

PART G

LAW REFORM AND CRIMINAL JUSTICE



To properly address the needs of children in the care of organisations, there needs to be a ‘significant framework implemented by government’ that applies to employees and volunteers in those organisations.¹ The Committee concluded that opportunities for improvement and reform can be found in two main areas relating to the criminal justice system:

- grooming
- reporting, and responding to, allegations of criminal child abuse.

In the past, the abuse of children in organisational settings has been under-researched,² and largely misunderstood as a community problem.³ The incidence of child abuse in organisations is difficult to estimate though children in Victorian organisations remain vulnerable to multiple types, and repeated episodes, of abuse.⁴

As Professor Chris Goddard, Director of Child Abuse Prevention Research Australia at Monash University, told the Committee:

In my view the starting point ... has to be clarifying what our goal is. We are seeking to provide children with the best possible protection. To do that we need to fully acknowledge the vulnerability of children and the serious crimes that are committed against them.⁵

In describing the current situation in Victoria, the Australian Childhood Foundation (ACF) commented to the Inquiry that:

The legal and policy paradigm currently in place in Victoria can best be described as a loose collection of uncoordinated initiatives which have been implemented progressively in reaction to public concern to specific cases as they have been reported.⁶

Victims and their need for criminal justice

Victims of criminal child abuse spoke to the Committee of their desire for the criminal justice system to adequately respond to their needs. These needs included:

- appropriate criminal sanctions for offenders
- public acknowledgement of an offender’s guilt
- an opportunity to air publicly the devastating effect of offending on victims.

Associated with these matters was the desire of victims to ensure that organisations both:

- properly screen, monitor and supervise employees and volunteers who have the care of and responsibility for children⁷

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

2 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*. *Child Abuse Prevention Issues series*. vol. 25, Spring 2006, Melbourne, Australian Institute of Family Studies, p. 2.

3 *Transcript of evidence*, Australian Childhood Foundation, p. 2.

4 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*, p. 2.

5 *Transcript of evidence*, Professor Chris Goddard, Child Abuse Prevention Research Australia, Monash University, Melbourne, 19 October 2012, p. 5.

6 *Submission S224*, Australian Childhood Foundation, p. 3.

7 Discussed in Part D.

- make appropriate and prompt reports to the police when an employee or volunteer is known or suspected of having criminally abused a child.⁸

One witness told the Committee that in his view, prosecution through the criminal justice system and the subsequent imposition of criminal sanctions was the only effective way to address an offender's behaviour. Mr Robert Mackay told the Inquiry:

I am thinking a bit about how offenders deny, minimise or rationalise their behavior ... My sense is that the community at large, represented by government, has to set very clear boundaries and, if you like, positions that actually challenge and also deconstruct the ways in which offenders make sense of their behaviour, so that if there has been denial, if there has been reluctance to address these issues, that has to be confronted. Sometimes that may have to be confronted through the process of prosecution.⁹

The criminal justice system gives many victims of criminal child abuse a voice and a public forum. For a victim who has maintained their silence, sometimes for many, many years, finally having an opportunity to make publicly known what an offender did and the effect of that behaviour on them can be of great importance. Recent changes in practice and amendments to the *Sentencing Act 1991* (Vic)¹⁰ are designed to ensure that the experience of one witness, who was not able to read out his Victim Impact Statement in court, is not repeated:

In our case we had no voice ... We were given 5 minutes worth of the public prosecutor's time while the perpetrator had hours of defence. For us, our perpetrator pleaded guilty, and we had people say to us, 'That is good', and 'You do not have to prove this in trial'. That is probably the worst thing that could have happened, because no one has heard our side ... A person got up and said, 'He has been charged with these offences and he is pleading guilty'. That was the whole lump sum total of our side of the case.¹¹

Broken Rites also impressed upon the Committee the importance of the criminal law having the ability to properly respond to victims of criminal child abuse. Ms Chris MacIsaac, President of Broken Rites told the Committee:

That is why we come before you people today—to make sure that there can be recommendations made to government that will change the plight of the victim who comes in with a little pile of evidence under their arm. They want to see their perpetrator pay the price for harming them, and they want to see the institution that allowed this to happen also having to act in a responsible way.¹²

Many victims' evidence to the Committee expressed a call for any changes necessary to make the criminal justice system more responsive to victims of criminal child abuse. As demonstrated by the examples above, having the opportunity to pursue justice through the successful prosecution of offenders is an important avenue of redress for victims of abuse.

8 Or other appropriate authority, as recommended in Chapter 18 of Part E.

9 *Transcript of evidence*, Mr Robert Mackay, Melbourne, 1 March 2013, p. 6.

10 *Sentencing Amendment (Community Reform) Act 2011* (Vic) s.8Q.

11 *Submission S454*, Name withheld.

12 *Transcript of evidence*, Broken Rites (Australia) Collective Inc., Melbourne, 9 November 2012, p. 4.

Chapter 22

The criminality of grooming

AT A GLANCE

Background

There are a number of ways 'grooming' can occur including through conduct directed at parents of a victim and also by the cultivation of friendship with the child victim. Traditionally this conduct has been treated by the Court as an aggravating feature of the sexual offence committed against the child. Currently the law does not regard such conduct, carried out with criminal intent or intent to engage in sexual activity with a child as a criminal offence.

Key findings

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

Recommendation

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

The grooming offence should:

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

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

A person who grooms a child in this way makes numerous decisions and engages in a number of acts, all separately and collectively directed at achieving a serious criminal objective. Grooming also involves a breach of trust that makes this behaviour particularly abhorrent. Furthermore, through the grooming process the perpetrator often seeks to isolate and silence the victim, by fostering a sense of exclusivity in their relationship.

The Committee heard from a number of secondary victims as to the impact of ‘grooming’ behaviour, who felt responsible for the abuse suffered by their children and personally exploited by the perpetrator, as discussed in Section 4.3 of Part B. The Committee recommends the Victorian Government give consideration to a separate criminal grooming offence which recognises the harm to secondary victims as a consequence of the actions of the perpetrator, directed towards them and carried out with criminal intent.

As discussed in Section 23.3, techniques used by Victoria Police to investigate sexual offences have changed over the last decade. The current approach gives a victim the chance to tell their whole story, including details of the circumstances and history of events leading up to the actual sexual assault. By this technique investigators can find evidence of grooming behaviour from victims. The Committee heard that grooming is one of the three critical concepts that police investigating child sexual abuse explore with victims. Mr Patrick Tidmarsh, a forensic interview adviser with the Sexual Offences and Child Abuse Investigation Team (SOCIT), told the Inquiry:

To talk about whole-story specifically, it is the crafting of the relationship narrative, not the narrative of events ... But there is always a lead-up to sexual offending, and there are three critical concepts that we teach our members.

The first is grooming ... One of the things that I think is not adequately known about grooming in sexual offending is that it is not exclusively about the sexualisation of the relationship with the child. We teach our investigators that what we call grooming—which is the establishment of power, control and authority over that individual—is far more important in the investigation of the crime, ironically, than the sexual element, because it is in that phase, which is always present, that you will see the offender craft the silence, the surrender and the cooperation of that particular victim. As I said earlier, that can take years in some particular cases, but it often takes weeks and mostly months.¹³

Victims gave evidence to the Inquiry that was consistent with Mr Tidmarsh’s analysis of grooming behaviour, although (as illustrated below) grooming can take many different forms. A number of witnesses described a range of grooming behaviours to which they and their families had been subjected. The evidence revealed that offenders are highly skilled in identifying vulnerability in a potential victim and exploiting it to achieve their criminal purpose or desire.

13 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), Victoria Police, Melbourne, 9 November 2012, p. 5.

22.1. The process of grooming the individual, family or organisation

The Committee learnt that the criminal abuse of a child will regularly involve multiple secondary or passive victims of the grooming process. These victims are likely to suffer significant long-term trauma, caused in part by the perpetrator's deliberate betrayal and manipulation of their trust, but more particularly by their sense that they (unknowingly) helped make possible the ultimate sexual abuse.

Mr Tidmarsh described the deliberate way in which offenders construct and manipulate relationships in order to achieve their objectives:

What you will hear [offenders] say is how carefully they [perpetrators] craft their relationship with individuals, with communities and with organisations—the masks they wear in order to persuade people of the way they would like to be seen and the way they manipulate children to say what they would like them to say. One man in treatment once said to me—I have never heard it said more clearly—when asked about grooming and his approach to grooming, “The point for me is I want the child to think like me.”¹⁴

A further element in crafting the relationship is trying to ensure that the victim will not disclose the fact that the abuse is occurring. Mr Tidmarsh explained:

For example, two of the myths that are still around about the reporting of children is that they will immediately report to a trusted adult. Leave aside that most of the offending happens in families where the trusted adult is often the person doing the offending, in the context of what we are talking about today, it is extremely unlikely after the relationship has been manipulated and crafted for them to be isolated and for them to see that adult abusing them as connected to their parents and trusted by their parents. It is extremely unlikely that children will report in those circumstances.¹⁵

22.1.1. Grooming victims

Perpetrators recognise that certain children are more susceptible to their influence than others. Relevant factors include the victim's age, home circumstances, and emotional or psychological state. Offenders will often target children who have family problems or lack confidence, and are therefore indiscriminate in trusting others. In other words, offenders will often identify, and then seek to fill, a void in a child's life.¹⁶ Grooming behaviour has been observed in both historical and current environments where criminal child abuse occurred.¹⁷

Ms Nicky Davis told the Inquiry how an offender identified vulnerability in her. She had suffered emotional abuse at home and as a consequence she was:

... painfully shy and insecure and had been taught to believe I was hopeless at everything, and I was too worthless to exist, far less to have opinions or needs.¹⁸

14 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 3.

15 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 4.

16 AM. McAlinden (2006) “‘Setting ‘em up’: Personal, familial and institutional grooming in the sexual abuse of children”. *Social and Legal Studies*, Vol. 15, No. 3, pp. 339-62, p. 349.

17 In 2008–09, the New South Wales (NSW) Ombudsman examined trends and patterns of child sexual abuse by school employees, including the incidence of grooming as a precursor to sexual activity.

The research found that where teachers were the perpetrators, grooming occurred prior to the sexual offence in 92 per cent of cases. NSW Ombudsman (2009) *Annual Report 2008–2009*. p. 57.

18 *Submission S334*, Ms Nicky Davis, p. 10.

Ms Davis believed that, having identified her as a potential victim, the offender set about grooming her:

Initially he groomed me, paying attention to a shy child starved for love and affection. The fact that any adult would pay attention to worthless me was a foreign concept, far less a godlike creature such as Brother Brendan.¹⁹

Mr Lincoln McMahon similarly told the Inquiry that he was targeted because of his family circumstances:

My father was by this stage drinking heavily ... I now realise, having read accounts by other victims of Ridsdale, that my father's drinking probably helped ensure that I was someone he would target.²⁰

Many offenders will seek to develop a special relationship with an intended victim in order to facilitate the abuse. As described above by Ms Davis, grooming can typically involve befriending a potential victim. The offender may develop their relationship with a child by getting to know the child's interests, being helpful, and confiding in them, all in order to gain the child's confidence and trust. The offender may then cultivate a 'special' friendship by giving the child presents, treats, outings, trips or money.²¹

This special friendship can reinforce the exclusivity of the relationship between the offender and the victim. It also distances the child from other significant adults such as parents.²² The offender also controls the victim in the course of their relationship through inducements, bribes or threats, all intended to ensure the child's ongoing co-operation or silence.

The Committee heard evidence that supported these descriptions of grooming. For example, Mr Tim Lane described how he was targeted and groomed, stating that:

I think we were nearly the Brady Bunch without Alice. Three boys and three girls; it was almost that perfect scenario, I suppose. We were all pretty shy kids. He made things fun. He would chase us, or something like that. He made it so that, I do not know, we would not say anything, even though our parents said nobody is allowed to touch you in certain areas. They told all the kids that, but he made things fun and he made it like he was a friend. I was only five and still did not quite understand what he was doing, really.²³

A number of victims explained that the offender introduced alcohol as part of the grooming process. Mr Raymond D'Brass told the Committee:

I was born and raised in Melbourne and between 1979 and 1983—I was aged between 9 and 13—I was a member of both the choir and altar boys at St James, Gardenvale, during which time I was regularly abused by Father Ronald Pickering, now deceased. He groomed me by giving me cigarettes, money and alcohol ... I am aware that two other boys were also sexually abused by Father Ronald Pickering. I was regularly fondled and petted by Pickering, as were other boys. This occurred within the change rooms of the church and within the presbytery. I began smoking cigarettes and drinking alcohol with Pickering from the age of nine and on many occasions passed out from consuming the alcohol, which left me vulnerable to such abuse.²⁴

19 *Submission S334*, Ms Nicky Davis, p. 10.

20 *Submission S432*, Mr Lincoln McMahon, p. 1.

21 AM. McAlinden (2006) "'Setting 'em up': Personal, familial and institutional grooming in the sexual abuse of children', p. 347.

22 AM. McAlinden (2006) "'Setting 'em up': Personal, familial and institutional grooming in the sexual abuse of children', p. 347.

23 *Transcript of evidence*, Mr Tim Lane, Ballarat, 28 February 2013, pp. 2–3.

24 *Transcript of evidence*, Mr Raymond D'Brass, Melbourne, 4 March 2013, p. 2.

22.1.2. Grooming parents and families

As they do with children, offenders often identify vulnerabilities in a family unit. Offenders may infiltrate the lives of families by helping a parent overcome problems and ensuring that the parent perceives their interest in the child as helpful. This serves to isolate the child victim and give the abuser unquestioned access to the child.

Ms Debi Crocker explained to the Inquiry that her mother was groomed by a pastor of an independent church. She described the process:

Parents have a very specific role in dispossessing their children and allowing a person to control their parental instincts. My mother was no exception and with a very complex set of circumstances in her own life that allowed for psychological abuse, exploitation and manipulation, she was truly putty in the hands of a man who was targeting her child and distancing her from her maternal role toward the child.²⁵

The Committee also heard that the authority of religious organisations and their personnel can play a unique part in the process of grooming family members. Offenders may take full advantage of the respect accorded to their position and the unquestioned trust that parents, grateful for and in some cases honoured by the attention being given to their child, place in them. There is a power imbalance in situations where an offender has a revered position in the family. Ms Mairead Ashcroft described such an experience to the Inquiry:

My parents of course thought, ‘isn’t this wonderful that somebody from the church has taken my children under their wing, and they’re going to help us ...’ that was, of course, the idea that my parents had: that they could not have put their children in any better hands; how lucky were they? Brother Bernard then offered to become our family babysitter because, as I said, we had no relatives here; there was just us. So, yes, he became our family babysitter.²⁶

Some offenders will try to position themselves in an organisation in a way that gives them access to children. Emeritus Professor Freda Briggs described the process that some offenders pursue when trying to get close to selected victims, their parents, other employees, and the wider community:

What you usually find is that child sex offenders in schools will get the trust of everybody. They will get to know the targeted children. They will offer their services for a wide range of things, so they get a reputation for being the best teacher in the school. They will do the extra playground duty. They will be volunteering for sports. They will be volunteering for camps—anything that will give them contact with the children with no other supervisor there.²⁷

A witness who was the parent of abused children explained:

I first met XXX in the early 1960s. We became pretty friendly and I took him to Melbourne a couple of times ...

Then I met my wife. We were married in 1964 and then the children came. Then he reappeared in 1975, just prior to Christmas. From that point on—I was a psychiatric nurse who worked night shift, and he seemed to make it his business to come when I was on duty, so all this molestation of my children by him came about while he was

25 *Submission S366*, Ms Debi Crocker, p. 15.

26 *Transcript of evidence*, Ms Mairead Ashcroft, Melbourne, 23 November 2012, p. 6.

27 *Transcript of evidence*, Emeritus Professor Freda Briggs, Education Arts and Social Sciences Divisional Office, University of South Australia, Melbourne, 4 April 2013, p. 3.

visiting our home. That was going on unbeknown to myself and my wife.²⁸

Perhaps the devastation of the family was best described by the mother of a victim who ultimately took his own life as a result of the abuse he suffered. She told the Inquiry that:

Even our eldest daughter put on the internet for everybody to read that I am to blame ... for allowing him (the offender) to be in the house ... When our children needed us most, we were not there ... I still feel the guilt that I did not know about it, and I should have, being a good mother. I should have been a better mother.²⁹

The Committee recognises that parents or other family members who have been targeted by perpetrators in order to get access to a child are also victims. Their trust in the offender has been betrayed and they feel some responsibility for the abuse perpetrated on the child. In addition to dealing with the effects of criminal abuse on the child as the primary victim, many family members have to deal with an internal guilt that arises from their role in encouraging a relationship between the perpetrator and the child, or from allowing the perpetrator free access to the child. We should remember that these passive or secondary victims were deliberately exploited by an individual whose actions were intended to make possible a crime against a child.

Finding 22.1

Treating grooming as an aggravating feature of a sexual offence does not sufficiently recognise the damage such conduct causes to those who are the subject of such behaviour, categorised as secondary or passive victims. The criminality of the conduct of grooming should be recognised as an offence and in addition to the primary victim, parents and others should be recognised as victims of grooming.

22.2. Difficulty in drafting effective grooming legislation

It is difficult to draft legislation to penalise the crime of grooming. Actions or conduct that may constitute grooming can sometimes appear innocent, even if inappropriate. It is the perpetrator's intent that makes the conduct criminal in nature. Legislators must be careful in making laws that depend upon circumstantial evidence. For this reason, it is necessary to consider the behaviour in the context and circumstances in which it occurs, in order to determine whether it is part of a pattern that reveals a criminal intent.

There may be cases where an offender's history enables police to use propensity evidence. That is, police may observe that a particular offender has habitually used a certain method of grooming. Police might then be able to identify the same patterns of behaviour towards other victims.

Because of grooming, an incident of criminal child abuse will often involve multiple secondary victims, who are likely to suffer long-term trauma. Most typical are parents and other family members who allowed and encouraged the perpetrator to develop a relationship with the child. Continued offending and continued exploitation of the victim's and family's trust in the perpetrator are likely to have a devastating effect on all of them. Treating grooming simply as an aggravating feature of the sexual offending perpetrated against the child does not adequately reflect the seriousness

²⁸ *Submission S482*, Name withheld.

²⁹ *Submission S482*, Name withheld.

and significance of this element of criminal child abuse. Conduct that is deliberately intended to facilitate the perpetrator's sexual activity with a child should, in and of itself, be made a criminal offence.

22.2.1. Other grooming offences

The Commonwealth and each of the Australian states have considered grooming as a specific offence in the context of electronic communications. They have passed laws that criminalise use of the internet or other forms of communication to create or develop relationships with children, with the ultimate intention of engaging in sexual activity with them.³⁰

In April 2001, the Victorian Law Reform Commission (VLRC) was given a reference to consider ways the criminal justice system could become more responsive to sexual offence complainants, encourage more people to report sexual offences to police and participate in the criminal trial process. In respect of sexual offences committed against children a number of procedural reforms were enacted with the aim of making the criminal justice process less traumatic for children and other sexual abuse victims, including adults who had been abused as children.

The *Sexual offences: Interim report*, tabled in Parliament on 4 June 2003, considered whether the criminal law could deal adequately with conduct amounting to the grooming of children. Law reform in this area was directed to amending statutory offences under the *Crimes Act 1958* (Vic) of procuring and soliciting a child for sexual activity.³¹ This amendment was designed to address what was seen as a growing and serious problem in the early 2000s: child exploitation facilitated through the internet.³²

The current provision, made in 2006 on the basis of the VLRC's recommendation:

- prohibits recruiting or propositioning children to participate in a sexual act
- makes such conduct a crime, whether or not sexual activity takes place (criminal liability arises from the perpetrator's intention to engage in sexual activity with the child and acting upon that intention by contacting or engaging the child)
- applies both to making an offer to a child to participate in sexual activity (procuring), and to urging or persuading a child to participate in sexual activity (soliciting).

The VLRC did not recommend that the mode of communication should be limited to the internet. It said that the criminality of the conduct should not be based on the medium used to prepare the child to participate in sexual activity. In this way the VLRC anticipated that the section would cover a range of telecommunications media, including telephones and the internet.³³ It is noted that the Cummins Inquiry³⁴ recently recommended the creation of a Victorian offence (as opposed to a Commonwealth offence) to cover internet or online grooming.³⁵ Clearly the VLRC

30 *Crimes Act 1900* (ACT) s.66; *Criminal Code Act 1995* (Cth) ss.474.26,74.27(1)(2)(3),74.27A; *Criminal Code Act 1899* (Qld) s.218A(1); *Criminal Law Consolidation Act 1935* (SA) s.63B(3); *Criminal Code Act 1924* (Tas) s.125D; *Criminal Code Act Compilation Act 1913* (WA) s.204B; *Criminal Code Act* (NT) ss.131,32(2); *Crimes Act 1900* (NSW) s.66EB.

31 *Crimes Act 1958* (Vic) s.58(1).

32 Victorian Law Reform Commission (2003) *Sexual offences: Interim report*. Melbourne, VLRC, p. 383.

33 Victorian Law Reform Commission (2003) *Sexual offences: Interim report*, p. 386.

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

35 See Recommendation 51, Cummins, P., Scott, D., OAM, & Scales, B., AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, Melbourne, Department of Premier and Cabinet.

intended that this provision would cover ‘grooming’ conducted through some form of communication, but not where a person grooms a child by befriending them and establishing an emotional connection with them *in person*. For this reason, the current Victorian provision does not cover many of the behaviours that can be part of the grooming process. The Department of Justice recently released a review of sexual offences consultation paper that proposes changes to the criminal law to include a broader definition of grooming.³⁶

22.2.2. NSW grooming provision

In 2007, NSW introduced s.66EB of the *Crimes Act 1900* (NSW): ‘procuring or grooming child under 16 for unlawful sexual activity’.

Grooming provisions introduced in NSW were designed to go further than those in Victoria and other states, by covering a broader range of grooming activities. The parliamentary debates revealed:

Grooming is essentially a process that paedophiles and child sexual abusers engage in to get access to a child and prepare him or her for sexual abuse. It often entails emotional seduction and unfortunately can be quite subtle. Perpetrators can target a child’s family to get closer access to the child, or befriend the child directly without the child or the family being aware of the intentions ... Increased use of the Internet and new technologies expose children to sexual predators partly through the anonymity of online interaction. However, such behaviour can and does occur without the use of communications technology. That type of behaviour should be dealt with by the criminal justice system whether it is perpetrated on the internet or elsewhere.³⁷

Amendments in 2008 added another offence: ‘meeting a child following grooming’. These offences are designed to cover the following situations:

- An adult intentionally procures a child for unlawful sexual activity (s.66EB(2) ‘Procuring children’).
- An adult intentionally meets a child, or travels with the intention of meeting a child, whom the adult has groomed for sexual purposes, and who does so with the intention of procuring the child for unlawful sexual activity with that adult or any other person (s.66EB (2A) ‘Meeting child following grooming’).
- An adult engages, on one or more previous occasions, in conduct that exposes a child to indecent material (s.66EB(2B) ‘groomed for sexual purposes’).
- An adult engages in any conduct that exposes a child to indecent material or provides a child with an intoxicating substance; and does so with the intention of making it easier to procure the child for unlawful sexual activity (s.66EB(3) ‘Grooming children’).

‘conduct’ includes:

- a) communicating in person or by telephone, the internet or other means, or
- b) providing any computer image, video or publication. (s.66EB(1)).

‘Unlawful sexual activity’ is broadly defined and it is not necessary to prove or specify the unlawful sexual activity for which the child was procured (s.66EB(1) and s.66EB(4)).

36 See Part 8, Department of Justice (2013) *Review of Sexual Offences Consultation Paper*, Criminal Law Review, Melbourne.

37 *Parliamentary Debates*, The Hon. Ian Cohen, New South Wales Legislative Council, 7 November 2007, p. 4011.

The provision covering ‘meeting a child after grooming’ requires proof that on one or more previous occasion, the adult exposed the child to indecent material. This requirement is also included in the grooming provision, although alternatively an adult can be liable under this provision if the adult provides the child with intoxicating liquor. The legislation defines conduct broadly and covers all forms of communication, including a face-to-face meeting with the child.

Although these provisions go further than those in other states, including Victoria, there is no grooming offence where an adult engages in conduct (whether directed at the child or at some other person) to facilitate access to that child and does so with the intention of making it easier to procure that child for unlawful sexual activity.

22.2.3. Applying existing grooming laws

If an equivalent grooming provision were enacted in Victoria it would cover many of the grooming behaviours described to the Committee by witnesses. For example, victims told the Committee about perpetrators giving them illicit drugs or alcohol and/or pornographic material before committing sexual offences, or giving them alcohol or pornography with the intention of engaging them in sexual activity.³⁸ However, significantly, such provisions would not cover actions aimed at deliberately exploiting a relationship with a child’s parent to gain their trust and get access to their child for a sexual purpose. As discussed above, as with direct victims (the subject of criminal activity), passive or secondary victims are also exploited by the perpetrator. They unknowingly assist the perpetrator in carrying out a criminal intent towards a child.

The other limitation of the NSW provision is that the conduct must expose a child to indecent material. This limitation does not exist under the Commonwealth legislation, although it is limited to grooming via various forms of communication. Section 474.27 of the *Criminal Code 1995* (Cth) was amended in 2010 to delete the requirement that the communication in question must include material that was indecent. This change recognised that grooming can encompass a wide range of activities designed to build a relationship of trust with a child for the purposes of sexually exploiting that child. The content of communications may not always be indecent. The grooming process is just as likely to involve seemingly platonic exchanges and innocent materials.³⁹

22.2.4. Difficulties in defining grooming

As discussed in Section 18.3 of Part E, the NSW Ombudsman requires organisations to notify him of allegations against employees, including allegations that would constitute criminal child abuse. The ‘reportable conduct scheme’ includes sexual offences that are ‘committed against, with or in the presence of a child.’ Grooming or procuring a child under s.66EB is included as a sexual offence constituting reportable conduct. Other ‘grooming behaviour’ may be sexual misconduct which is also ‘reportable conduct’.

The NSW Ombudsman’s *Child protection practice update 2013* outlines difficulties in identifying grooming as a sexual offence. Behaviour constituting sexual misconduct is not necessarily a criminal offence. The document outlines three categories of sexual misconduct:

38 *Transcript of evidence*, Mr Raymond D’Brass, p. 2; *Files relating to Father Paul David Ryan*, provided to the Family and Committee Development Committee by the Catholic Ballarat Diocese.

39 Commonwealth of Australia (2010) *Explanatory Memorandum Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010*. p. 92.

- crossing professional boundaries
- sexually explicit comments or other overtly sexual behaviour
- grooming behaviour.⁴⁰

The 2013 document urges caution when considering whether there has been ‘grooming behaviour’, particularly since it can, in some circumstances, amount to a criminal offence. The document advises that in many cases it would be more appropriate to consider whether there has been a crossing of professional boundaries and/or other more overt sexual behaviour.

Additionally, the 2013 document advises that proving ‘grooming’ requires evidence of a pattern of conduct or behaviour consistent with grooming the child for sexual activity where there is no other reasonable explanation for the conduct. The document then outlines the types of behaviours that may support a conclusion that grooming behaviour is occurring. An extract from the document is shown in Box 22.1.

Box 22.1: Grooming behaviour

- Persuading a child or group of children that they have a ‘special relationship’, for example by:
 - ♦ spending inappropriate special time with a child
 - ♦ inappropriately giving gifts
 - ♦ inappropriately showing special favours to one child but not other children.
- Inappropriately allowing the child to overstep the rules.
- Asking the child to keep the relationship to themselves.
- Testing boundaries, for example by:
 - ♦ undressing in front of a child
 - ♦ encouraging inappropriate physical contact (even where it is not overtly sexual)
 - ♦ talking about sex
 - ♦ ‘accidental’ intimate touching.
- Inappropriately extending a relationship outside of work (except where it may be appropriate—for example, where there is an existing friendship with the child’s family or as part of normal social interactions in the community).
- Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child.
- An adult requesting that a child keep any aspect of their relationship secret, or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

Source: *NSW Ombudsman child protection practice update 2013*.⁴¹

40 NSW Ombudsman (2013) *Child protection practice update: Defining reportable conduct*. Accessed on 9 September 2013 from http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0013/5620/PU_CP_02_11_Reportable_Conduct_v3.pdf.

41 NSW Ombudsman (2013) *Child protection practice update: Defining reportable conduct*.

The Committee recognises the difficulties in defining grooming behaviour. The critical feature of grooming is not the conduct itself, rather the intention that accompanies it. The difficulty in identifying this kind of offence is that apparently innocuous conduct needs to be viewed in the context of a pattern of behaviour and the accompanying intention will usually need to be inferred from all the circumstances.

Finding 22.2

It is recognised that grooming can occur in many other contexts other than via telecommunications which are currently covered by legislation. Perpetrators of sexual offences against children often engage in grooming behaviour directly with the child cultivating a friendship through personal contact and the criminality of that conduct should be recognised.

→ Recommendation 22.1

The Committee recommends that the Victorian Government give consideration to an amendment to the Crimes Act 1958 (Vic) to create a criminal offence of grooming.

The grooming offence should:

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

Chapter 23

Reporting abuse and the response of the criminal justice system

AT A GLANCE

Background

Child abuse in organisations is a crime. The failure to report to police or to conceal the commission of such a serious crime should be regarded as a criminal offence.

Key findings

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

Recommendations

- That the Victorian Government consider amending Section 326 of *Crimes Act 1958* (Vic) to remove the element of 'gain', to ensure that a person who fails to report a serious indictable offence involving the abuse of a child will be guilty of an offence.
- That the Victorian Government consider the introduction of a criminal offence relating to child endangerment in organisations that covers relevant wanton or reckless behaviour in situations:
 - ♦ when a person in authority is aware of and consciously disregards a substantial and unjustifiable risk that their acts or omissions placed a child in a situation that might endanger the child's life, health, welfare, morals, or emotional well-being.

23.1. Criminal justice system response to reports of criminal child abuse

The decision to report a crime to the police can have profound consequences for victims and the criminal justice system.⁴² As noted previously in this Report, there are many reasons why a child does not complain to police or anyone else about criminal sexual abuse. Evaluating the operation of the criminal justice system and ensuring that it can respond appropriately and adequately to instances of abuse is particularly important when vulnerable members of society, such as children or adult victims of child abuse, are involved. Evidence before the Inquiry has demonstrated the need to recognise the vulnerability of both these groups and to ensure that they are not further traumatised through their interaction with the criminal justice process.⁴³

In particular, the way the criminal justice system carries out investigations into allegations of sexual abuse is an important part of the community response to criminal child abuse.

Encouraging people to report actual or suspected criminal child abuse is vital. Vulnerable children are often unable to reveal what is happening to them, and are often too young to understand that what is happening is a crime and that they are a victim. The responsibility then falls upon adults who become aware of what may be happening, to protect the child.

When people report suspected criminal child abuse, it becomes possible for authorities to intervene early to protect the child being abused as well as to prevent further offending against the child and other children. The Committee sees a need to strengthen laws that provide for the reporting of criminal child abuse perpetrated in religious and non-government organisations. Given that such activity is criminal, it is most appropriate to make such reports to the police.

The Committee determined that there are two main areas of Victorian legislation directly relevant to the reporting of child abuse in an organisational setting:

- mandatory reporting laws
- failing to report or concealing abuse.

It is important to recognise that all adults have a moral responsibility to report any reasonably held suspicions about someone who may be committing acts amounting to criminal child abuse. The Committee has found that there is a need to strengthen the criminal sanctions for concealing abuse, and recommends the Victorian Government consider the introduction of a 'failure to report' offence as described in Section 23.6.1.

The Committee also recommends the Government consider the introduction of a child endangerment offence.

42 C. Carcach (1997) 'Reporting crime to the police'. *Trends & issues in crime and criminal justice*, Vol. 68, p. 2.

43 C. Eastwood (2003) 'The experiences of child complainants of sexual abuse in the criminal justice system'. *Trends & issues in crime and criminal justice*, Vol. 250, p. 113.

23.2. The criminal justice system

The criminal justice process commences when a person (usually the victim) makes a report to police, thus starting an investigation. A prosecution, trial and punishment of an offender found guilty then follows. However, many factors can influence a victim's willingness to report a crime.⁴⁴ Some of these are outlined in Figure 23.1.

Figure 23.1: Dynamics of reporting a crime



Source: Compiled by the Family and Community Development Committee.

The progress of sexual assault complaints through the criminal justice system can be complex. Victims of sexual abuse—and child victims in particular—face a variety of difficulties pursuing a complaint through the courts. These difficulties include a lack of corroborating evidence, given the secretive nature of sexual offending, and the fact that crimes often took place a long time ago.

Historically, further obstacles include the poor perception generally of child witnesses (or adult witnesses suffering the effects of criminal child abuse) and negative inferences commonly drawn as a consequence of delayed reporting.

Finally, various decision makers can exercise discretion at many points in the prosecution process. This may result in a complaint not proceeding to court. The result is that only a small proportion of child sex crime cases reach trial and result in a conviction.

The filtering of cases begins when police must decide whether to record and investigate a complaint and then whether to charge a suspect with the offence. Their discretionary powers probably make police the most significant gatekeepers to the criminal justice system.

Once the police charge a suspect, prosecution lawyers review the file to determine whether the case should be prosecuted. Cases that proceed are subject to continuous reassessment because the circumstances of the case can change over time.⁴⁵

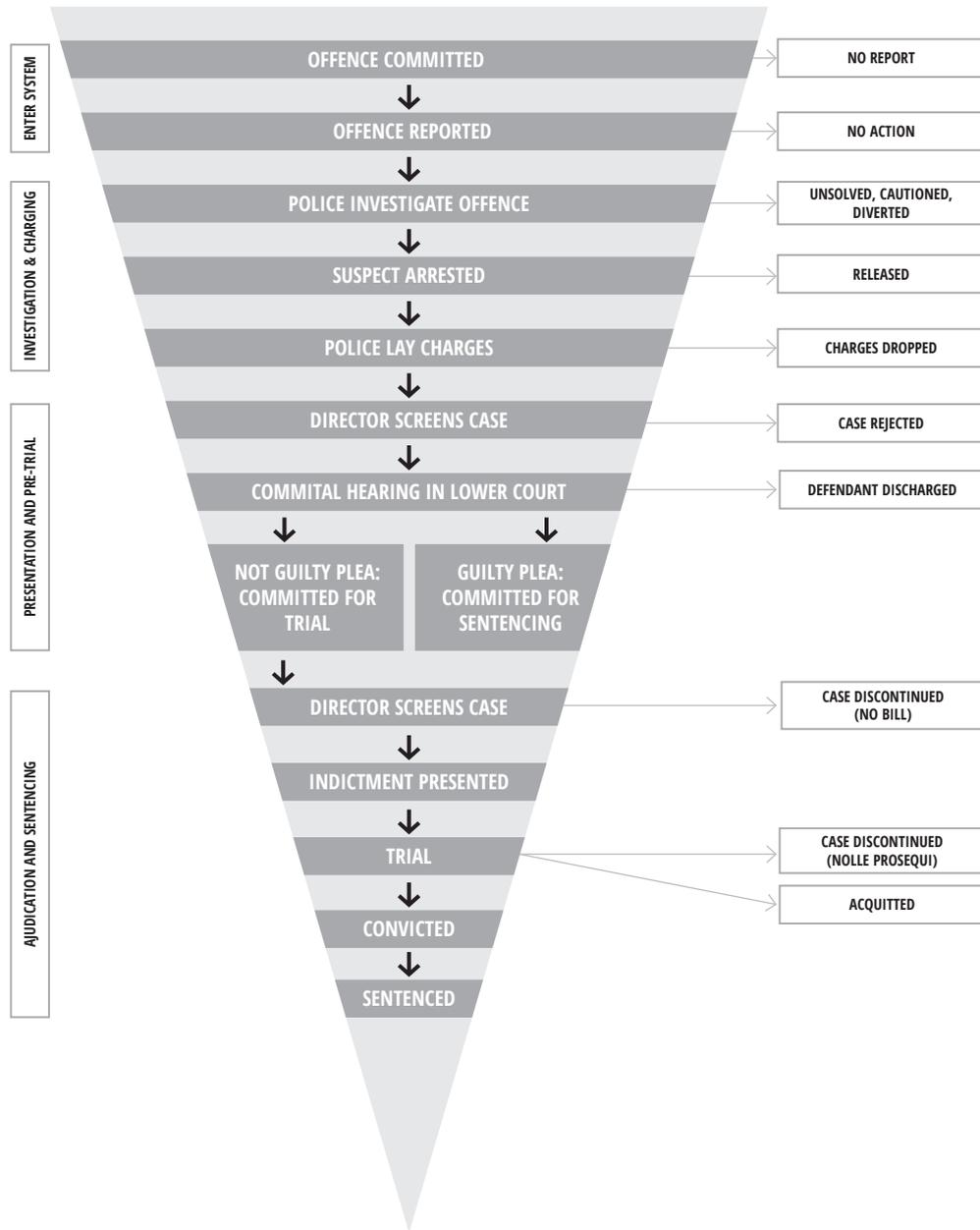
⁴⁴ C. Carcach (1997) 'Reporting crime to the police', p. 3.

⁴⁵ Australian Law Reform Commission & NSW Law Reform Commission (2010) *Family violence: A national legal response. Final report (ALRC 114)*. Commonwealth of Australia, p. 1207.

In addition, different evidentiary standards apply at each decision-making stage—the police decision to charge is based on the ‘prima facie’ test (that is, based on the facts as presented), which is a more inclusive standard than the ‘reasonable prospects’ test applied by the prosecutor, while the jury’s decision to convict is based on the stringent standard of ‘beyond reasonable doubt’.

A summary of the way a complaint progresses through the criminal justice system is outlined in Figure 23.2 below.

Figure 23.2. The movement of a complaint through the criminal justice system



Source: Australian Law Reform Commission & NSW Law Reform Commission (2010) *Family violence: A national legal response. Final report (ALRC 114)*.⁴⁶

46 Australian Law Reform Commission & NSW Law Reform Commission (2010) *Family violence: A national legal response. Final report (ALRC 114)*, p. 1186.

23.3. Police investigation of criminal child abuse

While reporting rates for child abuse have increased significantly over the past 20 years, the same cannot be said for the prosecution and conviction rates for the physical and sexual assault of children and young people.⁴⁷

The first stage of the prosecution process is the police investigation. Because police are the ‘gatekeepers’ to the criminal justice system, the way they respond to people who report sexual assault is vitally important.⁴⁸

In the past, police treated sexual assault investigations very much like any other crime. This resulted in a ‘segmented investigative response, with little real understanding of the complexities of sexual offending, sexual offenders and, most importantly, the victims.’⁴⁹ This mindset has often handicapped police investigations.

Furthermore, research has shown that victims wishing to report offences that took place a long time ago often feared that the police would not treat the matter as being as important or serious as a more recently committed crime.⁵⁰

While the evidence to the Committee from Victoria Police focused on the reporting and investigation of sexual offences, it is reasonable to conclude that victims of other forms of abuse, such as physical abuse, would encounter many of the same challenges in making a report to police. As identified in the 2010 *Victims of crime compensation review: Framework report*:

The ongoing harm caused (by a crime) can be greater than the injury incurred directly due to the crime. Even when no or little physical injury is suffered, often the victim continues to have ongoing difficulties caused by the crime, such as increased fear and perceived vulnerability.⁵¹

Many victims have been concerned that they will be viewed as a ‘second-class’ victim because they waited a long time to come forward. They were concerned people would think they had probably moved on from the abuse when in fact they remained haunted and deeply affected by the crime.⁵² This is particularly relevant to victims of child sexual abuse. When adult victims report to police in these circumstances they are often motivated less by their own needs and more by their concern that the perpetrator may have offended against others in their family group or community.⁵³

23.3.1. Past approach by the police

Before Victoria Police set up the Sexual Offences and Child Abuse Investigation Teams (SOCIT) in 2009, police investigation of sexual offences was significantly

47 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria’s vulnerable children inquiry*. Melbourne, Department of Premier and Cabinet, p. 331.

48 Victorian Law Reform Commission (2004) *Sexual offences: Final report*. Melbourne, VLRC, p. xxii.

49 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 2.

50 C. Taylor, S. Muldoon, C. Norma et al. (2012) *Policing just outcomes. Improving the police response to adults reporting sexual assault*. Social Justice Research Centre, Edith Cowan University, Western Australia, p. 107.

51 Department of Justice (2010) *2010 Victims of crime compensation review: Framework report*. Department of Justice, p. 2.

52 C. Taylor, S. Muldoon, C. Norma et al. (2012) *Policing just outcomes*, p. 108.

53 C. Taylor, S. Muldoon, C. Norma et al. (2012) *Policing just outcomes*, p. 107.

different. Detective Superintendent Rod Jouning, from the Sexual and Family Violence Directorate, told the Inquiry that:

As was the training then, the detective would firstly try to establish if in fact a criminal offence had been committed, and this often centred on the victim—their behaviours during, pre and post offending, their presentation at the time and their recall of events. This had the potential to create significant tension between the investigator and the victim and often resulted in the victim withdrawing from the process.⁵⁴

Witnesses told the Committee about their poor experiences once they became involved in the criminal court process:

The other part of it is that because the court process necessarily has to be very legalistic, and the abuse was very traumatic, you have to be able to remember specific instances of abuse, whether it be rape or whatever. It is very hard if it has gone on for 18 months or 2 to 3 years to remember specific instances. So you can say, ‘This happened to me once a week or once every couple of weeks’, but when you get to court, you need to say, ‘I remember this time specifically, because it was this sort of day’, and there does not seem to be any weight given to what you are doing.⁵⁵

In 2004 the Victorian Law Reform Commission’s *Sexual offences: Final report* highlighted the fact that people who had been sexually assaulted were the least likely of all crime victims to report the offence to police. The report provided 201 recommendations in all, 36 relating to police. These recommendations focused on improving training, procedures and processes for the investigation of sexual assault.⁵⁶

Prior to the introduction of these reforms, the approach of Victoria Police towards adult victims of criminal child abuse was not particularly sympathetic and investigation of such complaints was frequently perceived as too difficult with little chance of a successful prosecution. As a consequence such complaints were often treated by Victoria Police with little enthusiasm. With the reforms in investigative techniques adopted by Victoria Police, such complaints are now more appropriately handled by specialist police units.

23.3.2. Recent criminal justice reforms

Significant reforms were introduced following the Victorian Law Reform Commission’s *Sexual offences: Final report* recommendations.⁵⁷ These reforms were introduced to make the criminal justice system more responsive to the needs of sexual offence complainants, to encourage more people to report sexual offences to police and to become involved in the criminal trial process. Further procedural reforms aimed to make the whole criminal justice process less traumatic for children and other sexual abuse victims, including adults who had been abused as children, were also introduced.

Other reforms were designed to permit acceptance of expert evidence to explain to the court why victims might delay disclosing abuse. Delay in disclosing abuse and the reasons for it have been addressed in various sections of this Report. However, the reasons for delays in reporting abuse are not commonly known and such delay ‘affects

54 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 2.

55 *Submission S454*, Name withheld.

56 *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 3.

57 *Crimes (Sexual Offences) Act 2006* (Vic); *Criminal Procedure Act 2009* (Vic); *Evidence Act 2008* (Vic).

the way that the credibility of a victim is understood.⁵⁸ This lack of understanding often makes it difficult for people to appreciate or acknowledge the influence of grooming in securing a victim's silence, as discussed in Chapter 22. The following provision in *Criminal Procedure Act 2009* (Vic) was enacted to deal with this issue:

In a criminal proceedings that relates to a charge for a sexual offence, the court may receive evidence of a person's opinion that is based on that person's specialised knowledge of—

The nature of sexual offences;

The social, psychological and cultural factors that may affect the behaviour of a person who has been a victim, or who alleges that he or she has been the victim of a sexual offence, including the reasons that may contribute to a delay on the part of the victim to report the offence.⁵⁹

But Professor Caroline Taylor, Foundation Chair of Social Justice at Edith Cowan University, told the Committee that although the amendment was an enlightened one, in practice it was not used by the prosecution or was rejected at the trial judge's discretion:

And this is one of the problems that we have when we create legislative reform. It can be stultified and it can be resisted and not filter down into practice. So since its introduction it has been mostly prohibited from entering court cases. This legislation was designed to assist victims, to have a jury understand delayed disclosure, the grooming tactics used by offenders, and it is still not filtering into practice and is still hanging around on the courtroom steps.⁶⁰

Other reforms to improve a victim's experience in the criminal justice system have been introduced to ensure that victims may have their Victim Impact Statement read out in court. As outlined in the introduction to this part of this Report, victims see this as important—it means they have a public acknowledgement of the damage they have suffered.

The provision reads:

s.8Q Reading aloud of victim impact statement.

A person who has made a victim impact statement may request that any part of that victim impact statement—

(1) (a) is read aloud or displayed in the course of the sentencing hearing by—

- (i) the person making the request; or
- (ii) a person chosen by the person making the request who consents and who is approved by the court for that purpose; or
- (iii) is read aloud in the course of the sentencing hearing by the prosecutor.⁶¹

Given that these legislative changes are so recent and their operation is at an early stage, it is difficult to assess the success or otherwise of these reforms in practice. However, the Committee did receive detailed evidence from Victoria Police about

58 *Transcript of evidence*, Professor Caroline Taylor, Edith Cowan University, Melbourne, 4 April 2013, p. 8.

59 *Criminal Procedure Act 2009* s.388.

60 *Transcript of evidence*, Professor Caroline Taylor, p. 8.

61 *Sentencing Act 1991* (Vic) s.8Q.

the changes it had made to its investigative techniques as a consequence of the same law reform package.

23.3.3. Changes in police approach to investigating sexual offences

Victoria Police gave evidence to the Committee about the philosophical shift in its approach to allegations of sexual abuse. The current approach provides specialised training about sexual offending and child abuse, to ensure that the investigation of sexual offending:

- is open-minded
- is knowledgeable
- places importance on listening to victims throughout the process
- understands the nature of victim behaviour
- understands the nature of offender behaviour
- provides positive outcomes for victims at whatever stage of the investigative process their case might reach.⁶²

Table 23.1 below highlights some of the main differences in the Victoria Police approach to investigating sexual offences following the 2009 reforms.

Table 23.1: Changes in Victoria Police investigations of criminal child abuse

	Before 2009	2009 to present
Investigation of sexual offences	Sexual offences treated like any other crime. Segmented investigatory approach. Limited understanding of the complexities of sexual offending, offenders or victims. A generalist detective undertakes a local criminal investigation.	A dedicated unit carries out investigation. Investigators with specialised training about sexual offending and child abuse. Whole-story approach.
Approach to investigation	Establish whether a crime has been committed by assessing victim’s behaviours during, pre and post-offending, their presentation at the time of reporting and their recall of events. Victim often required to repeat their account numerous times, with the risk of re-traumatisation.	Listen, inquire and ask questions until a comprehensive narrative is obtained. The way people remember trauma is understood and recognised by investigators. Focus on eliciting a full, free and uninterrupted account.
Priorities in investigation	Take a statement where appropriate and obtain a forensic medical examination. Gather corroborating evidence such as CCTV, DNA or a witness. Establish whether a crime has been committed by focusing on a victim’s ability to provide a convincing account.	Focus on the entire relationship between a perpetrator and the victim to look at how this was crafted over time. Elicit the moments in those relationships that might be evidence of predatory behaviour or the beginnings of perpetrating.

Source: Compiled by the Family and Community Development Committee.

62 *Transcript of evidence, Sexual Offences and Child Abuse Investigation Team (SOCIT)*, p. 7.

23.3.4. The value of reporting where there is no likelihood of prosecution

Detective Superintendent Jouning told the Inquiry that two of the central aims of Victoria Police's new approach are:

- to increase the rate of reporting of child sexual abuse and giving the victim a judicial response
- to reduce the number of cases that fall by the wayside in the course of investigation.⁶³

In Good Faith and Associates endorsed the changing police approach to investigating historical offences, telling the Inquiry:

We believe now the police are very keen to gather information. Even if it will never go to court, they are wanting to get the intelligence of these things and where they were operating. Many children abused in those sorts of circumstances developed dissociative disorders which make testimony in court very difficult. But the police tell us that does not in any way prevent you going to the police and giving that intelligence. That might help someone who is able to testify, because it can corroborate. That is really important.⁶⁴

There is clearly great value in making a report to police, even if the victim is unwilling or unable to pursue the matter through the justice system. This is because the report might corroborate the account of another victim. In addition, that same victim may be able to give police more information about the offender as well as other potential and as yet unknown victims. In some instances child sexual abuse victims only ever report the abuse when contacted by Victoria Police after another victim had nominated them as a possible victim.⁶⁵

Finding 23.1

Improvements in techniques adopted by Victoria Police in investigating criminal child abuse have resulted in increased satisfaction with complainants and their involvement in the criminal justice system.

23.4. Reporting criminal child abuse to authorities

This section of the Report deals with the question of whether criminal child abuse or suspected criminal child abuse should be reported to police or to some other welfare authority.

23.4.1. Mandatory reporting

In Victoria, media attention surrounding the tragic death of two-year-old Daniel Valerio in 1990 resulted in public pressure for legislative change to child protection laws and the introduction of mandatory reporting. In 1993, the Victorian Government amended the *Children and Young Persons Act 1989* (Vic), making it mandatory for prescribed professionals to notify state child protection services if they suspected a child was being abused. The legislative framework for mandatory reporting is now

⁶³ *Transcript of evidence*, Sexual Offences and Child Abuse Investigation Team (SOCIT), p. 11.

⁶⁴ *Transcript of evidence*, In Good Faith and Associates, Melbourne, 12 November 2012, p. 13.

⁶⁵ *Transcript of evidence*, Victoria Police, p. 3.

covered by the *Children, Youth and Families Act 2005* (Vic), though it remains in a form similar to that introduced in 1993.

The Committee received evidence that shows there is a great deal of confusion about mandatory reporting laws in Victoria and how these laws might operate to protect children from criminal child abuse in an organisational setting. Much of the confusion seems to stem from the fact that mandatory reporting to child protection authorities is often confused with compulsory reporting of a crime to police.

The Committee heard that there is a need to properly identify any criminal child abuse as a crime and to deal with it on that basis. It is not enough simply to call welfare services to deal with what must be recognised as a criminal offence. Professor Chris Goddard, Director of Child Abuse Prevention Research Australia at Monash University, told the Committee:

It is a strange perception that somehow we have allowed child abuse to become a welfare problem, even in organisations. It is not. Sometimes it is a welfare problem, but our responses to child abuse should not be as if all child abuse is benign neglect in a careless, disorganised family. Some of the people who abused their children are evil and they are criminal. To actually say that a welfare response will cover that, when they are torturing children or killing children or something, is a nonsense. We have to have a minimum standard, and we have to accept our responsibility to try to care for children.⁶⁶

23.4.2. 'Welfare' reporting versus 'criminal' reporting

The Committee heard from a number of witnesses about the need to differentiate between what can be described as mandatory 'welfare' reporting to Department of Human Services (DHS) of an unsatisfactory home environment stemming from abuse or neglect on the one hand, and compulsory 'criminal' reporting of criminal abuse (or suspected abuse) to police on the other.

The mandatory welfare reporting system gives first priority to protecting the 'at-risk' child, while criminal reporting focuses on catching, prosecuting and convicting offenders. Both are critically important.⁶⁷ As Ms Maria McGarvie, a member of Catholics for Renewal told the Committee:

We distinguish between mandatory welfare reporting and mandatory criminal reporting. The first prioritises the protection of at-risk children; the latter, the apprehension and conviction of offenders. Both are critically important, but the mandatory criminal reporting will, in our view, prevent concealment of sexual abusers. The obligation to mandatorily report to the police should be imposed on all religious personnel at all levels in the church.⁶⁸

Dr Tom Keating also referred to the dichotomy between mandatory 'welfare' reporting and mandatory 'criminal' reporting in relation to abuse carried out by religious personnel:

Mandated persons are required under sections 182 and 184 of the *Children, Youth and Families Act 2005* to report where on reasonable grounds they believe that a child is in need of care and protection. This is concerned with circumstances in which the

⁶⁶ *Transcript of evidence*, Professor Chris Goddard, p. 10.

⁶⁷ *Transcript of evidence*, Catholics for Renewal Inc., Melbourne, 23 January 2013, p. 5.

⁶⁸ *Transcript of evidence*, Catholics for Renewal Inc., p. 5.

principal caregiver is unwilling or unable to protect a child. Instances of abuse by clergy are simply not relevant ... and in most circumstances parents and guardians would be doing all in their power to protect the child. They simply do not know that the abuse has taken place. These are not child protection situations; they are occasions of criminal assault.⁶⁹

The Committee heard calls for change to the way we address child abuse in Victoria. Dr Joe Tucci, CEO of the Australian Childhood Foundation, stated:

There needs to be a significant framework implemented by government that looks at the abuse and exploitation of children by employees and volunteers within organisations. But that has to be articulated. It has to draw across jurisdictions in relation to criminal law, in relation to child protection law and in relation to community education.⁷⁰

Finding 23.2

Given that criminal child abuse is a very serious offence against the criminal law, failure to report or concealment of an offence is more appropriately dealt with under the criminal law than under the welfare/ child protection regime.

23.4.3. Extending mandatory reporting to religious personnel

The Committee considered whether religious personnel should be mandated reporters under the child protection legislation.⁷¹

The Catholic Church in Victoria made submissions to the *Protecting Victoria's vulnerable children inquiry* (the Cummins Inquiry) opposing an extension of the mandatory reporting laws to include religious personnel.⁷² The Committee acknowledges that the Catholic Church has reconsidered its position on this matter. In its submission to this Inquiry, which it titled *Facing the Truth*, the Church told the Committee:

In its submission to the PVVC inquiry [the Cummins Inquiry], the Church had opposed including clergy among those mandated to report child abuse. However, the Church accepts that the PVVC Inquiry carefully considered all of the submissions made to it, and that it was charged by the community with making a recommendation on this issue. Therefore, the Church now accepts that the requirement of mandatory reporting of cases of suspected child abuse under the CYF Act should be extended to ministers of religion and other religious personnel, provided that the sanctity of the confessional is maintained.⁷³

Other churches and religious organisations have also indicated a willingness to include religious personnel as a category of mandated notifiers. The Rabbinical Council of Victoria submitted to the Committee that 'rabbis are not currently mandatory reporters under the legislation. The Rabbinical Council of Victoria explained that it would have no objection to rabbis coming into that category.'⁷⁴

69 *Transcript of evidence*, Dr Tom Keating, Melbourne, 10 December 2012, p. 4.

70 *Transcript of evidence*, Australian Childhood Foundation, p. 2.

71 *Children, Youth and Families Act 2005* (Vic) s.182(1).

72 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 351.

73 *Submission S185*, Catholic Church in Victoria, p. 106.

74 *Submission S138*, Rabbinical Council of Victoria, p. 3.

Similarly, the Baptist Union of Victoria (BUV) submitted that:

The BUV supports the Mandating of Ministers of Religion (reporting suspected child sexual abuse) and believe it would have a positive effect for Ministers/Leaderships. It would make it clear cut for Ministers/Leaderships as to what they have to do in dealing with difficult and complex situations. Mandating Ministers of Religion would also provide more legal protection (as a notifier through the Legislation) for Ministers of Religion as they report ... It is the nature of Church that Ministers/Leaderships develop close relationships with the members and families of their Churches, and by making Ministers of Religion mandated, this very difficult process will be made clearer for all involved.⁷⁵

The Uniting Church also indicated its support for the proposition when it submitted to the Committee that:

Ministers have a position in which a significant amount of trust is reposed. To suggest they should be outside the provisions of mandatory reporting is arguably inconsistent with this trust ... Legally it is difficult to see a reason not to extend mandatory reporting to Ministers of Religion.⁷⁶

However, the Cummins Report did not support the extension of mandatory welfare reporting to all religious personnel.⁷⁷ The Cummins Report determined that extending the categories of mandated notifiers to include ministers of religion and religious personnel may inappropriately extend the reach of the legislation. *The Children, Youth and Families Act 2005* (Vic) currently applies to ‘identified professional groups that have training in and would be expected to have frequent contact with children and young people.’⁷⁸ To include ministers could extend the operation of the legislation beyond what was originally contemplated.⁷⁹ This, as the Cummins Report suggests, could lead to a ‘significant spike in reports with few resulting substantiations.’⁸⁰

The Committee also shares the concern expressed in the Cummins Report that extending mandatory welfare reporting would not necessarily ensure an appropriate investigation of suspected child abuse, particularly where the abuse is committed by religious personnel. The Committee considers the *Crimes Act 1958* (Vic) to be the more appropriate legislative mechanism to deal with this issue.

The Committee also notes that the Cummins Report identified that ‘the “reverencing of church leaders” can lead to a reluctance of victims to speak up.’⁸¹ In essence, the Cummins Report recognised the unique dangers to child victims that predators who are religious personnel represent. This situation demonstrates ‘the need for

75 *Submission S210*, Baptist Union of Victoria, p. 2.

76 *Submission S164*, Uniting Church in Australia, p. 24.

77 The Cummins Report did however recommend in Recommendation 44 that The Victorian Government should progressively gazette those professions listed in sections 182(1)(f)–(k) *Children Youth and Families Act 2005* (Vic) to cover those not yet mandated, beginning with child care workers.

78 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria’s vulnerable children inquiry*, p. 351.

79 The Cummins Report observed the likely absence of expertise and capacity of religious and of religious organisations’ staff under the provisions of welfare reporting (other than those professionals such as school teachers who are already mandated) to report suspected cases of child physical and sexual abuse, unlike the mandated professionals with relevant skills.

80 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria’s vulnerable children inquiry*, p. 351.

81 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria’s vulnerable children inquiry*, p. 353.

reporting of a suspected criminal offence to police authorities—a very different form of mandatory reporting from the established welfare reporting.⁸² This view is also consistent with the belief that the most appropriate authority to deal with acts of criminal child abuse is the police.

23.5. Compulsory criminal reporting

As outlined in Part D, the Committee highlighted that organisations providing services to children need to improve their systems and processes for creating child-safe environments. It has also recommended making it compulsory to report to police all incidents involving alleged or suspected serious criminal abuse of children. This would be one mechanism for reports to be made to police.

The Law Institute of Victoria (LIV) argues that:

If a person within an organisation has no discretion but to report suspected abuse, and can also be criminally liable for failure to report it, the existence of this legal duty will assist persons within those organisations to take the proper steps to ensure that criminal acts are made known to police rather than covered up or regarded as matters that the religious organisation should handle internally.⁸³

In the Cummins Report, it is recommended that the *Crimes Act 1958* (Vic) be amended to create a separate reporting duty where there is a reasonable suspicion a child or young person who is under 18 is being or has been physically or sexually abused by an individual within a religious or spiritual organisation. It recommended that the duty should extend to a minister of religion and a person who holds office within, is employed by, is a member of, or a volunteer of a religious or spiritual organisation that provides services to, or has regular contact with children and young people. It was recommended that information received during the rite of confession would be exempt. The Cummins Report also recommended that a failure to report should attract a suitable penalty having regard to s.326 of the *Crimes Act 1958* (Vic) and s.493 *Children Youth and Families Act 2005* (Vic).⁸⁴

The Committee noted that the Catholic Church stated in its submission to this Inquiry that it supports some elements of this recommendation, namely:

- (i) An exemption for information received during the rite of confession.
- (ii) That the duty to report would operate prospectively, that is, in respect of information/concerns about current danger to children.⁸⁵

However, as outlined above, the Catholic Church maintains that the most effective way to better protect children is to extend the mandatory requirement to report cases of suspected child abuse under the *Children, Youth and Families Act 2005* (Vic) to all religious personnel, provided that the sanctity of the confessional is maintained.⁸⁶

In its submission to this Inquiry, the Catholic Church described the Cummins Inquiry recommendation as misconceived. It stated that:

82 *Submission S205*, Catholics for Renewal Inc., p. 22.

83 *Submission S226*, Law Institute of Victoria, p. 17.

84 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 355.

85 *Submission S185*, Catholic Church in Victoria, p. 108.

86 *Submission S185*, Catholic Church in Victoria, p. 145.

... a priest who was aware a child was being abused by another priest would be obliged to report that, but a priest who was aware that a child was being abused by a family member such as a father or uncle would be under no obligation to report.

Accepting as the Church does, the important role of mandatory reporting in protection of children, it is misconceived to suggest that a child who is abused by a priest is in need of protection but that a child who is abused by a family member is not.⁸⁷

However, this response from the Catholic Church fails to recognise that the provision recommended was primarily directed towards holding those who commit serious criminal offences against children criminally responsible for their actions. Also, the Committee recommends the obligation to report such criminal conduct be cast in much broader terms than was recommended by the Cummins Inquiry.

Ms Maria McGarvie, representing Catholics for Renewal, told the Committee:

We endorse the Cummins report, which proposed that religious personnel should be mandated under the Crimes Act, and we agree that welfare reporting is inadequate. Both church protocols, the Melbourne Response and Towards Healing, allow the church to investigate allegations of abuse and possibly find the allegations substantiated, yet not report the matters to the police, thus leaving a potential sexual predator at large.⁸⁸

It is difficult to reconcile the position of the Catholic Church in Victoria with that in New South Wales, where there are provisions to compel the reporting of serious criminal offences.⁸⁹

23.5.1. Compulsory criminal reporting and privacy concerns

Some organisations told the Inquiry they were concerned that making police reporting compulsory would stop victims who were worried about their privacy from revealing their abuse.

In relation to protecting the confidentiality and privacy of the complainant, Dr Tom Keating told the Committee:

There is a difficult situation where someone who themselves has been the victim of abuse seeks support and says, 'Now, I don't want you to act on this'. That is the only complicating situation that I can see. It seems to me that you would deal with that as a counsellor would, working through the issue with the person, helping them get to a point where they can take a decision that it ought to go forward as a complaint to the police, particularly where there is a risk that there may be other persons at risk.⁹⁰

Representatives of both the Anglican and Catholic Churches expressed similar concerns. Representatives of the Anglican Church explained:

We would not want to be part of any conspiracy or secrecy, but we also understand that there are some situations where people who have suffered abuse do not welcome the intrusion of other, legal authorities in their situation ... but in some aspects we are sensitive that people who have been victims have to tell their own stories, and we do not want to revictimise people by taking that responsibility off them ...

87 *Submission S185*, Catholic Church in Victoria, p. 108.

88 *Transcript of evidence*, Catholics for Renewal Inc., p. 5.

89 See Section 23.2.3.

90 *Transcript of evidence*, Dr Tom Keating, p. 9.

We would always encourage people to tell their story, and we would always encourage them to report to police, but let us make a distinction here between current child abuse and historical child abuse. When I am talking historical, I am talking 20, 30, 40 or 50 years ago in situations where most likely, in all probability, the alleged abuser is deceased. If there is current child abuse, there is no question: the matter must be reported ...

If we are talking about a historical event, absolutely it is our preference that the matter be reported. However, if we are looking at a situation where follow-on abuse is impossible—the alleged abuser is deceased, for example—then this is where the tension comes in, and CASA [Centre Against Sexual Assault] would understand this as well. If somebody has been abused, they get strong enough and come and tell you about it. Often it might be a first report. If you ask them, ‘Can you report it to police?’, and they say, ‘No, I don’t want to’, they might have a number of different reasons—for example, they have a criminal history themselves, they do not want their family to find out about it, they do not want to do this, they do not want other people to know, they recognise it was a one-on-one situation that occurred on a single occasion, they understand that the police are unlikely to take it up, or they do not know the name of the abuser. They are all possibilities; they are all things that have come up.

Given that we are trying to empower them and encourage them to come forward with their story so that we can assist them, can you then say to them, ‘In the face of your absolute denial that you do not want this reported, I don’t care what you reckon. I want to report it. It suits us to report it, so therefore we will report it’? We are trying to judge that empowerment versus disempowerment for the individual.⁹¹

Similarly, in its submission to the Inquiry, the Catholic Church made the following comments about the Melbourne Response:

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

- The right of a victim to privacy
- The responsibility of society to protect its citizens and punish offenders
- The right to the presumption of innocence.⁹²

Catholics for Renewal took a firmer view. Ms McGarvie told the Committee:

We reject this as a constraint. We say that the church is a private and conflicted organisation which should not have the power to determine whether the police can handle such situations. We say the police can deal with them discreetly and with sensitivity to the interests of the complainant. Again we refer to the comments of Gill Callister, Secretary of the Department of Human Services, where she notes:

... often what happens is the police will then speak to that child or young person, and sometimes they will go ahead with a statement of complaint even though they originally said that they did not want to and other times they will not.

The police in our view are trained to interview complainants with care and sensitivity. They have expressed concern that the police should not be hindered by church authorities undertaking their own investigations.⁹³

On the same issue of the duty to report a criminal offence, Victoria Police submitted:

91 *Transcript of evidence*, Anglican Diocese of Melbourne, Melbourne, 22 April 2013, pp. 5–6.

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

93 *Transcript of evidence*, Catholics for Renewal Inc., p. 6.

The Catholic Church has maintained its reluctance to refer allegations to police on the basis that it is not the wish of the victim. Mandatory reporting creates a public duty to report such suspicions and sends a message to everyone within the organisation who may know of such issues but are reluctant to become involved. This is acknowledgment of the seriousness of the conduct involved and the moral responsibility of the community to care not only for one complainant, but other potential victims.⁹⁴

The reference to mandatory reporting in the above quote is not related to reporting to welfare authorities, but to compulsory reporting to police.

The Committee appreciates the particular difficulty in weighing up the competing interests of all parties including:

- a victim's right to privacy and to seek support and counselling without the fear of their abuse being made public or otherwise reported
- the protection of potential future victims who may be exposed to an abuser if an opportunity to apprehend them is not taken in a timely manner
- the identification of other victims who may require assistance
- the general function of the criminal law in seeking justice for all victims, together with protecting the community.

23.5.2. Reporting child criminal abuse to police and Victoria Police criticism of the Melbourne Response

The Melbourne Response was established in October 1996 after consultation between the Catholic Archdiocese of Melbourne and Victoria Police, as discussed in Chapter 1 of Part A. After some negotiation, the parties reached an agreement that included a requirement that the Independent Commissioner would encourage victims to report abuse to police. The protocol was publicly supported by the Catholic Church, Victoria Police and the Victorian Government.

The Committee heard from victims and from Victoria Police, who criticised the Melbourne Response, particularly the manner in which the Independent Commissioner 'encouraged' victims to report abuse to the police. It is important to note that the Committee's examination of Melbourne Response files and transcripts of interviews revealed that the Independent Commissioner's practice throughout was to tell victims that they had an 'unfettered right' to report abuse to the police.

Documentation about the Melbourne Response states:

The Melbourne Response also recognises however that some complaints will not be dealt with by the police based on the wishes of the complainant or for reasons such as the alleged offender being deceased or the complaint having previously been reported to the police and police action having been finalised.⁹⁵

As outlined in the previous section of this Report, the Anglican Church also adopted this approach for similar reasons.⁹⁶

⁹⁴ *Submission S201*, Victoria Police, p. 11.

⁹⁵ *Submission S185*, Catholic Church in Victoria. Annexure 1.

⁹⁶ 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. 4, Paragraph 1.5(f).

Arguably, the position taken by both these organisations was justifiable, given the manner in which Victoria Police has historically investigated allegations of sexual assault, particularly at the time when the Melbourne Response was introduced in 1996. More particularly, prior to the reforms, the police would not become involved if an offender was deceased. Victoria Police's criticism to the Inquiry of this approach (considered in more detail below) needs to be viewed in the context of changes Victoria Police has recently made to police investigative techniques in matters of sexual assault and its approach to victims who report such crimes, as discussed in Section 23.3.3 Experience has shown that victims of sexual assault are reluctant to reveal their experience to anybody—including the police. Victims of criminal child abuse perpetrated by a member of the Catholic Church, as recognised earlier in this Report,⁹⁷ have an additional reluctance to report their assault to the Church, or through a process that is perceived to be part of the Church. Given this hesitancy on the part of victims, many of whom have been very seriously damaged, more active encouragement than words or a signature acknowledging that they have been advised that they can go to the police, is necessary. It was not until February 2011 that a complainant participating in the Melbourne Response was required to sign an acknowledgement that the Independent Commissioner had encouraged them to go to the police but that they had decided not to adopt that course.⁹⁸

The other issue is that reporting abuse to police may delay a victim's claim for compensation under the Melbourne Response process and the receipt of any funds. Arguably, this delay may act as a powerful disincentive for a victim to make a report to police.

The seriousness of the criminal child abuse offending cannot be denied. Deputy Commissioner Graham Ashton of Victoria Police illustrated the unjustifiable position of the Catholic Church with his assertion that if a child was raped on Catholic Church grounds it would be reported by officials to police unless the offender was a member of the clergy.⁹⁹

Victoria Police was very critical of the Melbourne Response, stating:

In relation to offenders being deceased, simply saying 'The offender is dead. The police don't need to know' is an absolute nonsense. Despite the fact that an offender is dead, we need to know the fact that the person was an offender through their life so that when other victims come forward to us and they say, 'I'd like to tell you about my abuse at the hands of Mr X, Y or Z,' our records will show that that person actually had a history of offending. That changes that interview with that victim because we are not then exploring with the victim the validity of what the victim is talking about and has experienced—we know that that person is an established offender. It assists us in our analysis of these issues and our dealings with other victims.¹⁰⁰

Victoria Police expressed the view that a victim not wanting to go to police is not necessarily making an informed decision. Additionally, information regarding alleged offenders even if deceased at the time of complaint, can be useful as part of the whole story approach and validation for a victim. Victoria Police told the Committee its members were better trained, and in the best position to provide all

97 See Chapter 7 in Part C.

98 From 2003, *Towards Healing* has had this as a requirement.

99 *Transcript of evidence*, Victoria Police, p. 6.

100 *Transcript of evidence*, Victoria Police, p. 11.

relevant information to complainants, about the choices they had and their potential involvement in the criminal justice system. It is inappropriate, in the opinion of Victoria Police, for other bodies to undertake that role:

But the mere fact that there is a process of a criminal investigation conducted by the Church into that victim in our view does not give us reliable facts or allow them to say, ‘The person doesn’t consent.’

What normally happens is that if a person comes forward with a complaint an interview is conducted using the whole-of-story concept interview techniques ... It goes into a lot of detail about how interviews are conducted. Then at the end of that the victim is able to make an informed decision about whether they wish to complain or not. For the Church to be simply saying ‘The person didn’t want to complain’ is in our view an invalid response because it is based around a flawed investigative premise ...

What I am saying to the Committee is that, sure, a lot of the offending we have got is historic offending; there is a reason why it is historic offending, and based on all the other data we have around general offending, population cohorts and the protection of the people who commit these crimes that is placed around them by the Church, we think that the offending is likely to be continuing ... But without these sorts of inquiries we are not optimistic that people will come forward in any increasing number, and we will not see this offending for years to come. I guess I am saying to you we are not seeing big numbers right now, but there is a reason for that.¹⁰¹

Although Victoria Police directed these criticisms at the Catholic Church’s Melbourne Response, the Committee concluded they are equally applicable to other organisations that have adopted a similar approach. These approaches are discussed in Chapter 21 of Part F.

We should note that many of the matters that Victoria Police raised before the Committee in justifying its criticism of the Melbourne Response come from a shift over the last few years in the police approach to investigating and collating information about historical sexual abuse complaints. Previously, if an offender had died or a victim could not give enough detail of an historical offence, police were unlikely to take the matter any further or have any use for the information provided by a victim.¹⁰²

It is important to recognise that it was only relatively recently that Mr Peter O’Callaghan QC, the Catholic Church’s Independent Commissioner, became aware of Victoria Police concerns about the reporting of historical criminal abuse.¹⁰³ As far as the Committee is aware, Victoria Police made no complaint to the Catholic Church about the absence of reports to them flowing from the Melbourne Response process, and made no request for a review of the Melbourne Response protocol in the period 1996–2009. Significantly, in materials that the Melbourne Archdiocese provided to the Committee, it is evident that Mr O’Callaghan QC and representatives of the Melbourne Archdiocese and Victoria Police had cordial relations and were working together on a protocol in 2009. There is no suggestion in these materials that Victoria Police did not enter into a protocol at that time (2009) on the basis that

¹⁰¹ *Transcript of evidence*, Victoria Police, p. 11.

¹⁰² See Section 23.3.

¹⁰³ *Neil Mitchell radio interview with Deputy Commissioner Graham Ashton, Victoria Police*, 3AW 693, 13 April, 2012.

the Melbourne Response's 'processes were fundamentally flawed'.¹⁰⁴ Rather, Victoria Police was no longer entering into formal protocols with any organisations.

Both Mr O'Callaghan QC and Archbishop Denis Hart gave a detailed written response to Victoria Police's criticisms of the Melbourne Response.¹⁰⁵ Annexed to these responses was a significant amount of correspondence between Melbourne Response representatives and Victoria Police. From that material we can see:

- The Catholic Church established the Melbourne Response (in 1996) in consultation with Victoria Police and the Victorian Government. Assistant Commissioner Gavan Brown, and the Solicitor-General each approved and signed off on the process.
- In the period December 2009 to October 2010, representatives of the Melbourne Response and Victoria Police were working together to establish a protocol. On 6 October 2010, Deputy Commissioner Sir Ken Jones wrote to Archbishop Hart and informed him:

You may have read in various media reports that Victoria Police has recently changed its policy with regards to entering into agreements with non-government or non-law enforcement agencies who are involved in our investigations or operations. The Chief Commissioner, or any of his staff, can no longer enter into such agreements with organisations external to government and law enforcement. Essentially our position now is that there is no need for such agreements and that our relationships with such bodies ought to be solely regulated by the extant laws and procedures that apply to everyone.

Unfortunately the agreement that the Church and Victoria Police were developing for some time has been caught by our change of policy and cannot now be completed. Consequently any previous similar agreement between Victoria Police and the Catholic Church is now effectively rescinded.

I have discussed this decision with Detective Inspector Glenn Davies and feel that a meeting be arranged to agree a way forward which ensures that Victoria Police and the Catholic Church continue to work closely together. Inspector Chris Gawne, from my office, will be in contact shortly to arrange that.¹⁰⁶

- On 12 November 2010, Sir Ken Jones confirmed with representatives of the Melbourne Archdiocese and Mr O'Callaghan QC that Victoria Police was content with the process and the Church's care of victims. Thereafter, members of Victoria Police and the Melbourne Archdiocese worked to prepare a joint media release. Ultimately, the media release of February 2011 was issued solely by the Catholic Archdiocese of Melbourne.
- There was no indication that at anytime before April 2012 Victoria Police told the Catholic Archdiocese of Melbourne that it had any concerns about the Melbourne Response.¹⁰⁷

104 *Transcript of evidence*, Victoria Police, p. 12.

105 *Right of Reply* Mr Peter O'Callaghan QC, Independent Commissioner, Melbourne Response, 26 April 2013; *Right of Reply*, Archbishop Denis Hart, Catholic Archdiocese of Melbourne, 17 October 2012; *Right of Reply*, Archbishop Denis Hart, Catholic Archdiocese of Melbourne, 5 June 2013.

106 Catholic Archdiocese of Melbourne, Letter from Deputy Commissioner Sir Ken Jones, Victoria Police, 6 October 2010 to Archbishop Denis Hart, accessed by the Family and Community Development Committee.

107 *Right of Reply*, Archbishop Denis Hart, Catholic Archdiocese of Melbourne.

Given this history, the approach of the Melbourne Response in ‘encouraging’ victims to report abuse to police, including in circumstances where there was no likelihood that the police would use that information for any purpose, is understandable.

However, given the evidence of Victoria Police about its current specialised treatment of victims who complain of historical sexual abuse, the Committee recognises the important benefits of reporting to police all information, including cases where the perpetrator has died or has already been convicted of other similar offences.

The Catholic Church’s rationale of empowering the victim in Victoria is significantly different from that adopted in NSW. In that state, the failure to report such conduct amounts to a criminal offence.¹⁰⁸ A document published by the Sydney Archdiocese states that:

Sexual abuse is a crime which must be reported to the police.

The police are best placed to investigate allegations of sexual abuse and sexual assault, not the church. Sexual abuse has no place in the church and the best way to investigate it is to report criminal conduct to the police. The law requires serious crimes to be reported to the police and the policy of the Archdiocese is to report allegations of sexual abuse to the police ...¹⁰⁹

As noted in the submission of the Catholic Church to the Inquiry:

Victorian law does not require crimes to be reported to police. This sets the legal context in which the Church believes that victims should be empowered to make this important choice for themselves.¹¹⁰

There is no good reason why such a distinction with respect to the rationale should exist. It could not be justified on the basis of the existence of an obligation under the criminal law.

The Committee considers that complaints of criminal child abuse, whether current or historical, should be referred to, and investigated by, the police. Whether this leads to the successful prosecution of the offender depends on many factors, including the preparedness and ability of victims to participate. The Committee accepts that police must approach incidents of this kind with sensitivity, but considers that police are the most appropriate organisation to use the information in order to protect children from criminal abuse within organisations.

23.6. Universal responsibility to report a serious crime

The Committee takes the view that every member of society has a moral and ethical responsibility to report to police any knowledge they have about serious crimes committed against children. This obligation is certainly stronger in circumstances where the most vulnerable members of our community are child victims or adults suffering the consequences of criminal child abuse.

The Committee therefore considers that it is necessary to develop a criminal offence that deals with the reporting of serious criminal offences committed against

¹⁰⁸ *Crimes Act 1900* (NSW) s.316.

¹⁰⁹ Catholic Archdiocese of Sydney (2012) *Sexual abuse: The response of the Archdiocese of Sydney*. Sydney, Catholic Archdiocese of Sydney, p. 5.

¹¹⁰ *Submission S185*, Catholic Church in Victoria, p. 110.

children. The Committee has reached this determination in preference of extending the mandatory welfare reporting scheme.

One benefit of introducing a criminal offence relating to the reporting of criminal child abuse is that it would remove the need for the reporter to possess any particular expertise or training. The Committee believes that members of the community are much better able to recognise what behaviour constitutes a criminal offence, than to identify and assess the elements that must be satisfied under the mandatory reporting legislation.

As discussed below, the Committee considers that it is necessary to amend the *Crimes Act 1958* (Vic) to make it a crime for any person who knows or believes that a serious offence has been committed by another person against a child, and has information that they believe might be of material assistance, to fail to report that information to police. The Committee considers that this provision would address the need to make clear the requirement to report to police all child-related offences, as well as making it a crime to fail to do so. The Committee considers that this is the most effective way of addressing the criminal abuse of children in organisational settings. This approach accepts that institutional abuse cannot be adequately addressed by employing a welfare response alone.

23.6.1. Offence of failing to report a serious crime—concealment

Criminal child abuse often goes undetected. This is due to:

- the private nature of the crime
- offenders' efforts to silence their victims
- children's difficulties in revealing what has happened to them and in being believed.

These challenges are often made harder by other practical difficulties. For example, many victims of abuse are unable to report offences against them because of their age or other vulnerability. Such victims should be able to rely on another person to intervene on their behalf.

Archbishop Hart acknowledged that prior to the 1990s some senior religious personnel in the Catholic Church responded to allegations of criminal child sexual abuse by removing offending priests from the parishes in which the allegations had been made and relocating them to new parishes where their history was not known and where they would not be suspected of any wrongdoing.¹¹¹ It is convenient to refer to this practice as offender relocation.¹¹²

Victoria Police gave evidence to the Committee:

As part of their process of 'handling' allegations of child sexual assault, the Catholic Church has on a number of occasions moved alleged offenders. This has included moving alleged offenders ... to other locations to impede police investigation. In the 1970s, 1980s and 1990s a number of alleged offenders were moved to different parishes after complaints were made to the church.¹¹³

111 *Transcript of evidence*, Catholic Archdiocese of Melbourne, Melbourne, 20 May 2013, p. 13.

112 Offender relocation is discussed in greater detail in Section 7.3.7 of Part C.

113 *Submission S201*, Victoria Police, p. 7.

The Committee heard that while offenders were often moved to a different parish, they could also be transferred overseas. The Committee also heard of a more recent example of this practice in the Jewish community.¹¹⁴

Offender relocation is discussed in detail in Section 7.3.7 of Part C. But it is useful to examine here the legal response to the risks inherent in the practice.

Prior to 1981, a person who engaged in offender relocation may have been found guilty of the offence of misprision of felony. The courts have described this offence as follows:

[A] person is guilty of the crime of misprision if knowing that a felony has been committed he fails to disclose within a reasonable time and having a reasonable opportunity for so doing his knowledge to those responsible for the preservation of the peace.¹¹⁵

The courts made it clear that ‘the offence lies in the failure to perform the duty to disclose. And so it matters not what induced the citizen concerned not to do his duty.’¹¹⁶ That is, it was not necessary for a person to benefit from not having reported a crime for that person to have committed an offence.

23.6.2. Modification of Victorian law is required

Following the abolition of the misprision of felony offence in Victoria in 1981, it is currently illegal to conceal a crime if you benefit from that concealment.¹¹⁷ In other words, and in the context of this Inquiry, a person will only be charged with an offence for failing to report the criminal abuse of a child if they have received some reward in exchange for maintaining their silence.

The Committee considers that there is a need to reform the law covering situations where an adult has knowledge of a serious indictable offence committed against a child and fails to report that information to police. The change would place an enforceable obligation on people who have knowledge of any serious offence, including sexual offences against children, to make a report to police. The aim is to send a clear message to the community that withholding information about crimes against children, or concealing that criminal activity without reasonable excuse, may carry severe legal consequences.

With respect to child abuse, serious indictable crimes would include offences such as indecent assault, physical assault or gross indecency.

23.6.3. Irish example of similar legislation

In recent times in Ireland there have been a number of reports cataloguing many appalling revelations of the sexual abuse of children in the Catholic Church and the failure to respond to that abuse.¹¹⁸ In Ireland, the Murphy Report¹¹⁹ found that at least until the mid-1990s, the Dublin Archdiocese dealt with cases of child sexual abuse in

114 *Transcript of evidence*, Mr Manny Waks, Melbourne, 10 December 2012.

115 *R v Stone* [1981] VR 737. per Crockett J at 741

116 *R v Crimmins* [1959] VR 270. 270 at 272

117 *Crimes Act 1958* (Vic) s.326.

118 Commission of Investigation (2009) *Report into the Catholic Archdiocese of Dublin*, Ireland, Department of Justice and Equality; Commission of Investigation (2005) *Report into the Catholic Archdiocese of Cloyne*, Ireland, Department of Justice and Equality; Commission of Investigation (2011) *Report into the Catholic Archdiocese of Ferns*, Ireland, Department of Justice and Equality.

119 Commission of Investigation (2009) *Report into the Catholic Archdiocese of Dublin*, p. 4.

secrecy. This was intended to avoid scandal, to protect the reputation of the Church and to preserve its assets. All other considerations, including the welfare and justice for victims, were subordinated to these priorities.

It is clear from these revelations, and the various published reports, that if those who had knowledge in the past of sexual offences against children had told the police, many children who later became the victims of abuse may have been protected from sexual predators.

The Committee has seen a similar situation reflected in the evidence of Victorian victims. The Irish reports prompted the drafting of the *Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012*. This Act provides some useful guidance for reform of Victorian law. The relevant section of the Irish legislation is set out in Box 23.1.

Box 23.1: Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act, Number 24 of 2012

2. (1) Subject to this section, a person shall be guilty of an offence if—
- (a) he or she knows or believes that an offence, that is a Schedule 1 offence, has been committed by another person against a child, and
 - (b) he or she has information which he or she knows or believes might be of material assistance in securing the apprehension, prosecution or conviction of that other person for that offence,
- And fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána ...
- (4) This section is without prejudice to any right or privilege that may arise in any criminal proceedings by virtue of any rule of law or other enactment entitling a person to refuse to disclose information.

Source: Irish Statute Book, available at: <http://www.irishstatutebook.ie/2012/en/act/pub/0024/index.html>

The Committee has considered circumstances where the victim is a child, for whom making a report to police and the subsequent criminal justice process may be too traumatic. Similar issues were considered prior to the enactment of the Irish legislation with provision made for various defences to the crime in circumstances where it was not in the interests of the child to report the crime.¹²⁰

23.6.4. Seal of confessional

One issue that arose during the Inquiry with a number of witnesses and in written submissions was the question of whether a Catholic priest would be liable for this kind of criminal offence, on the basis of failing to reveal information provided in the confessional from a perpetrator regarding criminal child abuse. Under canon law the sanctity of the confession is paramount. Further, under the provision of the *Evidence*

¹²⁰ *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012* s.4.

Act 2008 (Vic) outlined in Box 23.2, the information provided to a Catholic priest in the confessional would be privileged.¹²¹

It is apparent that for many in the Catholic Church and other religious groups that have a rite of religious confession the removal of the present exemption under s.127 *Evidence Act 2008 (Vic)* would raise serious issues of conscience and tension between their perceived religious duty and their obligations to the secular community.

There is no superior canon law which binds the community or justifies non-compliance with the civil or criminal law by anyone. Equally obviously, the community accepts the importance of freedom of religion and will intervene only when required to do so in order to protect fundamental interests and values, and then only to the minimum extent necessary.

It is not always seen to be in the interests of our society to allow exemptions or privileges that conceal evidence and impede or defeat our legal processes. However, they are accepted because the enforcement of the broader principles underlying them are regarded as more important than the achievement of a desirable short term objective in a particular case. The right against self - incrimination and legal professional privilege provide examples of this choice. The limitations placed on our ability to compel the production of evidence represent the balance effected in a democratic community between the maximum recognition of personal autonomy reasonably available on the one hand and the rights and needs of the community on the other.

Fewer and fewer Catholics are utilising the sacrament of confession. The Committee was informed by representatives from Catholics for Renewal that 'that not many Catholics go to confession these days ... rarely on a one-to-one basis.'¹²²

As far as the sanctity of the confessional is concerned, recognition of the concept of religious belief on which it is based must be considered against the importance of protecting children against criminal abuse. The protection of children and the vindication of their rights is an overwhelming consideration. However, the central question is whether the removal of the exemption/privilege is likely to be of assistance in exposing offenders and bringing them to justice.

A similar issue arose in Ireland with the introduction of its legislation. As indicated in the submission by Catholics for Renewal:

... The debate about whether there should be any exemptions from the mandatory duty to report knowledge of the criminal abuse of children in the case of confession has been enlivened by the Irish Government's decision to proceed with legislation (The Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012), which contains no such exemption provision and removes the right of priests to use the confessional seal as a reason for not coming forward with information concerning the abuse of children. This has placed the State, the Irish Government, in conflict with the Catholic Church which has indicated that it will not cooperate with this legislative requirement.¹²³

121 Section 127 of the *Evidence Act 2008 (Vic)*, outlined in Box 23.2.

122 *Transcript of evidence*, Catholics for Renewal Inc., p. 12.

123 *Submission S205*, Catholics for Renewal Inc., p. 29.

Box 23.2: Evidence Act 2008 (Vic) s.127*Religious confessions**127. Religious confessions*

- (1) A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy.
- (2) Subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose.

Source: *Evidence Act 2008 (Vic)*.

Section 127 of the *Evidence Act 2008 (Vic)* outlined in Box 23.2 affords protection to religious personnel who are the recipients of confidential information in the context of a religious confession. A person who receives such information cannot be compelled to reveal this information. The privilege is limited to evidence of communication secured by a member of the clergy in those precise circumstances. It does not affect their obligation to provide evidence of their observations or communications in any other context. Nor does the provision appear to impact in any way upon the entitlement of a confessionalist to disclose what occurred. It would not for example preclude a child providing evidence of a complaint about grooming in the context of a confessional. The protection does not extend to any communication made for a criminal purpose.

As Catholics for Renewal indicated in its submission to the Inquiry:

There is an argument that the seal of confession should not be recognised by civil law given past Church failures. However, such an approach would be a grave step requiring confessors to breach a sacred trust with nothing to be gained by way of protecting children. However horrendous the crime and sin, State legislation to breach this trust would be ineffectual and would simply isolate the perpetrators from a potentially helpful source of guidance and contrition.¹²⁴

In 1987 the Australian Law Reform Commission considered whether the privilege should attach to such communications. It concluded on the basis of the concept of free exercise of religion, the perceived tension between Church and State and significantly, that there was no evidence from law enforcement authorities where the privilege existed, that its existence hampered law enforcement in any significant way, that such a privilege should remain.¹²⁵

The Committee considers that the current exemption in s.127(2) of the Evidence Act 2008 provides an appropriate check on the potential abuse of any communication in a religious confessional setting made for a criminal purpose. The operational effect would be that where a religious confession of criminal child abuse is made for the purposes of seeking assistance in concealing that crime, the exemption will not apply.¹²⁶

124 *Submission S205*, Catholics for Renewal Inc., p. 30.

125 Australian Law Reform Commission (1987) *Evidence (ALRC Report 38)*. ALRC. Paragraph 211– 213

126 See Box 23.2

Finding 23.3

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

The Committee requests that the Victorian Government is mindful that while Recommendation 23.1 has been considered in its application to the criminal abuse of children within organisations, if implemented it may become of general application. In consequence, in drafting any legislation there needs to be consideration of any unintended implications for other groups and individuals.

→ Recommendation 23.1

The Committee recommends that the Victorian Government consider amending Section 326 *Crimes Act 1958* (Vic) to remove the element of ‘gain’, to ensure that a person who fails to report a serious indictable offence involving the abuse of a child will be guilty of an offence.

23.7. Child endangerment

In order to further encourage people to report suspected abuse to police, the Committee considered that the Victorian Government should consider introducing a new criminal offence that would make it an offence to cause or permit any child to be placed or left in a situation that creates a substantial risk to the child of becoming a victim of serious harm or sexual abuse, or to fail to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation. Such an offence would cover the situation where a person wilfully disregards the risk of criminal abuse to a child.

Such a provision would help greatly to establish a strong legal framework to protect children at risk. It would mean that where a person in authority intentionally or recklessly fails to take steps to protect a child from harm or abuse, that person is guilty of an offence. People who know that a child is being abused and are in a position to do something about it would have a direct legal duty to intervene to save the child. ‘One cannot turn one’s eyes away and say that it is somebody else’s business or that it is too embarrassing to deal with.’¹²⁷

For the purposes of a child endangerment offence, such wanton or reckless behaviour would occur when a person is aware of, yet consciously disregards, a substantial and unjustifiable risk that the person’s acts or omissions placed a child in a situation that might endanger the child’s:

- life
- health
- welfare

¹²⁷ *Parliamentary Debates*, Minister for Justice and Equality—Criminal Justice Bill 2004: Second Stage Seanad Éireann Debate, Seanad Éireann (Ireland), vol. 184, no. 9, 21 May 2013, p. 731.

- morals
- emotional wellbeing.

The risk must be of such a nature and degree that disregarding the risk would constitute a gross deviation from the standard of conduct that a reasonable person would follow in the situation.

For a person to be found guilty of child endangerment, the State must prove that the defendant understood that their action posed a great risk of harm, yet they disregarded that risk and continued to perform the action. In proving the charge, it would not be necessary to prove that the defendant intended to cause the resulting harm. However, they must have intended to perform the act in question, and again they must have understood the risks associated with their conduct.

In June 2012 in the United States, Monsignor Lynn, a former cardinal's aide of the Archdiocese of Philadelphia, was found guilty of endangering children. The Monsignor was the first senior official of the Roman Catholic Church in the United States to be convicted of covering up sexual abuse by priests under his supervision. The New York Times reported that:

Monsignor Lynn served as secretary for clergy for the 1.5 million-member archdiocese from 1992 to 2004, recommending priest assignments and investigating abuse complaints. Prosecutors presented a flood of evidence that Monsignor Lynn had not acted strongly to keep suspected molesters away from children, let alone to report them to law enforcement.¹²⁸

The New York Times also reported that prosecutors argued that the Church 'sought to avoid scandal and costly lawsuits at almost any price, putting the reputation of the archdiocese ahead of protecting vulnerable children.'¹²⁹

Finding 23.4

The creation of the offence of child endangerment will impose criminal responsibility on those who act understanding that their action may pose a substantial and unjustifiable risk of harm to children, but who disregarded that risk and acted accordingly.

→ Recommendation 23.2

The Committee recommends that the Victorian Government consider the introduction of a criminal offence relating to child endangerment to cover relevant wanton or reckless behaviour in situations:

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

128 J. Hurdle & E. Eckholm (June 22, 2012) *Cardinal's aide is found guilty in abuse case*, New York Times. Accessed on 28 May 2013 from www.nytimes.com.

129 J. Hurdle & E. Eckholm (June 22, 2012) *Cardinal's aide is found guilty in abuse case*.

23.8. Need for laws to protect those who report criminal child abuse in an organisation

The Committee considered the further reform of extending protections under ‘whistleblower’ legislation to cover individuals who reported incidents of criminal abuse of a child in the care of a religious or other non-government organisation. Such individuals can play a critical role in protecting children in organisational settings.

The Committee heard from a number of witnesses about their experiences in the organisation when they tried to report criminal child abuse. These witnesses saw the law as having a key role to play in giving appropriate and effective protections against retaliations for reporting.¹³⁰ Some whistleblowers told the Committee that they felt they had been forced, one way or another, from their jobs and then from their careers, as a consequence of their complaint about the conduct of a person in their organisation towards children in their care. Their resignations were met with support in some instances but in others they encountered criticism from members of the community who continued to find it incomprehensible that religious personnel in the Catholic Church could ever commit such atrocities and therefore maintained their support for the priest. Mr Graeme Sleeman explained:

The sad part about all this is that my mother died before I could be vindicated. She disowned me because I should have kept my mouth shut, and that is the saddest thing. Even though my mum thought I was the most educated no-hoper, she still did not believe that I should have done what I have done.¹³¹

The Committee heard evidence that the Catholic Education Office Melbourne established a whistleblower protection policy. The current version is dated 2007. The policy is described as being ‘underpinned by a strong commitment to building a culture in Catholic education workplaces that reflects sound governance and that promotes ethical behaviour in the detection and management of fraudulent, corrupt or improper conduct.’ Mr Stephen Elder, Executive Director of the Catholic Education Commission of Victoria, told the Committee that this policy enables any person to ‘make an anonymous complaint to the designated whistleblower person within the office, and that can be dealt with.’¹³²

Mr Dennis Torpy, Manager of Wellbeing and Community Partnerships in the Catholic Education Office Melbourne, told the Committee that:

Under our policy of allegations of misconduct against lay employees there is clear detail about what processes should be followed hand in hand with mandatory reporting. They include clear steps around maintaining confidentiality, as well as appropriate documentation, reporting, and careful listening and understanding of the allegation at the same time. So that is set out as well to ensure confidentiality.¹³³

The Committee considered whether it was necessary to recommend amendments to the *Protected Disclosure Act 2012* (Vic). This Act aims to encourage and enable

¹³⁰ *Transcript of evidence*, Mr Graeme Sleeman, Melbourne, 23 January 2013; *Transcript of evidence*, Ms Carmel Rafferty, Melbourne, 23 January 2013; *Transcript of evidence*, Ms Sandra Clark, Melbourne, 25 March 2013.

¹³¹ *Transcript of evidence*, Mr Graeme Sleeman, p. 14.

¹³² *Transcript of evidence*, Catholic Education Office Melbourne & Catholic Education Commission of Victoria, Melbourne, 3 May 2013, p. 5.

¹³³ *Transcript of evidence*, Catholic Education Office Melbourne & Catholic Education Commission of Victoria, p. 6.

disclosure of improper conduct, reporting of experiences of reprisal against a person who has made a disclosure, and protection and confidentiality for those affected by such disclosures.¹³⁴ The definition of improper conduct includes conduct that would constitute a criminal offence.¹³⁵

The Act presently only covers the public sector and does not apply to the corporate, unincorporated or charitable sectors. As Dr Tucci from the Australian Childhood Foundation told the Committee:

The Australian Senate Community Affairs Committee recommended that governments introduce whistleblower legislation to cover not-for-profit and religious sectors. Whistleblower legislation is already in place for government and corporate organisations. We would see that if you had whistleblower protections under various Acts, you would make the system far more transparent and far more accountable. You would encourage people to come forward and expose, in a contemporary way, the abuse and exploitation of children within religious and not-for-profit organisations.¹³⁶

However, the Committee is of the view that the proposed reform to create a criminal offence for failing to report information about abuse or suspected abuse to police is enough to meet these concerns. That is, the Committee recommends that failure to report to police information about criminal child abuse in an organisation be made a criminal offence, and those that fail to report be subject to criminal sanctions. In those circumstances, the actions of a 'whistleblower' would be protected and justified because they would be acting in accordance with the law.

134 *Protected Disclosure Act 2012* (Vic) s.1.

135 *Protected Disclosure Act 2012* (Vic) s.4.

136 *Transcript of evidence*, Australian Childhood Foundation, p. 3.