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██████████ submission to the Family and Community Development Committee of Victorian Parliament, on the processes by which religious and other non governmental organizations respond to the criminal abuse of children by personnel within those organisations.

Disclaimer: This is not a legal submission but is advocacy for law reform based on concerns identified in legal practice for over three decades.  
This submission will be confined to the physical and sexual abuse of children by clergy within religious organisations (clergy abuse).

### 1.Introduction

I congratulate the Victorian government for commissioning this inquiry, as hopefully it will start where the Cummins Report (titled *Protecting Victoria's Vulnerable Children* of January 2012) stopped, with regard to the abuse of children in religious organisations. The Cummins Report appeared to have been unable to fully investigate how religious entities deal with child abuse especially with regard to mandatory reporting by clergy. They were of the belief that sufficient research had not been done on how such organizations responded to reports of the abuse of children. This present inquiry has been specifically empowered to obtain such evidence (not just research-see attached addendum below) that the Cummins Report believed was lacking.

However, it must be noted that there are past reports that documented significant clergy abuse of children that are in the public domain that this inquiry can take note of. They include the Stolen Children Report 1997, the Forgotten Australians Report (2004) and the Layton Report (2003). Also anecdotal evidence that will be received and other information sourced by this inquiry will no doubt corroborate clergy abuse in these other reports.

The Terms of Reference for this inquiry include consideration of the:-

- handling of allegations of criminal abuse of children, measures in response to concerns of, or potential for such abuse.
- whether there are any systemic issues that preclude or discourage the reporting of suspected criminal abuse of children to state authorities.
- what changes in law, practice, policies and protocols are required to prevent the criminal abuse of children or deal with such allegations.

This submission refers to law reform issues that the Cummins Report made recommendations on, with regard to religious organisations. In addition it will refer to the common law in Victoria on the physical abuse of children. In particular it will refer to the Roman Catholic Church (the organization), using the information that the Cummins Report provided, information in the public domain, legislation and existing legal precedent. Observations made about this organization are simply because they are the subject of a recent English Court of Appeal decision that has ramifications for the law in Australia and for many other religious organisations here : *JGE v Trustees of the Portsmouth Roman Catholic Diocesan Trust* (2012) EWCA 938.

## **2. Rationale for law reform proposals in this submission**

The present state of the law in Victoria permits the unsatisfactory handling of clergy abuse allegations within all religious organisations. Although the Cummins Report made some law reform recommendations on these issues, there is a need for further legal reforms . The aim of these additional law reforms would be to ensure a more just handling of complaints of criminal abuse within religious organisations and a better regime for the prevention of physical and sexual abuse of children, their equal access to justice and to all available remedies in the law.

At present the internal processes of religious organisations are problematic as they have devised their own processes, policies, practices and protocols for investigations of clergy abuse. When they respond to complaints of clergy abuse by their own personnel, inevitable issues of conflict of interest will be, and have arisen. This situation needs to be remedied.

In addition public policy and public interest imperatives demand that personnel in all religious organisations and the organisations themselves acknowledge and accept that they have a duty and responsibility to adhere to secular laws. Law reforms proposed in this submission, will reduce the ability of any religious organisation to quarantine their obligations to the laws of Victoria based on doctrinal positions and difficulties in the law. To maintain their privileged position of trust and authority they must have a corresponding obligation to act with the utmost integrity.

### **3. Basis of law reform in religious organisations.**

The following self-evident principles are universally applicable to all organisations, religious or otherwise. They are expected to have by law or best practice, processes, policies, practices and protocols that inter alia:-

- are compliant with the law,
- be non-discriminatory and provide equal access to the law for all,
- promote human rights,
- prevent criminal abuse,
- be governed by the rules of natural justice.

The areas of Victorian law that require change that will facilitate adherence to the above principles (that are applicable to all organisations), and to enable victims of clergy abuse to obtain the justice denied to them for decades are:-

- A change in the legal status of people employed within religious organisations, as in the above English Court of Appeal decision.
- an amendment of the criminal law to penalize non reporting of abuse
- an extension of mandatory reporting to all clergy on *suspected* abuse.
- a clarification of what information can be excluded from confessions
- repeal of the common law defence to the physical assault of children.

The above reforms are not exhaustive but without them the prevention, reporting, responding and the handling of criminal abuse within religious organisations are compromised. Despite policies and protocols in place now, the actual practices and processes of the organization fall short of full disclosure of criminal abuse to state authorities. As indicated earlier, these difficulties in practice adversely impact on victims of clergy abuse.

The other issue for reform is that of the extension of limitation periods for tortious liability. It will not be addressed here as it was not canvassed by the Cummins Report. They will be covered by advocacy groups based on evidence and personal experience of those who have suffered criminal abuse from clergy within religious organisations. Such litigants face the real possibility of their late claims as survivors being defeated in law.

#### **4. Legal principles that impede justice for victims of clergy abuse**

##### The exemption of the Roman Catholic Church from civil liability

At present, the above organization is in a very privileged position in the legal system that Victoria inherited from English common law. Case law (*The Trustees of the Roman Catholic Church v Ellis and Anor* (2007) NSWCA 117), allows for the view that there is no legal entity that exists in Australia known as the Roman Catholic Church. It is not a legal entity that is capable of being sued in a court of law, and from that it follows that the Roman

Catholic Church as an organisation is not legally accountable to victims of clergy abuse.

#### Legal position of Roman Catholic priests in Australia

In Australia the Roman Catholic Church is merely an unincorporated association of parishioners known as the “People of God”, with their clergy, including priests) appointed by the bishop of their diocese. Appointments and terms of appointment of all clergy are subject to canon law (and by definition canon law is the law of the church based on religious beliefs: Duhaime: Church and Religion Legal Dictionary ), but the wages of priests are not paid by the bishop or the organisation but by lay parishioners of the diocese.

#### Legal position of Trustees of a Roman Catholic Diocese

In addition, by canon law a diocese is a “moral person” that is obliged to establish a legal entity in accordance with secular law. This gives rise to the establishment of trustees of a diocese, but case law in Australia indicates that parish priests are not employed by these trustees.

Given these legal structures, any parish priest is in a unique position in civil law. Although they are subject to canon law, civil law, and the criminal law, if allegations of clergy abuse are made against them, neither the Roman Catholic Church (which has no legal status), nor its legal entity the diocesan trustees (who do not supervise them nor pay their wages), can be made liable for the priests’ actions. These are all significant issues in secular law, which impede victims of clergy abuse from obtaining proper redress within the legal system in Victoria.

### **5. Law reform to remove legal impediments in the law governing clergy**

Clergy are subject to canon law, which is stated to be the law of the church based on scriptural beliefs. However over the centuries, canon law has

been formulated and promulgated by church leaders and are an expression of human authority over “the people of God”. Clergy subject to canon law are also subject to secular law and this too has been formulated by human authority. It is this latter law that needs to be reformed, as the state has no role to play in canon law. However secular law appears to have had the shadow of canon law cast over it for centuries but this is being reviewed now. Canon law is being viewed as a code of law with rights and obligations within it that can have an impact on principles of secular law. This view is reflected in a recent English case brought by a member of a parish abused as a child by a Roman Catholic priest (JGE etc above).

a. A change in the employment status of clergy under English law

In England, the civil liability for the wrongful actions of priests has recently changed, when the Court of Appeal held that such clergy were in a legal position “akin to employment “. The decision was that there was vicarious liability for the actions of an abusive priest working within a diocesan parish. To date in Australia, the issue of whether a bishop as the appointer of a parish priest is vicariously liable for the actions of his priest is arguably an open one, yet to be decided in a court of law.

b. Potential for change in the laws of vicarious liability of clergy in Australia

The above English case (which only has persuasive authority in Australia) is on appeal, and the case has yet to be finally decided. However, if one victim of clergy abuse is successful in England it will create a common law precedent. This has the potential of being a persuasive reason for law reform here in Victoria. In reality the common law position adopted by the English Court of Appeal, is simply the legal system acknowledging and accepting social change and the evolution of ethical ideas. This rationale for change has already been adopted by our own Australian High Court in many cases in the recent past, and is not a new jurisprudential concept in our legal system.

#### c. Amendment of the *Crimes Act 1958* by the addition of a further crime

The Cummins Report recommended that the *Crimes Act 1958* be amended so that it is a criminal offence with criminal penalties if any abuse is not reported to the police (Section 326 Of the *Crimes Act* and section 493 of the *Children Youth and Families Act 2005*). The lack of reporting of criminal abuse to police, has been an issue causing great anguish to victims of clergy abuse. Since their abuse as children, some have reached adult hood (those who have not taken their own lives in despair), only to have their distress compounded by seeing their abusers remain unanswerable to criminal law.

In the interests of justice, there is no reason why the Victorian government should not act on this recommendation and amend the criminal law now. Police in New South Wales are able to investigate the non-reporting of criminal abuse of children unlike Victorian police. An amendment of the *Crimes Act* would create legal sanctions for concealment or non-reporting of crime for all, and not just those in religious organisations. It should be noted by the Committee that no such law reform is proposed, and that this omission reflects adversely on the present Victorian government. They already have the power to act to remedy this wrong, but choose not to.

#### d. Mandatory reporting obligations for all clergy and religious personnel

The third law reform proposed to prevent clergy abuse, promote a better response to complaints of clergy abuse and provide a safer environment for children is the extension of mandatory reporting of suspected abuse to all priests. I note that the Cummins Report failed to recommend any amendment of the current *Children Youth and Families Act 2005*, to make priests mandated notifiers. Their rationale may be understandable, but is unrealistic as it is more likely that clergy themselves would be more aware of clergy abuse than others. The close proximity of clergy to other clergy would make up for any perceived lack of skills or training in detecting abuse of children.

In my view the Cummins Report over emphasizes the professional skills necessary for reporting child abuse, as parents and children may be the first to see the signs of distress in their children and friends. It is true that this may give rise to an increase in reporting, but this in itself is not problematic if managed properly. All such reporting, even if not possible of immediate substantiation can be collected as contemporaneous evidence of allegations. They are valuable intelligence in an efficient child protection regime that can point to an accumulation of evidence against an abuser.

In addition, the Cummins report does not appear to fully acknowledge the differences between detection of suspected child abuse and its subsequent investigation by professional child protection personnel. It rejected the calls made by the Melbourne Victims' Collective for an extension of mandatory reporting obligations to cover clergy. It also noted that after the above Collective's submission was made public on the inquiry website, four submissions were received from sectors of the Victorian Roman Catholic organization, with only one supporting such extension.

The Cummins Report also noted that South Australia had apparently strong representations on mandatory reporting made in its own child protection report (the *Layton Report 2003*) from major churches. The South Australian churches, contrary to the position of some bishops in Victoria, proposed an inclusion of clergy and church personnel as mandated notifiers. In 2005 section 11(2) of their *Children's Protection Act 1993* (SA) placed a reporting obligation on all types of clergy or volunteers in organisations formed for religious or spiritual purposes. The Cummins report also notes that section 11(4) of the South Australian Act, exempts confessional communications.

Mandatory reporting by priests would facilitate the reporting of clergy abuse to Victoria Police and welfare authorities, both of whom already have protocols and procedures to deal with abuse or crime *reported* to them. At present, they can, and do fail to have reports made to them because of the unsatisfactory state of the law in Victoria. After the inquiry has

received information that the Cummins Report stated it lacked, there would be no reason for the ongoing existence of any exemption for clergy and related personnel, from the legal obligations of reporting suspected child abuse.

e. Clarification of the *Evidence Act 2008*

The fourth law reform issue is a clarification of section 127 of the *Evidence Act 2008* that protects information received during a religious confession so that no one is left in doubt that there is an obligation to report criminal activity. I suggest sub section (2) of section 127 is amended to read as follows:

*Subsection (1) does not apply if the communication involved in the religious confession discloses the commission of a crime.*

ie it is made clear that the exemption is not only for any confession made for a criminal purpose. If the law is strengthened as suggested and one priest confesses to another, within the religious ritual of confession about the commission of a crime, the opportunity to protect that information and conceal crime will be conclusively removed. Without reform this ambiguity in the law will continue to fail victims of past and present clergy abuse and the concealment of clergy abuse will continue.

f. Compliance with human rights in policies, practices and protocols

Although the Victorian Charter of Human Rights and Responsibilities Act 2006 is applicable to legislative provisions, policies, practices and protocols of religious organisations can voluntarily comply with the human rights of children guaranteed under Victoria's Charter. It would be best practice for them to accept the human rights of children that the Parliament of Victoria declared should be available for the protection of children. It would not be in the public interest for any religious group to seek exemption from its provisions, or consider that somehow their obligations to children and compliance with human rights principles and values are optional.

g. Removing the common law defence to physical assault of children.

In Victoria the common law provides a defence to the crime of assault of children in accordance with the decision made in *R v Terry* (1955) VLR 114. This case followed an English decision where a schoolmaster was charged with the murder of a pupil whom he beat over several hours. He was found guilty of manslaughter instead, and the decision in that case (*R v Hopley* (1860) 2 F&F Pg 20) allowed for the moderate and reasonable corporal punishment of children for the purposes of discipline. However this case confirmed an English seventeenth century proposition in the common law that even if death followed, disciplinary action against wives, children, servants and apprentices would be allowed if the force used was moderate and reasonable. We are now in the 21<sup>st</sup> century and the law has not yet defined what “reasonable” is so children remain at risk of criminal abuse because of this uncertainty. Most common law jurisdictions around the world have made such violence illegal against all stated classes of persons subject to this old common law proposition, except children. Aotearoa / New Zealand was, in 2007, the first country to shake off its common law heritage in this area, by passing a law that such discipline is illegal for children too: (New Zealand Crimes (Substituted section) Amendment Act 2007 s.59).

In Victoria now, if a child is harmed by the use of physical discipline in religious or other organisations, the issue on whether the force used was reasonable or not is a difficult question of law given the law’s lack of clarity. Police, welfare authorities and all adults in charge of children have to decide whether a particular form of physical discipline used is or is not reasonable. When a law is abhorrent for all except children, it begs the question why physical discipline can be considered reasonable at all. Ultimately the question of reasonableness is a decision for the courts, but all such judgements calls are made after harm has been done to a child.

Although the Victorian Parliament has legislated for the human rights of children, this common law defence makes nonsense of those human rights.

In Victoria children alone are subjected to the risk of legally sanctioned violence. Whilst the sexual abuse of children is clearly understood and accepted as a crime, the issue of physical discipline of children is not.

To compound this, in religious organisations the physical abuse of children is bedeviled with the same legal problems as sexual abuse is, with regard to the reporting and handling of such criminal abuse. The existence of this defence in Victoria exposes all children, including those in religious organisations, to the risk of violence legally sanctioned in the common law. There is no reason why we should not act as New Zealand has and repeal this common law rule for children now. As with violence against women and workers, violence against children, wrapped up in obsolete notions of 'reasonable' force which tolerates assault as chastisement, should not now have the imprimatur of law. (See Addendum A for more details on this.)

## **6. Juxtaposition of canon law with secular law in religious organisations**

Bishops and others with a similar canonical authority, appoint priests to positions of leadership and influence in the community. Once appointed to these positions, clergy within all Christian religious organisations are as has been indicated earlier, governed by canon law as well as secular law. Although secular case law, has affirmed that canonical rules governing clergy do not bestow any legal rights on lay people, no religious organization should have any assumption bestowed upon them by secular law that they are not, or should not be governed by the same principles of law that govern interpersonal relationships in the community. I suggest that it would be in the public interest and in the interests of justice, for compliance with canon law by clergy to mean that there are clear obligations placed on bishops and those in authority to properly implement canon law. This should translate into penalties against clergy who abuse children, with appropriate punishments from diocesan authorities for criminal conduct, to protect the laity that clergy serve.

### Doctrinal positions under canon law and its impact on rights of victims

Despite priests being appointed by bishops to responsible positions in the community, doctrinal views held by the Roman Catholic Church, allow them to avoid their obligations to observe canon law and their sacred duty to children. It may be, that their own interpretation of the canon law that they are governed by, allows them to do this. For instance the forgiveness of sins against children and the allowing of such confessed sinners to continue with their service to God and their parish. That alleged adherence to canon law, need not make those who have confessed to crimes against children to be permitted to remain above our secular laws - a fundamental principle of any democracy.

### Doctrinal positions, canon laws and their impact on laity.

An example of a doctrinal position in the organization that may not be based on religious truths, are the rules on celibacy for clergy, which can have an adverse impact on the laity they serve. These rules or Lateran canons appear to have been formulated in the 12<sup>th</sup> century by the Lateran Councils, despite evidence that the first pontiff (St Peter) may well have been married. There is evidence also that many clergy who lived and held office in the early centuries of the organization's existence, were not celibate. This celibacy rule became entrenched dogma after the 12<sup>th</sup> century and like other dogma or doctrine can be revised but has not been. However, canon law itself was revised in 1917 and in 1983 with a revision of church law for the Eastern Churches in 1991.

Of note is the fact that another church covered by their own canon law - the Anglican Church has no such celibacy rule and only recently allowed the ordination of women as priests.

### Amendment of policies, practices and protocols regarding supervision

Bishops have an obligation under canon law to have oversight of their appointee priests, to ensure compliance with canon law, and there is no

reason why bishops cannot now improve on their level of supervision of their parish priests. Under canon law they have a degree of autonomy for oversight of their parish that allows them to take this purely administrative action that has the potential of addressing cases of suspected abuse of children by clergy. Even if Victoria is not minded to change the law on vicarious liability of priests, an increased scrutiny of priests, can be made part of a prudent risk management strategy to better protect children now. This level of supervision by bishops should not be any less than that expected of secular employers.

### Other religious organisations, religious laws and law reform

Outside the two church organisations referred to so far, there are other religious organisations that are allowed freedom of worship in our society. Christian, Jewish, Muslim, Buddhist or Hindu etc organisations, have their own laws, rules and constitutions which govern their activities. All these are organisations based on religious teachings, and have a duty to comply with their own religious law, the spiritual wellbeing of all whom they serve, including children, and to a higher authority they purport to serve. As well, they have a further duty to comply with secular law. Whatever their aims and religious beliefs are, their clergy like other clergy are in positions of authority over children and must be subject to the same laws that are proposed in this submission with regard to addressing clergy abuse of children.

### 7. Breaches of canon law and its consequences in secular law

As it is an offence under canon law to sin against children, there would be no reason why sinful and abusive personnel should not be punished according to canon law, and any secular laws they also break. Instead it appears that at present, that clergy in the organization at least, have their sins absolved (no doubt sometimes in the confessional which is beyond the

reach of the law-without unambiguous law reform), and are allowed to remain in the church and in the service of God and man, woman and child.

In doctrines promoted by Christians and the organisation, compassion towards children and a neighbourly regard for them are part of the core tenets of religious belief. Indeed what has been described as Roman Catholic Church teachings on responsibility for breaches of core religious beliefs are just that, the position of mere mortals in authority and may not in fact reflect the reality of Christian religious beliefs.

Religious beliefs can be accepted as a personal experience some have, a mystery they accept in faith. We live in a society that allows the free expression of all faiths and beliefs but are the activities of those within faith and belief systems, above secular common law? As canon law appears to have no specific obligation placed on clergy to disclose breaches of canon law with respect to the abuse of children by clergy to state authorities, should secular law not remedy this situation? This is a purely pragmatic question and on this basis alone there is no reason why Victorian laws should not be reviewed and reformed.

Clergy in the organization that purport to serve God and God's people owe a duty to their religious organisation pursuant to their oath of office or other oath made at their ordination under their own religious law. Canon law, arising as it does, out of religious beliefs and a commitment to the principles of humanity and justice does not specifically grant anyone in the hierarchy of any religious organization, or the organization itself, the right to pervert those principles. They have not been granted any right or power to accommodate crimes against children, human right breaches, or to tolerate inadequate structures and processes that fail to properly protect children. On the contrary clergy have very high expectations placed on them of probity, good faith and acting in the best interest of all they serve with an utmost regard for their spiritual wellbeing.

Indeed there are many charitable religious organisations with personnel in them who have a long and proud history of devoted service to all in the community, and who strive to fulfill the religious beliefs and faiths they are committed to.

## **8. Conclusion**

In the past, we failed to protect children from what they suffered, but our past failure must be the catalyst for changes in the legal system. Law reform can provide children with more protection from clergy abuse, improved procedures for the handling of criminal abuse complaints and additional redress for past wrongs. It can challenge past ideology and allow the creation of more functional environments for religious entities to operate in. Changes in the legal system (in welfare, criminal, and civil laws) proposed in this submission, will compel religious organizations to change their processes, policies, practices and protocols of dealing with clergy abuse and the protection of children. It will be even less acceptable than it is now, for any religious organization to rely on archaic medieval philosophies or practices not based on religious truths, to permit or tolerate:-

- Doctrinal positions that allow internal processes that do not properly implement core religious truths and beliefs applicable to children.
- Canon law interpretations, doctrine and dogma to exempt or shield clergy who abuse children they purport to serve in the name of God.
- Impediments to the proper protection of children and full remedies and entitlements victims of clergy abuse have under secular laws.

The law reform proposed will importantly return to adult victims of clergy abuse, a little portion of the comfort and the faith they had in the Church. To those of faith, that which was forcibly removed from them must be

restored. Nothing will ever give them back their innocence and a full trust in the Church, but there is a chance they will regain their trust in man's humanity and live less damaged lives for themselves, their family and friends.

Patmalar Ambikapathy

28<sup>th</sup> August 2012

By email only to the Family and Development Committee of the Parliament of Victoria

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## Addendum A

The Lord Chief Justice of England, Sir Matthew Hale (1609 to 1676) wrote that the common law permitted the physical discipline of wives and that husbands had immunity from prosecution if they raped their wives (*Historia Placitorum Coronae* by Sir Matthew Hale Pub in 1736). He also said wives, servants, apprentices and children could be subject to 'moderate correction' even if such discipline caused death (Hale above @ pages 472-474). In 1860 the Lord Chief Justice of England Sir Alexander Cockburn expressed the same law in his judgment in *R v Hopley* ((1860) 2 F & F Pg 20), but did not acknowledge Hale or appear to have referred to any precedent. He simply said it was the law of England.

Providing no precedent is an omission we need not accept, and if we choose to investigate further, we find that earlier in history, during the Roman occupation of Britain, England – like other occupied nations – incorporated aspects of the occupiers' pre-Christian Roman law into their legal system. Roman law had a legal principle that a father or master had absolute dominion over his household, including the power of life and death over his wives, children, servants and slaves. History also tells us that Hale was an admirer of Romans and like all other lawyers of his time, studied Roman law as this was the main subject for a law degree at Oxford. King Henry the VIIth had abolished the teaching of canon law (religious Roman law) at Oxbridge, and common law only became part of an Oxford law degree in the eighteenth century. William Blackstone, a Solicitor General of England, commenced lectures in Oxford in around 1758 on common law. The lectures were published contemporaneously in 1765 titled *Blackstone's Commentaries on the Laws of England* (Commentaries on the Laws of England by Sir William Blackstone Reprint of 1<sup>st</sup> Edn by Oxford Clarendon Press)

Both Hale and Blackstone, although living more than a century apart, studied Roman law in Oxford and common law at the Inns of Court in London. Both would have been aware of the Roman law principle of the power of the *paterfamilias*, and whilst Hale embraced it, Blackstone distanced himself from the Roman law on children and wives, suggesting instead the common law proposition of discipline without violence.

One century after Blackstone, Coburn chose to follow Hale and not Blackstone. I suggest that contemporary law follows this archaic Hale defence and jurisprudence, although it has been discarded and discredited with regard to violent discipline of all except children. In New Zealand, in an amendment to its criminal law, discipline without violence remains a defence (New Zealand Crimes (Substituted section) Amendment Act 2007 s.59).

Many other countries within and outside the English common law legal system, have made all violence against children illegal. In 2011 there were 33 countries with a full prohibition of corporal punishment. Some have had this law in existence for over three decades and there is ample research evidence that such law reform has been both beneficial to children and successful for the community with a reduction of juvenile crimes like drug addiction. In New Zealand there was a very strong vociferous minority who sought to spread fear and misinformation about the reform, through the media to the public and succeeded. However, although there was a change in government after their criminal law was reformed, their new Parliament chose to retain this law reform as their Prime Minister was of the view that it was working well.

( See [www.patmalar.com](http://www.patmalar.com) for a further discussion on this law reform topic)

## **Addendum B: Available anecdotal evidence vs research data**

The rationale of the Cummins report of requiring further evidence is valid but can be addressed by looking at the context of clergy abuse. It is at one level institutional abuse of children, about which there already is a great deal of research evidence on which action has been taken to modify child protection and criminal laws. Over the last few decades these legal changes have become established in state authorities and also accepted as part of the welfare and legal systems. Further legal reform is needed to address criminal abuse within all religious organizations with current and past research, evidence, research indications and information now available.

### **Difficulties in research of criminal abuse within the organization.**

In addition it would be unrealistic to wait for research data when victims who have reported clergy abuse have been constrained by confidentiality agreements etc. imposed by the organisation. Research would require full disclosure from the organization, and this is very problematic and difficult now. On the other hand there is a plethora of evidence in the public domain from around the world that the inquiry can take notice of, that indicate varying levels of acknowledgement and acceptance by the organisation of the existence of less than satisfactory situations with regard to their dealing of clergy abuse.

### **Anecdotal evidence on the response of the organisation to clergy abuse.**

Information on how one particular religious organization deals with clergy abuse has already been provided by victims and their advocates to the Cummins Report. Such anecdotal evidence corroborating existing research on the criminal abuse of children in institutions, on analysis may satisfy qualitative and quantitative requirements that would make it as accurate as any academic research could be. In the past four decades, research in this area has confirmed anecdotal evidence available in legal practice. In these circumstances, delay in research is justice denied to children who have already waited too long for adults to take action on their behalf.

### Information on criminal abuse of male children in institutional settings

Feminist lawyers practicing in this area of law and the founder of the *Protective Behaviours* programme Peg Flandreau West, predicted in the 1980's that a hidden upsurge of sexual abuse of young boys in institutional settings would emerge as an issue in years to come. That time came in the 1990's and continues to the present time. It was then, and is now, a human rights issue, and the sexual abuse of boys must now be confronted with all the research evidence we have for girls. It is a criminal activity within the context of power differentials and opportunism and as such has striking similarities with the abuse of girls that need to be acknowledged.

### Information the inquiry can access now

Much information on this is in the public domain that cannot be dismissed. Parallel, quasi legal, internal processes for dealing with clergy abuse devised by the organization and tainted with compelling concerns with regard to procedural fairness, are in the public domain. Although other religious organisations have different issues, those raised in investigations of clergy abuse by the organization, demonstrates flaws within all systems. The inquiry can take note of adverse media comment and information in the public domain which corroborates past research and information obtained from past inquiries. Such public exposure and public concern can be addressed by this inquiry by the representatives elected by the same public to do the task they have been entrusted with.

Patmalar Ambikapathy

## **Addendum C : Documentary evidence now available to Inquiry**

### **A. Past Inquiries and reports that were followed by law reform**

1. Stolen Generation Report 1997
2. Forgotten Australians Report 2004
3. The Layton Report 2003

### **B. Past Report not followed by full law reform**

1. Protecting Victoria's Vulnerable Children: The Cummins Report 2012

### **C. Past Court decisions that have created legal precedents**

1. *JGE v Trustees of the Portsmouth Roman Catholic Diocesan Trust* (2012) EWCA 938.
2. *The Trustees of the Roman Catholic Church v Ellis v Anor* (2007) NSWCA 117
3. *R v Terry* (1955) VLR 114
4. *R v Hopley* (1860) 2 F&F Pg 20

### **D. Victorian Acts of Parliament for consideration of Inquiry**

1. Children Youth and Families Act 2005
2. Crimes Act 1958
3. Evidence Act 2008
4. Charter of Human rights and Responsibilities Act 2006

## **E. Information in the public domain about the organization**

1. Towards Healing
2. The Melbourne Response
3. News from the Melbourne Response
4. Media Releases from the Archdiocese of Melbourne, Sydney
5. The Melbourne Victims Collective publication: *The Victims Charter*.
6. Comments on Victoria Police in the Cummins Report
7. Initial data published by author Judy Curtain on her ongoing research for a PhD from Monash University on clergy abuse

## **F. Canon law**

- a. Canon Law in the 12<sup>th</sup> century (Lateran canons of the Lateran Councils)
- b. Canon law from 1983: (Revised Code of Canon law of the Latin Church)
- c. Canon law for Christian churches operating outside the Roman Catholic Church regions: (Canons of the Eastern Churches 1991).

## **G. Media reports on criminal abuse within religious organisations**

1. The Age on clergy convicted or accused of crimes against children
2. The ABC on clergy convicted or accused of crimes against children
3. The Sydney Morning Herald on charges against and convictions of clergy for crimes against children.

4. Other media reports of clergy charged with criminal abuse of children
5. Ongoing charges against clergy for the criminal abuse of children

**All of the above are available for the Inquiry from accessible websites.**