

TRANSCRIPT

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

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

Melbourne — 19 October 2012

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Witnesses

Deputy Commissioner G. Ashton,
Mr F. McRae, director, legal services, and
Detective Superintendent R. Jouning, sexual and family violence directorate, Victoria Police.

The CHAIR — On behalf of the committee I welcome from Victoria Police Mr Graham Ashton, deputy commissioner; Mr Findlay McRae, director of legal services; and Rod Jouning. I remind witnesses that all evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act 2003, 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 if required. 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 the presentation, the committee members will ask questions relating to the inquiry.

I now call on the deputy commissioner to give a brief presentation of no more than 30 minutes, and then I will open it up to members of the committee to ask questions of you again. On behalf of the committee I thank you very much for being with us this morning.

Deputy Comm. ASHTON — Thanks for the opportunity to be here this morning for what is a very important inquiry. As you mentioned, Detective Superintendent Rod Jouning is with me here today. Rod is the officer in charge of the sexual crimes division of Victoria Police, and I may lean to him occasionally for some assistance during the question and answer period. Fin McRae is our senior legal adviser at Victoria Police.

Before appearing here today we provided a preliminary submission to this inquiry to assist the inquiry. What we can do today is provide some more detail that flows on from that submission. I will not talk to that initial submission; I will consider it as read. Following on from this presentation, if there is other material that the committee needs to assist it in its endeavours, we will be more than happy to record that request for detail that may come from this presentation and we will provide it at the earliest opportunity.

The CHAIR — Thank you very much.

Deputy Comm. ASHTON — We are also available, if required, to provide a further written submission on matters that may develop through the inquiry.

At Victoria Police we have conducted an analysis of material that we have available to us on child sexual abuse involving religious organisations in Victoria. That work stems from material we have gathered since 1956 to the current day. It is the first time we have undertaken that analysis. We are presenting to you today the data that extends from that intelligence assessment, and it will be the first time we have been able to present that data. This is the first time we have done a full aggregation and analysis of the information that Victoria Police has in its systems covering these issues.

It is Victoria Police's view that keeping quiet about these complaints hinders the detection of offenders and the prevention of offences. Victoria Police has concerns that existing protocols within religious organisations may be more focused on internal church issues such as legal liability and public relations rather than the long-term interest of victims. The existing processes, in the view of Victoria Police, lack transparency, independence, oversight, offender rehabilitation and criminal justice.

To date, Victoria Police has not had a single referral of a child sexual abuse allegation by the Catholic Church, and whilst a number of victims who have spoken to Victoria Police have indicated that they spoke to the church previously, there have been no referrals by the Catholic Church or its representatives. The Catholic Church, in particular, has indicated that its practices and protocols have changed and the issues identified in the submission to this inquiry are no longer of concern. If the Catholic Church is serious about changing its practices and its culture, it should be proactively reporting offences to the state rather than waiting for victims to come forward.

I would now like to present you with information from our intelligence assessment that has been conducted. It is not the full information in the assessment, and we are certainly willing to make that assessment available to this committee, perhaps via Mr Hyde. We can then work through the issues of the intimate content of that intelligence assessment. The information I am giving you today does not contain names or identify particular cases. There is one brief paragraph that does go into a little bit of graphic description of offending, but other than that it is general in nature.

In terms of general offending by religious organisations, Victoria Police were able to identify 2110 offences committed against 519 distinct victims between January 1956 and June 2012. Of those 519 distinct victims, 370 were within the Catholic Church system; therefore most of this presentation will focus on the Catholic

Church analysis. I have analysis also on a number of other religious organisations that I am happy to take the committee through, but I can certainly tell you that they are a much lesser number than the Catholic Church numbers, so for that reason we are giving you an analysis of the Catholic Church issues in this next section.

Of the 370 distinct victims, 87.3 per cent were identified to be male, aged between 11 and 12 years. In fact of the total victim cohort, 87 per cent were male and 10 per cent were female. In terms of the location of offending, the offences in our analysis occurred predominantly in schools; houses; church locations, such as classrooms; dormitories; shower blocks; principals' offices; churches, including confessionals; presbyteries; parish houses; and victims' residences. Child sexual abuse also occurred in offenders' vehicles and at camps, picnics and sporting events. Victims reported that offences were committed while they were ill and receiving treatment in the infirmary, in offenders' bedrooms after being instructed to attend to receive punishment for misbehaviour, while being comforted due to emotional distress caused by family separation, and when telephoning family from the offender's office.

Of the 1419 offences committed during the period, 57.7 per cent were committed in suburbs within the Melbourne diocese. In relation to single-parent families, children with only one parent were at an increased risk of being victims of child sexual abuse. It is very probable that the absence of a male figure within the family unit was favoured by offenders as it provided a greater opportunity to groom mothers into trusting them to care for their child under the guise of providing a male role model.

In relation to post-traumatic events, research also identified that offenders exploited their positions of trust to gain access to and commit child sexual abuse against children in the aftermath of traumatic events. Victims reported being sexually abused immediately following funerals of family members and also after having confided in an offender in relation to other matters causing them emotional distress.

In relation to physical abuse, which was one of your previous questions at the previous session, often physical abuse under the guise of punishment was a pretext for isolating the victim, culminating in sexual abuse. For example, victims were instructed to remove their pants in the course of receiving punishment; that led then to anal penetration or they were struck by the offender, who would then massage the area to alleviate the pain while at the same time fondling or rubbing the victim's genitals. So you can see that escalation from physical to sexual abuse. It is almost certain that acts of physical abuse by an offender served to both instil fear and enforce compliance with sexual abuse.

The majority of alleged offenders processed were aged in their 30s — that is the offender cohort rather than the victim cohort — at the time of offending. Further analysis revealed that 88.6 per cent of all alleged offenders processed were aged between 20 and 40 and had predominantly committed offences between the 1960s and the 1980s. Of the 66 distinct offenders, 50 per cent were identified to be priests and 27 per cent were brothers.

In relation to repeat victimisation offending, whilst there was no evidence to confirm that child sexual abuse was planned by offenders, we do have intelligence which indicates that it was probable offenders were aware or complicit in each other's offending in some instances. Incidents of child sexual abuse that occurred at one Catholic college in Victoria identified that a child reported abuse to one priest who subsequently offended against the victim. Analysis also identified that three offenders — one priest and two brothers — sexually abused the same children attending a Catholic primary school in Victoria during the 1970s.

Non-disclosure and delay of reporting: it is widely reported that a significant proportion of child sexual abuse victims do not disclose the abuse during childhood. Analysis of victims' witness statements also identified a number of influencing factors that contributed to non-disclosure. They included fear of the offender, fear of non-belief and fear that the abuse was normal or necessary as a result of religious manipulation.

Australian research reports that victims of sexual assault are the least likely of all victims to report the incidents to police. The average reporting lag for the total offending in our research was 23.6 years. In some instances child sexual abuse victims only ever reported the abuse when contacted by Victoria Police after another victim had nominated them as a possible victim. Victims were also identified to have reported child sexual abuse on advice of victim advocacy groups and due to being exposed to media reporting of the offender's alleged child sexual abuse against other victims.

Further, it is almost certain underreporting or delayed reporting will continually and considerably limit Victoria Police's ability to analyse contemporary child sexual abuse incidents involving the Catholic Church in Victoria.

This offending also impacts victims when they are in their adult years. It is widely regarded that child sexual abuse causes long-term, traumatic and damaging consequences that impact victims in adulthood. A clear correlation between child sexual abuse victims involving the Catholic Church in Victoria and adverse social or psychological impacts is evident. A number of victims were identified to have suffered from depression and had experienced nervous breakdowns. Adult impacts also include behavioural, relationship and mental health problems, drug and alcohol abuse, suicide and consequential offending.

We have also observed a phenomenon which has been spoken about before, where victims themselves become criminal offenders. Of the 370 victims within the Catholic Church cohort, 27.8 per cent were identified with an offence history in Victoria. A recent Australian study found child sexual abuse victims were almost five times more likely than the general population to be charged with an offence compared to non-abused individuals.

I might move to the impact of historic and current church procedures on police investigations. Firstly, historically - and when I say historically I am referring to a period before the introduction in 1996 of the new Melbourne Response and Towards Healing arrangements. Historically analysis of the data on child sexual abuse involving clergy and others employed by or affiliated with the Catholic Church in Victoria identified that obstructive practices and dismissive actions were employed by the church in efforts to discourage child sexual abuse allegations.

Examples of those historic activities include: transferring alleged offenders to other parishes or schools within Victoria, interstate or overseas; permitting international trips to undergo spiritual formation amidst child sexual abuse allegations; persuading complainants, victims and families to remain silent and that the church would handle the matter; dismissing schoolteachers' repeated requests for action against alleged child sexual abuse offenders; and not intervening after inadvertently discovering offenders in the act of child sexual abuse.

Moving to more current times, current church protocols provide child sexual abuse victims with alternative courses of action to civil or criminal proceedings. Since 1996 the Catholic Church of Victoria has upheld approximately 620 cases of criminal child abuse, none of which they have reported to police.

Despite the introduction of church protocols, victims have reported to Victoria Police: evasive and defensive dealings with personnel employed by the church, making them feel re-abused; a lack of timely responses, which has increased stress; being misadvised regarding the location of an offender that prevented the commencement of an investigation; non-advice by the church-appointed investigator that their interview could be used in future court cases at the outset of that interview; failure to provide pastoral and psychological support, which has exacerbated suffering; alleged breaches of confidentiality between Carelink and archdiocese lawyers — I stress the word 'alleged' there; and uncertainty of their future rights once they had accepted an ex gratia compensation and signed a deed of release. There have been reports of the church encouraging victims to confront their alleged abusers.

The Catholic Church submission to this inquiry went to lengths to explain their use of canon law in handling these matters. International reporting, however, indicates a reluctance of bishops to use the provisions of canon law for removing clergy members from the ministry, and also those found guilty under canon law were primarily ordered to undertake spiritual exercises.

Of significance the church is not required to report clergy members laicised under canon law resulting from a guilty verdict of child sexual abuse to Australian authorities. I took some advice this morning, and that may not be the case in South Australia, but I am getting that checked. Subsequently such individuals are able to seek employment or engage in activities in environments that provide access to children, as they are not recorded with a child sexual abuse criminal history that may preclude them from obtaining employment within certain sectors. Additionally these offenders are not listed on the sex offenders registry and therefore subject to the same restrictions and regulatory compliance as those sentenced under criminal law. This increases the risk to children in the Victorian community to child sexual abuse and hinders Victoria Police's ability to monitor trends and develop reduction or prevention strategies internally and in consultation with other government and non-government bodies.

In terms of cooperation with Victoria Police, since the introduction of the Catholic Church protocols to investigate child sexual abuse complaints the church has been identified to have alerted alleged offenders to police investigations and discouraged victims from reporting incidents to police. Examples include: a

church-appointed investigator advised a priest suspected of child sexual abuse of a police investigation, which allegedly enabled the destruction of evidence; the independent commissioner in 2010 made statements to a victim regarding the potential success of child sexual abuse allegations if the victim reported the abuse to police as ‘this kind of conduct you describe would be unlikely to be held by a court as criminal conduct’; the independent commissioner sent correspondence to an alleged offender alerting him to child sexual abuse allegations made to police prior to the offender being charged; a clergy member who had acted in a liaison between the church, victims and police had advised an offender already serving a term of imprisonment of new child sexual abuse allegations prior to police inquiries; a senior Catholic figure was identified to have encouraged child sexual abuse victims not to report incidents to authorities for fear of negative publicity; and a general reluctance to provide information under warrant to Victoria Police.

We have also had examples where evidence has been moved and also of the obtaining of injunctions and imposition of legal professional privilege to prevent the release of evidence. We had a number of examples of this conduct which named people et cetera, so we have taken those names out, but I will quickly give you three examples where this obfuscation has occurred. In the first example an investigator from Victoria Police in 2009 sought contact details of an accused via the head of the order; the accused was cc’d into the reply, alerting him to the investigation.

In the second example the independent commissioner informed the accused that police were investigating the matter. Victoria Police’s e-crime unit’s analysis of the accused’s computer subsequently showed that a number of suspicious files were destroyed. Alerting the accused gave him the opportunity to attempt to destroy those files.

The third example is that a church liaison officer indicated that relevant files were in one location when contacted by police, neglecting to mention that any information relating to a complaint was in fact put in a separate file and held at the independent commissioner’s offices. Files relevant to the case were removed from a counsellor’s office immediately prior to the execution of a search warrant in this matter and taken to a solicitor’s office. Execution of a warrant was met with a refusal to reveal the whereabouts of the file. Internal advice indicates that these actions could be considered perverting the course of justice; however, this issue was not pursued by Victoria Police.

Victoria Police has also come across one deed of agreement between the church and a person who witnessed or was impacted on by the activities of a convicted priest where the compensation has been traded for a discharge of potential liability. In consideration the witness released and discharged from responsibility the archbishop, any person who became the archbishop and all entities and bodies associated. The witness further agreed that unless compelled by law they would not discuss or disclose any of the facts or circumstances that led to the complaint. It is not known just how many of these confidentiality agreements historically exist and when and in what circumstances they were used; however, these persons have valuable information which may assist police in making connections concerning offences. They should not in any way be discouraged from reporting to police.

In relation to legislative reform, we have provided in our initial submission some observations regarding legislative reform, but suggestions within our submission certainly include mandatory reporting and the identification of a concealment offence.

I have facts and figures concerning other faiths if required. The amount of offending is nowhere near the volume that sits within the Catholic system.

I have also prepared today some responses to the submission of the Catholic Church to this inquiry called ‘Facing the truth’. However, that is fairly extensive, and while I can generally speak on that I propose to submit a further written response that addresses the Catholic Church’s submission to this inquiry.

The Catholic Church’s current protocols for handling child sexual allegations lack transparency, government oversight, public interest and a rehabilitative focus. These protocols continue to drive underreporting and adult victim impacts. The Catholic Church’s lack of cooperation with Victoria Police will continue to impede investigations, prevent the identification of other victims of child sexual abuse during the course of investigations of alleged offenders and decrease the organisation’s ability to understand the complexities of child sexual abuse and long-term impacts.

This lack of cooperation is compounded by the lack of transparency attributed to the Catholic Church's internal investigation processes. Persons found guilty of child sexual abuse by the church are not reported to Victoria Police, which will continue to limit our organisation's identification of repeat offenders. It is likely that the Catholic Church's support of alleged and convicted offenders will continue to impact the number of child sexual abuse complaints made to the church by either of its protocols. This is likely to compound the varied behavioural and psychological impacts child sexual abuse victims may be experiencing.

The protocols employed by the Catholic Church are based on a flawed notion of independence. It is our view that the independent commissioner is appointed and paid for by the church. He appears, from the church's own submission, to be empowered to act under canon law.

Finally, I might sum up this presentation with the following excerpts. I think the following analogy is telling when one examines why there is in fact a need for any sort of process within the Catholic Church system for dealing with child sexual abuse. If a stranger were to enter the grounds of a church and rape a child, then that rape would be immediately reported to the police and action expected. But if that stranger happened to be a member of the clergy, such as a priest, the matter under the current experience would not be reported. If that stranger is a member of the clergy, then a special process is wrapped around him which discourages the victim from complaining to police, seeks to ensure that the offending clergy member is not only not prosecuted and jailed but never included on the sex offenders register and never adversely recorded on future working-with-children checks.

What is it about the fact that this offender is a member of the clergy that means that a different approach is adopted? You may have your own views about that, but I would not be doing my job today if I did not tell you that the overwhelming view of investigators from Victoria Police who deal with these matters on a daily basis is that it is the reputation of the church that creates that point of difference. In assessing all the material before Victoria Police on these issues the conclusion that Victoria Police draws as the investigator is that, apart from perhaps the desire to compensate victims, the process adopted by the Catholic Church is designed to put the reputation of the church first and the victims second. Only when there is evidence that that stance has changed, such as with the reporting of a single matter to police, would we be prepared to be optimistic that the victims of clergy abuse will be truly heard and receive the justice they deserve.

I think I am out of time. I have some stats on other religious organisations available to me here if you would like to hear them.

The CHAIR — I think it would be helpful if you could briefly run through some of those statistics just to put it in context.

Deputy Comm. ASHTON — Sure. In relation to the Anglican Church we identified 150 offences, involving 37 distinct victims. In relation to the Salvation Army we found 135 offences, involving 36 distinct victims, and in relation to Judaism we found a total of 69 offences, involving 18 distinct victims. There are some further subsets of that data, but that is the broad number we were able to find during our research.

The CHAIR — Thank you very much, Deputy Commissioner. I wanted to ask both Mr McRae and Mr Jouning if they have any other comments they would like to make to the committee before I open up to questions.

Mr JOUNING — Not at this point.

Mr McGUIRE — Thank you, Deputy Commissioner. Your submission is chilling in its detail and its analysis of a culture, I think you are explaining to us, of denial and cover-up rather than actually addressing the problem and trying to take it further. This is an inquiry into all religious orders and other organisations, but I am going directly, I think, to the key point you raised on these issues, particularly about concealment and mandatory reporting. If I can ask you: how could compensation be handled by the church so that it does not discourage litigation? Should all complaints made through church processes be automatically reported to police — so mandatory reporting — and should church personnel receiving the complaint refer the matter to police, or should victims be encouraged to report matters to police themselves? If you could just give us more detail on Victoria Police's view on that.

Deputy Comm. ASHTON — Sure. Thank you. Firstly, we believe there should be mandatory reporting by clergy in relation to child sexual abuse. The preliminary submission we provided I think was clear on that issue. The issue we have in relation to reporting is that the contact with the victim by church representatives, in our view, is a damaging part of the process. It does not enable an interview to be conducted with a witness which elicits the necessary facts and restricts as much as possible the abuse that has already been suffered. It then compounds that abuse and suffering with an interview that is conducted in an inappropriate manner. Whether the avenue through which the reporting is made is via the victim at the encouragement of the church or by the church itself to us, as long as we can then have a conversation with the victim in the manner in which we now conduct these interviews, as long as that can occur, then that is what we are really looking for. It can come, in our view, from either direction, as long as it comes.

Mr McGUIRE — And the compensation proposition?

Deputy Comm. ASHTON — We understand that the church may wish to pay compensation to victims of clergy abuse. We understand that is a matter for the church — it is not something Victoria Police has a particular view on — but we think that where that transgresses is that it is not just a discussion about compensation, which can occur at any stage of the process. The compensation becomes part of a broader interview about the offending and a criminal investigation that is then conducted by people who are not authorised to conduct a criminal investigation. If it is just a conversation at some point in the process about compensation, then I do not have an issue with that.

Mrs COOTE — Thank you, Deputy Commissioner. I was particularly interested in your presentation and also the submission you have given us. I look forward to looking in more detail at the statistics particularly that you presented, which is what I would like to tease out now. I know we have a greater ability to look at that later, but it is relation to the numbers of cases of child abuse that are in fact reported. I am interested in your longitudinal study from 1956 to 2012. I would like to bring us back closer to the part around 2012 in your collection of data. You have given us various statistics, but overall how many sexual abuse cases are reported to you each year by religious and non-government organisations?

Deputy Comm. ASHTON — What is the total number reported to us by all organisations, do you mean?

Mrs COOTE — Yes.

Deputy Comm. ASHTON — That is certainly data we can get for you. We can certainly have that. I do not have that on my table here. Rod, do you have an idea?

Mr JOUNING — No, not at this stage. I would need to go back and draw those figures out. It is a big part of it.

Mrs COOTE — I would be very keen to see that, if I could. Also, could you tell me if it is increasing, in your opinion? I know you said there is a reluctance, and there is a time lag. I think you suggested 23 years — or is it 26?

Mr ASHTON — It is 23.6, yes.

Mrs COOTE — So 23.6 years. Is there any indication that it is in fact increasing?

Deputy Comm. ASHTON — Certainly rape and sex non-rape offences — that is, sexual assault — across the community are increasing, and they have increased for some period of time. It is an area that would be increasing, and certainly in relation to organisations we will attempt to distil that data for you. Your point on the time lag — in relation to that as reported by organisations, I can certainly tell you that has diminished a lot in recent years, particularly over the last 10 years, but we would submit that the reason for that, particularly in these types of cases, is because this type of offending is characterised by delay in reporting; it is absolutely characterised by it. So these notions that this no longer occurs, that this is something in the past, are ameliorated by the fact that people who are likely to be abused today we are not going to hear about for 20 years. We are now talking about what we regard as current, but it is abuse that has taken place decades ago.

The abuse that is occurring now we are simply not going to hear about because of the nature of offending. It is occurring against children; it is occurring in a situation where there is a massive power differential between the

offender and the victim. I doubt you could get a larger power differential than exists in these cases. Those issues impact on the minds of young, impressionable victims, so it is not until years later that, often through their own efforts or other volunteer organisations, they manage to get through the psychological damage that has been done to them and live normal lives. At some stage they themselves feel confident enough in the way they are conducting their own lives with their families and children that they then think, 'I now feel confident enough to go and talk to someone about this'. That is typical of this type of offending.

So I think when we talk about the delay in reporting, it is absolutely real in this issue. It should not be confused with the fact that the offending is no longer occurring. I am sure that that is not the case.

Mrs COOTE — I look forward to having a look at those statistics in greater detail. One of the issues I would like to ask now is if, in your opinion — and looking at the statistical data which you have access to — have you seen any correlation between an additional increase in suicides? I know you enunciated a number of behaviours as consequences of this abuse, but have you seen an increase in suicides as a consequence of the abuse and do you have data to support that?

Deputy Comm. ASHTON — I need to tread a little carefully on the suicide issue. Earlier this year we received a report from one of our detectives regarding work that was being pulled together on the issue of suicides as a result of clergy abuse. We have seen suicides as a result of clergy abuse. In relation to the material that was provided to us in a compiled format early this year, we met with the coroner and discussed the issues around those particular alleged suicides. I think there were 43 in number that were talked about at the broad level that needed to be looked at. The coroner asked us to do a review of those individual cases to determine whether she should reopen any of those matters. We have now concluded that research, and we will be in a position very shortly — maybe in the next week or two — to go back to see the coroner and give her the results of that work. So I am just a bit reluctant in open forum to provide you with those details.

The CHAIR — I understand.

Mrs COOTE — At some stage we will obviously be wanting to ask you other things, but as that comes through it is something that the committee would be very keen to see. Once the protocol with the coroner has been worked through, that information will be particularly helpful to this committee. So if we could flag that with you, that would be very helpful.

Deputy Comm. ASHTON — Yes, certainly.

Ms HALFPENNY — Just a quick clarification before I go to my main question. With regard to the data that you have been analysing or the cases that have been reported, do they include cases reported by children who were in institutions who were looked after by religious and non-government organisations?

Deputy Comm. ASHTON — Yes, they do.

Ms HALFPENNY — My main question is: when you talk about the delays in reporting — and this follows on a little bit from what Andrea asked — you talk about the fact that there has been up to 20 years or so delay in reporting and that there is no reason to think that that will change, and that we will continue to see that happening; is that on the basis that the opportunities for offenders remain exactly the same as they did 20 years ago or is it in terms of the structures of religious organisations, or is there some other basis for that assessment?

Deputy Comm. ASHTON — I think the basis for it is that sexual offending in our community is increasing. We are seeing increased reporting of sexual offending across the community generally. The body of people working within the church environment is a cross-section of personalities, the same as any other organisation, police included. We have people from different walks of life who enter the police force; we have people from different walks of life who enter a religious organisation, so it is a cross-section. In any large cross-section cohort of any community or subset of a community you will get sexual offending. So we expect that, for those reasons alone, offending is continuing up to the current time.

As we have explained in our submission, the fact that there are processes that then wrap around an offender within the church cohort in our view only exacerbates that likelihood of offending rather than actually preventing it. It is for that reason as well that we would be expecting to see victims continue to come forward in the years ahead.

Ms HALFPENNY — I know that you have proposals on legislative change for once an offence has occurred; do you have any thoughts or suggestions about the preventive side in terms of religious organisations and legislative ideas?

Deputy Comm. ASHTON — We would absolutely love to get involved in that. First we need an open and honest dialogue to occur with the church. We need matters to be referred to us. We need to know what information the church has on the 600 or more complaints that are upheld and what sits in those files. We need to know properly what the nature of the offending is, how it is occurring and what is driving it. The information we have given you today is only from the victims that have come to us. None of this information is the information that the church is holding.

I am sure I speak for Rod when I say we would like nothing more than to be able to sit down, open the files and have an honest discussion about what offending is occurring and what is driving it so that we can then develop some world-class preventive mechanisms that we can bring in and provide education to clergy and provide education to people working in the system. We can provide a far more comprehensive response when we are dealing with victims if we actually understand what sits behind that veil of processes within the church system.

To answer your question, prevention is much better than cure, and we would be absolutely keen to get involved in any initiatives that led us down that path.

Ms HALFPENNY — So there is no legislation under which you can seize or acquire documents?

Mr McRAE — Mandatory reporting really opens the door for us to use the usual tools that we have — investigative tools like warrants and other tools — to build intelligence and disrupt, because we need to know the pattern of offending and repeat offending that is occurring so that we can move into prevention mode. It is that issue of mandatory reporting, and I might as well talk about it now.

Our preferred option is the option recommended by Justice Cummins in recommendation 47 of the Cummins report, and we note that is supported by the law institute. On this occasion we are in agreement. The law institute in its submission also goes to some commentary on the checks and balances about the confessional and the ritual of confession as well. We think consideration of moving a mandatory reporting regime into the Crimes Act is worth considering. Our second option would be the current regime that the secretary spoke about previously, which is section 182 of the Children, Youth and Families Act, which is in the realm of DHS, and adding ministers of religion and religious personnel to the existing scheme. There are two options there.

Of course the other matter that the deputy commissioner mentioned is concealment. We understand that we already have offences in regard to obstruct and resist in the summary proceedings act and there are also offences in the Crimes Act in terms of the destruction of records. But we are just putting on the table that given the New South Wales offence is being used in this context, that is another one that could be added to the tools that we have that is more specific to this type of scenario.

Mr WAKELING — Deputy Commissioner, thank you very much for your submission and for the frankness of your submission. It is certainly appreciated given the gravity of what we are dealing with.

I am interested in two areas, the first is mandatory reporting, which Mr McRae has dealt with. The second area is concealment, which Mr McRae has dealt with as well. In regard to the concealment proposal, if there was to be an extension of this offence here in Victoria, should there be a restriction to serious indictable offences or offences involving the abuse of children? Also what mechanisms may be needed to provide protection for those who reveal crimes perpetrated by others under such legislation? I do not whether you have given it that level of thought at this stage, but certainly this is a significant issue that we are grappling with and will have to grapple with, and I would be keen to have your feedback.

Mr McRAE — Our position is we put it on the table because it is a live example. In our submission we have also noted that there is a current prosecution in New South Wales. They are complex policy issues, and I think we would probably be best placed to provide some clarification in a further submission on that. People would require protection from detrimental action, or that consideration for protection in terms of the confidentiality, because we are stepping away to a certain extent from a trend across Australia in terms of misprision, felony-type offences. But we would argue that we have a problem and we need a tool to deal with that problem

that the community is facing at the moment. We are happy to consider it and give some clarification in terms of our submission, which was very short on that aspect.

The CHAIR — Deputy Commissioner, do you have a comment you would like to make?

Deputy Comm. ASHTON — No. That is fine.

Mr O'BRIEN — Thank you, Deputy Commissioner. You mentioned reputation; one of the concerns about this particular issue is that is the trust and faith that many people place in these organisations that results in their vulnerability, and that is also of great concern to many people within church organisations. Whilst there is a willingness for the police to continue identifying matters to the committee that we need to work on, I would ask that where there have been responses to that and where there is agreement from the church — and I note that we have a helpful, in a sense, movement of that position in relation to the mandatory reporting on page 106, but it is then focused on the exemption relating to the confessional, and I asked the secretary about that — it would be of great benefit to this committee and is part of the role and purpose of this committee to be able to get agreement from the parties wherever you can to responses, particularly from protagonists, as much as identifying where there are differences. It will obviously be the complex role of this committee and the government to respond to that, but the more quickly we can identify where there is agreement will be very helpful both in relation to specific reporting obligations and as to what issues are left unresolved.

Deputy Comm. ASHTON — Certainly we will endeavour to make sure that we provide you with some further written material on that. In relation to the issue of mandatory reporting in terms of what has been perhaps regarded as conceded or acceptable to the church submissions that you have got, they are willing to partake in mandatory reporting with the exception of the confessional. There are very few — in fact it may be as few as one — examples that we have of a confessional being the point at which allegations have been brought out. Our view is that it is a difficult decision for the committee to have to undertake. We understand that. We notice that most jurisdictions have not opted to open the seal of confession, although I think Ireland has, from memory. But I noticed in the media reporting I saw on that that some of the priests in Ireland were basically saying they did not care and they were not going to be reporting it anyway, notwithstanding a 10-year jail term. We do not see the level of reporting within the seal of confession that prompts us to say, 'You must include the seal of confession', but again, we just do not know. We do not see the data to be able to provide you with that sort of qualified response.

Mr O'BRIEN — Specifically I take you to one of the other issues that has emerged in relation to reporting and that is your submission's statement that, again, you have not received a single referral of a complaint. The church has provided a response in their submission on pages 110 and 119, but no doubt there is correspondence already occurring between you about that, which will be helpful to clarify the issues for the committee. In relation to the issues that are identified the church has said in the *Melbourne Response*, for example, that reports were not made because of three reasons: one, the complaints were brought to police by the victim prior to contacting the Melbourne Response; two, the complaints related to offenders who were deceased and could not have led to a police investigation; and three, which is perhaps the most important reason they gave, the victim did not wish to report the matter to police. That is a bit of a chicken-and-egg situation, and I would like you to explain very clearly to the committee on that third reason what the police's response to that is and where we might need to change protocols or the law.

Deputy Comm. ASHTON — You ask a very important question in the context, with respect. In relation to the correspondence we have received from the Catholic Church on Melbourne Response, they have said that there are matters that police are aware of that occurred within the church. Yes, there are, but they are matters that the victim has brought forward to us, not the church. We did a full analysis, as I said, of all the cases that are on our records, and we cannot find an example where of their own volition the church has brought forward a complaint to us. If the church has one, I am more than happy to sit here and say, 'I am wrong. There are one or two of the 600 or however many they have looked at', but I do not see any in the church's submission. We cannot find any. Where are they if they exist?

I will deal with your further issues firstly. I have received numerous pieces of correspondence since giving a 2-minute radio interview on this issue six months ago, which apparently made me a strident critic of the church. What happened was we received numerous pieces of correspondence from the church, and that correspondence

continually talks about the fact that offenders are dead and victims do not want to report matters. So they are the two points that you have accurately touched on.

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

In relation to victim consent, sure, we understand that there will be occasions when victims do not want to report crimes to police, and sexual crime is a particular example where people, for a range of reasons, feel like they do not want to be put through the trauma of the criminal prosecution of an offender where they will be giving evidence. We understand that and we respect that. But the mere fact that there is a process of a criminal investigation conducted by the church into that victim in our view does not give us reliable facts or allow them say, 'The person doesn't consent.'

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

Mr McGUIRE — Deputy Commissioner, one of the benefits of this inquiry will be to shine a light on these crimes which you have outlined in great detail, but also there would probably be a public perception that a lot of this was in the past, and you are saying that the evidence that you have got is that that is not the case. In the best way you can estimate, how big is this issue, and how prevalent and how current is it?

Deputy Comm. ASHTON — What I am saying to the committee is that, sure, a lot of the offending we have got is historic offending; there is a reason why it is historic offending, and based on all the other data we have around general offending, population cohorts and the protection of the people who commit these crimes that is placed around them by the church, we think that the offending is likely to be continuing. There have been a handful of modern cases in the last year or two that talk about offending right now, but we do not expect to see that. I guess our leap of faith in this stuff is that we do not expect to see it for years to come. From working with victims, as Rod does on a daily basis and Rod's people, they are hopeful that inquiries like these may actually encourage victims to come forward in greater numbers so that we can work towards getting some outcomes through the justice process for them and getting offenders prosecuted. But without these sorts of inquiries we are not optimistic that people will come forward in any increasing number, and we will not see this offending for years to come. I guess I am saying to you we are not seeing big numbers right now, but there is a reason for that.

Mrs COOTE — Deputy Commissioner, can I have a point of clarification about protocols? In the Catholic Church's submission they talk about the fact that they in fact did have a protocol with Victoria Police prior to Glenn Davies coming on board; that is what they say in their submission. You in your submission suggest that you would like to have a protocol, but my understanding from the advice that has been given to this committee is that Victoria Police do not have protocols with any groups. Apparently there was some fuss with the protocols between the AFL and that as a consequence of that you do not engage in protocols with organisations as such. Is it your intention to encourage protocol particularly with the Catholic Church, or is that a policy decision that Victoria Police is not following any longer?

Deputy Comm. ASHTON — The issue in relation to protocols was that there were attempts — I think in fact it was the church that reached out to want to have some sort of agreement on a protocol with us, which started the development of a draft protocol in relation to handling information. I was appointed the assistant commissioner for crime early last year, and this file came to me because of the fact that we were approaching some sort of protocol. I read the advice that was provided by the Victoria Police legal services team on the appropriateness of doing that, and the clear advice was not to do it. It had nothing to do with the AFL or any other organisation. We are happy to enter into protocols provided that they are appropriate.

In this case it was clearly inappropriate because of all the matters, facts and circumstances that I have outlined for you today. We are not going to enter into a protocol or an agreement on processes that we think are fundamentally flawed. I made it clear from that point onwards that there would be no agreement, despite their website saying for some period of time that we had this agreement, until I wrote to them and asked them to take it down. We do not have an agreement. We would not have an agreement until such time as the processes were changed and we were comfortable that those processes did not adversely impact on victims and enabled us to deal with offenders. If at some future time we were in that space, then we would be happy to sit down and discuss protocols, agreements or anything else.

The CHAIR — Thank you for that clarification. On behalf of the committee I thank the three of you again for appearing before us this morning. We appreciate your time, and your evidence has been most helpful.

Deputy Comm. ASHTON — We are grateful for the opportunity, and we are certainly happy to re-attend at any time the committee feels appropriate.

Witnesses withdrew.