

TRANSCRIPT

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

Inquiry into the handling of child abuse by religious and other organisations

Melbourne — 23 January 2013

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Witnesses

Mr P. Johnstone, OAM, president,

Mr F. Burke, secretary,

Ms M. McGarvie, member, Catholics for Renewal.

The CHAIR — On behalf of the committee I welcome from Catholics for Renewal Mr Peter Johnstone, president, Mr Frank Burke, secretary, and Ms Maria McGarvie, member. Thank you very much for being with us this morning. All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act, attracts parliamentary privilege and is protected from judicial review. Any comments made outside the precincts of the hearings are not protected by parliamentary privilege. Witnesses may be asked to return at a later date to give further evidence. All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript. Please note that these proceedings are not being broadcast.

Following your presentation the committee members will ask questions relating to the inquiry. I now invite you to commence your presentation. Thank you again for appearing before us.

Mr JOHNSTONE — Thank you, Madam Chair and members of the committee. Thanks for the opportunity to address the hearing. We have lodged a statement, as you know, as a supplementary submission that expands some aspects of our original submission. We will speak to key aspects of that statement within the 20 minutes that we have been allocated. I will be talking about the governance of the church and conclude our presentation. Frank Burke will comment on Towards Healing and the Melbourne Response, and Maria McGarvie will address legislative reform.

I would like to start with a quote from the late Cardinal Martini. Some weeks before his death on 29 August 2012 he said:

... the church must recognise its errors and follow a radical path of change, beginning with the pope and the bishops. The paedophilia scandals compel us to take up a path of conversion.

...

The church is 200 years behind the times.

Catholics for Renewal has received the support of more than 8000 Australian Catholics in an open letter to Pope Benedict XVI and the Australian bishops in 2011, expressing concerns about the church's governance, including the sexual abuse scandal. Our views are common among Catholics, including many bishops and priests who are constrained by rigid requirements of obedience from speaking out.

Our society should be able to expect much more of the church than of secular organisations. As Pope Benedict said in his first encyclical:

The entire activity of the church is an expression of a love that seeks the integral good of man ...

Our submission identifies and focuses on a direct relationship between the church's handling of sexual abuse and dysfunctional aspects of the church's governance.

When it Sydney in July 2008, Pope Benedict said the deeds of clergy responsible for abuse were a grave betrayal of trust that had caused great pain, had damaged the church and deserved unequivocal condemnation. He did not mention or apologise for church decisions to conceal those deeds, that criminal offences were covered up, that the cover-up was perpetrated across the world and there was Vatican involvement in that cover-up.

The Catholic Church is centrally governed from the Vatican in Rome.

In April 2010 Father Hans Küng, an internationally eminent theologian, wrote an open letter to all Catholic bishops throughout the world. Father Küng claimed:

There is no denying the fact that the worldwide system of covering up sexual crimes committed by clerics was engineered by the Roman Congregation for the Doctrine of the Faith under Cardinal Ratzinger ...now Pope Benedict, who in 2001

sent a solemn document to all the bishops . . . in which cases of abuse were sealed under the 'secretum pontificium' (pontifical secret), the violation of which could entail grave ecclesiastical penalties.

Church authorities should have acted immediately to protect children. Any global direction should have required all evidence of child abuse to be reported to the civil authorities, which was eventually done in May 2011 by Cardinal Levada, Cardinal Ratzinger's successor as prefect of the congregation, but it was limited to the requirements of local laws.

Dr Marie Keenan's groundbreaking work in clerical child abuse in Ireland, which she relates to the rest of the world, locates the crisis of sexual abuse within the cultural fabric of the priesthood and the governance structures and practices of the church. Keenan observes:

... obedience is one of the central features of governance for the Roman Catholic Church in exercising authority ...

She also speaks of 'a failure of leadership and of the relational governance that went right to the top', and observed:

...the role of obedience in the current crisis of child sexual abuse cannot be underestimated.

The Cummins report refers to the importance of understanding:

How theological beliefs and church structures that engender and maintain patriarchal views ... undermine the ability of a victim to speak up ...

There appears to be no evidence of church authorities seeking this understanding.

To summarise on governance: the Catholic Church's system of governance is based on centralised global control with ambiguous local decision making, no commitment to transparency or accountability, gender bias, an anachronistic culture and structure, and institutional self-preservation. It comprises a solely male, ordained, hierarchical structure of autocratic governance exercised through compulsorily celibate bishops, often socially isolated and increasingly aged with no effective engagement with the membership. It is a very dated system of governance, 17th century in origin, which does not approach modern standards of good governance or established Australian values of transparency, inclusivity and accountability.

The church's governance structure makes it impossible for its decision-makers adequately to understand, respond to and learn from the social and spiritual experiences of communities. The Catholic Church's governance must be reformed or there will be further decision making that could hide sexual abusers or otherwise be prejudicial to the common good of our civil society.

Legislative reform in areas of civil authority is necessary. Beyond that this inquiry can also be an influence for change by reporting publicly on whether changes to "practices, policy and protocols in such organisations", as stated in the terms of reference, are required. We will discuss further the systemic and practical approaches that governments can implement to improve systems of governance and organisational culture that lead to inadequate responses to child abuse in religious and other non-government organisations. I will now ask Frank Burke to comment on church protocols in responding to complaints of sexual abuse of children.

Mr BURKE — Madam Chair, committee members, the Catholic Church in Australia took steps in 1996 and 1997 to improve its handling of sexual abuse complaints through the adoption of two protocols: the Melbourne Response, covering those exercising ministry under the authority of the

Archbishop of Melbourne, and Towards Healing, covering those exercising ministry in the national church, except religious personnel in the Melbourne archdiocese.

The relevant church authorities established national principles common to both complaint-handling protocols and criteria by which their effectiveness might be judged. Prior to this, the church complaint-handling practices were arbitrary, inconsistent and deaf to the cries of abused children and their families for justice and compassion. The protocols promised a fresh start by the church in handling child sexual abuse complaints — an opportunity to move on from a shameful past. The protocols have dealt primarily with historic abuse — that is, children who were abused some years ago but had not reported the abuse until reaching adulthood. Both protocols focus on giving complainants some measure of restorative justice and redress by way of compensation for past wrongs.

To our knowledge, both protocols are managed conscientiously within their mandates, but we have concerns with how those mandates are exercised and a particular concern about internal church investigation procedures intruding into matters properly within the province of a state to determine through the criminal justice system. We have been asked by the committee to provide information on differences of approaches by the protocols in handling child abuse complaints, and in the presentation material provided to you we have attached an appendix reflecting our understanding of those differences.

There are historical reasons for having two church complaint-handling systems, but in 2013 such an arrangement needs to be overhauled. It is unnecessarily complex and duplicative. Lodging a complaint with a church is traumatic enough, but that experience is made even more traumatic when it is not clear which protocol applies to a survivor of abuse. It is now timely for the archdiocese of Melbourne to move from a diocesan-specific protocol to be part of a national response with uniform procedures for handling complaints throughout the Australian church.

In our view, any church complaint-handling process should be focused primarily on the pastoral care of survivors of abuse and not the investigation and determination of potentially criminal acts of child abuse. Further, any revision by the church of its current procedures should not be done in isolation from a consideration of a new national code of conduct focused on pastoral and preventative measures, covering all religious personnel, with clear standards of appropriate behaviour in all interactions with children.

By investigating and making findings, both protocols hold evidence of possible criminal activity not available to the police — evidence that would require police investigation under the laws of this state. The protocols also deal with confirmed offenders privately, outside the criminal justice system, and do not ensure their investigation and possible prosecution in that system. It is in the best interests of children in the care of the church that these matters are criminally investigated by the police.

The church's complaints statistics obtained through the two protocols confirm a horrifying but conservative number of past cases and a minimal record of abuse incidents by individual offenders. Given the significant elapsed time between the act of abuse and reporting it to the church, the protocols are not an effective means of identifying the current incidence of child abuse or an effective means of preventing further abuse, as the offender may have abused many other children before a survivor, as an adult, makes a complaint.

The church's complaint-handling protocols are not its only source of information on possible child abuse in its ranks. The church can also become aware of abuses through other internal processes and intelligence which are not dependent on the existence of a complainant. The church must be alert to

abusers exercising ministry and seek by every means available to identify and report them to the police for investigation at the earliest opportunity.

The protocols are a necessary but far from adequate church response to addressing the scandal of child abuse. They have a continuing role to play, in our submission, but they need to be restructured as instruments of pastoral care and compassionate response to survivors of such abuse. The investigation of the abuse claims should be a police responsibility. The withdrawal of the church from involvement in the criminal investigation of complaints in this state will require legislative change. Maria McGarvie will now speak of the legislative reforms that we regard as necessary to enhance the protection of children.

Ms McGARVIE — Madam Chair and committee, in our view specific legislative reform is necessary to address systemic practices that operate to preclude or discourage the reporting of suspected criminal abuse of children to state authority. 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.

In our view these church protocols are not a substitute for police investigation. In New South Wales the current law mandates the criminal reporting of sexual abuse. We agree with the archdiocese of Sydney, which states that the police are best placed to investigate sexual abuse allegations, not the church. Despite the fact that no moral reason prevents the church of its own initiative immediately reporting to police any reasonably suspected abuse, this is not the current practice of the church, yet the church complies with the New South Wales mandatory reporting requirements without any apparent impediment. Why oppose the introduction of similar measures in other jurisdictions?

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. We note that the document ‘Facing the truth’ accepts that there should be mandatory welfare reporting extended to clergy and other religious personnel. While mandating welfare reporting of clergy and other religious personnel is appropriate, in our submission it does not go far enough. The Secretary of the Department of Human Services, Gill Callister, provided advice on this issue when she observed that mandatory welfare reporting ‘is designed to capture instances where children are at risk in their family’.

Clerical sexual abuse is a distinctively insidious crime and should be dealt with in the criminal justice system. Mandatory criminal reporting is designed to ensure sex abusers are dealt with by the criminal justice system. In fact religious professionals are already welfare mandated in their professional roles. Under the Working with Children Act 2005, if they work or volunteer with young people, they are mandated. This is appropriate in our view, but it is different from mandatory criminal reporting. I quote the ‘Facing the truth’ document:

The church acknowledges that prior to the introduction of the Melbourne Response and Towards Healing, it did not respond appropriately to some allegations of criminal conduct. This was a mistake. The mistake was compounded because the manner in which the church dealt with the allegations was sometimes ineffective.

With great regret, the church acknowledges that there have been instances in the past where further abuse could have been prevented by more effective action against offenders, and where inadequate support was given to victims.

But the document 'Facing the truth' fails to explain how such 'mistakes' could occur in a church committed to the highest Christian values. 'Facing the truth' fails to identify or propose any reforms of the dysfunctional governance structures and systems that we say allowed such grave mistakes. 'Facing the truth' identifies in fact three major issues with which it seeks to rebut a proposal that the church should be subject to mandatory criminal reporting: the first it notes as protection of confidentiality of the complainant from the police; the second, where the child is no longer at risk; and the third, where information is received during the rite of confession.

As for their first point, 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.

As for point 2, we do not agree that it is a matter for the church to determine when a child remains at risk. Even when an adult is complaining about a historic incident, the perpetrator may still be at large, and it is up to the civil authorities, not the church, to pursue justice and protect the community. The church in 'Facing the truth' seems to assume that only the complainant is at risk, ignoring the high possibility of other victims of the same abuser. Mandatory criminal reporting would not be limited to the complaints process but would extend to all sources of reasonable suspicion which might come to the attention of members of the church through any sources of its intelligence.

As for item 3 — the information which may be obtained in confession — we agree generally with the arguments in the church's submission for this exemption and see no net benefit in refusing the exemption, but we are disappointed that church authorities have not addressed means by which they could be more constructive in demonstrating the church's intolerance of sexual abuse of children. We suggest that church authorities be asked to respond to our submission that suggests that where an abuser confesses and seeks absolution it is always subject to the abuser self-reporting to the police. This arrangement is more likely to lead to the prosecution of abusers as confession can be anonymous, rendering forced reporting ineffective.

The need for mandated reporting at all levels is reinforced by last week's Whitlam report on Father F in the dioceses of Armidale and Parramatta. In commenting on that report, Bishop Fisher of Parramatta has said:

Some members of the church have committed grave sins and some leaders of the church have made grave mistakes.

Mr JOHNSTONE — A few concluding words: our recommendations have regard to the dysfunctional aspects of the church's governance, namely centralised and very strict global control, discriminatory structures, inappropriate culture involving limited engagement with members and institutional self-preservation. We have made five recommendations in our submission. In essence they are supporting criminal mandatory reporting, but I will not go into the details. You have it there, and you have heard what we have had to say about criminal mandatory reporting. We consider that absolutely essential. We agree in essence with the Cummins report, and we have expounded on that Cummins report and have also spoken about the differences, which I think it is fair to say are not well

understood in the community: the proposal that welfare reporting be extended is simply not a substitute for the introduction of mandatory criminal reporting.

We do support an exemption for the seal of confession. We have respect for that sacrament, but we do not believe that not excluding it would achieve anything much at all. There have been priests who have said of course that they would go to jail first, and I find that understandable. The point that we make is that those reactions may be understandable, but this is not an issue. Absolution for sins can be made conditional on people's self-reporting, and that would be much more effectual. As Maria said, we are very disappointed that the church has not commented on that or taken that initiative in its own right.

We also suggest the inquiry should make a number of good practice findings, not unlike the good practices expected of the corporate sector generally. Society has a right to expect organisations to behave in a proper way in their corporate governance. We refer there to a basis for gender balance and accountability in decision-making structures, informed and transparent decision-making on evidence of child abuse, reporting evidence of child abuse to civil authorities, consistent Australia-wide practices for responding to allegations of child abuse and appropriate assignment and supervision policies for accused and convicted personnel. Finally, we recommend that the church should adopt one national code.

To finish on the role of government in child protection, only the state can be properly accountable for a comprehensive framework to safeguard all the state's vulnerable children. This duty cannot be delegated to any religious or non-government organisation. The state's legal framework must be adequate to deal with known serious risks for children, and legislative safeguards must be put in place to deal with identified risks. As Cardinal Martini observed,

“the paedophilia scandals compel the church to take up a path of conversion. . . The church is 200 years behind the times”.

Governments have a legitimate and necessary role to play in ensuring that all institutions, including churches, operate in a manner that contributes to a good society. Our recommendations are focused on our church's need “to take up a path of conversion” in the interests of both church and state.

We have been pleased to note that the work of this inquiry will continue and no doubt contribute substantially to the federal royal commission. In our view it is imperative that implementation of this inquiry's findings not be delayed due to the federal royal commission. We believe that our recommendations propose necessary actions that are properly the preserve of the state. Finally, we commend our full submission to you, today's statement, which we have lodged with you, and particularly our recommendations for the committee's consideration. We would welcome any questions and thank you for the opportunity to speak to our submission.

The CHAIR — Thank you, the three of you, for your presentation and insights into the issues that you see as very important. We take that on board and also thank you for the additional information that you have provided to us in the last few days. You spoke extensively about law reform and changes to protocols that will appropriately address complaints systems and investigatory mechanisms. In the additional material you have provided to us, you say:

... we speak frankly of our church's failings, in the interests of justice to victims ...

Can you explain to the committee, in addition to the law reform issues that you think will part way address some of those aspects, what other elements of justice victims may be looking for?

Mr JOHNSTONE — If I can make a general point and perhaps ask Maria to clarify, firstly, I think it is very important that we say to you that we are committed Catholics. We have been put forward by some as being somehow opposed to or undermining the church. We happen to love our church and love what it believes in. We believe in Christ's teachings. We feel very let down by the way the church has been administered, and we believe that goes to the governance of the church for the reasons we have set out.

Of the legislative reforms we have spoken about, the one we stress as particularly important is mandatory criminal reporting. It is hard to believe there would be much hesitation on the part of government in demanding that, given the history of this matter, especially in the case of the church. I think we all must recognise, and in many ways it is appropriate, that churches have a very special position in society. Sometimes that can give churches very considerable influence, and governments can be hesitant to take the steps that are necessary, particularly when the churches, with some sense of self-protection, do not want to go down that track. There is a conflict for any organisation in reporting abuse within its ranks. It is not good for their reputation, and our Catholic Church knows that very well. However, our responsibility is certainly to the teachings of that church and to victims of child abuse. As we all know, it is hard to imagine anything worse to do to a child from the point of view of affecting its whole life at such a sensitive stage of its development. We expand on that in our submission.

Mandatory criminal reporting is the main legislative reform. We are suggesting, though, that it would be appropriate for the committee to make comments in other areas. We do not believe that the committee could introduce requirements of a detailed governance nature on the internal workings of the church, but it is certainly appropriate for the committee to comment on inadequacies in those governance structures. We believe the committee's terms of reference in fact ask the committee to do just that — to not only talk about legislative reform but to make comment on internal processes and workings of organisations.

The CHAIR — Do you have any further comment, Ms McGarvie?

Ms McGARVIE — Only that I believe your question may be looking for our views in respect of further issues, such as our opinion about restorative justice or our opinion or views on issues of compensation or the pastoral role of the church. Whilst we have some personal views about those issues, we felt that in our finite time and with our specific opportunities that some of those issues were best addressed by others with greater expertise — if that is the angle that you are looking at.

The CHAIR — The question was in relation to redress or accountability, those elements, but you have answered the question as you see fit, and I am perfectly happy with that. Mr Burke, would you like to add anything?

Mr BURKE — Just an additional comment, Madam Chair. I think justice for survivors of abuse would certainly be best achieved if the church was to withdraw from the investigation of potentially criminal matters and focus on pastoral care and healing. We believe the restructuring of the protocols, not their total removal but their restructuring and refocusing, will be an important step towards assisting victims. This needs to be balanced with the right of the criminal justice system to effectively investigate and prosecute complaints of abuse.

Mr McGUIRE — Thank you very much for your submissions and testimony today. They are important to our inquiry. I would like to start with you, Peter, if I can. You have described your organisation as being a group of committed Catholics, and you are looking to try to build reform. How does the Catholic Church relate to your organisation?

Mr JOHNSTONE — Perhaps I can start by commenting on how we relate to the Catholic Church, because certainly we have been in close touch with the bishops. In fact we started with our open letter to the Pope and Australian bishops, which in fact was handed in to the Curia in Rome at the time of the Australian bishops *ad limina* visit. You have a copy of that letter. In that letter we deal with a whole range of things, most of which as it turns out are very relevant to this inquiry, although sexual abuse was only one of the matters we dealt with.

We have also put separate presentations to the Catholic bishops for the introduction of synods in Australia. There have been some synods. People do not normally associate them with the Catholic church, and people are often surprised to know that Vatican II particularly came out very strongly in favour of synods and diocesan pastoral councils, and every pope since, including the present pope, has encouraged the bishops of the world to have synods to listen to their people and to make sure there is a two-way conversation. That proposal has been to the bishops on a number of occasions. It is still with them; they tell me they are going to be considering it at their permanent committee very shortly and perhaps look at it again in March.

We have an approach of dealing very openly with the church. In fact we sent a copy of our submission to you to them. We have a very open approach. We are not saying anything that we are not prepared to be held accountable for ourselves. As to what they think of us, perhaps you could ask them in due course.

Mr McGUIRE — The point I am trying to get to, though, is what has changed? You are saying that you make these submissions. You say you represent faithful Catholics who want change and all the rest of it, yet you are effectively describing the hierarchy of the Catholic Church in the 21st century as still being run like a male medieval monarchy.

Mr JOHNSTONE — Yes.

Mr McGUIRE — Is that fair enough?

Mr JOHNSTONE — I think that is fair enough. I think I used the term ‘17th century’.

Mr McGUIRE — So when the Catholic Church says, as it has more recently, that they are sorry for what has happened in the past — I will put it bluntly to you — do you believe it?

Mr JOHNSTONE — Yes. I do not think any human being could not be sorry for what has happened with sexual abuse.

Mr McGUIRE — I will put it this way: do you believe that they have made the difference to actually make the change that will change the structure? That is the point I am getting to.

Mr JOHNSTONE — All right.

Mr McGUIRE — I am not denying that they are saying they are sorry, but it is the action that needs to be taken and the cultural change and the hierarchical change.

Mr JOHNSTONE — Yes. I think I have noted that they have said sorry for sexual abuse, not for the way they have dealt with it, and that has been part of the abuse — in that priests have been moved, a further abuse has occurred, priests have been found to be confirmed abusers and they have not been reported to the police.

We are dealing here, in simple terms, with an institution. All institutions have a number of common characteristics. We have drawn a distinction between the church and other secular institutions. We

expect more of our church, but we expect an awful lot of secular institutions, and the business of corporate governance these days puts very high demands on secular institutions for transparency and accountability. The church, however, is not an accountable institution. It does not even have elections every so often except when a pope dies, and it is a very limited franchise that conducts that election. The pope is safe in his seat, and in those circumstances it is very easy for an institution to be very confident of itself and to in fact close in and protect itself.

We have referred a lot to Bishop Geoffrey Robinson's book on institutional power in the church. It is very insightful about the way the church as an institution has become self-protective. We have noticed some of that — to answer your earlier question a little bit more — in their dealings with us. I think it is fair to say that the bishops do not like what we have to say, and that is probably not any surprise to you at all, but the church is an institution. What we are saying to them is, 'Please listen. We are not being critical of you individually; we are criticising what is happening here'. There is a very real problem of governance here that threatens the work of the church in dealing with people, and it has had horrific effects when it comes to child abuse

Mr McGuire — Just to use your phrase, where do you see the Catholic Church at the moment on your path to conversion? Is there still a gap between the rhetoric and the reality?

Mr Johnstone — Yes.

Mr McGuire — Just describe where you see them, though.

Mr Johnstone — The gap is in the governance.

Mr McGuire — The gap is?

Mr Johnstone — In the governance of the church with those matters that I have mentioned. In terms of the system of obedience in the church, you will notice some conflict between 'Facing the truth' and some of the other evidence we have given. In 'Facing the truth' the church talks about bishops at a local level having a lot of ability to take decisions, and then you read George Pell's comments about the fact that the pope is the last remaining monarchy. Personally I find the use of the term 'monarchy' to describe a church headed by a person who is supposed to represent the teachings of Christ somewhat offensive. To my mind, the teachings of Christ are about listening to people and respecting people. Indeed the early church was very much about being informed by the experiences of communities. The church has a long, long way to go to get to that stage, and currently it rejects the argument.

Mr McGuire — So how concerning is it for you, you are saying as a faithful Catholic, with the difference between the teachings of Christ and the politics of men?

Mr Johnstone — We would not be spending the time we are spending right now here and on preparing our submissions and all the other work we have done in dealing with the church if this was not extraordinarily important to us. People have often said to us, 'Why don't you leave the church?'. This is our church. Bishop Greg O'Kelly of Adelaide, as we mentioned in our statement, made a statement recently saying that the church is the people: it is the people in the pews, it is the people who write letters, it is all the people of the church. That is the church that we speak about. The church is seen these days by many as an institutional church guided by obedience without thinkers. There is, however, a provision in canon law that we take a lot of interest in that says that the people of the church have a duty, indeed a responsibility, to express their concerns about the running of the church.

Mr McGuire — But are you being heard?

Mr JOHNSTONE — We live in hope.

Mrs COOTE — I would like to thank all of you for your submission, for the presentation today and for the additional material that you have given us. You have given some very good insights into the cultural practices of the Catholic Church, which I think were welcomed by this committee. I noticed, Ms McGarvie, that you talked in your contribution today about the confessional. I know and understand it is a very controversial issue within the church and beyond. I think we have seen a lot of spin around this both from within the church and from commentators outside.

However, I am very keen to know the opinions of the three of you, but probably this is addressed to Ms McGarvie, about the confessional issue. When you speak of the mandated welfare approach and the shift in your recommendation to a mandated criminal approach, how do you believe this is going to play out in the confessional and do you in fact believe that abusers use the confessional to abuse? This is a continuous issue out there in the wider area. We have been given evidence in this committee of actual grooming from the confessional — the grooming of young people and soliciting their ideas and then using those ideas against them in a whole range of ways, and also soliciting information et cetera — and actual physical sexual abuse within the confessional. Could you just give me some indication particularly of the nexus between mandatory welfare reporting and mandatory criminal reporting within the confines of the confessional?

Ms McGARVIE — I think we would need to clarify the circumstances in which you are looking at the issue of confession. You gave the example then of a child in effect being groomed by a sexual abuser who was a priest. We were looking at it from the opposite situation, where a possible abuser may use the confessional as their opportunity to ask forgiveness of their pastor, and in those circumstances, that is where we were suggesting that part of the church's role of absolution would be to ensure or demand that the confessing priest or confessing abuser self-reported to the police. I just want to distinguish that set of circumstances.

The aspect that you have described is probably not that common now. As to the example you highlighted, I do not know when it occurred, but perhaps 30 to 40 years ago, if I were to hazard a guess. My own experience is that one-to-one confession, priest to confessor, is not as common as it might once have been. I do not know whether or not the experience of my colleagues is the same, but it is less likely to occur that a child would attend confession on a regular basis.

Mr JOHNSTONE — Could I add particularly that we certainly have drawn that distinction? When we are talking about an exemption for the seal of confession, we are talking purely about abusers seeking absolution in confession, which most people find repulsive if it is an easy way out. What we are saying is that there are strong arguments for the sacrament of confession in the Catholic Church, but it should not be a way in which abusers can, in effect, get off the hook. It would be very easy for the church — and we have certainly checked this with some canon lawyers — to simply say that in granting absolution when a priest hears a confession from an abuser they should say, 'This absolution is conditional on you hopping down to the police station and reporting yourself', and often the priest will not know who the penitent is. So it actually deals with it very effectively, and it is beyond us as to why that has not been done.

The church over the years, though, has given particular attention to the issue of grooming. They have not called it that. There is an instruction called *Crimen Sollicitationis*, which deals with the crime of soliciting in confession, as I understand it, and it is very clear how the church regards that. Everything we have said about mandating criminal reporting would apply to that as well. Confession is not part of any exemption that we have talked about or indeed that the church has talked about. As we understand it, the church would condemn that completely and do everything in its power to stop it.

Mrs COOTE — Could I just really get that very clear? You are saying that in your belief, and certainly you have been very strong in saying that, the church would condemn any sort of grooming. We have been told, for example, that there have been priests in the past — and it is very difficult often to put a date on this — who have asked a young boy particularly about his attitudes towards such things as masturbation and have then gone on to use that against that very same child, and in fact have then gone on to have a sexual engagement with that child along mutual masturbation-type lines. What do you believe is the current governance in the church around the confessional that deals with these issues? Do you believe that has been dealt with?

Mr JOHNSTONE — I am not sure that it has been dealt with adequately. I guess what I am saying is there is absolutely no doubt in my mind, and I think in anyone's mind, knowing what we do about sexual abusers, that if a priest were a sexual abuser and confession offered an opportunity for him to groom a child, I reckon that it would be pretty predictable that it would be abused in that fashion. I do not know specifically in answer to your question what the church has done in that regard, but I would be very surprised in fact if there are not some pretty good controls in the schools and so on when priests go to confession, and I would hope the children are in fact briefed on how they handle confession, and how they report, just as they are with sexual abuse generally. Teachers, of course, are mandated under welfare reporting to be able to pick up that sort of thing. I think it is an area of grooming. You are quite correct that those are the areas that any responsible organisation would look at when it is dealing with sexual abuse in its ranks.

Mrs COOTE — Thank you. So in your comment there was a global comment about — —

Mr JOHNSTONE — Exemption.

Mrs COOTE — Not so much exemption, but really an archaic method of governance and that this is something that you believe, going forward, really needs to be properly addressed. Is that correct?

Mr JOHNSTONE — Yes, but can I add that not many Catholics go to confession these days?

Ms McGARVIE — Rarely on a one-to-one basis.

Ms HALFPENNY — Following on from what Andrea has said about grooming, you replied that the church has made statements, very strongly, about grooming, and they do not condone that or soliciting in the confessional. Other than saying something, are you aware of them actually training or explaining or giving people information about how to identify things such as grooming to actually be able to pick these things up?

Mr BURKE — Ms Halfpenny, if I could respond to that first of all. The church has issued documents that I think are important in this area: *Integrity in Ministry*, which is a national document applying to priests and clergy, and *Integrity in the Service of the Church*, which applies to lay workers and volunteers. Those documents identify behaviours, which are seen to be inappropriate, and articulate steps that should be taken to correct those behaviours by anyone who sees those behaviours happening. I believe the church has taken some steps to try to identify those sorts of inappropriate practices. We believe they have not gone far enough in that the documents are profuse. There are at least six that I am aware of. For example, *May Our Children Flourish* is specific to the Archdiocese of Melbourne, and applies to priests and clergy, lay employees and volunteers engaged with children in parish or diocesan activities.. Nationally there are other documents that apply to priests and others separately to laypeople. What we want to see is one code for all religious personnel that has these sorts of behaviours identified, sees them as completely inappropriate and places a duty on religious personnel to report occurrences of it or suspicions of it if it occurs. We think those documents are a first step, but they do not go far enough.

Ms HALFPENNY — Just going on, then, to the code of conduct, I know that you have put in your submission and you have mentioned that it would be up to the church to implement this code of conduct; it is not really for government to impose one or whatever. How do you think it would be monitored or enforced, based on past experience of how the church has dealt with issues such as abuse? Also, as I understand it, for example, a priest has autonomy within their parish. If there is this sort of governance where individual priests are acting autonomously in their own parish, I understand that they would still have most of the decision-making power in the schools. How do you look at that and then this idea of their having their own code of conduct and then self-monitoring it? How do you think that could really work?

Mr BURKE — You are correct in your observations: the parish priests have ultimate authority in their parishes. We look to the church to be not only a Christian organisation but a self-reflective organisation. These documents have power when people have the ability to self-reflect on their practice and to have peers with the courage to identify where there are failings. There is, without doubt, in these documents a degree of self-regulation and a degree in which normative practices, good practices, are put forward. We believe that it is a first step, but it certainly needs to go further, because the culture of the church is something that is not going to change overnight, and it will not change overnight with the introduction of a single code. We believe that, coupled with good legislative change and mandatory criminal reporting, the culture within the Catholic Church will be changed. It will not change by itself. It cannot be allowed to self-regulate its own behaviour.

Mr JOHNSTONE — If I might just add briefly to that. The point you make about priests and the authority they have in individual parishes actually is relevant to the broad point we make about the system of obedience within the church and a command and control system. I would have to say the best parish priests are the ones who, in running even parish schools of course talk to the principal and act in a very normal, modern fashion of good governance and accountability. But the system does allow for priests to take decisions that do not have regard to those sorts of views, and that is very much the form of governance in the church right through to Rome that we are talking about.

Mr WAKELING — To members of your organisation, thank you very much for your submissions and your participation today. I would firstly like to deal with the issue which Mr McGuire had covered, which deals with the culture of the Catholic Church. I understand that, for us as a committee, we cannot necessarily deal with the organisation because we are specifically looking at child abuse, but you have identified that we can look at the structure in terms of our inquiry. We have had evidence provided to us that the culture of the appointment of priests is one which is problematic. The evidence that we have been provided is that — and I am looking at evidence here — adolescents or young men enter the seminary; they live 24/7 for a number of years with other priests or seminarians; they do not have the opportunity to develop relations with important female members of the community. So they are living in an environment which is one where, for many, the only interaction they have is with other males, young males, and it has been led that that has been part of the problem which we see today.

I am interested to know from your organisation, do you have a view on that, because the evidence that has been put is that young men are going into seminaries and coming out as priests, and effectively there is a cultural issue there which is beyond the issues of mandatory reporting and which is beyond what we are talking about. It is that the culture of the organisation is one that has created this environment which has led to these outcomes — which is the evidence that we have heard — of the offences that have been perpetrated by many priests throughout the state, if not throughout the nation.

Mr JOHNSTONE — I have a couple of comments. Firstly, we refer quite a bit to the work of Dr Marie Keenan, as I mentioned earlier in my evidence, who has looked very much at that sort of thing. She has done extraordinarily extensive work, mainly in Ireland but also across the world — international comparisons — and she refers to a lot of what has happened in Australia as well. I think what you are saying, from the point of view of any observer, intuitively makes sense — that there is a problem there — and certainly Marie Keenan makes it very clear that that is an issue in the way priests are trained. It is worth saying that the church has looked very much, as I understand it, at how they admit people to the seminary. We have not done close work on that.

Ms McGARVIE — No.

Mr JOHNSTONE — And I do not think we would like to pretend to be in any way expert on that matter. But I would refer you to Dr Marie Keenan's work. There is absolutely no doubt that it is an artificial environment in seminaries, and we refer to the lack of gender balance in the church as being an issue for any normal, healthy institutional environment, for its decision making. There is no doubt that anyone working in the corporate governance field would tell you that these days good organisations are about gender balance. The evidence is in: the performance is actually better in an organisation that has gender balance. The church is labouring under this self-inflicted handicap of being run by men, and men only, because it is the men who are ordained who are the real decision-makers. Of course women are involved in advisory positions; that looks good and it might improve the argument a bit, but the fact is that they are not the decision-makers.

Just on that I make another point. In the presentation I referred to the bishops of the church and I said, 'Our views are common among Catholics'. I want to make it very clear that we are not saying that bishops are necessarily bad; it is the culture. Your point about the culture is absolutely critical. We have got lots of good people at every level of the Catholic Church. We are not condemning any individual — it is not for us — but we are condemning the problem, not the people who are part of it. And as I said earlier, there are many bishops and priests who we talk to who are stopped by the rigid requirements of obedience from speaking out.

Mr WAKELING — If I may, I am interested also in your opinion on the issue of priests who have been what they call fly-in priests. We have had evidence led that priests from interstate, but more importantly overseas priests, have been moved to Victoria — certainly priests who are under a cloud within another jurisdiction. So we have had not only the issue of priests being moved within the state but also the issue of priests who have been brought to this country, potentially under a cloud. Clearly that, if true, is a significant concern. I would be interested in your view on that, particularly from the operation of the Catholic Church here in Victoria.

Mr JOHNSTONE — I think we have heard the same stories.

Ms McGARVIE — Yes.

Mr JOHNSTONE — We do not have any more evidence than you, and we certainly would not condemn the practice of priests being brought in from overseas on that basis. We would on other grounds say it is a very questionable practice of making up for a lack of vocations. When you bring people in from a different culture as a leader of a small community, obviously there are going to be difficulties there, but there are a lot of good priests that have been brought in in that way. Now whether there are sexual abusers among them who have been moved by their home diocese, whether in Australia or overseas, the past evidence is that that has happened and the evidence is amongst the stuff that we have quoted. Whether it is happening today, I am sure the church would be doing everything possible it could these days to stop that sort of thing happening. We would go back and say there are two things though: you can introduce processes, but those processes are not going to make

much difference if you do not change the culture; the culture is what in fact determines whether or not bad decisions can be made on a continuing basis.

Mr WAKELING — But do you think the culture will change? We hear this.

Mr JOHNSTONE — We are doing everything we can to get the culture of the church changed.

Ms McGARVIE — Yes, we do think that the culture is capable of being changed. We would not be here at this inquiry and we would not have spent a lot of time and effort working within our own church communities, and nor would we have excited the interest of some 8500 Catholics from around Australia who signed our petition, if we did not think the culture could change.

I think another relevant comment in relation to priestly culture is also a historical issue. I am not going to say that I have the accurate statistics, but there was a large number of young men — boys — entering into the seminary in the 50s and 60s. That young man/boy into 24/7, male, cloistered community has changed significantly in the last 30 years to where we now see a situation where our Catholic Church, which has always only wanted celibate male priests, is prepared to accept Anglican married priests if they are prepared to come across into the Catholic Church. So there are signs of cultural change and many people now — I should not say many; there are certainly individuals — who have been working in other aspects of life and who take the step into ministry later in life. My own parish priest was an accountant working for quite some years before he decided to become a priest.

Mr BURKE — Could I just make an additional but very brief comment. This is an important issue about the transfer of priests who are offenders or are subject to charges of offence. We are particularly concerned with Professor Parkinson's evidence that, on the one hand, we have a protocol like Towards Healing that sets out what the practices should be, that these offenders should be removed from the ministry, but the transfer of many of these priests interstate and overseas — and he cited the example of the Salesians of Don Bosco — is a matter of considerable concern to us. On the one hand we have a policy and on the other hand we have the practice, and the practice is not always congruent with the policy. It is only as good as the weakest link, and in this case the lack of compliance of a major order can put other children in grave risk of abuse. We condemn that.

Mr O'BRIEN — Just to follow up on that point. You mentioned the acceptance of Anglican and other married priests. There is also, on the evidence given to this committee, the acceptance that the Catholic Ukrainian Church in Australia allows married priests. Now in a multicultural community like Victoria and Australia how can the Catholic Church, in Australia at least, permit that? I do not have a problem with that permission, but if you are pushing for married priests, for example, as part of your next synod, what logical answer can you expect to receive to the suggestion that if Ukrainian priests can be married, why cannot priests of other descents, particularly as we start to have merged and mixed families of many nationalities in a multicultural society?

Mr JOHNSTONE — I have to say this is an excellent example of a command and control system in a very large worldwide organisation that adopts policies and does not find it necessary to explain them. I think that most in the church would say this is an administrative decision of convenience not to have married priests. It might cost a bit more to have to upkeep a family as well, perhaps there might be other reasons; there could be all sorts of things like that. It is convenient to the church not to have married priests. The church has a different position about the ordination of women where they say it is a matter of doctrine and we are not allowed to even talk about it, because it is fundamentally wrong and the church does not have the power to do it. Some of us say we just cannot follow these arguments, and some of us have studied them pretty closely.

Ms McGARVIE — There is no logic.

Mr JOHNSTONE — Yes, we would say very clearly there is no logic. If you invited the church to explain it to you, I wish you luck in following their explanation.

Mr O'BRIEN — Just to follow up the other discussions you have had with Mr McGuire and other questioners in relation to the apologies that you have received. If we use not the analogy but the genuine act of confession, another aspect of confession, do you believe the extent that we have heard evidence, firstly, from individual victims and their families of what has gone on in relation to both the abuse and the systemic cover-ups and failures to deal with that abuse; secondly, from committed Catholics like yourself; and thirdly, and most importantly — not most importantly, sorry, but most generally in terms of broad application — of the Victorian laws and all the Victorian community, there has been a genuine confession of what has gone on in the Catholic Church as a first step towards a genuine contrition or a penance that would lead to some form of absolution, if that is what the church is seeking from society?

Mr JOHNSTONE — I think we have made a very strong point that the church has apologised for the acts of individual sexual abusers — the horrible things that they have done. The church has not apologised or acknowledged, confessed if you like, that the church itself has indulged in cover up, and worse has in fact exposed further vulnerable children to abuse by shifting priests who have been thought to be sexual abusers — accused or confirmed — to other areas without telling parishes, where they have been able to groom and abuse more children.

Mr O'BRIEN — But even those apologies, much as they are of some comfort, and they have been in individual cases, have tended to be one-line apologies, non-specific, where the language is almost undignified in a sense — we do not descend to the graphic detail; it is a general apology for our sins. For example, our next witness is seeking that every diocese and religious order supply to this inquiry a detailed list of allegations with names, dates and actions taken, which will enable the inquiry to have some sense of the scope of the problem. We have not received any of that information voluntarily from the church. There is nothing in 'Facing the truth' that descends to specific actions. Individual victims have received only one-line letters, and in the case of the Fosters, for example, then had subsequent denials in pleadings — or, sorry, not denials, non-admissions — that the events that had been apologised for had actually taken place.

In relation to the priests who have been moved around, there has been no provision of a detailed account as to why that has happened and who knew what in fact happened. Would you say that that is something that the Catholic Church or you as Catholics would be seeking, obviously subject to cooperation on the confidentiality of individual victims?

Mr JOHNSTONE — We are seeking transparency and accountability, so most definitely yes. I will just add — Frank will say something in a moment — that one of the best things that I have noted recently is with the appointment of this — whatever it is called — national commission of lay people in the church, with Francis Sullivan as the CEO, to my knowledge, that is the first time that anyone representing the church has admitted to a cover-up. In fact it was only a couple of weeks before that Cardinal George Pell said 'There has been no cover-up' in his famous press conference. Francis Sullivan has come out and admitted that there was a cover-up. Now, that might be the beginning of a change, but generally there is no doubt that there has been a reluctance to go beyond saying sexual abuse acts were terrible and everyone must agree to that, but they are apologising on behalf of other people who did other things.

You will notice the Bishop Fisher comment that Maria quoted was about the grave evil done by particular people and the mistakes made by leaders of the church. These are more than mistakes that

we are talking about. Again, not condemning the individual — condemning the sin, not the sinner — the fact is that moving priests who were abusers to fresh areas where they could abuse new children was fundamentally wrong.

Mr O'BRIEN — The last one on that: you mentioned some bishops you had spoken to. I am particularly interested in your March synod coming up, if you get that opportunity — or your request for a synod following the bishops meetings. Are you saying that there are bishops in Australia who would like to say things but are not presently because of directions from Rome as to a systemic cover-up?

Mr JOHNSTONE — I have absolutely no doubt at all. If you want to know what happens to bishops who say things that are not in accord with the actual line that the church approves, look at the termination of Bishop Bill Morris in Toowoomba.

Mr O'BRIEN — We have heard of that one, but in Victoria if you are able to think about identifying names, we obviously have parliamentary privilege.

Mr JOHNSTONE — I am sorry; it really would not be for me, because what individuals have said to me is of course expressed only to me. I could go back to them and encourage them, but I am telling you that it is very difficult within the church for those bishops. They have an oath of obedience to the pope; it is very difficult for them to say anything except in accord with what the church tells them.

Mr O'BRIEN — If you could do that, citing that canon law, that would be most useful to us. Thank you.

The CHAIR — Mr Burke, do you have a final comment?

Mr BURKE — No, thank you.

The CHAIR — Have any of you got a final comment for the committee? On behalf of the committee, could I thank you very much again for your presentation. I know there are many more questions that we would have liked to ask you, but your insights, presentation this morning and submissions have been most helpful. Thank you again for being before us.

Mr BURKE — Thank you.

Mr JOHNSTONE — Thanks for the opportunity.

Ms McGARVIE — Thanks for the opportunity.

Witnesses withdrew.