

STRICTLY CONFIDENTIAL

(FOR BISHOPS MAJOR SUPERIORS AND SUPERIORS ONLY)

AUSTRALIAN CATHOLIC BISHOPS CONFERENCE
SPECIAL ISSUES SUB-COMMITTEE

PROTOCOL FOR DEALING WITH ALLEGATIONS OF
CRIMINAL BEHAVIOUR

PLENARY MEETING APRIL, 1992

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1. PREAMBLE

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

It established the Australian Catholic Bishops Conference Special Issues Committee Relating to Priests and Religious (now titled Special Issues Sub-Committee).

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

This protocol, which has been approved by the Australian Catholic Bishops Conference, is limited to allegations of criminal behaviour made against a cleric or religious.

It is understood that this protocol in no way affects any rights and obligations, arising from canon law either universal or particular, of bishops or major superiors or superiors.

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

2. DEFINITIONS

In this protocol

'ACBCSIC' means the Australian Catholic Bishops Conference Special Issues Sub-Committee

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

'bishop' means the diocesan bishop or the diocesan administrator or whoever is called to the governance 'sede impedita' of a diocese in Australia or their authorized representatives

'cleric' means a bishop, diocesan priest or deacon, or priest or deacon incardinated in a personal prelature, and any person formally accepted into the process of formation for the sacrament of order by a bishop or superior

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'competent ecclesial authority' means the bishop, the major superior, the superior as herein defined for the purposes of this Protocol

'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

'institute' means a clerical or lay Institute of Consecrated Life or Society of Apostolic Life recognised by the Catholic Church

'major superior' means the competent major superior, in accordance with the Institute's own law, resident in Australia of the accused or if the Institute has no major superior resident in Australia that Institute's highest authority resident in Australia or their authorized representatives

'religious' means a member of an Institute, and any person formally admitted into an Institute's programme of formation by the competent superior in accordance with an Institute's own law

'Special Issues Resource Group' means a group established in accordance with paragraph 5 below and any reference to 'Special Issues Resource Group' includes a reference to some or all of the members thereof

'superior' means the highest authority, resident in Australia, of a Personal Prelature or his authorized representative

'victim' refers to the person who is alleged to be the victim of criminal behaviour involving the accused

Words importing the masculine gender only include the feminine gender and vice versa.

3. RESPONSIBILITIES OF BISHOPS, MAJOR SUPERIORS AND 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 and responsibility when the actions of members of the 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 Superiors have a similar duty and responsibility when the actions of members of the Personal Prelature 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.

3.4 The investigation, required by this protocol, and resolution of allegations of criminal behaviour against the accused shall be the responsibility of the competent ecclesial authority whose responsibility is personal. Whilst this protocol requires that others may assist with the process of investigation and make recommendations, it is the competent ecclesial authority personally who bears the responsibility for decisions.

3.5 Allegations of criminal behaviour against the accused will affect the whole church in Australia, and even the universal church. Bishops, major superiors and 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 The competent ecclesial authority must be and appear to be impartial during any process of investigation, lest the victim or complainant should perceive that the competent ecclesial authority 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, the competent ecclesial authority is obliged to take into account and preserve various values.

4.1.1 To act with justice, mercy and charity.

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

4.1.3 To show pastoral solicitude for the welfare of any complainant, victim, victim's family or accused.

4.1.4 To not call into question the good reputation of any person whether complainant, victim or accused and their right to privacy.

4.1.5 To act so as to prevent or remedy scandal.

5. RESOURCES

5.1 The investigation, required by this protocol, 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 Provincial Council, in such Ecclesiastical Provinces as ACBCSIC recommends, a Special Issues Resource Group consisting of personnel who are skilled in dealing with allegations of criminal behaviour.

5.2.1 The personnel of the relevant Special Issues Resource Group are to be available to the competent ecclesial authority as each case may require for the purposes of assisting such authority by:

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

5.2.2 The ACBCSIC shall offer advice on appointments to, and the activities of, such Special Issues Resource Groups.

5.2.3 Membership of Special Issues Resource Groups shall include at least one priest as well as other professionals skilled in the relevant social sciences.

5.3 The relevant Special Issues Resource Group shall advise the competent ecclesial authority of the names of civil lawyers in each State or Territory who are available to act in these matters.

5.4 The ACBCSIC shall provide to the competent ecclesial authority as required a list of personnel and facilities that are available for counselling of complainants, counselling and therapy for victims and their families, and assessment and therapy for the accused.

5.5 The Provincial Council and the relevant major superiors and superiors, shall nominate a spokesperson(s) who shall be the only authorized person(s) available to comment to the media on behalf of the competent ecclesial authority in relation to allegations of criminal behaviour. The ACBCSIC and the relevant Special Issues Resource Group shall consult with such spokesperson(s).

6. COMPLAINTS

6.1 Whenever the competent ecclesial authority receives information of alleged criminal behaviour the matter shall immediately be referred, except in circumstances of a most serious and extraordinary nature, to the relevant Special Issues Resource Group.

6.2 In circumstances of a most serious and extraordinary nature, the competent ecclesial authority shall immediately conduct, through another suitably qualified delegate, an inquiry into the complaint about the alleged criminal behaviour.

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 competent ecclesial authority in a number of ways.

The complaint may be made

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

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

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 competent ecclesial authority, who shall immediately refer the matter to the relevant Special Issues Resource Group.

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

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

6.4.3 Complaints received by the competent ecclesial authority directly from a victim and/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 skilled in this area so that the complaint can be investigated. The competent ecclesial authority shall immediately refer the matter to the relevant Special Issues Resource Group.

6.4.4 Complaints received from other persons, including clerics or religious, should be received sympathetically. The complainant should be informed that he will be contacted by a person skilled in this area so that the complaint can be investigated. The competent ecclesial authority shall immediately refer the matter to the relevant Special Issues Resource Group.

6.4.5 It should be made known to departmental officers that, subject to the obligations of law, the competent ecclesial authority wishes to be informed by departmental officers of allegations against a cleric or religious.

When a complaint comes to the attention of the competent ecclesial authority in this way, the matter shall be referred immediately to the relevant Special Issues Resource Group and the departmental officers informed that appropriate action has been initiated.

6.4.6 Complaints that come from the media should be noted and the complainant informed that the complaint will be investigated. The matter shall be referred immediately to the relevant Special Issues Resource Group.

General inquiries from the media should be referred to the nominated spokesperson(s) who shall be fully briefed by the competent ecclesial authority and/or the relevant Special Issues Resource Group.

6.4.7 Anonymous complaints should not be simply ignored but shall be referred immediately to the relevant Special Issues Resource Group for assessment and if necessary investigation.

6.5 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.

7. PRELIMINARY INVESTIGATION

7.1 The relevant Special Issues Resource Group shall assist the competent ecclesial authority to investigate the complaint. In the light of the nature of the complaint, the age of the victim and the circumstances generally, the relevant Special Issues Resource Group shall consider, without prejudice to paragraph 6.4.3 above, whether it is necessary or prudent to either initiate contact with, or otherwise interview, the victim and/or the victim's family.

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

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

7.2 The complainant should be reassured

7.2.1 that the Church is concerned for the welfare of the victim and that the competent ecclesial authority shall make appropriate arrangements for victims and victims' families to be given advice regarding counselling or therapy which may or may not be provided by an agency of the Catholic Church

7.2.2 that the competent ecclesial authority must act in accordance with the law and not in a way that will prejudice the process of law

7.2.3 that the Church takes allegations of this kind seriously

7.2.4 that justice requires that the accused be heard.

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

7.3.1 that the accused is guilty

7.3.2 that there is any liability in damages

7.3.3 that any particular course of action will follow any investigation.

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7.4 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, pending investigation and resolution of the allegation, it is standard procedure for the accused to be given administrative leave. It does not imply any admission of guilt.

7.5 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.

7.6 The relevant Special Issues Resource Group shall then report to the competent ecclesial authority

7.6.1 that there is no substance to the complaint and no further action should be taken

7.6.2 that, although there is no substance to the complaint and no further action should be taken, as the allegation has become public specific action must be taken to repair any scandal or remedy any injury to anyone's good reputation

7.6.3 that there appears to be substance to the complaint and that there is need for further investigation.

8. THE RESPONSE OF THE ACCUSED

8.1 If the relevant Special Issues Resource Group informs the competent ecclesial authority that it considers there is substance to the complaint and the matter requires further investigation, the competent ecclesial authority shall forthwith (within hours) require the accused to attend for an interview.

8.2 The competent ecclesial authority should simply inform the accused of the nature of the complaint and inform him that the relevant Special Issues Resource Group shall enquire into the complaint. The accused shall be given the opportunity to seek legal (canonical and civil) advice. The accused is entitled to the protection of the law. He 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.

8.3 The relevant Special Issues Resource Group shall recommend to the competent ecclesial authority what further action is required.

8.4 The competent ecclesial authority 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 process of law.

9. FURTHER INVESTIGATION

9.1 If further investigation is required the procedure shall be for the accused to be given administrative leave from any public duties.

9.2 Proper arrangements must be made for the accused to reside in a secure place during the period of administrative leave, and consequently the competent ecclesial authority shall choose an appropriate place for him to reside pending the outcome of the investigation. The accused should have access to such spiritual and psychological assistance as he may require.

9.3 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. The accused ought not undertake any public function since this might create greater scandal if he is subsequently found to have offended.

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9.4 If the accused refuses to take administrative leave or is otherwise unco-operative action may be taken in accordance with the provisions of CIC can. 1319. In such circumstances specific advice should be sought from an expert in canon law.

9.5 If it appears even possible that the complaint will involve legal proceedings the accused should be advised by the competent ecclesial authority to retain his own lawyer independent from the lawyer retained in accordance with paragraph 5.3 above and independent from any lawyer usually retained either by the institute, diocese, personal prelature 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.

9.6 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.

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

9.7.1 The competent ecclesial authority shall consult with the relevant Special Issues Resource Group 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 administrative leave should make it clear that such leave is a routine requirement that does not imply any admission or presumption of guilt.

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

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9.8 Where it appears that legal proceedings are unlikely the competent ecclesial authority must personally consider, in the light of all the information available to him, whether it is prudent to cease the period of administrative leave, reassign the accused or provide him with psychological therapy.

9.9 If legal proceedings are commenced the competent ecclesial authority shall not act in any way which would prejudice the fair trial of the accused.

9.10 If the accused is not committed for trial, or is tried and acquitted, the competent ecclesial authority must personally consider, in the light of all the information that is available to him, whether it is prudent to cease the period of administrative leave, reassign the accused or provide him with psychological therapy.

9.11 If the accused pleads guilty or, after trial, is found guilty, of criminal behaviour, whether or not a conviction is recorded, the competent ecclesial authority should carefully consider, in the light of any criminal penalty, what action should be taken in regard to the accused and what should be done to remedy any scandal.

9.12 In making these decisions the competent ecclesial authority must give first priority to preventing, as far as possible, any future risk to others, especially children.

9.13 A negligent failure to take reasonable steps to prevent such risk could expose the competent ecclesial authority 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.

10. CONFIDENTIALITY

10.1 In all matters relating to any conversations and documents and the preliminary and further investigations required under this protocol professional secrecy is to be observed.

10.2 All clerics and religious should be exhorted by their competent ecclesial authority safeguard the reputations of all who may be involved in a complaint, including the complainant, victim, and the accused.

11. TREATMENT OPTIONS

11.1 Immediately upon informing the accused of a complaint the competent ecclesial authority should reassure him that his welfare is important. In the light of the recommendations of the relevant Special Issues Resource Group, he should immediately be referred to an appropriate person or facility for assessment.

11.2 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.

11.3 The competent ecclesial authority must take a personal interest in and be supportive of the accused during any assessment or treatment programme.

11.4 Treatment options and the details of particular personnel or facilities should be made available to the competent ecclesial authority by ACBCSIC.

12. PREVENTIVE STRATEGIES - ESPECIALLY WHERE CHILDREN MAY BE VICTIMS

12.1 The competent ecclesial authority shall ensure that all clerics 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.

12.2 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.

12.3 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 consideration.

12.4 Where the competent ecclesial authority is concerned about the behaviour of a cleric or religious he should initiate such assessment and therapy as may be indicated.

12.5 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.

12.6 The competent ecclesial authority shall ask a cleric or religious, requesting incardination into a diocese or personal prelate or transfer into an institute and/or to carry out any ministry or apostolate in a diocese, to warrant that he is not aware of any circumstances which might lead to an allegation of criminal behaviour.

12.7 When a cleric or religious requests to exercise a ministry in a diocese or personal prelate, the competent ecclesial authority of that diocese or personal prelate shall request, from the competent ecclesial authority in whose diocese or personal prelate the cleric or religious previously exercised a ministry, a warranty that such authority is not aware of any circumstances which might lead to an allegation of criminal behaviour.

13. PREVENTIVE STRATEGIES - SCREENING AND FORMATION

13.1 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.

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

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

13.4 Even a single incident of criminal behaviour that relates to children should be considered grounds for dismissing a seminarian from a seminary or a candidate from an institute's programme of formation.