

STRICTLY CONFIDENTIAL

(FOR BISHOPS AND MAJOR SUPERIORS ONLY)

AUSTRALIAN CATHOLIC BISHOPS CONFERENCE
SPECIAL ISSUES COMMITTEE

PROTOCOL FOR DEALING WITH ALLEGATIONS OF
CRIMINAL BEHAVIOUR

AMENDED DRAFT APRIL 1991

1. BACKGROUND

In November-December, 1988 the Australian Catholic Bishops Conference considered the implications of allegations of criminal behaviour (especially relating to children) made against clergy and religious. The Conference was made aware of the problems that had arisen in United States of America and Canada.

It established the Australian Catholic Bishops Conference Special Issues Committee Relating to Priests and Religious. The terms of Reference of that Committee are set out in the Appendix.

The Special Issues Committee was required 'to establish a protocol to be observed by bishops and major superiors if an accusation is made against a priest or religious alleging criminal behaviour, and to advise on the implementation thereof.'

This document forms the basis for such a protocol.

This protocol is limited to allegations of criminal behaviour made against a cleric or religious. The general principles would apply to allegations made against an employee of the Church or a voluntary worker engaged in Church activities. In addition the requirements of any process of industrial arbitration or disputes procedure would have to be followed.

2. DEFINITIONS

In this protocol

'ACBCSIC' means the Australian Catholic Bishops Conference Special Issues Committee Relating to Priests and Religious.

'accused' means the cleric or religious against whom a complaint of criminal behaviour is made.

'advisory committee' means a committee established in accordance with paragraph 5 below and any reference to 'advisory committee' includes a reference to some or all of the members thereof.

'bishop' means the Administrator for the time being of an Australian diocese.

'cleric' means a bishop, diocesan priest or deacon, or priest or deacon incardinated in a personal prelature, and those in formation as clerics.

- 'complainant' means the person who has made a complaint alleging criminal behaviour against the accused.
- 'criminal behaviour' shall refer to criminal offences in civil law and shall include sexual assault relating to children.
- 'departmental officers' shall include Police and those officers of the relevant State Government Department responsible for child welfare.
- 'major superior' means an Institute's highest authority resident in Australia.
- 'religious' means a member, including a clerical member, and those in formation, of an Institute of Consecrated Life or a Society of Apostolic Life.
- 'victim' refers to the person who is alleged to be the victim of criminal behaviour involving the accused.

3. RESPONSIBILITIES OF BISHOPS AND MAJOR SUPERIORS

3.1 Bishops have duties and responsibilities to their priests, religious, and all of Christ's faithful according to natural justice and canon law. They have a responsibility to protect the good reputation of individuals and the Church as a whole. They have a special concern for the victims of injustice and those who are vulnerable.

3.2 Major superiors have a similar duty where the actions of members of their institute are challenged, but they must also take into account, as well, the rights of all Christ's faithful and the good of the whole Church.

3.3 The canonical investigation and resolution of allegations of criminal behaviour against the accused shall be the responsibility of the bishop or major superior. The responsibility of a bishop or major superior is personal. While advisers may assist with the process of investigation and make recommendations, it is the bishop or major superior personally who bears the responsibility for decisions.

3.4 Bishops and major superiors have the obligation to make their own investigation and act in accordance with their own judgment but shall take into account the recommendation in 6.1.1.

3.5 Allegations of criminal behaviour against the accused will affect the whole church in Australia, and even the universal church. Individual bishops and major superiors must take into account the critical importance of adopting uniform approaches and working in close co-operation with each other, so that justice may be done not only for the good of individuals but for the good of the whole church.

3.6 Bishops and major superiors must be and appear to be impartial during any process of investigation, lest the victim or complainant should perceive that the bishop or major superior is acting defensively, with disbelief, or as advocate for the accused.

4. VALUES TO BE PROMOTED

4.1 In dealing with allegations of criminal behaviour against the accused, bishops and major superiors are obliged to take into account and preserve various values.

4.1.1 They will act with justice, mercy and charity.

4.1.2 They will respect the civil law and not obstruct or pervert the process of justice.

4.1.3 They will have pastoral solicitude for the welfare of any complainant, victim, victim's family or accused.

4.1.4 They must safeguard the reputations of individuals whether complainant, victim or accused and their right to privacy. They will act to prevent or remedy scandal.

5. RESOURCES

5.1 The canonical investigation and resolution of allegations of criminal behaviour against the accused requires a multi-disciplinary approach. There are issues involving civil law, canon law, public relations, church discipline, as well as individual and community welfare.

5.2 There should be established, by the regional bishops, in such regions as ACBCSIC recommends an advisory committee consisting of personnel who are skilled in dealing with allegations of criminal behaviour.

5.2.1 The personnel of this advisory committee are to be available to all diocesan bishops and

major superiors as each case may require for the purposes of assisting bishops and major superiors by:

- providing advice;
- assisting with an investigation;
- managing contact with media.

5.2.2 The ACBCSIC shall offer advice on appointments to, and the activities of, such advisory committees.

5.2.3 Membership of the advisory committees shall include at least one priest as well as other professionals skilled in the relevant social sciences.

5.3 The regional committee shall advise bishops and major superiors of the names of civil lawyers in each State who are available to act in these matters.

5.4 The ACBCSIC shall provide to bishops and major superiors as required a list of personnel and facilities that are available for counselling of complainants, counselling and therapy for victims, and assessment and therapy for the accused.

5.5 The regional bishops and major superiors shall nominate a spokesperson(s) who shall be the only authorized person(s) available to comment to the media on behalf of bishops or major superiors in relation to allegations of criminal behaviour. The ACBCSIC and advisory committee(s) shall consult with such spokesperson(s).

6. COMPLAINTS

6.1 Pursuant to Canon 1717 'whenever the Ordinary receives information, which has at least the semblance of truth, about an offence, he is to enquire carefully, either personally or through some suitable person, about the facts and circumstances, and about the imputability of the offence, unless this enquiry would appear to be entirely superfluous.'

For the purposes of this protocol the words 'semblance of truth' should be understood as meaning 'a reasonable suspicion of truth'.

This Canon also requires that 'care is to be taken that this investigation does not call into question anyone's good name.'

6.1.1 In order to avoid any ambiguity or prejudice to the bishop or major superior concerning confidential relationships, the inquiry required by canon 1717, and any other investigation, shall, in the first instance, be undertaken, at the request of the bishop or major superior, by the advisory committee.

6.2 Every attempt should be made to offer assistance to victims, victim's families and complainants by way of confidential counselling or other pastoral support as soon as the complaint is received

6.3 It is possible that a complaint may be made concerning alleged criminal behaviour or the matter may come to the attention of the bishop or major superior in a number of ways.

The complaint may be made

6.3.1 - to the following:

- . the bishop, major superior, or superior
- . another cleric or religious
- . departmental officers
- . the media
- . some other person

6.3.2 - by the following:

- . the victim
- . the victim's family
- . a person who is aware of, or suspects criminal behaviour
- . departmental officers
- . the media
- . anonymously

6.3.3 The accused himself may bring the matter to the attention of his bishop, superior or major superior. The bishop or major superior should refer the accused to the advisory committee. The tendency of the accused to minimise or deny involvement should be taken into account.

6.4 Since all the possibilities cannot be foreseen the following general principles apply:

6.4.1 Each cleric or religious who becomes aware of a complaint, or the possibility of a complaint, either against himself, or another cleric or religious, is obliged (subject to any canonical obligation to the contrary) to notify that fact to the relevant bishop or major

superior who shall inform the advisory committee.

Requirements in some States for mandatory reporting should be taken into account.

6.4.2 It should be made known to departmental officers that, subject to the obligations of law, bishops and major superiors wish to be informed of allegations against clergy or religious.

Where a complaint is made in this way the matter should be referred immediately to the advisory committee and the complainant informed that appropriate action has been initiated.

6.4.3 Complaints that come from the media should be noted and the complainant informed that the complaint will be investigated. The complaint should be referred to the advisory committee for investigation.

General inquiries from the media should be referred to the nominated spokesperson who shall be fully briefed by the bishop, major superior or advisory committee.

6.4.4 Complaints received by bishops or major superiors directly from a victim or a member of the victim's family should be received sympathetically and the victim and/or the family informed that they will be contacted by a person trained in this area so there can be further investigation. The matter should immediately be referred to the advisory committee.

6.4.5 Complaints received from other persons including other clerics or religious should be received sympathetically. That person should be informed that the matter will be investigated. The matter, including the name of the complainant, should immediately be referred to the advisory committee who will initiate contact with the complainant.

6.4.6 Anonymous complaints should not be simply ignored but referred to the advisory committee for discreet assessment and investigation if necessary.

6.5 The advisory committee shall evaluate the complaint. In the light of the nature of the

complaint, the age of the victim and the circumstances generally, the advisory committee shall consider whether it is necessary or prudent to either initiate contact with, or otherwise interview, the victim and/or the victim's family.

6.5.1 No interview with a victim who is a child shall take place without the consent of the child's parent(s).

6.5.2 No interview shall be undertaken which will prejudice any interview process being undertaken by departmental officers.

6.6 The advisory committee shall then report to the bishop or major superior

6.6.1 - that there is no substance to the complaint and no further action should be taken, or specify such action as may be required in the circumstances to prevent scandal or remedy injury to reputation.

6.6.2 - that there appears to be substance to the complaint and that the protocol should be implemented.

6.7 In those cases in which the protocol is to be implemented the complainant should be reassured

6.7.1 - that the Church is concerned for the welfare of the victim.

6.7.2 - that the bishop or major superior must act in accordance with the law and not in a way that will prejudice the process of law;

6.7.3 - that the Church takes allegations of this kind seriously;

6.7.4 - that justice requires that the accused be heard;

6.8 No admissions should be made to the complainant or victim or any other person

6.8.1 - that the accused is guilty;

6.8.2 - that there is any liability in damages;

6.8.3 - that any particular course of action will follow investigation.

6.9 It should be made clear in all conversations with the complainant, victim (if this is appropriate), victim's family, departmental officers, and any other person that, if the accused is given leave from his office, this is a standard procedure, pending investigation and resolution of the allegation. It does not imply any admission of guilt.

6.10 The freedom of people, and in some instances, an obligation in law, to make a complaint to departmental officers must be respected. Under no circumstances should any attempt be made to dissuade a victim or family from approaching departmental officers.

Under no circumstances should any agreement be made that in return for an undertaking by the family not to approach departmental officers certain action will be taken against the accused.

7. THE RESPONSE OF THE ACCUSED

7.1 If the advisory committee considers that there is substance to the complaint the bishop or major superior shall forthwith (within hours) require the accused to attend for an interview.

7.2 The bishop or major superior should simply inform the accused of the nature of the complaint and inform him that the advisory committee shall enquire into the complaint. The accused shall be given the opportunity to seek legal advice. The accused is entitled to the protection of the law. The accused should be made aware that statements made by him to others could, in some circumstances, be used as evidence against him. He should be warned of the dangers of interviews that are 'off the record'. He should be made aware of the right in law to remain silent.

7.3 The advisory committee should recommend to the bishop or major superior what further action is required.

7.4 The bishop or major superior must take care not to act in a way that could be interpreted as an attempt to pervert the course of justice, or amount to the offence of being an accessory after the fact. The accused must not be aided to escape the jurisdiction or otherwise to frustrate the legal process.

8. PROCEDURE

8.1 If further investigation is required, or further time is required for the resolution of the allegation, the usual procedure shall be for the accused to be requested to take leave from his office. If he refuses the bishop or major superior will consider imposing such leave.

8.2 If it appears even possible that the complaint will involve legal proceedings the accused should be advised by the bishop or major superior to retain his own lawyer independent from the lawyer retained in accordance with paragraph 5 above and independent from any lawyer usually retained either by the institute, diocese or their insurers. A list of available and suitably skilled lawyers should be available from ACBCSIC. It should be made clear who is to bear the responsibility for the costs.

8.3 The relevant insurers must be notified, in accordance with the requirements of the relevant policy, if circumstances have arisen which might give rise to a claim.

8.4 If the accused refuses to take leave as requested or is otherwise unco-operative the bishop or major superior may, if this appears advisable, begin a formal canonical process. Specific advice should be sought from an expert in canon law so that the respective rights of the accused, the bishop or major superior and the whole church are safeguarded.

8.4.1 Pastoral solutions should always be preferred to formal canonical process.

8.4.2 The provisions of Canon 1722 permit the Ordinary, in certain circumstances, to prohibit the exercise of the sacred ministry or some ecclesiastical office, in order to prevent scandal.

8.4.3 Proper arrangements must be made for the accused to reside in a secure place during this period of leave. He should have access to such spiritual and psychological assistance as he may require. The requirements of Canon 1350 concerning his support must be complied with.

8.5 In every case pending investigation the accused must not remain in a situation where it may be perceived that other people, especially children, might be at risk. He ought not undertake any public

function since this might create greater scandal if he is subsequently found to have offended.

8.6 The accused must be informed that he must not give any interviews to the media, on or off the record. He must refer any requests to the nominated spokesperson(s).

8.6.1 The bishop or major superior shall consult with the advisory committee and nominated spokesperson(s) as to the advisability of any public statement and its scope, content and form. The minimisation of scandal as well as the reputations of all involved should be taken into account. The possibility that silence may be interpreted as an attempt to 'cover-up' the truth should also be taken into account. Any statement that explains a period of leave should make it clear that such leave is a routine requirement that does not imply any admission or presumption of guilt.

8.6.2 Where legal proceedings have begun or are imminent no public statement should be made without specific legal advice.

8.7 Where it appears that legal proceedings are unlikely the bishop or major superior must personally consider whether it is prudent to reinstate the accused, reassign him, provide psychological therapy, or institute a canonical process for the imposition of a penalty.

8.8 If legal proceedings are commenced the bishop or major superior shall not act in any way which would prejudice the fair trial of the accused.

8.9 If the accused is not committed for trial, or is tried and acquitted, the bishop or major superior must still personally consider, in the light of all the information that is available to him, whether it is prudent to reinstate the accused, reassign him, provide psychological therapy, or institute a canonical process for the imposition of a penalty.

8.10 If the accused pleads guilty or, after trial, is found guilty, of criminal behaviour, whether or not a conviction is recorded, the bishop or major superior should carefully consider, in the light of any criminal penalty, whether steps should be taken to impose a canonical penalty and what should be done to remedy any scandal.

8.10.1 The provisions of Canon 1395 must be taken into account. In serious cases of criminal behaviour involving children, especially if there is a history, laicisation or dismissal from the religious institute must be considered.

8.11 In making these decisions the bishop or major superior must give first priority to preventing, as far as possible, any future risk to others, especially children.

8.12 A negligent failure to take reasonable steps to prevent such risk could expose the bishop or major superior to a claim for damages in the event of future incidents. Furthermore, and more seriously, it could create the impression that the Church condones criminal behaviour or is unmindful of the harm caused to victims.

9. TREATMENT OPTIONS

9.1 Immediately upon informing the accused of a complaint the bishop or major superior should reassure him that his welfare is important. In the light of the recommendations of the advisory committee, he should immediately be referred to an appropriate person or facility for assessment.

9.2 Future management and therapeutic intervention will depend largely on the circumstances of the complaint and in many instances must await the finalisation of any legal proceedings. The anxiety, that is consequent upon the complaint and the legal process, may impede any therapy.

9.3 The bishop or major superior must take a personal interest and be supportive of the accused during any assessment or treatment programme.

9.4 Treatment options and the details of particular personnel or facilities should be made available to bishops and major superiors by ACBCSIC.

10. PREVENTIVE STRATEGIES ESPECIALLY WHERE CHILDREN MAY BE VICTIMS

10.1 Each diocesan bishop and major superior shall ensure that all clergy and religious are made aware of the seriousness of criminal behaviour especially involving children. They should be warned of behaviour that is inappropriate or which might be

misunderstood as involving improper behaviour relating to children.

10.2 Particular prudence must be exercised in the supervision of children on camps, in dormitories, in showers and toilets, and in other situations where adults are alone with children. Any physical contact with children must be carefully assessed.

10.3 General rules of conduct should be laid down to cover circumstances of likely risk and these must be rigidly enforced. Unwillingness by an individual to comply might itself be symptomatic of a problem that requires further investigation.

10.4 Where a bishop or major superior is concerned about the behaviour of a cleric or religious he should initiate such assessment and therapy as may be indicated.

10.5 Any clerics or religious who feel that they may have problems in this area should be exhorted to seek therapy before the problem becomes unmanageable and they offend.

11. SCREENING AND FORMATION

11.1 All vocation directors and directors of formation should be made aware of the seriousness of criminal behaviour especially involving children. They should be aware of the indicators of this problem and the high risk of recidivism.

11.2 This issue should be considered regularly at conferences and meetings of vocation directors and directors of formation.

11.3 Prior to acceptance, prospective candidates for a seminary or religious community should be asked to warrant that they are not aware of any circumstances which might lead to an allegation of criminal behaviour.

11.4 Even a single incident of criminal behaviour that relates to children should be considered grounds for dismissing a student from the seminary or programme of formation.

12. CONFIDENTIALITY

12.1 The confidentiality of conversations and any documents that may be created must be safeguarded in the strictest way.

12.2 All clerics and religious should be exhorted by their bishops and major superiors to safeguard the reputations of all who may be involved in a complaint, including the complainant, victim, and the accused.

12.3 The publication of this protocol is at the sole prerogative of ACBCSIC.

APPENDIX:**SPECIAL ISSUES COMMITTEE - TERMS OF REFERENCE****1. Name:**

Australian Catholic Bishops Conference Special Issues Committee Relating to Priests and Religious

2. Function:

- To act as a resource for bishops and major superiors in connection with legal proceedings brought against a priest or religious, or in which a priest or religious is otherwise involved.
- To collate research locally and overseas.
- To advise bishops and major superiors in relation to any aspect of legal proceedings involving a priest or religious.
- To monitor all legal proceedings involving a priest or religious.
- To identify issues of concern to bishops and major superiors connected with legal proceedings involving a priest or religious, either in particular cases or generally.
- To ascertain available treatment options for priests or religious alleged to be involved in criminal behaviour.
- To establish a protocol to be observed by bishops and major superiors if an accusation is made against a priest or religious alleging criminal behaviour, and to advise on the implementation thereof.
- To identify needs with respect to the ongoing education and formation of clergy and religious to the extent that this is relevant to issues connected with legal proceedings.
- Generally to be of such assistance to bishops and major superiors as they might request from time to time.
- To advise the Australian Catholic Bishops' Conference and the Conference of Major Superiors with respect to representations which may need to be made from time to time to governments concerning legislation and public policy that may be relevant to legal proceedings involving priests or religious.
- To report at least annually to the ACBC.

3. Membership:

- Not more than five members, at least one of whom shall be a bishop.

- Members shall be appointed by and answerable to the Bishops committee for Clergy and Religious.