

DRAFT 30 - 3 - 96

PROCEDURES FOR DEALING WITH ALLEGATIONS OF SEXUAL ABUSE

1. PREAMBLE

- 1.1 This document is a revision of the draft document published by the Australian Catholic Bishops' Conference (ACBC) and the Conference of Leaders of Religious Institutes (ACLRI) in April 1992.*
- 1.2 The document is intended to apply to all allegations of sexual abuse by church personnel, whether they be clerics, religious, lay employees or volunteers.
- 1.3 The document should be read together 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 concern a criminal offence, church authorities shall not jeopardise the right of the State to investigate the matter and take appropriate action. They shall also respect the legal rights of other authorities, such as statutory bodies or professional associations, in relation to their members.
- 2.3 An allegation of sexual abuse raises medical, psychological, spiritual, legal and practical questions. Since no one person can have an adequate knowledge of all these matters, a team approach is required.
- 2.4 A number of guiding principles underlie the provisions of this document:
 - always acting 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 other persons directly affected;
 - caring for persons accused of this offence;
 - presuming an accused person's innocence until the contrary is either admitted or proved;

* 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 OMI (*Studia Canonica* 26 [1992] 39-73).

- ensuring compliance with both civil and church law and with 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, the senior administrative authority of an autonomous lay organisation, and their authorised representatives.

`**Church body**' includes a diocese, religious institute and other public or private juridical person, body corporate, organisation or association, including autonomous lay organisations, 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 with a church body.

`**Civil authorities**' include members of the police service as well as officials of the government departments responsible for child protection, for the administration of laws relating to complaints of sexual harassment and 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 will 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 to either a civil or church authority or has 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 taken by a priest or religious, with the integrity of the relationship between a priest or religious and a person in their pastoral care, or with the professional responsibilities of church personnel.

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

4. STRUCTURES AND PERSONNEL

- 4.1 The bishops of Australia have established a national Bishops' Committee for Professional Standards (BCPS) and, together with the leaders of religious institutes, determined its terms of reference and membership (see Appendix I).
- 4.2 The bishops and leaders of religious institutes of each church province (centred on Brisbane, Sydney, Melbourne, Adelaide and Perth) shall establish a Professional Standards Resource Group (PSRG). It 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 areas such as child protection, counselling, law and industrial relations.
- 4.3 Each Resource Group shall nominate from among its members a Convenor, who shall convene and chair meetings of the Group and shall be the contact person for liaison with the national Bishops' Committee.

- 4.4 Each Resource Group shall then see to the appointment of:
- Contact persons*, who shall be the usual persons to receive disclosures of sexual abuse and report to the church authority. They should be skilled listeners, sensitive to the needs of complainants and victims.
 - Victim's Support Persons*, who shall assist, where appropriate, with the care of a victim, but shall not usually be the victim's therapist.
 - Investigators*, who shall be responsible for investigating the allegation and, together with the contact person, making recommendations to the church authority.
 - Accused's Support Persons*, who shall assist, where appropriate, with the care of a person accused, and also assist with communication between the accused, the contact person, legal representatives, therapists and the church authority.
- 4.4 Each Resource Group shall meet as often as necessary, but never less than twice in each calendar year.
- 4.5 All members of a Resource Group shall abide by the highest possible standards of professional conduct in 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 this document is intended to 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 and schools, giving the names and contact details of those designated as contact persons. Wherever appropriate, this information shall be available in languages other than English. It shall set out as simply as possible the options available for making a complaint about sexual abuse.
- 5.3 If a complaint of sexual abuse comes to the notice of any church personnel, they must immediately (and certainly within 24 hours) refer the matter to a contact person.
- 5.4 Written notes are to be made of the details of the complaint and, where possible, the complainant should confirm the details in writing.
- 5.4.1 Contact persons will have been specially selected for their skills and so will normally be the best persons to receive the details of a complaint. Victims can become upset, however, if the person they first approach will not listen to them and does no more than refer them to someone else.
 - 5.4.2 On the other hand, victims can also be upset if asked to tell their story several times. Church personnel should not, therefore, hear the whole story of the complaint without taking notes and then refer the complainant to the contact person. Whenever possible, they should negotiate with the complainant at the outset whether the matter should

be referred immediately to a contact person or whether the story should be told here and now and detailed notes taken.

- 5.5 Whoever hears the story of a complaint shall listen fully, honestly and sympathetically to the person laying the complaint, both concerning the facts of the situation and the emotional and spiritual effects it has had on the victim.
- 5.5.1 They shall assure complainants that, if the facts are truly as stated, abuse must be named for what it is and victims assisted to move the blame from themselves to the offender.
- 5.5.2 They shall enquire what needs to be done immediately to ensure that a complainant feels safe from further abuse.
- 5.5.3 They shall make an immediate offer to arrange for spiritual and psychological counselling, on the understanding that this offer cannot be seen as an admission of the guilt of the accused on the part of anyone in the church. If the complainant wishes to receive counselling from a non-church agency, this should be arranged.
- 5.5.4 They shall advise complainants of their right to take the matter immediately to the police.
- 5.6 All church personnel shall comply with the requirements for mandatory reporting of child sexual abuse that exist in some jurisdictions. Where appropriate, they should take advice from the convenor of the Resource Group. They should provide to the church authority a written report of what they have done.
- 5.7 While anonymous complaints must be treated with prudent caution, they should not be dismissed out of hand. A careful assessment should be made of the content of the complaint and of all the circumstances in which it was presented, and appropriate action taken, though always bearing in mind the impact that anonymity has on procedural fairness.
- 5.8 Upon receipt of all details of the complaint, the contact person must decide whether to recommend to the church authority that a church investigation be carried out.
- 5.9 When the complaint is such that an accused may be required to stand aside from an office, the contact person should advise that an investigation be carried out as soon as possible.
- 5.10 No investigation shall be undertaken in such a manner as to interfere in any way with the proper processes of the civil law, whether they are in progress or contemplated for the future.

6. INVESTIGATIONS

- 6.1 On the advice of the contact person, the church authority shall appoint one of the investigators to enquire into the allegation and advise concerning the action that needs to be taken.
- 6.2 An investigator shall not seek further statements from a victim without first discussing the matter with the contact person.

- 6.2.1 If the decision is made to seek further statements, the victim shall be invited to have another person present at the interview (e.g. victim support person or legal representative). The contact person also has the right to be present.
- 6.2.2 Under no circumstances shall there be any attempt to intimidate a victim or to dissuade a victim from proceeding with a complaint.
- 6.2.3 If the complainant was not the victim, the complainant, the investigator and the contact person shall together discuss the wisdom and prudence of seeking to interview the victim.
- 6.2.4 No interview shall be conducted with a child victim without the express authority and in the presence of the parent or guardian.
- 6.3 The investigator shall inform the accused of the complaint and arrange an interview.
 - 6.3.1 In both civil and church law a person is presumed innocent until proven guilty, and this principle shall always be observed.
 - 6.3.2 For the interview the accused is entitled to have another person present (e.g. accused's support person, industrial union official or legal representative).
 - 6.3.3 An accused person is not bound to admit to an offence, nor may an oath be administered (canon 1728, #2). The accused should be informed of these provisions before being questioned, even in a preliminary inquiry.
 - 6.3.4 Insofar as they apply, the provisions of canons 1717-1719 shall also be observed.
- 6.4 The investigator shall also interview any other persons whose testimony may assist in clarifying the matter.
- 6.5 At any time prior to or during the investigation, either the contact person or the investigator may recommend to the church authority that the accused be asked to stand aside from a particular office or from all offices held in the Church. If only one of these persons makes the recommendation, the church authority shall ask the opinion of the other before making a decision.
 - 6.5.1 If there is any risk of danger of sexual abuse to other persons, this advice must be given at the earliest possible moment that is compatible with fairness and due process.
 - 6.5.2 If accused persons are asked to stand aside from any office they hold while the matter is pending, it is to be clearly understood that they are simply on leave and that no admissions of any kind are implied by this fact alone. Accused persons who are employees shall, therefore, be on full pay while standing aside.
- 6.6 If the matter is one that is likely to involve the civil law, the accused may be encouraged to obtain independent legal advice.
 - 6.6.1 This advice must be at the accused's expense. It is not appropriate that a church authority should indemnify a person for legal expenses relating to possible misconduct.

- 6.6.2 An exception to the above rule will be necessary when the vows of poverty of a religious mean that the institute must pay for the legal advice.
- 6.7 After the investigation is completed, the investigator shall discuss the findings with the contact person, and the two shall then jointly report to the church authority and make their recommendations concerning both immediate and longer term action. Their specific recommendations must be given in writing.
- 6.7.1 In the case of a cleric or religious, the investigator and contact person may suggest that the church authority request a clinical assessment.
- 6.7.2 The advice given may be to the effect that a more detailed investigation be undertaken or that a canonical penal process be commenced.
- 6.8 During the investigation, and, therefore, at a time when guilt has been neither admitted nor proven, neither the investigator nor the contact person nor any other person representing either the church authority or the church body concerned, shall make any statement, apology or admission to the victim, complainant or any other person concerning guilt, liability or particular course of action that may follow the investigation. The contact person shall, however, keep the complainant and/or victim informed of the progress of the investigation.

7. OUTCOMES RELATING TO THE COMPLAINANT AND/OR VICTIM

- 7.1 If the investigation has not established any guilt on the part of the accused, the contact person shall present the facts to the complainant and discuss the options that the complainant now has.
- 7.2 If the investigation has established the guilt of the offender, the contact person shall inform the complainant of this fact.
- 7.3 In the event of a finding of guilt, the contact person shall immediately begin discussions concerning the ongoing needs of the victim and the assistance that the relevant church body might provide. To the extent to which it is prudent, the contact person shall also seek to know what the victim might be asking of the offender.

8. OUTCOMES RELATING TO THE ACCUSED

- 8.1 Irrespective of whether an accused is or is not found guilty in a civil court, 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.
- 8.2 If the matter is not resolved, either through a church investigation or the processes of civil law, the church authority must decide whether it is appropriate for the accused to continue in office or return to an office while the doubt remains.

- 8.2.1 Whenever a risk to others is feared, or there is likely to be scandal, an accused who is an employee shall be suspended on full pay and a volunteer shall be required to step aside.
- 8.2.2 In the same circumstances, a cleric or religious shall take administrative leave, in accordance with the principles of canon 1722, until the matter is resolved. They shall be provided with a suitable place to live and some useful activity. A cleric shall not engage in any public ministry during this time.
- 8.2.3 It must be made clear to all concerned that these actions do not involve a penalty and do not imply guilt.
- 8.3 If church authorities are satisfied that an accused is guilty of sexual abuse, they shall take such action as the situation demands. In the case of an employee, this may mean the commencement of a process of dismissal from employment. In the case of a cleric or religious, it can include a request that the person concerned apply to return to the lay state, or even the commencement of a canonical penal process in accordance with canons 1717-1731.
- 8.3.1 If a cleric has admitted to or been convicted of sexual abuse, the church authority shall, in person or through a nominated representative, meet with the offender to discuss openly and honestly the offender's future options. The offender may wish to be accompanied by a support person and/or legal representative. The discussion shall take into account the seriousness of the offence and all relevant circumstances. It is unfair to hold out to an offender any hope of a return to ministry when it is clear that this will not be possible.
- 8.3.2 Church authorities shall do their best to ensure that offenders make whatever restitution they can to their victims.
- 8.4 The church authority shall inform the contact person of all steps taken in relation to an offender, and the contact person shall inform the convenor of the Resource Group.

CONCLUSION

- 9.1 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 the procedures set down in this document.
- 9.2 The publication of this document, its implementation, and all matters of interpretation are reserved to the Bishops' Committee for Professional Standards.