

DRAFT WORKING PAPER**REVISED PROCEDURES FOR DEALING WITH ALLEGATIONS
OF SEXUAL ABUSE**

Version 23.06.96

1. PREAMBLE

- 1.1 This Procedures Document (these Procedures) is a revision the draft Protocol published by the Australian Catholic Bishops' Conference (ACBC) and the Conference of Leaders of Religious Institutes (ACLRI) in April 1992. ¹
- 1.2 These Procedures are intended to apply to all allegations of sexual abuse by church personnel whether they be clerics, religious, lay employees or volunteers.
- 1.3 It should be read in conjunction with the penal and procedural provisions of *The Code of Canon Law* and the document *Sexual Abuse by Priests and Religious: A Statement of Principles*, published by ACBC and ACLRI on [].

2. GENERAL OBSERVATIONS

- 2.1 When allegations of sexual abuse are made, church authorities should act quickly but also prudently. They must ensure that the victim is treated with sensitivity and the accused with fairness.
- 2.2 If the allegations involve a criminal offence church authorities must not jeopardise the right of the State to investigate the matter and take appropriate action. They shall also respect the legal right of other authorities, such as statutory bodies or professional associations, in relation to their members.
- 2.3 An allegation of sexual abuse raises spiritual, medical, psychological, legal, canonical and practical questions. Since no one person would be expected to have an adequate knowledge of all these matters, a team approach is required.
- 2.4 The procedures or decisions of one church body or authority can have an impact on the whole Church. While nothing in these Procedures is intended to override the legitimate rights of a church authority, it is in everyone's interest that church bodies and authorities adopt a uniform approach to handing such matters, and be willing to utilise these Procedures.

¹ It has drawn on various documents published in Australia, Canada and the United States of America. In particular it draws on the document, *Procedures to be Applied in Cases of Alleged Sexual Misconduct by a Priest* by Rev. Francis G. Morrissey O.M.I. (*Studia Canonica* 26 (1992) 39-73)

2.5 A number of guiding principles underlie the provisions of these Procedures.

- acting always with, justice and charity;
- taking all allegations of sexual abuse seriously;
- giving priority to the protection of children and vulnerable adults;
- caring for victims;
- caring for the families of victims and others directly affected;
- caring for those accused of this offence;
- presuming an accused person's innocence until the contrary is either admitted or proven
- presuming compliance with applicable civil and church law and industrial relations procedures;
- protecting the reputation of all persons involved

3. DEFINITIONS

'Accused' means the person against whom an allegation of sexual abuse is made.

'Church authority' includes a bishop, a leader of a religious institute and the senior administrative authority of an autonomous lay organisation, and their authorised representatives, responsible for the church body to which the offender is connected.

'Church body' includes a diocese, religious institute, and any other juridic person, body corporate, organisation or association, including autonomous lay bodies, that are generally perceived to be part of the Catholic Church.

'Church personnel' includes any cleric, member of a religious institute, employee or volunteer who is connected to a church body.

'Civil authorities' includes members of the police service as well as officials of the government departments responsible for child protection, for administration of laws relating to complaints of sexual harassment, for the discipline of professions, and for industrial relations.

'Complainant' means the person who has alleged sexual abuse against church personnel. In most but not all cases the complainant may also be a victim and this is to be understood in this document unless the context suggests otherwise.

'Offender' means a person who has admitted sexual abuse or been found guilty of sexual abuse by a court of law.

'*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 personnel.

'*Victim*' means the person to whom the sexual abuse was directed.

4. STRUCTURES & PERSONNEL

4.1 The Catholic Bishops of Australia have established a national Bishops' Committee for Professional Standards (National Committee) and, together with the leaders of religious institutes, determined its terms of reference and membership (see appendix 1).

4.2 To assist them in fulfilling their canonical and other responsibilities the bishops of each church province (centred on Brisbane, Sydney, Melbourne, Adelaide and Perth), in consultation with the representative group of leaders of religious institutes, shall establish a Professional Standards Resource Group (Resource Group). This shall consist of at least one priest and one religious and a suitable number of other persons, both men and women, of diverse backgrounds, skilled in the areas of child protection, pastoral counselling, civil and church law, and industrial relations.

4.3 Each Resource Group shall nominate from among its members a

Convenor (and deputy), who shall convene and chair meetings of the Resource Group as required and shall have an overview of all matters dealt with by the Resource Group and shall be the contact person(s) for dealings with the National Committee. The convenor will be responsible for the safekeeping of all documentation connected with the Resource Group.

4.4 Each Resource Group shall then appoint, either from among its members or co-opted where advisable, the following:

Contact persons, who shall be the usual nominated persons to receive disclosures of sexual abuse. They shall be responsible for ongoing contact with complainants and victims and the church authority. Contact persons should be skilled listeners, sensitive to the needs of complainants and victims.

Victim's Support Persons, who shall assist, where appropriate, with the pastoral care of a victim but shall not usually be the victim's therapist.

Investigators, who shall be responsible for investigating the allegation and making recommendations together with the contact person to the church authority. In each case the investigator who is appointed should be, and be perceived to be, independent of the church authority.

Accused's Support Persons, who shall assist, where appropriate, with the care of an accused person or offender and assist with communication between an accused person or offender, the contact person, legal representatives, therapists and the church authority.

- 4.5 The Resource Group shall meet as often as necessary but never less than twice in each calendar year. Each Resource Group should formulate its own internal procedures.
- 4.6 The convenor and other personnel of the Resource Group shall take into account the need to act in consultation and co-operation with other professional advisers of the relevant church authority in any particular case.
- 4.7 To the extent that it is necessary or prudent, all members of the Resource Group shall confer with at least one other member before making recommendations or taking other significant decisions.
- 4.8 All members of the Resource Group shall abide by the highest standards of professional conduct with respect to all aspects of their work. They shall take particular care to protect the privacy and good name of all persons involved in a particular incident.

5. COMPLAINTS

- 5.1 Nothing in these Procedures is intended to prevent or limit the right of a person to bring a complaint directly to the attention of a church authority.
- 5.2 Information shall be widely circulated to the public, and especially among church counselling agencies, giving the names and contact details of those who are designated as contact persons. Wherever appropriate, this information shall be available in languages other than English, and it shall set out as simply as possible the procedures for making a complaint about sexual abuse.
- 5.3 If a complaint of sexual abuse comes to the notice of church personnel, involving either themselves or other church personnel, they must immediately (and certainly within 24 hours) refer the matter to a contact person.
- 5.4 In the event that a report is made to any person connected with a church body, whether by civil authorities, a complainant or a member of the public (the notifier), suggesting there has been an incident of sexual abuse involving church personnel, the person receiving such a report shall take contact details of the notifier and immediately refer these to a contact person who will forthwith follow up the notifier and obtain details of the complaint. The contact person shall confirm to the person who received the report that contact with the notifier was made.
- 5.5 Immediately a complaint comes to notice the contact person shall inform the church authority who shall provide a written delegation to the contact person (and subsequently, if necessary, to the investigator) to proceed with the steps envisaged in these Procedures. The contact person shall keep the church authority informed of all further developments.
- 5.6 Contemporaneous written notes are to be made of the details of the complaint and, where possible, the complainant should confirm the details in writing.

- 5.7 All church personnel shall comply with the civil law relating to including the requirements for mandatory reporting of child sexual abuse that may exist in their jurisdictions, in accordance with any specific procedures established by the church authority, taking advice from the Resource Group where appropriate. A written record shall be kept by the church authority of all such reports.
- 5.8 In any case which may involve a breach of the criminal law the contact person shall advise a victim of the right to refer the matter to civil authorities.
- 5.9 After making contact with a notifier, the contact person shall consider whether an investigation is warranted.
- 5.10 If an investigation is warranted the contact person shall notify the church authority who shall nominate an investigator in consultation with the contact person and, if appropriate the convenor.
- 5.10.1 In every case where there has been a complaint to civil authorities an investigation is warranted.
- 5.11 While anonymous complaints need to be regarded with prudent caution they should not be ignored or dismissed out of hand. A careful assessment should be made of all the circumstances and the content of the complaint and appropriate action taken in the light of this assessment bearing in mind the impact that anonymity has on procedural fairness.

6. INVESTIGATIONS

- 6.1 The investigator shall, as soon as possible, inquire into the allegation in order to enable the contact person to advise the church authority about the action that needs to be taken both immediately and after further investigation.
- 6.2 The investigator shall co-operate with the professional advisers of the church body and shall conduct any investigation in the light of any advice received.
- 6.3 No investigation shall be undertaken that could be seen even remotely as interfering with the proper processes of the civil law whether already in progress or reasonably contemplated for the future.
- 6.4 An investigator shall not interview a complainant or victim without first discussing the matter with the contact person,
- 6.4.1 The complainant or victim shall be given an opportunity to have another person (such as a designated victim's support person or legal representative) present at any interview. The contact person has a right to be present.
- 6.4.2 In all cases the investigation shall be undertaken with pastoral sensitivity towards the victim and under no circumstances should there

be any attempt to intimidate a victim nor to dissuade a victim from proceeding with the complaint.

- 6.4.3 In a case where the complainant is different to the victim the investigator and contact person shall consider the wisdom and prudence of seeking to interview the victim.
- 6.4.4 No interview shall be conducted with a child victim unless it appears that no civil processes are contemplated and even then not without the express authority of and in the presence of the parent or guardian.
- 6.5 Unless it would interfere with the processes of the civil law, the investigator shall inform the accused of the complaint and arrange an interview.
 - 6.5.1. In both civil and church law a person is presumed innocent until proven otherwise. This principle shall always be observed.
 - 6.5.2 The accused person is entitled to have another person present (eg. the accused's support person, industrial union official or legal representative)
 - 6.5.2 An accused person is not bound to admit to an offence, nor may an oath be administered to the accused, (c 1728, ° 2). The offender should be informed of this provision before being questioned, even in a preliminary inquiry.
 - 6.5.3 In so far as they apply, the provisions set out in canons 1717-1719 shall also be observed.
- 6.6 The investigator shall also interview any other persons whose testimony may assist in resolving the truth of the matter.
- 6.7 At no time after an allegation has been made should the diocesan bishop or any priests involved in the process hear the sacramental confession of the accused nor should the promoter of justice or the judicial vicar be involved in any aspect of the matter other than that designated to them in a canonical penal process.
- 6.7 Any interview with an employee shall comply with the grievance procedures (if any) of the employment contract, and in all cases with due process.
 - 6.7.1 If appropriate, the contact person shall invite the designated industrial relations officer of the church body to participate in the investigation with the investigator.
- 6.8 If the case is one that is likely to involve the civil law the accused should be encouraged to obtain independent legal advice.
 - 6.8.1 This legal advice must be must be at the accused's expense. It is not appropriate that a church authority indemnify a person for legal expenses relating to misconduct outside the course of employment.

- 6.8.2 An exception to the above principle may be necessary when the vows of poverty of a religious means that the institute must pay for such legal advice.
- 6.9 After a preliminary investigation is completed the investigator shall make recommendations in writing to the contact person to enable advice to be given to the church authority about any immediate action that may be required.
- 6.10 In any case where the investigator or contact person is of the view there is some likelihood of ongoing risk to children the church authority shall be so informed who shall then ensure that the accused person is stood aside from any involvement with a church body immediately, and in the case of an employee on full pay, until the matter is finally resolved.
- 6.11 If necessary, a more detailed investigation can be undertaken or a canonical penal process commenced.
- 6.12 In the case of a cleric or religious the investigator may suggest to the contact person that the church authority request a clinical assessment.
- 6.13 Once satisfied that the facts and circumstances of the matter are as well known as is reasonably possible, the investigator shall then make recommendations to the contact person in writing to enable advice to be given to the church authority about how the matter should be resolved.
- 6.14 During the investigation neither the investigator, the contact person, nor any other person representing the church authority or church body, shall make any statement or apology or admission to the victim, the complainant or anyone else, about guilt, liability or any particular course of action which may follow the investigation.
- 7. OUTCOMES RELATING TO THE COMPLAINANT AND/OR VICTIM.**
- 7.1 The contact person shall keep the complainant and/or victim informed of the process of investigation and the resolution of the complaint by the church authority.
- 7.2 The contact person shall assess whether the victim or the victim's family is in need of pastoral support or therapeutic counselling and shall make the appropriate referral including a referral to a suitable non-church agency if this is requested or advisable.
- 7.2.1 Following discussions between the contact person and the church authority it should be made clear to all parties from the outset what assistance will be provided and on what terms and conditions.
- 7.3 The contact person shall assess whether pastoral support is required by any of those connected with the church body and shall arrange for such support to be provided.

- 7.4 Any directions given to the contact person, investigator or church authority by a complainant or a victim as to how the matter should be dealt with must be in writing and signed. Such directions, for example relating to notification of the complaint to civil authorities, should be respected to the extent that they are not inconsistent with any legal or other obligation.
- 7.5 The contact person shall discuss with the victim what might be done to assist in resolving any outstanding issues which the victim may identify and shall explore, in consultation with the church authority and its professional advisers the best means of resolving such issues, including the use, where appropriate, of mediation facilities.
- 7.6 If the victim remains of the view that the resolution proposed by the church authority is unsatisfactory the contact person shall discuss the matter with the convenor of the Resource Group and, then, if necessary, with the Chairperson of the National Committee who shall arrange for a member or members of that Committee to intervene to assist in resolving the matter.

8. OUTCOMES RELATING TO THE ACCUSED/OFFENDER

- 8.1 Upon receipt of the recommendations from the investigator the contact person shall inform the church authority of the action that needs to be taken.
- 8.2 Irrespective of the outcome of any civil law process, the church authority is required to make its own assessment of the facts of the matter and take such action as is warranted for the protection of the community and the good of all persons concerned.
- 8.3 If the matter is not resolved, either through a church process or the process of the civil law, the church authority must decide whether it is appropriate for the accused to remain in office or return to an office while some doubt remains.
- 8.3.1 Wherever a risk to others is feared, or there is likely to be scandal, the accused person who is an employee should be suspended on full pay and a volunteer should be required to step aside.
- 8.3.2 In the case of an accused person who is a cleric or religious it will be normal practice for the offender to take administrative leave in accordance with the principles of canon 1722 until the matter is finally resolved. A cleric shall not engage in any public ministry during this time. The church authority must ensure that the cleric or religious is provided with suitable living arrangements and dignified activity.
- 8.3.3 It must be made clear to all involved that the above mentioned actions do not involve a penalty and do not impute guilt.
- 8.4 If the church authority is satisfied that the offender is guilty of sexual abuse it must then take such action as the case warrants. In the case of an employee this may involve the commencement of a process for dismissal from employment. A volunteer may be prohibited from being involved in any

activity associated with a church body. In the case of a cleric or religious it may include a request to that person concerned to apply to return to the lay state or even the commencement of a canonical penal process in accordance with canons 1717-1731.

8.4.1 In the case of a cleric who has admitted to sexual abuse, or been convicted of criminal sexual abuse, the convenor, in conjunction with the church authority and the offenders' support person and legal representative shall discuss with the offender future options honestly and openly, taking into account all the relevant circumstances and the seriousness of the matter. It is unfair to hold out hope of return to ministry where it is clear that this is will not be possible.

8.4.2 The church authority shall do its best to ensure that the offender makes just restitution to the victim. To the extent to which it is prudent the contact person should ascertain from the victim what might be required of the offender for justice to be done.

8.5 In a case where it is apparent that the accused was not guilty of the alleged offence the church authority should take such steps as may be required to vindicate the reputation of the accused if this has been called into question.

8.6 The church authority shall inform the contact person of all steps taken in relation to this process and the contact person shall inform the convenor of the Resource Group.

9. PREVENTIVE STRATEGIES

9.1 The church authority shall ensure, as far as possible, that all church personnel are made aware of the seriousness of sexual abuse especially involving children. They should be warned of behaviour that is inappropriate or which might be misunderstood as involving improper sexual behaviour.

9.2 Where the church authority is concerned about the behaviour of a cleric or religious this should be brought to his or her attention and if necessary such further assessment and therapy as may be indicated should be initiated. In the case of employees or volunteers a grievance procedure should be initiated. Such procedures should be carefully documented.

9.3 Church personnel who feel that they may have problems in the area of sexual abuse should be exhorted to seek assistance before the problem becomes unmanageable and they offend. Names of suitable therapists should be available from contact persons and easily and privately accessible.

9.4 Every church authority shall ask a cleric or religious, requesting incardination into a diocese or transfer into an institute and/or to carry out any ministry or apostolate in a diocese, to warrant in writing that there are not any known circumstances which might lead to an allegation of criminal sexual abuse.

9.4.1 When a cleric or religious requests to exercise a ministry in a diocese, the church authority shall request, from the church authority in whose

diocese the cleric or religious previously exercised a ministry, a warranty in writing that such authority is not aware of any circumstances which might lead to an allegation of criminal behaviour.

- 9.4.2 Prior to acceptance, prospective candidates for a seminary or religious institute should be asked to warrant in writing that they are not aware of any circumstances which might lead to an allegation of criminal sexual abuse.
 - 9.4.3 Even a single incident of criminal sexual abuse should be considered grounds for dismissing a seminarian from a seminary or a candidate from an institute's programme of formation after due process has been carefully followed.
 - 9.4.4 Church entities, especially those involved in providing care for children, should have in place a procedure, consistent with good industrial relations practice, for checking references and verifying the suitability of church personnel for employment, or participation as volunteers.
- 9.5 Church authorities must be honest in giving references and must not act in a way which would allow an offender to obtain employment in circumstances where others might be at risk.

10. OTHER ISSUES

- 10.1 Media attention may follow a public accusation, or in some instances it may be media attention that brings an allegation to notice.
- 10.2 The management of media inquiries concerning an allegation of sexual abuse shall be the responsibility of the convenor of the Resource Group who shall consult with the church authority and the accused person's legal representative in identifying who is to be the designated spokesperson(s) on the matter and establishing the necessary co-ordination of media comment.
- 10.3 Accused persons are to be cautioned by the contact person that they must not make themselves personally available for media inquiries until they have taken their own legal advice on the matter.
- 10.4 Dealings with the media must be conducted honestly and prudently.

11. CONCLUSION

- 11.1 All church authorities shall take the necessary steps to conduct such in-service programmes for church personnel as may be necessary to inform them of these Procedures.
- 11.2 The publication of these Procedures, their implementation and all matters of interpretation are reserved to the National Committee.