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Australia

16 May 2013

The Honourable Georgie Crozier MLC  
Chair  
Family and Community Development Committee  
Parliament House  
Spring Street  
MELBOURNE VIC 3000

Dear Ms Crozier

I am writing ahead of my appearance before your Inquiry on Monday, 20 May.

One of the responsibilities given to your Committee in relation to its Inquiry into the processes by which religious and other non-government organisations respond to the criminal abuse of children within their organisations includes whether changes to law or to practices, policies and protocols are required to help prevent the criminal abuse of children and to deal with allegations of such abuse.

In *Facing the Truth*, the submission of the Catholic Church in Victoria to your Inquiry, two proposals for the reform of the law were made regarding Mandatory Reporting (see Section 15.5 at pages 108 to 109) and reporting to the police (see Section 16.5 at page 114).

Having reviewed submissions which have been made to you and having listened carefully to the testimony which has been presented to you during the course of the Inquiry, we have identified three further reforms to strengthen the Working With Children Check system, to clarify an extended limitation period for legal claims against the Church and to consider statutory oversight of our processes, *Towards Healing* and the *Melbourne Response*.

On behalf of the Bishops of Victoria and the leaders of Catholic Religious Victoria and Catholic Religious Australia, I attach a submission regarding these reform proposals and commend these to you and the Committee for your careful consideration.

Yours sincerely in Christ

A handwritten signature in black ink, appearing to read "A. J. Phillip", with a cross symbol to the left.

ARCHBISHOP OF MELBOURNE

## PARLIAMENTARY INQUIRY INTO THE HANDLING OF CHILD ABUSE BY RELIGIOUS AND OTHER ORGANISATIONS

### SUBMISSION BY THE CATHOLIC CHURCH IN VICTORIA REGARDING REFORM PROPOSALS

#### A REFORM PROPOSALS IN *FACING THE TRUTH*

##### 1. Reporting to the Police

In *Facing the Truth*, the Church reiterates its view that the most appropriate avenue for the investigation of criminal conduct is the police. This remains the Church's view. In submissions and evidence to the Inquiry, Victoria Police make various assertions about the Church's processes, and in particular The *Melbourne Response*, which are demonstrably wrong. The Church notes the Right of Reply submitted by the Archbishop dated 17 October 2012 and that a detailed submission in reply dated 26 April 2013 has been made by Mr Peter O'Callaghan QC. There has been no response from the Police to either submission. The Church also notes that evidence has been provided to the Inquiry about the procedures operative in New South Wales in relation to Police reporting. In addition, the Church notes the submissions about reporting to the police made by various victim and advocacy groups.

At paragraph 16.3 of *Facing the Truth*, the Church refers to the tensions that exist between the wishes of a victim who does not want their allegations of abuse reported to Police, and the view that all allegations of criminal conduct made outside the confessional should be reported to and investigated by the Police. As we said in *Facing the Truth*, an appropriate balance to this tension is an important matter for the Inquiry to consider.

The Church reiterates its position, as set out in paragraph 16.5 of *Facing the Truth* as follows:

##### 16.5 – Striking the balance

In considering these issues, this Inquiry needs to strike the appropriate balance between the rights of the individual and the rights of the community. In striking the right balance, the privacy of an individual should not be ignored. The Victorian Charter of Human Rights and Responsibilities gives legal protection to 20 fundamental human rights, including the right to privacy and reputation.

The importance of the right to privacy and reputation is recognised by section 13 of the Charter, which states:

*A person has the right-*

- (a) *not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and*
- (b) *not to have his or her reputation unlawfully attacked.*

The Church acknowledges that in some circumstances it is important for the police to be aware that allegations of criminal conduct have been made. This information can help with the investigation of other crimes and the support given to other victims. It is also true that sometimes victims who decline to go to the police will reconsider their position when they learn that the police are already investigating other complaints against the accused. In some circumstances, reporting abuse can help prevent further offences being committed.

The Church in Victoria would support a situation in which all allegations of serious crimes are reported to the police in a way that avoids infringing the confidentiality and privacy of victims who have come forward on that basis.

This balance would be achieved via a regime in which details of an allegation, other than those that could identify the complainant, are reported to the police on the basis that the police are not at liberty to use their powers of compulsion to discover the identity of the complainant from the source of the report. The sanctity of the confessional must also remain protected.

The Archdiocese of Melbourne has sought to reach agreement with Victoria Police on a protocol to establish such a procedure. Although Victoria Police has previously declined to agree to such a protocol, the Church in Victoria would welcome either a protocol or legislative reform that appropriately balances the right of an adult victim to seek confidential assistance from the Church, with the investigative and prosecutorial functions of Victoria Police.

The Church is particularly interested to hear any proposal as to how the prosecution of an alleged offender could occur without intruding on the expressed desire of a victim for their privacy and confidentiality to be maintained. The Church would strongly welcome such prosecutions if they are possible.

## 2. Mandatory Reporting

Distinct from the reporting of current and historical matters to the police, mandatory reporting is the reporting by mandated reporters to the Department of Human Services in relation to children who are currently at risk.

At paragraph 15.5 of *Facing the Truth*, the Church submitted as follows:

### 15.5 -- Submission of the Church regarding mandatory reporting

Having carefully considered Recommendation 47 of the PVVC Report, the Church accepts that legislative amendment is appropriate in order to enhance the protection of children. However, the Church does not agree with the recommendation that a separate offence be created in the *Crimes Act 1958* (Vic) and respectfully submits that the proposed amendment is misconceived.

Recommendation 47 proposed that a priest or religious who has "*a reasonable suspicion a child ... is being, or has been, physically or sexually abused by an individual within a religious or spiritual organisation*" is required to report that suspicion.

Accordingly, a priest who was aware that a child was being abused by another priest would be obliged to report that, but a priest who was aware that a child was being abused by a family member such as a father or uncle would be under no obligation to report.

Accepting, as the Church does, the important role of mandatory reporting in the protection of children, it is misconceived to suggest that a child who is abused by a priest is in need of protection but that a child who is abused by a family member is not. Nevertheless, this would be the consequence of implementing recommendation 47. Accordingly, the Church does not support the way in which Recommendation 47 proposes for clergy and Church persons to be given a duty of mandatory reporting.

Another difficulty with Recommendation 47 is in defining, and proving, who is "a member" of a religious or spiritual organisation.

However, Recommendation 47 of the PVVC Inquiry also proposed:

- An exemption for information received during the rite of confession; and
- That the duty to report only operates prospectively so that the knowledge required must only relate to situations where there is concern about current danger to a child, not to knowledge obtained at any time during an individual's life.

The Church supports these aspects of Recommendation 47.

The Church submits that the most effective way of achieving the outcome desired by the PVVC Inquiry is for the current requirements relating to mandatory reporting under the CYF Act to be extended to ministers of religion and other religious personnel, with an exemption for information received during the rite of confession.

The Church further submits that the requirement of mandatory reporting should operate prospectively, as recommended by the PVVC Inquiry, so that it only covers reasonably suspected instances of physical and sexual abuse of a person who is under the age of 18 at the time the reporter forms the suspicion of such abuse. Such a provision would otherwise be impractical and unworkable.

The Church submits that this recommendation ought to be adopted.

## **B ADDITIONAL REFORM PROPOSALS MADE BY THE CATHOLIC CHURCH IN VICTORIA, IN LIGHT OF SUBMISSIONS AND TESTIMONY TO THE INQUIRY**

### **3. Working with Children Checks**

It is noted that the Working with Children Check (WWCC) process administered by the Department of Justice (DOJ) is based on the charging and conviction of persons in the criminal courts. While the legislation does permit DOJ to make other inquiries, and prescribes a number of organisations (eg. The Victorian Institute of Teaching) as prescribed bodies from which DOJ can consider information, it is not clear that the legislation would allow DOJ to consider information that is submitted to it by bodies such as the Church in relation to an applicant for, or a holder of, a WWCC.

It is submitted that the *Working with Children Act 2005* be amended to clarify that DOJ is empowered to take account of information submitted to it by the Church and like entities. The Church proposes that the relevant Church authority (ie. Archbishop, Bishop or Congregation Leader) would then report to DOJ all adverse findings made against living Church persons by the *Melbourne Response's* Independent Commissioner and all substantiated assessments made through *Towards Healing*, that relate to conduct in Victoria involving a child, where that conduct could amount to a criminal offence to which the WWCC regime applies.

Once DOJ received this information, all of its usual processes and powers would then be open to it to suspend or remove WWCC cards or to conduct further inquiries. This proposal would empower DOJ to remove a WWCC card held by a Church person who was the subject of an adverse finding but not convicted, and to refuse an application for a WWCC by such a person.

### **4. Limitation Periods**

Limitation periods in Victoria are regulated by the *Limitation of Actions Act 1958*. The relevant limitation period applicable to a cause of action depends largely on the nature of the claim, the injuries complained of and any relationship between the parties. In relation to personal injury claims, the Act imposes a 3 year limitation from when the injury was discoverable. This is extended to 6 years if the plaintiff was under a legal disability at the time of the injury.

The Courts have the power to extend limitation periods where satisfied that it is just and reasonable to do so.

It is noted that Part IIA of the Act provides for a special limitation period for minors who are injured by parents or guardians of the victim or a close associate of a parent or guardian of the victim. In essence, time does not start running until the later of when the victim becomes aware of the claim or when they turn 25, with a "long stop" deadline when the victim turns 37. This provides a significantly longer period in which victims injured as children can bring claims.

The Church considers that these extended provisions provide an appropriate standard for claims made against religious, non government and government institutions. To the extent that there is doubt as to whether the extended limitation periods provided for by Part IIA of the Act would apply to claims against those in a position of special relationship with a child, the Church would support amendments to clarify the position.

The Church considers that a shorter limitation period would not be just for victims. However, there is no case for allowing a longer limitation period in claims against the Church than for a claim against a parent. Arguments that limitation periods should be abolished in claims against the Church are contrary to the public policy behind the legislation.

In making this recommendation, it is noted that in addressing claims through the *Melbourne Response*, through *Towards Healing* and through other negotiations, the Church does not rely on limitation periods to accept a claim or to avoid the payment of compensation.

#### 5. Statutory Oversight of Church Processes

The Church has noted with great interest the evidence given to this Inquiry by Mr Steve Kinmond, the Deputy New South Wales Ombudsman.

Part IIIA of the *Ombudsman Act 1974* (NSW) imposes reporting requirements on organisations that work with children in New South Wales. Part IIIA was introduced in 1999 and requires government and designated non government agencies to report, and undertake investigations into, any allegation that an employee of the agency has engaged in "reportable conduct". Since Part IIIA became operational, all Catholic Dioceses within New South Wales have accepted that they are designated agencies. In early 2005, on the recommendation of a joint working party that was established between the Ombudsman and the New South Wales Bishops, regulatory amendments were passed pursuant to which each Bishop or Archbishop is designated as "Head of Agency" for his Diocese or Archdiocese.

The Church in Victoria submits that the *Ombudsman's Act 1974* (NSW) provides a useful, practical and effective mechanism, and is supportive of the adoption of an equivalent mechanism in Victoria.

The NSW legislation applies to "employees" of the agency, and accordingly, will not necessarily apply to clergy. Specific issues can also arise in relation to historical allegations where the accused is no longer an "employee" within the meaning of the legislation.

These issues of detail may require further consideration.

16 May 2013