

**STRICTLY CONFIDENTIAL**  
**AND LEGALLY PRIVILEGED**  
**DISCUSSION DRAFT ONLY**

**ROMAN CATHOLIC ARCHDIOCESE OF MELBOURNE**

**RESPONSE TO ALLEGATIONS OF SEXUAL ABUSE  
MADE AGAINST THOSE ASSOCIATED WITH THE CHURCH**

**A FOUR PART PLAN**

**DRAFT 5 FOR DISCUSSION ON 18 OCTOBER 1996**

**BACKGROUND**

On 26 April 1996 the Catholic Bishops of Australia published a Pastoral Letter dealing with the issue of sexual abuse by priests and religious.

In this Pastoral Letter they stated that:

"With deep regret, we acknowledge that a number of people associated with the Church have betrayed the trust placed in them by sexual abuse of minors and adults. In doing so, they have acted in a way that is contrary to everything the Church stands for.

We cannot change what has happened in the past, undo the wrongs that have been done, or banish the memories and the hurt. In seeking to do what is possible, our major goals must be: truth, humility, healing for the victims, assistance to other persons affected, an adequate response to those accused and to offenders, and prevention of any such offences in the future".

It is in the spirit of these reflections that the following document is published. It does not pretend to be a final and comprehensive pastoral response to this deplorable reality that has so shocked our community. Its parameters are more limited. It aims simply to offer a satisfactory administrative framework around which situations requiring action can be dealt with in a proper and immediate manner.

## 1. INTRODUCTION

### 1.1 The plan has four parts:

- Provision of professional support to victims
- Investigation of alleged offences
- Compensation
- Parish pastoral response.

1.2 The plan applies to allegations of sexual abuse made against any priest of the Archdiocese and to lay persons and religious working within the Archdiocese ("Church person").

1.3 An allegation of sexual abuse includes any form of criminal sexual assault, sexual harassment or other conduct of a sexual nature that is inconsistent with the public vows, integrity of the ministerial relationship, duties or professional responsibilities of Church persons.

1.4 In this plan a "complainant" is any person making a complaint of sexual abuse against a Church person, and an "accused" is a Church person against whom an allegation of sexual assault is made.

1.5 The plan aims to provide a structure that, to the maximum extent possible, is independent of the Archdiocese and to respond to the issues in a professional, caring and appropriate manner.

1.6 The initiatives will be administered from premises to be established in Victoria Street (the "centre") [? Ted - details]. The centre will provide the "public face" of the plan and be the first point of call for those wishing to make allegations or complaints.

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- 1.7 The centre will be staffed by appropriately trained "contact persons". The contact persons will perform an intake assessment and ensure that complainants are directed to the appropriate parts of the plan. The contact persons will develop a case management plan and provide support to complainants in relation to each part of the plan. [? flesh out]

## 2. PROFESSIONAL SUPPORT SERVICES

- 2.1 The Archbishop is appointing Professor Richard Ball (the "support professional") to be responsible for administering the provision of professional support services, namely treatment, counselling and support to victims of accused Church persons within the Archdiocese.
- 2.2 The professional support service will operate from the centre and will be staffed by persons with appropriate qualifications and experience. Professional support services will be available directly from these staff. Complainants may also be offered services from members of a panel. In addition, the services will administer reimbursement of the costs of approved private treatment, counselling and support.
- 2.3 Contact persons will be staff of the professional support service. The contact person for a particular complainant will not provide treatment to that complainant.
- 2.4 The role of the professional support service is not investigatory.
- 2.5 The existence of the professional support service will be widely publicised. Complainants will be free to approach the service directly. The service will also receive referrals from the other parts of this plan. There will be regular meetings between the service and the Archbishop's media spokesperson to ensure that the service receives appropriate publicity.

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- 2.6 The service will respect the confidentiality of complainants, but will comply with legal reporting requirements. It may also disclose information with the consent of the complainant. Complainants will be encouraged to refer allegations of sexual abuse to the independent commissioner for investigation.
- 2.7 The professional support services will be available to victims of sexual abuse by accused Church persons within the Archdiocese. If, having investigated an allegation of sexual abuse, the independent commissioner concludes that there is no prima facie case to support the allegation, the professional support services may be withdrawn.

### **3. THE INDEPENDENT COMMISSIONER**

- 3.1 The Archbishop is appointing Mr Peter O'Callaghan QC to act as an independent commissioner to enquire into and advise him with respect to allegations of sexual abuse by Church persons.
- 3.2 The independent commissioner's role will be:
- to investigate allegations of sexual abuse by Church persons, either himself or with the assistance of delegates
  - to consult as he considers it appropriate with the accused, the complainant and relevant witnesses
  - to provide a recommendation to the Archbishop as to interim action to be taken: for example in the case of a priest, whether the priest should be placed on administrative leave
  - to encourage the appropriate reporting of criminal activity to the police.

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- 3.3 Immediately upon a complaint of sexual abuse being referred to him, the commissioner shall inform the complainant that he or she has an unfettered and continuing right to report the matter to the police. The commissioner shall appropriately encourage the exercise of that right.
- 3.4 The commissioner will respect obligations of confidentiality imposed on him by complainants to the maximum extent permitted by law. Except where those obligations preclude him from so doing, he may if he considers it appropriate report matters to the police.
- 3.5 The commissioner will not act so as to prevent any police action. [? mention discussion, liaison, approval of police???].
- 3.6 The commissioner will be assisted in his task by a consultative committee that he shall appoint with the concurrence of the Archbishop. This committee shall have an appropriate mix of men and women and shall include:
- one or more psychiatrists, and/or other medical specialists with appropriate expertise;
  - a priest, canon lawyer and notary;
  - a lawyer or lawyers to assist him [?]; and
  - other lay persons.
- 3.7 The activities of the commissioner will be subject to canon law and to rules of natural justice. [To be discussed]
- 3.8 Complainants will have the right to nominate a support person to assist them during the investigation by the commissioner.

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3.9 Accused persons will be informed of the nature of the charges made against them, of the name of the complainant, of the accused person's right to protection of his or her good name, right to legal and/or canonical representation and right to silence. They will also be offered representation by a suitable person.

\*\*\*\*\* ??? delete .10 - .11 ????

\*\*\*.10 If the independent commissioner finds no prima facie case then:

- no action need be taken by the Archbishop in respect of the allegations;
- the Archdiocese need not meet any counselling or treatment costs for the accuser;
- the accuser will be again informed of their right to make a report to the police.

\*\*\*.11 If the commissioner establishes a prima facie case against the accused, then:

- if the accused is a priest, the commissioner will provide a recommendation to the Archbishop as to whether his faculties should be withdrawn and he be placed on administrative leave. The Archbishop must consult with the Promoter of Justice and summon the priest before acting on the recommendation;
- if the accused is a lay person or a religious then the commissioner will take legal advice as to the appropriateness of interim measures;

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- if criminal charges are laid against an accused priest, then the withdrawal of faculties and administrative leave shall continue until the criminal charges have been dealt with;
- if the priest admits the criminal charges or they result in a conviction, and the canonical time limit for proceedings has not elapsed, the Archbishop can decree whether an ecclesiastical judicial process or an administrative process is expedient. Where appropriate, and subject to the constraints imposed upon him by canon law, the Archbishop will give instructions to commence the process to laicise the priest;
- if a complaint has been made to the police, no charges have been laid within 3 months from the date of the complaint, and the police advise that no charges are presently intended to be laid, then the Archbishop may remove the restrictions on the accused priest unless the commissioner recommends that he not do so;
- notwithstanding the absence of a complaint to the police, the commissioner may recommend to the Archbishop that the faculties of a priest should be withdrawn or that he be placed on administrative leave.

#### 4. **COMPENSATION PANEL**

- 4.1 A compensation panel will be established to provide ex gratia compensation to complainants of illegal sexual abuse by accused Church persons within the Archdiocese.
- 4.2 The function of the panel is to provide complainants with an alternative to the pursuit of legal proceedings against the Archbishop or the Archdiocese. It is expected that the panel will provide an informal rather than legalistic approach and a forum for a fair, just and speedy settlement of claims.

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- 4.3 The establishment of the panel and the payment or offer to pay compensation is not an admission of legal liability. The Archbishop, the Archdiocese and the Church do not accept that they have any legal obligation to make payments to complainants. The Archbishop also recognises that there is strong opposition from some quarters to the making of any compensation payments. The compensation scheme takes these factors into account and strives to achieve a fair and reasonable compromise.
- 4.4 The panel will operate in a manner similar to a number of Ombudsman/Alternative Dispute Resolution schemes.
- If the panel determines that an amount of compensation is to be paid then that determination will bind the Archdiocese.
  - If the recommendation is not acceptable to the complainant then that complainant is free to pursue other remedies. In that event neither the Archdiocese nor the complainant will be able to rely upon any material produced during the compensation panel process.

**THIS MEANS THAT THEY CAN TAKE THE MONEY AND KEEP SUING. IS THIS WHAT IS INTENDED???**

- 4.5 The panel's ability to award compensation is limited to \$50,000.00 per victim [here we will need to cover claims arising through complainants].

**RAL suggests: The maximum ex gratia payment that will be available to any complainant from the panel will be \$50,000.00.**

- 4.6 Complainants remain free to use the normal court processes if they do not wish to avail themselves of the compensation panel process. In that event they should expect that the proceedings will continue to be strenuously defended.

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4.7 The membership of the panel will consist of:

- an eminent psychologist or psychiatrist;
- an eminent lawyer;
- two other eminent lay persons.

The panel will have a chairperson with a casting vote and will if possible consist of two men and two women.

4.8 Although the initial appointment of members of the panel will be by the Archbishop, the panel shall to the maximum extent possible operate independently of the Archbishop and the Archdiocese.

4.9 The panel will determine guidelines appropriate to the method in which it is to operate.

4.10 To be eligible for an ex gratia compensation payment, the complainant will need to establish the factual basis of the claim. The panel will consult and liaise with the independent commissioner in this regard.

4.11 The amount of the ex gratia payments to be offered by the panel will reflect the absence of a valid legal claim against the Archdiocese or the Archbishop together with the other matters referred to at 4.3. **[? comments]**

4.12 Payments will not be made for complaints relating to alleged offenders who were not priests of the Archdiocese, nor will it be paid in relation to complaints regarding lay persons or religious unless they were working within the Archdiocese and subject to the employment or control of the Archbishop. Compensation will in general only be available where the conduct in question constitutes a criminal offence, subject to a discretion retained by the panel.

## 5. PARISH PASTORAL RESPONSE

- 5.1 In addition to the measures set out above, there will be a pastoral response team that will operate at a parish level. The team will offer spiritual support and counselling at a parish level and provide a forum for pastoral healing.
- 5.2 The parish pastoral response team will be administered by the Vicar-General's office.
- 5.3 Members of the parish pastoral response team will not discuss sexual abuse issues with the media, save with the specific prior permission of the Archbishop, the Vicar-General or the Archbishop's media adviser.
- 5.4 Members of the team will not assist claimants before the compensation panel or in legal proceedings.

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