

REPORT ON MATTERS DISCUSSED AT THE MEETING OF THESPECIAL ISSUES COMMITTEEOF THE AUSTRALIAN CATHOLIC BISHOPS' CONFERENCEHELD ON MONDAY, 16TH NOVEMBER, 1992, AT 10.30 A.M.,AT C.C.I. OFFICES, 324 ST. KILDA ROAD, MELBOURNE.

PRESENT: Bishop Peter Connors (Chairman);  
 Father Brian Lucas; Father John Usher;  
 Father Dan Torpy; Brother Paul Noonan, CFC;  
 Sister Angela Ryan, CSB;  
 Messrs. Chris O'Malley (C.C.I.);  
 John Taylor (C.C.I.).

APOLOGY: Bishop Kevin Manning.

The following items were discussed and/or given consideration.

1. FATHER BRIAN LUCAS' REPORT AND RECOMMENDATIONS ARISING OUT OF HIS TRIP TO U.S.A. AND CANADA.

The following recommendations of Father Brian Lucas taken from his Report, prepared after his visit to the United States of America and Canada, were considered by the Committee:-

1. It is recommended that the present policy of encouraging a plea of guilty be continued.

The present civil law advice in Australia is not to plead guilty. However, it should be noted that a decision of not guilty will often tell only half the story. This recommendation will require further consideration by Special Issues Resource Groups and should be brought to their attention.

2. It is recommended that the present policy as set out in the Protocol be clarified so that it is clear that the Arch/Diocese will only make a loan of funds for legal costs.

This recommendation will help to clarify article 9.5 of the Protocol and should be referred to the A.C.B.C.

3. It is recommended that the Special Issues Committee investigate awards of compensation made under the Criminal Injuries Compensation Legislation.

The decision to award compensation under the Criminal Injuries Compensation Legislation does not require the same burden of proof as a criminal law decision. Hence, this was a very difficult matter and will require continual monitoring by the Special Issues Committee.

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4. It is recommended that the Special Issues Committee discuss further the question of discovery of documents and the procedures that should be followed for record keeping.

This recommendation would seem to be contrary to advice given by civil law experts in Australia. However, it does seem better to keep good records. On the other hand, it was noted that too many people are keeping too many records. This matter will require further consideration.

5. It is recommended that the Special Issues Committee investigate further the issue of vicarious liability.
6. It is recommended that the Special Issues Committee monitor any negotiations which take place concerning the application of the Statute of Limitations to old cases of child molestation.

Contact persons in Special Issues Resource Groups should be asked to keep the A.C.B.C. Special Issues Committee informed of such negotiations if and where they become aware of them.

7. It is recommended that the Special Issues Committee keep in regular contact with Mark Chopko, General Counsel, U.S.C.C., and Jennifer Leedy, C.C.C.B.

A query was raised in the United States whether a National Protocol is a good thing. There is a serious divergence of legal procedures in the various States of the U.S.A. However, our Protocol should not create problems because the civil law procedures are substantially the same throughout Australia. Bishop Connors is to discuss with Father Michael McKenna whether the A.C.B.C. should subscribe to "Law Briefs", published by the U.S.C.C.

8. It is recommended that C.C.I. produce some guide-lines to assist in the resolution of difficulties which will occur when the C.C.I. wishes to protect its rights to conduct litigation and the Arch/Diocese or Order wishes to instruct its own solicitors.
9. It is recommended that the Special Issues Committee investigate whether it is opportune for the A.C.B.C. and the A.C.L.R.I. to publish some form of pastoral statement concerning special issues.

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A statement will be drafted for the A.C.B.C. and the A.C.L.R.I. by Father Brian Lucas. The draft will then be considered by the Executive of the A.C.L.R.I. and tabled for adoption by the A.C.B.C. at the December Meeting. However, if the A.C.B.C. wishes to make substantial amendments to the statement then it is to be referred back to the Special Issues Committee.

10. It is recommended that the Special Issues Committee investigate the establishment of a therapy programme in Australia and establish a working party to dialogue with the St. John of God Brothers at Richmond.

It was agreed that Father Dan Torpy and Father John Usher should form a sub-committee to investigate the establishment of a therapy programme in Australia. (cf. item 3). The Committee agreed that the prognosis for offenders to be returned to any form of active ministry as a Priest is not good.

Father Lucas reported that the Apostolic See, after consultation with delegates of the U.S.C.C., was not willing to alter the Canon Law procedures for the laicization of offenders.

11. It is recommended that the Special Issues Committee provide ongoing in-service training for the personnel of the Special Issues Resource Groups.

This recommendation was treated under item 4.

12. It is recommended that C.C.I. continue to require that the adherence to the Protocol be a condition of insurance coverage.
13. It is recommended that C.C.I. require that ongoing regular education of personnel be a condition of insurance coverage and that it sponsor such education in co-operation with Centacare and the National Catholic Education Commission.

Mr. O'Malley suggested that there is now need for the appointment of a Risk Management Officer. C.C.I. will draft a job description for the Risk Management Officer and it was suggested that a semi-retired Brother, preferably an ex-Provincial would be a suitable appointee for such a position.

15. Centacare should be approached by the Special Issues Committee to ensure that there is adequate counselling available for complainants, victims and families.

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It was agreed that Centacare should charge some fee for services which are provided by it in counselling victims. Such fees are being met by Religious Institutes, but it seems that Dioceses are much more reluctant to provide such payments. A query was raised whether the Church, through its Centacare agencies, is the appropriate provider of counselling for victims of child molestation when a Church minister or employee has been the offender.

2. FOLLOW-UP FROM A.C.L.R.I. CONFERENCE ON 5TH OCTOBER, 1992.

Sister Angela Ryan reported that the Executive of the A.C.L.R.I. are considering whether an extra day at the end of the Annual Conference, which is to be held in Perth in 1993, should be added to the programme for the Conference.

Some Institutes of Religious Women are querying whether there is any advantage in taking out membership in the Pool. However, there is ample evidence that Institutes of Religious Women can very easily find themselves in need of such protection. Sister Eileen Anne Daffy, the Congregational Vicar of the Sisters of Mercy in Victoria, has drawn attention to the problem of the payment of membership in the Pool by incorporated schools. It will be very difficult to retain the confidentiality of the existence of the Pool when school councils are asked to make the payment.

The recommendation of the A.C.L.R.I. is that the Charter for the Pool should be put on hold at this stage and for some years.

3. AUSTRALIAN THERAPY CENTRE.

It was agreed that a sub-committee comprising Fathers D. Torpy and J. Usher be established to make recommendations concerning the establishment of Therapy Programmes and/or Centres in Australia. The small number of offenders who might be seeking such assistance would not warrant the establishment of a permanent Centre at the present time.

Father Usher reported that at present he is devoting twelve hours a week to assisting offenders with counselling and Father Torpy reported that he is now devoting ten hours to such clients.

Both Father Usher and Father Torpy reported that the service which they are providing is not sufficiently wholistic. They also pointed out that an immediate response is often required when allegations are made against an offender. It seems that some place be readily available to assist offenders.

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#### 4. STATUS AND STRUCTURE OF RESOURCE GROUPS.

It should be noted that the Special Issues Resource Groups in each State are not necessarily investigative bodies, but rather are there to provide advice to Bishops and Major Superiors.

It was agreed that there are serious "time bombs" ticking away in a number of Dioceses at the present time. It is very important that the alleged offender be given every opportunity to provide all the facts and be questioned very fully by an expert investigator.

Attention should be given to article 5.2 of the Protocol, which states that the Provincial Council is to establish the Special Issues Resource Group in the State. Some consideration should be given to the role of the State Conferences of Leaders of Religious Institutes in the establishment of such groups.

It was agreed that article 6.4.2 should read as follows:-

"The accused may bring the matter to the attention of a competent ecclesial authority, who shall immediately refer the accusation to the relevant Special Issues Resource Group. The tendency of the accused to minimise or deny involvement should be taken into account."

It was agreed that this alteration would avoid any apparent contradiction with the contents of articles 6.1, 6.2 and 6.4.1. In other words, it is not necessary for the Superior of the alleged offender to ask a member of the Special Issues Resource Group to carry out the investigation.

After general discussion, it was agreed that a Handbook should be drawn up by the Special Issues Committee to assist Special Issues Resource Groups to carry out their duties and responsibilities. So that this project can be brought to a satisfactory conclusion it was agreed that an all-day meeting be held early in 1993, to which the Contact Persons of the Special Issues Groups around Australia should be invited to attend. The members of the Special Issues Committee are to attend the meeting. Moreover, two Religious with appropriate qualifications are to be invited by the Special Issues Committee to assist in the discussions at the meeting.

It was decided that Fathers D. Torpy, J. Usher and B. Lucas should attend to the drafting of the Handbook and the drawing up of the agenda for the meeting, which is to be held at Simonds Hall in South Yarra, Melbourne. The meeting is to commence in the late afternoon with dinner and then conclude at 4.00 p.m. on the following afternoon.

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There is to be a meeting of the Special Issues Committee for a few hours after the conclusion of the meeting.

5. DISTRIBUTION OF THE PROTOCOL.

The extent of distribution of the Protocol is a major problem at the present time. Bishop Connors is to recommend to the A.C.B.C. that copies of the Protocol should now be given to key personnel in Dioceses, e.g. Seminary staff, Personnel Advisory Boards, Vicars for Clergy, etc. A new draft is then to be drawn up and arrangements are to be made for the in-service of such key personnel.

The distribution of the Protocol would not be such a major issue if the A.C.B.C. and the A.C.L.R.I. agree on the publishing of a pastoral statement.

6. CONTINUING NEED TO PROMOTE AND EXPLAIN THE POOL IN THE LIGHT OF A RECENT LETTER RECEIVED FROM CHRISTIAN BROTHERS, QUEENSLAND PROVINCE.

Mr. C. O'Malley will visit Brother Kingston, the Provincial Leader of the Queensland Province of the Christian Brothers, to ensure that he understands the implications of the letter which has been received from one of his advisers. It was noted that some Religious Institutes are relying on brokers for advice. However, the concept of the Pool still requires explanation and promotion to Leaders of Religious Institutes.

The Management Committee of the Pool may also establish a fee for those Institutes who postpone a decision to take up membership in the Pool.

Bishop Connors is to arrange for Father Brian Lucas to attend the December, 1992, Meeting of the A.C.B.C. so that he can provide the Bishops with a brief report on his visit to the United States.

7. LEGAL ADVICE RECEIVED FROM MINTER ELLISON MORRIS FLETCHER ON PROTOCOL FOR CHURCH WORKERS.

The Committee was in receipt of a copy of a letter from Mr. Richard West of Minter Ellison Morris Fletcher addressed to Mr. J. F. Taylor on the Protocol for Bishops and Major Superiors.

Father Brian Lucas commented on some of the matters raised by Mr. West.

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Paragraph 3 (ii) - As a general rule the ecclesiastical authority should place the matter in the hands of the Police or the other appropriate statutory body. However, there are occasions when the parents of the victim and the victim himself does not wish to refer the matter to the Police.

Paragraph 3 (iv) - It is not always possible to postpone the taking of action by the employer, particularly when a lay teacher pleads not guilty to accusations made against him.

Paragraph 4 - It was noted that the draft Protocol for Church workers has now been referred to Mr. Paul Gair, the Executive Officer of the Australian Catholic Industrial Relations Commission. In every State there is good advice readily available from industrial relations experts. Some consideration might be given as to whether a clause can be included in the employment agreement as to whether the employer has the right to stand down an employee when allegations are made against him. It is very easy to obtain a Police check on lay personnel when they apply for appointment to Church organizations.

Paragraph 5 (iii) - The priority in providing pastoral care is to be given to the victim.

Bishop Connors is to enquire of Mr. Paul Gair as to when he will be able to provide comments on the draft Protocol for Church workers.

8. REQUESTS TO EXTEND POOL TO DIOCESES/RELIGIOUS INSTITUTES OF PAPUA NEW GUINEA AND NEW ZEALAND.

C.C.I. has received a request through Father Rodger Austin as to whether New Zealand can take up membership in the Pool. The Provincial Leader of the Society of the Divine Word has made a similar request on behalf of his personnel in Papua New Guinea.

It was agreed that it is still too early to make such a facility available for Dioceses and Institutes outside Australia.

9. GENERAL BUSINESS.

Sister Angela Ryan gave a brief synopsis on the operations of Casa House and Project Anna in Melbourne. Both organisations are adopting a very militant attitude towards clergy who offend against women.

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A request has been received by C.C.I. from Centacare in West Australia to fund the appointment of a counsellor in the Child Migrant Referral Service. However, it was noted that C.C.I. is not the sole insurance agent involved in these matters.

C.C.I. reported that they are now dealing with a civil claim for damages as a result of a child molestation offence.

10. DATE FOR NEXT MEETING.

The next meeting will be held at the conclusion of the special meeting with contact persons of Special Issues Resource Groups.

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