support:

People who did not understand it tried to run it. There were five sessions of counselling, and they said, 'Sign on the dotted line, take the money, go and have a binge and destroy yourself. You can't come back and talk to us about it anymore.'¹⁵⁸

Of the files reviewed by the Committee, only one case provided counselling for a secondary victim. The parents of a victim remarked:

Another point that I would actually like to make ... is the counselling. The counselling ... has done XXX the world of good. But Towards Healing works from 9 to 5. You ring up Towards Healing at 3 o'clock in the morning, you get a recording, and they will ring you back. So if you are trying to maintain a normal life and working, you do not want a phone call back from Towards Healing at 11 o'clock in the morning when your boss is doing whatever, to take — —

I rang Towards Healing ... several times on a Friday and they rang back on the Monday. So you have got the whole weekend. So what does a young guy do on a farm on the weekend? We have removed the guns from our household many a time in fear of what could happen. To me if they cannot do counselling 24/7, at least they need to do it from 6 to 6, because that is when these people need the most help. It is not in the middle of the day when everybody else is around; it is when they are home alone or when they have been drinking too much. That is when they go to these Lifelines, not in working hours ...

The other thing that I think is important is that counselling services are made available to them for not necessarily emotional but for financial advice, advice on planning their life, marriage advice, and for the whole family, not just for them. In the compensation package the boys demanded that each member of the family had continuous counselling, which the church accepted. But one of the wives wanted to go to a counsellor recently, so I rang up and organised it for her, but it has to go before the bishop. It does not just automatically happen. There is not a list saying, 'Yes, they are eligible', or whatever. Before she can say yes to me, she has to go to the bishop again and ask the bishop, 'Is that okay?', and then she has got to come back to me. A fortnight later the crisis point that they might have been having is gone. They need to have it then and there, not a fortnight later.¹⁵⁹

Further, only in the odd, rare case was the victim immediately offered counselling to assist them to complete the Towards Healing process.¹⁶⁰ This is despite some victims clearly needing emotional assistance during the process and having to request this assistance themselves.

Unfortunately, where counselling was provided, victims had virtually no control over the choice of counsellor or type of therapy. The Church Authority decided those matters. In the Committee's study of the Towards Healing files one victim complained that he did not like the counsellor or the sessions but these concerns were ignored by

157 *Transcript of evidence*, Ms Carmel Moloney, Ballarat, 7 December 2012, p. 4.

158 *Transcript of evidence*, Mr Peter Blenkiron, Ballarat, 28 February 2013, pp. 5–6.

159 *Submission S451*, Name withheld.

160 Committee's study of files shows 3 individuals were offered counselling through the process—prior to facilitation.

Towards Healing causing the victim to drop the counselling after only two sessions. No further assistance or encouragement was given to him by Towards Healing to attend counselling.¹⁶¹

On occasion, the Church Authority offered a victim assistance even though their claim was not substantiated.¹⁶²

21.5.3 Counselling—the Anglican Church

Anglican Church representatives told the Committee that counselling was paid for by the Anglican Church and was organised through the Office of Professional Standards. They also stated:

The counsellors are not employed by the church or a church organisation ...

We have two sorts of psychologists. We have people who are absolutely independent of the church, and they just send their invoices to my office and I send them, de-identified, through to be paid. We also have some psychologists who are also affiliated with a denomination—it might be Anglican or some other denomination—and if the person specifically wants somebody that they would consider to be a Christian psychologist, then I would give them the option of a couple of those choices as well. Mostly people want the independent psychologist, and that is whom they will be offered.¹⁶³

There is no set number of counselling sessions. The Independent Director of Professional Standards in the Anglican Diocese of Melbourne, Ms Claire Sargent, responded as follows to the Committee's enquiry about the duration of counselling:

The question is 'How long is a piece of string?' The criteria is based on need. So somebody might want 1 session; somebody else might want 3 sessions; somebody else might 20 sessions. It just depends. Particularly if the matter is going through the Church process—for example, it is taking quite some time, the police have not taken it up, and it is getting back to Church process, then those people have a need to be supported throughout that process. There is no number of sessions that will be appropriate. What I do is get in touch with the psychologist who is providing the care and I would authorise X sessions at a time—six, something like that.

I would say after that, 'Please get back in touch with me. Let me know how your client is going'. I am not asking for confidential information. I am not asking to be involved in that client's process. I am just saying, 'Are you the right person for them?' Do we need to think of anything else? Has something come up that we need to do something more about? I am thinking, does a psychiatrist need to be involved? How are we going? What do you think? How long do you think we are going to go? For example, I might be asking those questions at a stage when the person has yet to make a decision about whether they are going to make a complaint: 'Is this person going to make a complaint? Let's just keep in touch' ...

It is up to the individual. They might decide that once they have got an outcome maybe they are satisfied with that. They might say, 'Okay, I'm out of here', or they

161 Determined from the Committee's analysis of the Towards Healing files. See Appendix 9.

162 Where complaints are unsubstantiated, pastoral meetings involve the Church Authority offering support to a victim, whilst not admitting liability, apologising or offering compensation. They are effectively a way for the Church to say 'we're sorry that you're hurt but we do not admit that we are responsible for your problems.' By nature, therefore, pastoral meetings exclude the majority of the victims' needs. Many victims rejected Towards Healing's offer of a pastoral meeting.

163 *Transcript of evidence*, Anglican Diocese of Melbourne, p. 13.

might need some additional care. I have people who have gone through a process quite some time ago. I am thinking of a fellow who rings me probably three or four times a year and just has a chat for an hour because he wants to have that little bit of contact, and he wants to know that his information is safe, that it has not been forgotten and that there is somebody he can call.¹⁶⁴

Finding 21.6

Not all organisations provide counselling support, and some that do tend to provide inadequate counselling due to the limited sessions offered, an approach not tailored to individuals or counselling offered through services operated internally within the organisation.

21.6. Pastoral and other support

The Committee considered the approaches of the Melbourne Response, Towards Healing and the Anglican Church in their offer of pastoral support to victims who engage in internal dispute resolution processes.

21.6.1 Pastoral support—Melbourne Response

The Melbourne Response includes a *Parish Pastoral Response*, which aims to offer support to parish communities and parish priests at times of crisis following disclosure, or at the prospect of imminent disclosure, of misconduct by Church personnel or parish clergy. The Committee received little information about this aspect of the Melbourne Response, although the Committee heard evidence that victims perceived a lack of pastoral response in their community.

Before the implementation of the Melbourne Response, the Catholic Church's Pastoral Response Group held forums for the purpose of providing support to parishioners where abuse allegations had surfaced. The Committee asked Cardinal George Pell why these did not continue once the Melbourne Response commenced, given that victims saw them as a good mechanism to come forward and seek assistance from the Catholic Church. Cardinal Pell responded:

The first thing is that according to my recollection that particular form of pastoral response was not recommended in the document ... I was not keen to continue them precisely because of the bad experience at the third meeting, which I have already recounted, where people were condemning priests here, there and everywhere, and I said, 'That has to be established'. I took the decision, just myself personally, that I thought it was much better for me, as distinct from my representatives or staff—that is an entirely different thing—to meet only with the victims after the situation had been adjudicated in some way or another. To meet with them beforehand, there is a possibility that they either regard you as rude, or, if you are too ingratiating, that you are somehow encouraging them not to go to the police.

What the pastoral response certainly envisaged was teams that would go out to the parishes to explain what was happening, to organise for counselling and help and to deal with special groups. They were not wedded irrevocably or essentially to that, and

¹⁶⁴ *Transcript of evidence*, Anglican Diocese of Melbourne, p. 14.

in the light of especially that third meeting, where I explained what I had to say—people were cross—it did not contribute to making things better.¹⁶⁵

When challenged that such forums provided a perfect opportunity for parishioners to express their concerns about the actions of a parish priest and the effects of his behaviour on the parishioners, Cardinal Pell responded:

There are a number of factors there. If you are talking about the measures that have to be put into place to protect children, an acrimonious public meeting is not the best way to do it. Secondly, on many occasions, less controversial figures than the head of the Church are much better placed to be able to talk with these people and help them. I think that it is useful to have somebody—I have been blessed with somebody who is very good at this, a priest, in Sydney—to go out and talk to these people in these circumstances. Generally, though, it is better done in small groups or in a family or individually than in big groups, where things can deteriorate quickly.¹⁶⁶

In regard to implementing the alternatives, he stated:

In Melbourne I am pretty certain I met—for the first part, with any victim who wanted to meet with me. Secondly, Maria Kirkwood was in charge of the pastoral response project, and she carried that out. I know that—for example, when Searson was stood down I wrote to the parish, and we put out a press release that he had been stood down. The team went out to help and to talk to people. I believe that basically the other elements of the pastoral response went forward. I would not preclude the fact that perhaps more needs to be done on that.¹⁶⁷

Cardinal Pell was asked why he did not, on his own initiative, proactively seek to engage with parishes where there had been known offenders. The Committee raised the particular example of Fr Ronald Pickering at Gardenvale. The Catholic Archdiocese of Melbourne did not contact parishioners until 2002, even though it had been told in 1994 of concerns that there were allegations of serious criminal child abuse, and Fr Pickering had gone to England:

I did not initiate action myself. You would be aware that in that letter, as you yourself said, Little said they were allegations. I do not know whether they were established at that stage. We probably should have sent out a letter, as we did to the other parishes. I am a bit unsure about the chronology of who dealt with what or to what extent we knew, but it is certainly true that I did not go out, as my successor did so commendably, to ask for other ...

It was far from perfect.¹⁶⁸

The impact of abuse and the need for some victims to have pastoral support cannot be disputed. As explained by one victim:

This secondary abuse, if you like, has been compounded by an unforgivable spiritual neglect and abandonment. The image of penguins caught in an oil spill springs to mind where the church is the responsible party and refuses to accept responsibility for damage or repairing it. As I said, there are so many layers to our story and the biggest fear I have in describing it is that I have bits of paper everywhere. I have been drowning in it, but I will just try to read at least some of it. I know there will be lots of stuff that I won't get a chance to say.¹⁶⁹

165 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 38.

166 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 38.

167 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 38.

168 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 40.

169 *Submission S479*, Name withheld.

Professor Chris Goddard, Director of Child Abuse Prevention Research Australia indicated to the Committee:

I was talking there particularly about the impact, and I do not think that we still fully understand that impact. But I will come back to what you said; I just wanted to emphasise that. There is one particular victim I know, who is a woman now perhaps in her 60s, who would still describe herself as a hostage to the religious abuser. I really do believe that it is that spiritual disorientation that is catastrophic. Some people say that in order to help people heal you actually have to help heal their souls as well ...

I am not saying that one form of abuse is worse than another. I have, however, a firm opinion that the abuse of children and young people in religious organisations is truly diabolical because of the lasting and terrible spiritual damage. This is supported by the literature. The abuse of children by adults always rests on a power imbalance. The large number of offences by Catholic priests reflects an extraordinary power imbalance. The religious authority they possess allows them even to turn parents and families against their own children. This has meant that many victims have had to attempt to deal with the abuse on their own, magnifying the impacts.¹⁷⁰

Another victim said:

Any abuse is dreadful, and sexual abuse is worse, but when it happens within the context of the Christian community it damages your soul. If you want to help people get into a better place, then you have to look at all aspects. It is family, especially for people who are really embedded in the church. It is abuse within the family, and it attacks your meaning of life. Certainly for me as part of a spiritual community, because that is how I get my sense of meaning in life, so it needs a very holistic approach. I do not know how else to say it really.¹⁷¹

The Committee heard that there was a lack of follow-up with victims who had gone through the Melbourne Response process. Fr Kevin Dillon, compared the Melbourne Response with the Department of Veterans Affairs (DVA) response to claimants. He noted that while the DVA has organised group gatherings where people can discuss 'how they are going', Melbourne Response has no such follow-up:

When I have spoken to victims, I have asked, 'Have you had any follow through? Has anybody ever rung you up to ask how you're going? Have you got through this all right? Are you still okay?' and whatever, but there is never a phone call, never a follow up ... No effort whatsoever has been made to bring together victims of Church-related abuse, who have a lot in common, to give each other support within what should be the comforting arms of the Church.¹⁷²

21.6.2 Pastoral support—Towards Healing

Towards Healing requires the relevant Church Authority to consider how to assist other affected people, through counselling or other pastoral support, following the conclusion of the process. This suggests that Towards Healing should assist secondary victims and communities. However, the Inquiry received no evidence of any Church Authority undertaking such measures.

170 *Transcript of evidence*, Professor Chris Goddard, Child Abuse Prevention Research Australia, Monash University, Melbourne, 19 October 2012, p. 10.

171 *Submission S486*, Name withheld.

172 *Transcript of evidence*, Father Kevin Dillon, p. 4.

Some victims complained that the facilitation process focused on monetary concerns, especially when solicitors were involved. Many victims complained that pastoral sensibilities, propagated as part of the facilitation process, were simply lost in the face of monetary concerns.

So to draw some sort of a line under it so we could get on with our lives without this becoming an all-consuming passion, we drew a line under it, but it was never finished. I have been waiting for this sort of thing or the royal commission or something to happen for 15 or 18 years, and that is part of why I went to see the Bishop's representatives. And money is not the thing. What we need is pastoral support and care for families.

My parents made enormous sacrifices to send us to that school. The church could not care less about them. The hardest thing I have had to in this whole process was tell my kids. At the time I had a 16-year old son and a 13-year old daughter, and I had to say, 'When Dad was your age he was abused by a Christian Brother'. That just devastated my daughter.

There is no support for my family. They have just drawn a line under us— 'You're in that little box over there, and we won't worry about you again'. But we are not going away until they do something concrete.¹⁷³

The victim indicated he would not have been resentful of the Catholic Church offering pastoral care. In describing to the Inquiry what pastoral care would look like the victim said:

I am not sure what it will look like. I do not profess to be an expert in this area, but to me—and this is a given, I would have thought—it should be orientated towards the victim and the victim's family. It should not be about the cost of it or the time it consumes. It should be whatever it takes for however long it takes until the victim feels satisfied. For some victims it may take a couple of weeks, a couple of months or a couple of years; for other victims it will be ongoing. Some people are very, very damaged by this; it has split some families in Ballarat where parents no longer talk because one parent has taken the son's side and the other parent has taken the other side ...

I think the problem with the church is what they did was they consulted a lawyer before they consulted anybody else. I am betting this is Minimise Damage 101, and it has backfired big time because they should not be doing it. I do not know how many of you are lawyers, but they need to take them out of the equation and put some counsellors or some people who care in the equation.

It is devastating the Catholic community. I know parishioners who are devastated by their reaction. A lot of them did not understand what the reaction was ... They have spoken to some of the clergy, and they are just astounded at the reaction of the clergy. George Pell's press conference is a classic example of that; he is somebody who has just not got it. I would be very surprised if he makes any more announcements. I know that the bishops of Australia have muzzled him. But that does not mean the attitude has changed. The man spent \$15 million on a chapel in Rome but will not spend a couple of hundred thousand dollars sorting out some pastoral care or some counselling for victims ...

I am still involved in this process, because I think the church does really good things. I think there are really some enormously good people in it. Personally I would not

173 *Submission S454*, Name withheld.

care if it burnt down tomorrow, but I would hate to see those people lose everything they have worked for in their lives and I would hate to see the really good things that the Catholic Church and Catholic institutions and Catholic lay people do gone. I think they do enormously good stuff, and that is the only reason I am still in this.¹⁷⁴

When asked for further clarification the victim explained:

I would have said, 'You need to do pastoral care'. I have had meetings with a couple of representatives of the Catholic boards in Ballarat and they said, 'We'll wait and see what this inquiry does'. I said, 'I will be amazed, I will go to the moon if this inquiry recommends pastoral care to you, because this is what you should be doing. This is your nuts and bolts stuff. You do it for bereavement, you do it for refugees, you do it for everything else under the sun, but the one thing you don't do it for is for victims of your own church'.¹⁷⁵

Mr Joseph Saric asserted that the Catholic Church's response processes can never compensate victims for their loss of faith and innocence and that encounters with church representatives have been inadequate:

The fact is that the Church's credibility, trust and respect from its parishioners has been lost on a scale more damaging than any financial compensation the Church has to deliver. The question becomes: can any amount of money ever compensate for the destruction of the personal innocence and personal faith of so many victims who carry the scars of their experience for a lifetime?¹⁷⁶

They report bruising encounters, being intimidated by bishops and solicitors ... Not one speaks of a positive, healing, Jesus-like response from the Church protocols.¹⁷⁷

Inquiry participants criticised the Towards Healing process for combining pastoral care with legal and adversarial negotiations of settlement. For example, Dr Joseph Poznanski, a psychologist, gave an example which he noted was 'not uncommon':

One of my clients waited almost three years for his Towards Healing process to be completed. On the day of his much awaited mediation he was offered a pastoral session from a Marist provincial, who came along with his lawyer. After this pastoral session had finished the lawyer acted in an adversarial, bullying manner towards my client and my client's advocacy team. The lawyer stated that there would be no more negotiation and that he was not going to miss his lunch.¹⁷⁸

The parents of a victim indicated their disappointment that pastoral care was not forthcoming:

The other thing I want to say too is: I honestly did feel ... that I would get a knock on the door from a nun or from a priest or from somebody from the pastoral care to say, 'Now, XXX, you know, we're just looking into this, and we're going to help you, but I notice that your boys were altar boys at XXX in such and such, and there's been some allegations. Are you having any trouble? Do you think there might be an issue?'. When that didn't come, I thought, 'Oh, this is good; my boys aren't affected— lucky me'. As time goes on— no help at all from the church.¹⁷⁹

Similarly, another witness said:

174 *Submission S454*, Name withheld.

175 *Submission S454*, Name withheld.

176 *Transcript of evidence*, Mr Joseph Saric, pp. 2–3.

177 *Transcript of evidence*, Prof. Michael Parer, Melbourne, 25 March 2013, p. 4.

178 *Transcript of evidence*, Dr Joseph Poznanski, p. 3.

179 *Submission S451*, Name withheld.

The girls yesterday were so welcoming and kind, whereas with that lot there you would think we were aliens from Mars or something like that. It is not just me, and I am not here just for me. I want things done for the other victims. It is just deplorable what has happened to so many victims. I want them to sort this out and acknowledge that they must work toward justice and compassion. It is not just about money; they must do something about follow-up pastoral care. They do not even bother giving you a phone call after you have been through the process and you have had your settlement. Sexual abuse affects you for the rest of your life. You can forgive, but it is really hard to forget. It bruises your soul. It certainly affected the way I relate to males. It has affected my life.¹⁸⁰

21.6.3 Pastoral support—the Anglican Church

Some victims request a Christian psychologist, presumably to deal with spiritual as well as other issues. As part of the Anglican Church protocol the Director of Professional Standards and the Professional Standards Committee will, where appropriate, develop a pastoral response for the care of any Anglican Church community or congregation affected by a matter. The Committee did not receive any information about how the Anglican Church put this into practice.¹⁸¹

21.7 Review and/or appeal

The Committee considered the extent to which the Melbourne Response, Towards Healing and the Anglican Church have a review or appeal process regarding the outcomes of any complaints of criminal child abuse.

21.7.1 Review/appeal—Melbourne Response

There is no formal procedure for a victim to initiate an appeal against any Melbourne Response decision, most notably those of the Compensation Panel. There is no mechanism for a victim to express any grievance about the process, other than approaching the Independent Commissioner or the Chairman of the Compensation Panel. This would be a difficult process if the grievance is about one of these same individuals.

Fr Kevin Dillon commented, for example:

There is no appeal. This is what we do; this is our decision—take it or leave it. If you do not like it, you can pursue it through the courts. We know how successful that can be; there are all sorts of ties and escape clauses.¹⁸²

The Catholic Church Submission, *Facing the truth* indicated that Cardinal George Pell and Archbishop Denis Hart regularly reviewed the Melbourne Response since its inception. However, no documentation regarding any formal review was provided by the Catholic Archdiocese of Melbourne. Further, the Committee noted that the brochure published by the Archdiocese of Melbourne regarding the Melbourne

180 *Submission S452*, Name withheld.

181 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 16.

182 *Transcript of evidence*, Father Kevin Dillon, p. 3.

Response and the terms of appointment of the Independent Commissioner have been updated once since 1996, and that was in 2011.¹⁸³

Additionally, there is no set process for reviewing the operation of the Melbourne Response. The Committee notes, however, that the Catholic Archbishop of Melbourne has indicated that the Archdiocese of Melbourne is willing to submit to the establishment of an office with independent oversight of Church processes, such as that of an ombudsman.¹⁸⁴

21.7.2 Review/appeal—Towards Healing

Each stage of the Towards Healing process has an avenue for appeal, but few victims seem to know about these avenues, let alone initiate an appeal. Appeals are subject to time limits.¹⁸⁵

The Catholic Church instituted Towards Healing in December 1996. It modified Towards Healing processes in December 2000, June 2003 and January 2010 in accordance with the recommendations of independent reviews involving Professor Patrick Parkinson from Sydney University (who gave evidence to the Inquiry).

But in May 2009 Professor Parkinson wrote to the co-chairs of the National Committee for Professional Standards (NCPS) of Towards Healing, expressing his concern about matters relating to the Salesians that had been reported in the press and discovered by him when he was undertaking a Towards Healing review. This dispute raises the broader issue of the effectiveness of Towards Healing if signatories do not follow its process and protocols.

Professor Parkinson's criticism was about the Salesians' lack of action when they were aware of historical complaints of criminal child abuse perpetrated by three of their members: Fr Frank Klep, Fr Jack Ayers and Fr X.¹⁸⁶ The allegations related to these three Salesians, who had been responsible for the care of boys at Rupertswood College during the 1970s. At the time the complaints were made to police, the priests were living in Salesian ministries overseas.

Professor Parkinson's principal concern was with the Salesians' treatment of Fr Frank Klep and the failure to ensure that he returned to Australia to face criminal charges. Professor Parkinson's concern arose in these circumstances:

- During June–July 1986 a complaint had been made regarding the conduct of Fr Klep at Rupertswood College during the 1970s. This was investigated by the Provincial of the order but was not substantiated.
- Fr Klep was convicted of four counts of indecent assault relating to two individuals (victims G1 and G2) on 2 December 1994. These offences occurred in 1976 and 1979 at Rupertswood College. Fr Klep was sentenced to three months imprisonment to be served by way of an Intensive Correction Order.

183 *Submission S185*, Catholic Church in Victoria, p. 63; *Submission S185*, Catholic Church in Victoria. Annexures 1, 2 and 3.

184 *Submission S185A*, Catholic Church in Victoria, p. 5.

185 It is unclear to what extent victims are aware of the possibility that they can apply for a review of the Towards Healing process.

186 For legal reasons this priest is not identified.

- Fr Klep was interviewed in respect of sexual abuse of victim T in June 1996. The allegations of victim T related to sexual abuse in 1973 at Rupertswood College.
- From the time that Fr Klep was interviewed regarding the allegations by victim T until he went to Samoa in April 1998 the following occurred:
 - ♦ civil claims of victims G1 and G2 were settled and Deeds of Release were signed (February and August 1997 respectively)
 - ♦ victim T issued civil proceedings sometime prior to August 1997
 - ♦ in the application for a permit to enter Western Samoa a declaration was made that Fr Klep was of good character and never convicted of a criminal offence was signed by Fr Klep and witnessed by Fr Murphy on 20 January 1998 (the document was dated 1997, although it is apparent that is a mistake and should have been 1998)
 - ♦ Fr Klep was assured by solicitors acting for him in the criminal matter relating to victim T that criminal action would probably not be forthcoming (letter 20 March 1998)
 - ♦ between June 1996 and August 1998 police took no action in regard to the victim T allegations against Fr Klep.
- After Fr Klep went to Samoa on 6 April 1998:
 - ♦ the police brief for the victim T matters was authorised and police attended at a Salesians' residence in Lysterfield on 10 August 1998 to serve a summons relating to those charges
 - ♦ the victim T civil matter settled soon after the mediation on 28 May 1998
 - ♦ Fr Klep was placed on the PASS system by police which would have notified them of Fr Klep leaving the country, however that expired on 7 December 1998.
- On 17 February 1999, correspondence was sent to Fr Klep's solicitors that revealed:
 - ♦ his knowledge that police had attended at Lysterfield and his contact with Fr Murphy regarding that police visit
 - ♦ a request that his solicitors ascertain if Fr Klep could return to Australia without police attention in regard to victim T.
- In response to this correspondence Fr Klep was informed:
 - ♦ that his solicitors have had discussions with police regarding the victim T allegations and that the police understood that there was an arrangement with Fr Klep's superiors that they would be contacted if Fr Klep returned to Australia
 - ♦ in another letter from his solicitors Fr Klep was informed that his solicitors will ascertain if victim T is prepared to make a statement of no complaint or if the police would treat the matter as 'low priority'.
- Fr Klep was able to travel to Australia on three occasions between 2000–2004 without police being notified.
- A further complaint against Fr Klep by victim B was subject to the Towards Healing process in 2000 but was not completed until after review in September 2003. This related to allegations of sexual abuse by Fr Klep in 1977 at Rupertswood College.

- Around this time the Salesians were informed by a visitor to Western Samoa that Fr Klep was the celebrant at mass in the Apia Cathedral. Concern is expressed as the visitor was aware of Fr Klep's 1994 convictions.
- On 6 October 2003 formal notification of limitation on ministry was provided to Fr Klep. That letter refers to previous discussions regarding his limitation on ministry.
- In June 2004, the Samoan government became aware that Fr Klep had signed a false declaration regarding his criminal history and began proceedings to deport Fr Klep.
- Prior to formal deportation, Fr Klep made arrangements to return to Australia on 25 June 2004.
- Fr Klep was committed to stand trial on 1 April 2005. On 13 December 2005 Fr Klep pleaded guilty to 14 counts of indecent assault against 11 victims. Each of them was a student at Rupertswood College between 1975 and 1977. Some of the counts were representative, meaning that the offence occurred on more than one occasion. Fr Klep was sentenced to imprisonment for 3 years, 2 years suspended for a period of 3 years.
- On 19 April 2006 the Court of Appeal allowed an appeal by the Department of Public Prosecutions (DPP) and increased Fr Klep's sentence to imprisonment for a period of 5 years 10 months with a non-parole period of 3 years 6 months.
- Decree of dismissal process in regard to Klep commenced by Salesians 19 May 2006.¹⁸⁷

In regard to the Salesians actions in response to Fr John Ayers, Professor Parkinson's principal concern again relates to their lack of action to have Fr Ayers return to Australia when they were aware that allegations of sexual abuse had been made. He raised the following concerns:

- Fr Ayers was sent to Samoa in 1992.
- A formal complaint was lodged by S regarding sexual abuse by Fr Ayers in June 2000 and accepted by Towards Healing. S was a student at Rupertswood College and the allegations related to the period between 1965 and 1967.
- There is no documentation to suggest that Fr Ayer's ministry was restricted after the Towards Healing process was complete.
- Upon S becoming aware that Fr Ayers had returned to visit Australia after the Towards Healing process, he indicated that he wanted to confront Fr Ayers. By that time, Fr Ayers had returned to Samoa and the Salesians were not prepared to assist in the return of Fr Ayers until a police complaint was made.
- In correspondence between the Provincial and Fr Ayers in September 2009 Fr Ayers was informed that the Province was under investigation and having to answer the question:
 - ♦ did any past officeholders (i.e. Provincials of the order) allow men who have been accused of child sexual abuse and whom it might reasonably be expected

187 *Supplementary evidence*, Response to request for information from the Salesians of Don Bosco, Catholic Archdiocese of Melbourne, 31 January 2013; *Complaint files* provided by the Salesians of Don Bosco to the Family and Community Development Committee; *Submission S015*, Professor Patrick Parkinson.

that Victorian Police would want to interview, to return to Australia without informing Victoria Police?

- It is indicated by the Provincial that there is no cause for alarm and he thinks he has the situation covered.
- When police did become involved the Salesians assisted the police with their inquiries, although Fr Ayers was deemed unfit to travel. Fr Ayers died on 4 April 2012.¹⁸⁸

Professor Parkinson gave evidence to the Inquiry that suggests the Salesians were not prepared to act on his advice as an independent reviewer in these instances. Both of these instances illustrate the difficulties that can be encountered within the Towards Healing independent review process. The attitude of the Salesians is indicative of an inclination to protect the organisation and its members.

21.7.3 Review/appeal—Anglican Church

The protocol of the Anglican Church includes a process for reviewing decisions made by the Professional Standards Committee (PSC). Appeals are heard by the Diocese's Professional Standards Review Board. This Board is required to include non-Church representatives.

The Anglican Church has commissioned a number of independent reviews of its processes across Australian Anglican dioceses.¹⁸⁹ It has also made improvements to the process as a result of internal reviews. For example, the Anglican Diocese of Wangaratta explained how a recent review of the process resulted in the Church adopting a new right to appeal recommendations made under the protocol.¹⁹⁰ This led the Church to draft a model professional standards ordinance, which has been adopted with modifications by the Dioceses of Melbourne, Ballarat and Wangaratta.¹⁹¹

As is evident from the gradual development of this protocol, it is always under review with significant changes being adopted over time. At the end of the process there is a requirement to seek participants' views on how to improve the process.

The Committee considered that the willingness of the Anglican Church to review its protocols and make changes to its processes may contribute to the perception of independence of its process.

21.8 Scrutiny and monitoring of internal processes

As discussed in Chapter 18 of Part E, the Committee has determined that there is a need for a body similar to the New South Wales (NSW) Ombudsman to monitor and

¹⁸⁸ *Supplementary evidence*, Response to request for information from the Salesians of Don Bosco, Catholic Archdiocese of Melbourne, 31 January 2013; *Complaint files* provided by the Salesians of Don Bosco to the Family and Community Development Committee; *Submission S015*, Professor Patrick Parkinson.

¹⁸⁹ Archbishop Philip Freier noted the Kohl and Krowley report in 1998 in Tasmania, O'Callaghan and Briggs in 2003 in Brisbane, Olsson and Chung in 2004 in Adelaide and Parkinson in 2009 on a range of Anglican Dioceses.

¹⁹⁰ *Submission S225*, Anglican Diocese of Wangaratta, pp. 2–3.

¹⁹¹ *Submission S225*, Anglican Diocese of Wangaratta, p. 3.

oversee the processes that organisations have adopted for the handling of complaints and the preventative measures that are in place.

In evidence to the Inquiry, the NSW Ombudsman indicated that this role extended to the treatment of historical allegations as well as those that were current. However, his role was limited to the employment context with a requirement that the person the subject of a 'reportable conduct' was still working in the relevant field.

In regard to historical allegations, NSW Deputy Ombudsman, Mr Steve Kinmond indicated:

I am glad you have raised the issue of historical allegations. It is an extremely difficult area of practice, let me say. Yes, we often receive matters that relate to historical allegations. The test under our legislation is whether at the point of allegation the person is a relevant employee in a relevant field. If they are, the matter may well relate to something that occurred 20 or 30 years ago and yet it will come within our jurisdiction ...

Clearly if there has been any criminal allegation made, the fact that that allegation has been made ought to be kept by an agency and then all the relevant actions following on from that ought to be recorded. I think we both know when we are dealing with historical allegations that that will not be the case ...¹⁹²

Mr Kinmond also commented on the Towards Healing system operating in the Sydney Archdiocese:

If, for example, you take the Sydney Archdiocese, which is where it is located, it is in a position where it can have expert advisers that assist it in relation to matters. I would suggest that is of enormous benefit in terms of the way in which they handle matters. If one were to look at particular dioceses that are in more remote areas or in rural areas, it would not be unreasonable to assume that you are going to get variations in practice. One challenge for the church is to seek to identify where its potential risks might be, and in the areas where on a reasonable assessment one could say that the practices are not as strong, which might be for a whole range of reasons— location might be one— to seek to strengthen the system.

The interesting issue of course is the hierarchy of the church and the bishops, and of course you have the provincials as well, and their right to make decisions that they believe are appropriate decisions to make. As a layperson and a non-Catholic I would make the point that a system that encouraged much more peer review and the obtaining of expert assistance and that welcomed decisions being challenged would be a good way forward for the church. In making that comment I note that there is a national professional standards office, and in relation to matters that we oversight they can play an important role in relation to matters involving the clergy and in relation to other matters as well.

However, at the end of the day bishops have a great deal of power, and I do not want to present the picture that one should simply form the view that bishops who deal with matters poorly must be bishops who are poorly motivated. Sometimes matters are dealt with poorly because the necessary skills are not being brought to bear. The Catholic Church in New South Wales has a system where bishops can get good advice from the child protection officers and the national professional standards office, but from my review of a number of matters, on that test as to whether the right balance has been struck between pastoral responsibilities and broader responsibility to the community, I

192 *Transcript of evidence*, NSW Ombudsman, Melbourne, 4 April 2013, p. 8.

would have to say that there are occasions where one would feel uncomfortable.¹⁹³

Given the indications by the Catholic Archdiocese of Melbourne that it would be willing to submit to a process with independent oversight of its processes, a similar model as that considered in Chapter 18 of Part E could cover historical allegations of abuse and monitoring of processes to respond to complaints of that nature, as well as providing assistance in preventative measures for such organisations to adopt.

21.9 Recommendations about perpetrators and Church treatment of perpetrators

In this section of the Report, the Committee considers the response of the Melbourne Response, Towards Healing and the Anglican Church to perpetrators.

21.9.1 Perpetrators—Melbourne Response

Under the Melbourne Response the Independent Commissioner, after investigating a complaint, can make a recommendation to the Archbishop on how to deal with the offender. When misconduct is alleged against a priest in active ministry he is placed on administrative leave. The Committee understands that the Archbishop has accepted the Independent Commissioner's recommendation in every case.¹⁹⁴

21.9.2 Perpetrators—Towards Healing

Under Towards Healing, when a complaint is received the accused is often required to stand aside from ministry, employment or volunteer service. At any time the Director of Professional Standards may recommend to the Church Authority that it ask the accused to stand aside from a particular office or from all offices that the perpetrator holds in the Church, pending investigation. Such recommendations take into account the gravity of the allegations and the risk of harm to others if the allegations are true. Towards Healing also requires the Church Authority to seek the advice of the Consultative Panel, unless immediate action is required.

Once an offence has been substantiated or admitted the Church Authority 'must evaluate the situation and recommend an appropriate Response'.¹⁹⁵

21.9.3 Perpetrators—Anglican Church

Under the Anglican Church protocol, when a complaint is received the Archbishop or other relevant Church Authority may:

- suspend or stand down the accused from the duties of office or position of responsibility held by them
- prohibit the accused from holding a specified position or office or from carrying out a specified function
- take such other action as the Church Authority deems fit.¹⁹⁶

¹⁹³ *Transcript of evidence*, NSW Ombudsman, p. 9.

¹⁹⁴ *Submission S185*, Catholic Church in Victoria, p. 56.

¹⁹⁵ *Submission S185*, Catholic Church in Victoria, p. 69.

¹⁹⁶ Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 10.

The protocol provides for the ‘stand down’ of a Church worker in situations where the potential risk posed by the worker remaining in their role or continuing to have contact with vulnerable persons is such that concerns over ‘duty of care’ arise.¹⁹⁷

In addition to the protocol, the Anglican Church in October 2007 passed the *National Register Canon 2007*. Its objective is:

... to assist in providing for the physical, emotional and spiritual welfare and safety, and the protection from the risk of abuse of all people having dealings with the clergy and church workers by establishing a National Professional Standards Register to which authorised persons may have access and make disclosures of the information therein.¹⁹⁸

Finding 21.7

Some organisations demonstrated a reluctance to implement effective disciplinary processes for offenders in their organisation, such as standing them down from their duties, removing their title or their membership to the organisation.

21.10 The Catholic Church—outside the processes

In Chapter 4 of Part B of this Report the impact on victims of criminal child abuse was considered. The Committee accepts that much of the grief suffered by victims and the anger they have directed to the Catholic Church is partly as a consequence of the Church’s treatment of perpetrators.

21.10.1 The Christian Brothers

The Committee questioned representatives of the Christian Brothers about their financial support of their members who face criminal charges for abuse against children in their care. Material provided to the Committee showed that the Christian Brothers order has spent significant funds on the legal defence of Br Robert Best. The following facts were accepted:

- In 1996, the Christian Brothers spent \$158,000 on defending Br Robert Best, who was found guilty of indecently assaulting a boy.
- The Christian Brothers spent a further \$33,000 in 1998 on defending other criminal proceedings relating to Br Best.
- Most significantly, the Christian Brothers spent almost \$1 million defending Br Best through trials and pleas in 2010 and 2011. In those proceedings Br Best was found guilty of 20 counts of indecent assault and one count of buggery, against eight victims. Br Best also pleaded guilty to four counts of indecent assault against two victims and two counts of aggravated indecent assault against one victim. Br Best pleaded guilty to crimes against only three of the 11 victims involved.¹⁹⁹

The Committee questioned Br Brian Brandon Executive Officer for Professional Standards on why the Christian Brothers had continued to support Br Best, even though he had been convicted of similar offences in 1996. Br Brian Brandon responded:

197 *Submission S244*, Anglican Diocese of Melbourne, p. 15.

198 *Submission S244*, Anglican Diocese of Melbourne, p. 15.

199 *Transcript of evidence*, Christian Brothers, Melbourne, 3 March 2013, p. 31.

It was certainly considered, but they were different allegations ...

The 2010 matters are all post the decision to engage criminal support defence ...

I am saying that the funds have nothing to do with decision. It is the history of those trials that would impact on our decision.²⁰⁰

When asked why the Christian Brothers paid the actual costs of defending Br Best, Br Brandon responded:

We did not choose to do that ... You would have to ask what would happen were we not to have done that ... You would have to consider the alternative.²⁰¹

When asked what that alternative might be, Br Brandon replied:

That is a good question.²⁰²

Representatives of the Christian Brothers also spoke of other support provided to members of their order who were found guilty of criminal child abuse. Such support included funding a private investigator to seek information regarding complainants, additional counselling for offenders while in prison and continued visits and support in custody. They stated:

We regard visiting prisoners as one of the Catholic Church's corporal works of mercy, so visiting prisoners is part of the charisma of the Christian Brothers. Our founder, before he established the Christian Brothers, did a lot of work with prisoners. We do not just add further to the punishment. Any family member would visit a member who had committed a crime anywhere.²⁰³

Such treatment caused particular angst to victims. Mr Stephen Woods of Ballarat stated to the Inquiry:

One of the paedophiles who molested me was Brother Edward Dowlan. His lawyers—when I had charges against him along with 22 other victims at the time—harassed victims by hiring private detectives to call up the victims and to ask us whether we wanted to continue with the charges, and if we were sure we felt up to the court case et cetera. These private detectives were harassing victims, until they got to me. I told them where to go; I told them what to do with their lives; I told them if they came to see me, I would get my father's chainsaw and I would fucking teach them a lesson they would never forget.

I merely rang up Sergeant Blair Smith, who was the police informant in that case, and he stopped them. This is what happens when you go against an organisation such as the Church. They harass you. Harassment by the Church's lawyers is normal. In one of the courts I had to go to, the judge stopped the proceedings and he told the QC to speak to me in a respectful and professional manner. This was the guy who was receiving close to \$6,000 a day, and he had been Brother Best's lawyer for years and years. He and I had met previously, and yet he was treating me so badly in court that the judge had to stop proceedings and instruct him to speak to me correctly. That is one of the ways that they harass you.

Another way is being treated as if you are the perpetrator. The questions they ask, the way that they put questions, was to make you feel that you were the perpetrator; just like the way that women years ago complained about the way that they were made to

200 *Transcript of evidence*, Christian Brothers, p. 30.

201 *Transcript of evidence*, Christian Brothers, p. 31.

202 *Transcript of evidence*, Christian Brothers, p. 31.

203 *Transcript of evidence*, Christian Brothers, p. 31.

feel that they were the ones who had instigated the rape against them. That is the way that we victims feel in court, being harassed by these obscenely paid for lawyers

The Church, in defending Brother Edward Dowlan, over the years that he was in court, they spent close to, or, as it was said to me, they would not have got any change from \$500,000, because he was their first golden boy to go into court. But even worse than that is Brother Robert Best. I was told by an informed person of the court that the Christian Brothers have spent—are you sitting down?—\$1.5 million defending this heinous sex criminal. This is the one also who has a litany of bodies after him—\$1.5 million they have spent so far. Thankfully, he is in jail now.²⁰⁴

Another victim stated:

Payments from St Alipius to victims—the limited investigation has concluded—have not equated to \$1 million. When I was in court with Best the barrister was getting \$10,000 a day. He earned more in one week than one payment that has been made to one of the victims of Best. Forty thousand dollars to a victim of child abuse—a rape victim—is half a year's wages, and that is the system they have got at the moment. I am asking the Committee to tell the Catholic Church to shove their pamphlet and get on with the real game—the real business—of Healing this community. Thank you.²⁰⁵

When questioned about this support for Br Best, and the Christian Brothers' failure to dismiss him, Br Julian McDonald responded:

That is an option available to us—to formally dismiss him from the congregation. One of the questions we must ask is: are we being responsible by letting somebody with a record like that loose in the community unsupervised? ...

I can understand how people in the community would see that as offensive. I do not have the same view. I understand they are taking offence, but I think we also have a responsibility to address the issue ...

Yes, my opinion is that I believe we have an obligation to the community not to let people like Best loose in the community unsupervised. By retaining him we can supervise his behaviour and monitor his movements and make sure that he does not just run loose in the community ...

Firstly, I would like to say that the recidivism among Christian Brothers who have been retained after having been in prison is nil. I think that has partly to do—or not partly—I think it is largely to do with the fact that we do monitor their behaviour and we do put restrictions on them and we do expect them to be accountable.²⁰⁶

Representatives from the Christian Brothers were also questioned regarding their support for Br Edward Dowlan, who had been convicted of criminal child sex offences in 1996. Br Dowlan pleaded guilty in June 1996 to 16 counts of indecent assault of 11 victims. The Committee was provided with documentation located on Br Dowlan's file, including:

- A portion of correspondence on 11 February 2008:

I am writing to you for some quick information ... We had submitted the application for Ted Dowlan's dispensation. The Vatican have asked me for some details ...²⁰⁷

- The second paragraph of a memo dated 29 August 2008 from Br Brandon:

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

205 *Transcript of evidence*, Mr Rob Walsh, Ballarat, 28 February 2013, p. 13.

206 *Transcript of evidence*, Christian Brothers, pp. 31,33.

207 *Transcript of evidence*, Christian Brothers, p. 23.

TD looking for advice re protecting his assets in some sort of testamentary trust. We talked about this a bit. It is a good way for him to proceed but he needs independent legal advice and obviously needs help to set it up ...

In response to a question from TD re costs, I indicated that, given his present status as a brother, we would pick up the cost of the advice and implementation process.²⁰⁸

- Portion of a letter from solicitors Tolhurst Druce and Emmerson dated 15 October 2008 to Br Brandon, as Trustees of the Christian Brothers:

... the entitlement of Ted Dowlan while unaltered in quantum is left to him in the form of a discretionary trust to protect it, so far as that is possible, from any attack on his assets after Mrs Dowlan's death.²⁰⁹

When questioned by the Committee regarding these matters, Br McDonald accepted that it was a 'very real possibility, maybe a probability'²¹⁰ the most likely attack would come from victims regarding compensation. Br Brandon responded:

I would simply say by way of response to your question that I was not the author of the letter.²¹¹

The following portion of a letter dated 4 December 2008 from Br Brandon was also read:

I'm aware of Ted Dowlan's signing of his dispensation papers in recent times.

It will also be helpful to me to have some idea of the quantum of his separation payment.

I don't need to know that to the nearest cent, but at least a broad indication will assist me in helping ensure that it isn't all lost through the said legal action with some consequent further call on the CBs [Christian Brothers] for support funds. I am aware of the arrangements made in relation to the estate that will come to him in line with his mother's will when she dies.²¹²

On consideration of that correspondence, Br McDonald and Br Brandon did not accept that the Christian Brothers put its members needs over those of victims:

I do not believe so. Legal action and paying legal fees is one thing. It does not mean that we deny victims ...

No, it is not about repentance. It is about obligation and caring for people who would just be put on the scrapheap.²¹³

When a brother is severed from the congregation we believe it is an obligation for us to provide him with some kind of stability. He has to have accommodation and he has to have the wherewithal to survive. This man is a psychological cripple. That is manifest in his behaviour, in his whole history of abuse. So he is not going to get employment anywhere.²¹⁴

208 *Transcript of evidence*, Christian Brothers, p. 23.

209 *Transcript of evidence*, Christian Brothers, p. 24.

210 *Transcript of evidence*, Christian Brothers, p. 24.

211 *Transcript of evidence*, Christian Brothers, p. 25.

212 *Transcript of evidence*, Christian Brothers, p. 26.

213 *Transcript of evidence*, Christian Brothers, p. 26.

214 *Transcript of evidence*, Christian Brothers, p. 25.

21.10.2 Catholic Archdiocese of Melbourne—Fr Desmond Gannon

Fr Desmond Gannon resigned from his parish in Macleod on 7 May 1993 after a complaint was made to the Vicar General, Monsignor Gerald Cudmore regarding his abuse of a boy in 1959 at St Anthony's Glenhuntly. The Macleod parish was informed that Fr Gannon had retired for health reasons.

In Fr Gannon's file provided to the Inquiry from the Catholic Archdiocese of Melbourne, it is apparent that then Archbishop Frank Little directed Monsignor Cudmore to draft a letter appointing Fr Gannon as a Pastor Emeritus. The letter was to be backdated (from 24 May 1993) to the time of Fr Gannon's resignation. This letter of appointment was full of praise for the service of Fr Gannon and was in circumstances where Fr Gannon had admitted to Monsignor Cudmore 'involvements' with boys in five or six other parishes. No mention of these activities is made.²¹⁵

When questioned about this course which was adopted, Cardinal Pell indicated:

It is not a promotion to go to pastor emeritus; it is an acceleration ... It is an exit... You are no longer an active priest.²¹⁶

When Cardinal Pell was questioned about the backdating of the document and the failure to mention any complaints relating to Fr Gannon of his admitted paedophilic activity, he responded:

... that is totally unacceptable. The pattern for such letters would be the letters that are sent out to the various emeritus pastors ...

It is an unfortunate letter, totally.

Let me say as we go along that obviously I do not approve of these at all. I was unaware of this particular incident, but it was this sort of unacceptable behaviour that prompted me to bring in the measures I did. I agree with you that it is unacceptable.

He got the bloke out, but the way he did it was reprehensible.²¹⁷

The Committee also questioned Archbishop Denis Hart about a letter addressed to him on 10 February 1999. In 1998, an assessment report was written on Fr Gannon. This was sent to the then Archbishop, George Pell. That assessment report was explicit about Fr Gannon, stating that 'his sexual offences ranged over the years from about 1957 to 1979, though this last date may stretch to 1981'.²¹⁸ The letter goes on to say that:

This deficiency, together with the absence of effective resources in coping with his overall psychological disturbances, means his level of risk for reoffending is a very real concern and needs to be attended to forthwith.²¹⁹

The Committee challenged Archbishop Hart on why the Church did not take steps to laicise Fr Gannon for many years after his activities had been exposed and proven. Archbishop Hart responded:

First of all, I would say that he had his faculties as a priest withdrawn on 3 August 1993 by Monsignor Cudmore, so he did not work as a priest ever since then. He then had some convictions and some prison time. It is very difficult to process a case. What is also significant is that if the person is not ready to cooperate, up until the new version of

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

216 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 48.

217 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 50.

218 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 47.

219 *Transcript of evidence*, Catholic Archdiocese of Melbourne, pp. 8–9.

Sacramentorum Sanctitatis Tutela in 2002 there was a very heavy reliance on that unless you could get the fellow to petition to be laicised, you could not do quite as much without a very, very onerous process. What was significant in 2002 was that the then Cardinal Ratzinger—Pope Benedict XVI—simplified the process and enabled the bishop to go as petitioner and for there to be a more summary process which would bring the result. Because he had been in jail, we were not able to go ahead until 2011 when we certainly went for it and we put the case there in great detail. So I would say that we were always desiring to do something. The difficulties of Church law at the time and the difficulties of him being imprisoned impeded us through that time. But I was quite resolute then when I sent his case to Rome, and I maintain that resolution.²²⁰

The Committee asked Archbishop Hart why 18 years passed between Fr Gannon losing his faculties (in 1993), and being laicised in 2011. Archbishop Hart responded:

There would be very few who would have been laicised forcibly until the late 2000s—until after 2002. We were quite determined to get something done about Gannon, and we are still determined ...

Well, better late than never.²²¹

When questioned about the effect on victims of such a delay, particularly nine years after Church law changed, Archbishop Hart responded:

I would say we did what we could. I wish it had been earlier. I agree with you. I really would have wanted to get onto it, but we just were restricted by the fact that the law had to be changed, and that did not come until 2002. We were also restricted by the fact that he was in prison at different times. It is not a nice story. I agree with you. His activities have been most offensive to those who were his victims, to their families.

I am not proud of that, but at least we are addressing it.²²²

Archbishop Hart also understood that this matter strongly symbolised for many victims the attitude of the Church.

Connected to this issue was the Church's motive in taking action against Gannon when it eventually did. The Committee read to Archbishop Hart the following contents of a letter he had written to the Vatican: 'In the near future, the Catholic Church throughout Australia will—along with other religious organisations—be the subject of a royal commission.' In the letter Archbishop Hart also referred to this Inquiry, then continued:

The media in Victoria have been active in reporting the information and allegations made before the Parliamentary Inquiry, often concentrating on those cases involving the Catholic Church ...

I am gravely concerned that the steps taken in the case of Reverend Desmond Gannon, in the light of this new situation and also the possibility of further allegations against him, be seen to be inadequate and the cause of scandal for the faithful.

I am concerned that the good name of the church, and the strong and dedicated efforts that are being made within the Archdiocese of Melbourne to protect children, could be damaged unless Reverend Desmond Gannon is laicised.

I therefore humbly request that this case be reconsidered in light of the new situation.²²³

220 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 9.

221 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 9.

222 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 9.

223 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 17.

The Committee questioned Archbishop Hart about the contents of the letter, particularly the Church's motivation for seeking Fr Desmond Gannon's laicisation at this time. Archbishop Hart responded:

We would have sent a case to Rome which had all the details of his convictions. So in other words we had already argued on the basis of justice. We were trying to get them to see that this was an exceptional case for the public good, for the welfare of society and the Church ...

I put the justice argument. I was trying to pile up other arguments that might sway matters to get them to make an exception, because when people turn 80 it is a lot more difficult. You have got old age and frailty. Now I do not agree with that. If a person has offended, if a person has really seriously hurt people, the consequences of the civil law should be followed and the person should be removed from the priesthood.²²⁴

When challenged that the Church took steps only when it knew it would be obliged to appear before this Inquiry, Archbishop Hart replied:

I am not sure when the reply came. We had been thinking about what we could do for some months, I must say ...

I would certainly say that we were slow to move. With regard to Gannon, I believe I put that case very, very forcefully, and I was not very happy that it was not granted and I was told to impose a penalty.²²⁵

Archbishop Hart rejected the Committee's suggestion that the laicisation of Fr Desmond Gannon was a public relations exercise or piece of propaganda. He responded, '... That was not the way I saw it.'²²⁶

21.10.3 Catholic Archdiocese of Melbourne—Fr Ronald Pickering

Another area considered by the Committee was the Church's continued payments to priests. One example was that of Fr Ronald Pickering. The Committee read to Cardinal George Pell a note dated 5 June 2002 from the Vicar General, Monsignor Christopher Prowse:

On Thursday, 30 May I was informed by the business manager ... that stipend money had been sent from the priests' retirement foundation of the archdiocese of Melbourne to a former parishioner of Father Ron Pickering in Gardenvale. The indication was that the money would then be forwarded by this intermediary to England and eventually be passed on to Father Ron Pickering.²²⁷

This was in circumstances where:

- In 1993, Fr Pickering had fled Australia to England without approval.
- Fr Pickering had been informed that there were allegations of criminal child abuse against him.
- Fr Pickering had refused to cooperate with Catholic Church insurers when they sought him out in England. The insurers were seeking information in order to respond to a number of civil claims that were based on the abuse allegations.

224 *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 17.

225 *Transcript of evidence*, Catholic Archdiocese of Melbourne, pp. 17–18.

226 *Transcript of evidence*, Catholic Archdiocese of Melbourne, pp. 17–18.

227 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 40.

- Fr Pickering had refused to provide details of the whereabouts of another alleged sex offender, Fr Paul David Ryan from the Ballarat Diocese, when requested to do so.

Yet the Melbourne Archdiocese under the leadership of Cardinal Pell continued to pay Fr Pickering a monthly amount. Cardinal Pell responded:

We have an obligation to all priests who are not laicised, even if they are convicted, to continue to pay them a modest stipend. I was obliged in canon law to do that, and I did ...

If he remains a priest—and he was a guilty priest—we have an obligation to provide for him. Most priests are not well off. As long as a priest is a priest, canon law requires the bishop to support them.²²⁸

It was put to Cardinal Pell that this was a situation in which somebody had been mistakenly paid for nine years, and that it was inappropriate to continue payments. Cardinal Pell did not accept this, stating:

I have a different view. The sum was quite modest, and as with all the other priests who were in a similar situation, I authorised such a payment.²²⁹

The Committee read to Cardinal Pell a further part of the Vicar General's letter: 'We want to know his address so we can write to him and insist that he returns to Melbourne and 'face the music' regarding allegations of sexual abuse in his ministry here in Melbourne.'²³⁰

Cardinal Pell responded to the Inquiry:

I certainly was keen for him to face up to the music, but he refused to do that, and that was different from providing a rudimentary keep for him ...

There was no secret in Church circles about the money that was going, you know, in the immediate environment. That was not a secret, it was not done covertly. He was one of a number like that, and my successor had a different view, which obviously you commend.²³¹

21.10.4 Catholic Archdiocese of Melbourne—Fr Kevin O'Donnell

One victim described the effect of Fr O'Donnell remaining a priest until his death:

Why do I call him 'Father'? Okay. I want to call him every other thing. He was buried as a full priest after he came out of jail. He was still Father O'Donnell, and Mr Pell was Mr Bloody Archbishop of Melbourne when he died. This was two years after he had come out of jail, and he was still a priest, and he was buried in the Melbourne General Cemetery in the bloody priests' crypt ...

I was so pissed off! I mean, they had the chance to do something, even just a little bit there, but they still had to recognise him. Mr Pell is the biggest protector— I do not care— within the diocese of Melbourne, because he is part of the diocese of Melbourne. It might have been the diocese of Ballarat, but it is the diocese of Melbourne I am talking about there ...

Here was the archbishop of Melbourne, and they gave him a full salute funeral, or whatever.

228 *Transcript of evidence*, Catholic Archdiocese of Sydney, pp. 40–41.

229 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 41.

230 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 41.

231 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 41.

Yes. It was like a kick in the bloody face. Seriously, it was a kick in the face.²³²

The Committee put to Cardinal Pell a portion of the evidence of Mr Anthony and Mrs Chrissie Foster regarding their family:

- O'Donnell pressed his erection against their little naked bodies, and these are children that were in primary school. O'Donnell left few physical scars. Instead, he left them emotionally tortured and spiritually ruined. He irreparably altered their development as humans so their relationships, their ideas of love and connections to others were also strained and sometimes impossible. O'Donnell and the Church stole a part of their souls.²³³
- The actions of O'Donnell are appalling, absolutely appalling. He was a minister of the Church so he brought disrepute on the Church, and there is no doubt whatsoever about the terrible spiritual and emotional turmoil he produced. It is totally reprehensible.²³⁴

However, Cardinal Pell did not accept that this description would fit many victims of clergy child abuse across Victoria. He said:

I understand people feel deeply about this, and in any case where it happened I would not want to dispute it. But it is not helpful to go from one example to a claim that it is done many, many times. What I do know from my painful acquaintance with this is that O'Donnell would be certainly amongst the worst of them—certainly amongst the worst of them. It does not condone what others might have done, or lesser. If comparable things—if any terrible things are done, we concede they are terrible and we concede also that they have ruined those people's lives. I would do anything to be able to provide some healing in that way, but I am not sure it is helpful to extend that radical condemnation without giving book, chapter and verse.²³⁵

When asked whether the Catholic Church hierarchy does not understand the impact of abuse on the victims, Cardinal Pell responded:

One of the things that one of the Fosters, Mrs Foster—I do not mean any disrespect, to Mr or Mrs Foster—said was that she did not believe in the apologies of bishops. I disagree with that. One thing she said was, and this resonates with me as an Australian of my age, 'If people keep apologising too frequently my instinct is to say, 'Well, what's going on? Apologise once and sincerely'. She or he also went on to say that actions are the important thing.

That is precisely why I set up the Melbourne Response; it was to stop this sort of stuff, these terrible things that are happening. You might say it is imperfect. I am sure the Melbourne authorities would be open to improving it, but I stood down plus or minus 20 priests in my five years in Melbourne. I believe that the Melbourne Response has had a significant impact in providing justice and stopping this thing going on. Unfortunately, with these people who are so wounded, it is very, very difficult to help them. God knows we would like to be able to in some way.²³⁶

Mr Anthony and Mrs Chrissie Foster said in their evidence to the Inquiry:

It is so hard to understand people talking about innocent, molested children without

232 *Submission S478*, Name withheld.

233 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 42.

234 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 43.

235 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 43.

236 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 43.

compassion. Perhaps priests, bishops and archbishops don't have that connection with children because they can't or rather, according to their vows, shouldn't father them. But that's no excuse. They were once children too. Surely we are not so many worlds apart that we can't share a sense of loyalty and protection of young people, humanity's future.²³⁷

When the Committee sought a response to this, Cardinal Pell said:

I would totally agree with that, and that is precisely what I tried to do. As somebody who for 17 years, off and on, has had to grapple with the details of these appalling cases I am only too well aware of the suffering it has produced.²³⁸

Cardinal Pell was informed by the Committee of the view expressed by Mr Foster regarding Cardinal Pell's behaviour, displaying a 'sociopathic lack of empathy'. When questioned whether he understood why that view had been formed, Cardinal Pell responded:

I think it is a pretty big call after a 20-minute meeting, and I do not think the actions of the Church since then in any sense justify that. For example—and I do not begrudge this—I think it was during my time that the Church paid out \$100,000 for counselling for the Fosters, and that was money well spent. Peter O'Callaghan visited the Fosters in their home on two occasions to help them as they were putting together their case. After I had that very unfortunate encounter with them, the Fosters continued following the Melbourne Response procedures in an attempt to get justice. Whatever is said about my style, I believe compassion is best expressed through actions and we have consistently, with next to no success, tried to demonstrate that we are not hostile to the Fosters and in particular in no sense to the daughters.²³⁹

Perhaps the views of victims are best summarised by the following remark made to the Inquiry:

As for the Catholic Church, they will never be a brother or a father to me. I will never use that title, because He is Our Father, and He has seen everything ... As I said, they are no father. They are no brother, and that title should be ripped from them too.²⁴⁰

21.10.5 Victim dissatisfaction

Many victims of criminal child abuse made the now familiar complaint that those in power in the Catholic Church just do not get it. The dissatisfaction of many victims of abuse with the internal Catholic Church processes stems from a very deep sense of betrayal. Although that abuse was directly perpetrated by individual members of the Catholic Church, many victims channel much of their anger and distress towards the organisation itself.

A combination of factors account for the hostility that many of these victims show. The principal factor is the Church's refusal to acknowledge involvement in the abuse. Other factors include the limited funds granted by the Church to 'compensate' victims, the victims' limited control over the proceedings, and the Church's lack of support for victims and their families, particularly in the spiritual sense. Adding to the victim's assessment of the Catholic Church response is a perception that the

237 *Transcript of evidence*, Mr Anthony and Mrs Chrissie Foster, p. 6.

238 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 44.

239 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 18.

240 *Transcript of evidence*, Mr Tim Lane, Ballarat, 28 February 2013, p. 13.

Catholic Church's approach is more supportive towards offenders than the victims of criminal child abuse.

Finding 21.8

The dissatisfaction with the internal process of an organisation was influenced by the manner in which the organisation supported the perpetrator of criminal child abuse.
