

ROBERT G HAEBICH [REDACTED]

B.A. L.L.B. (Syd). M.A.I.D.C. [REDACTED]
[REDACTED] [REDACTED]

20 June, 2012

The Executive Officer,
Family & Community Development Committee,
Parliament House,
Spring St.,
East Melbourne Vic 3002

Dear Executive Officer,

Submission into the Handling of Child Abuse by Religious & other Non-Government Organizations

Thank you for the opportunity to make a submission to your inquiry.

I am indeed surprised that the inquiry is limited to non-government organizations. While I do not know the situation in Victoria I have some knowledge of the history & current situation in regard to the handling of child abuse in the Commonwealth Defense Department & in Queensland & New South Wales, at the state government level. I am a lawyer experienced in human rights, criminal & care law and a Catholic.

Term of reference 1

It is inappropriate for organizations to handle allegations of criminal abuse. The appropriate bodies are the police, the DPP and the courts that between them are experienced in & charged with the duty to investigate, evaluate & where appropriate to prosecute & judge complaints. A similar situation applies in regard to civil & criminal compensation claims.

I realize organizations such as the Church of England & the Catholic Church have adopted processes by which the churches seek to deal with the problem. They have exposed their organizations to the appearance of if not actual conflicts of interest. In addition where the complainant & his/her family are parishioners, such processes must surely add to the confusion & hurt of those who have been the subject of abuse.

Certainly all Christian Churches regard child abuse as an anathema. Certainly the Church of England & the Catholic Church have taken major steps to minimize and may even set a zero tolerance standard. They have introduced recruitment testing, set policies, practices & protocols and made parishioners highly conscious of the issues and the church's' condemnation of any form of child abuse.

I note that the Defense Department inquiry identified a huge number of sexual abuse complaints covering a period of 60 years. The complaints against church officials similarly cover a lengthy period giving the wrong impression that child sexual abuse by clergy is endemic. There is evidence of long-standing & determined cover-ups of child abuse at state level in at least 2 states.

In short, what is aberrant & very unacceptable behavior by some church officials & employees should not result in organizations carrying out state functions nor should it be used to justify the state intruding into religious practices. History has shown the importance of the separation of church & state.

Term of reference 2

There are 3 systemic issues.

There is generic requirement by insurance companies that no admissions as to fault be made on pain of cancellation of insurance cover. A prudent & properly risk managed organization should take insurance against even those acts it regards as reprehensible. The insurer stands in the shoes of the church in the conduct & outcome of litigation.

Complainants & their families are quite often committed parishioners & the subject of the complaint is often a close and trusted friend. The alleged offence is an anathema to their faith & to their roles as family & as members of the church community. Accordingly there is huge trauma & for some a reluctance to "go against the church " by seeking justice.

The subject of the complaint is often otherwise a well-regarded leader in the community. A complaint whether or not is subsequently established as truthful, is destructive to the church official or church employees reputation & future in the position. Accordingly colleagues often find objectivity difficult for that reason and because of the wider effect on the reputation of the clergy & employees more generally.

The church is about forgiveness by those who suffer harm & wrongs and of repentant perpetrators. Consequently prosecution & punishment are not the province of the church.

The sacrament of confession/reconciliation deals with such forgiveness. It is in this context that a confessor may come to learn of a crime. The priest is obliged by his oath to not reveal what has been confessed.

Of course there is nothing to preclude a confessor from counseling and advising a victim. He might advise/organize counseling, report the offence to family and to police or to seek legal advice and without breach of confidence take other steps. Similarly as a condition of absolution he may require a perpetrator to undertake counseling, seek legal advice, confess to the police, desist from contact, resign and in certain circumstances that could cause the victim distress, require a supervised or unsupervised apology and again without breaching confidentiality should take other appropriate steps.

I would consider a priest bound to address remedies and obliged to make it clear that the making of a complaint to police, pursuing that complaint & claiming compensation through the courts is a justified & proper thing to do. The victim should be assured that the church & the church community would respect such a decision.

It is not for the priest to take from the victim the choice of whether to report &/or prosecute the complaint. It is always open to a complainant to take such a course.

Term of reference 3

There should be no change to the law so that a priest is bound to breach his obligations of a confessor.

The confidence in the confidentiality of the confessional serves an important personal and social function where persons under stress can seek forgiveness, guidance & counseling in regard to matters they may well otherwise keep to themselves & so avoid dealing with problems in a positive & healthy fashion. As with confidentiality between lawyers & their clients, there are good reasons for the existence of this requirement. The justification for confidentiality is no less for the confessional than it is for the lawyer.

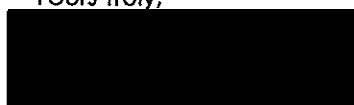
However neither a priest not a lawyer should condone crime.

Accordingly I see no problem with requiring that priests must unequivocally advise persons making allegations of criminal abuse of children that the matter should be reported to the police with a view to pursuing justice through the courts & to the person being told that a lawyer should be consulted in regard to compensation. Where the person in the confessional is a minor or a person of limited capacity the person should be advised to tell a family member or friend, be given the assistance to see a councilor or legal advisor and an invitation to return with or without a supporter. The priest can otherwise directly or indirectly assist the person to seek support & justice provided he has the consent of the person in the confessional.

How a priest could prove he satisfied this standard is problematical especially because of the requirement of confidentiality. However I suggest that the obligation in the terms of the above is essential to his carrying out of his priestly function either in the confessional or as counselor. The church should introduce this as a standard & provide training & for my part make the requirement the subject of a vow.

In conclusion I consider the path currently being followed by mainstream churches is a mistake & open to charges of conflict of interest. The requirements set for clergy has been considerably enhanced & should be strictly applied. Priests should be required to objectively advise complainants of their legal rights & complainants right to pursue or not pursue the complaint should be respected. Churches should be relieved of any obligations by insurers to not make admissions. Ultimately the role of the church in the business of forgiveness & the role of the state in law enforcement should not be confused.

Yours truly,

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R Haebich