MEETING BETWEEN REPRESENTTIVES OF NINE BISHOPS' CONFERENCES AND THE HEADS OF SEVERAL ROMAN DICASTERIES
1 - 4 April 2000

REPORT OF

THE AUSTRALIAN CATHOLIC BISHOPS' CONFERENCE

STATISTICS

It is impossible to obtain accurate statistics concerning sexual abuse by priests and religious in Australia. Until 1997 every diocese and every religious institute handled its own cases. With very few exceptions they were unwilling to reveal this information to anyone outside their own diocese or institute. In many cases the bishop or provincial superior kept no written records and left no information for his successor, so that even the present bishop or religious leader does not know what happened before his own time. It must be said that there was sometimes a greater concern to keep the matter secret than there was to confront it or to help the victim and deal with the offender.

For the last three years we have had a system in place that gives us more accurate figures. During that time 511 complaints have been made against 336 priests and religious brothers. In most cases there has been an admission of guilt, so that 346 cases have been finalised. Only 14 cases were found to be without foundation. 119 have been investigated by the police and there have been class actions against 60 Christian Brothers at three orphanages.

Secrecy is still a problem. When cases are first brought to a diocese or religious order, they are not always referred to the system the Church has established. When a priest is found guilty, the bishop or religious leader often says that it is now his responsibility to determine what will happen to the priest, but he does not inform us, so that we do not know what the outcome is.

Needless to say, not all victims come forward. For example, among our worst offenders, one has admitted to offences against 78 victims but only 15 have come forward; another has admitted to offences against more than 80 victims but only 20 have come forward. Victims will not come forward unless they feel confident that they will be listened to sympathetically.

Forty priests and brothers have served or are serving terms in prison, while a number of others have been given suspended sentences or community service orders. A significant number of priests and brothers have been declared not guilty because the case came down to a matter of their word against that of one other person, with no external proof available. In these cases "not guilty" does not necessarily mean "innocent".

The amounts of money paid out by dioceses and religious institutes is also hard to obtain. Our best estimate is that about 30 million dollars have been paid to victims.

The number of priests and religious brothers in Australia is currently 4,500, but this is about 40% lower than it was when most of the offences occurred between twenty and forty years ago. Our best estimate is that somewhere around 4-6% of priests and brothers have been guilty of a sexual offence (against either a minor or an adult) serious enough to have legal consequences.

AN OVERALL PLAN

In April 1996 the Australian bishops and leaders of religious institutes published a plan setting out their intended response to the scandal of sexual abuse. It consists of the following eight points:

1. A set of principles and procedures for responding to complaints of sexual abuse. This became the document *Towards Healing*, published in December 1996.
2. A coordinated response to the needs of victims, seeking to meet their spiritual as well as psychological needs, and not neglecting their physical and practical needs. This part of the plan has had only modest success. It has not been easy to get all the different Church authorities to work together. Some authorities are plainly afraid of the financial demands that victims might make on them and so have been afraid to be in contact with them. At its worst some authorities seem to see victims as enemies to be resisted rather than victims to be helped. The vast distances in Australia also create problems in helping victims.
3. A response to the needs of all other persons affected by the abuse, e.g. parents, a parish community, other clergy. This has also had only modest success, for much the same reasons.
4. A treatment and prevention program for offenders and those aware of problems that could lead to abuse. Encompass Australasia was established in June 1997. It is of a high standard and is doing

excellent work. It has helped many offenders, though it is impossible to guarantee a cure.

5. A study of any factors specific to the Catholic Church that might contribute to abuse. The document *Towards Understanding* was finalised in November 1999. It is a preliminary report indicating areas that need serious study. Much more work remains to be done in this field.
6. An assessment of the criteria for the selection and formation of candidates and of the lifestyle of clergy and religious . This study also deals with matters such as accountability both to Church superiors and the community, appraisal and supervision. A conference on these topics will be held in 2001.
7. A study of the ways in which power and authority are held and exercised in the Church. Issues of power are of the greatest importance in relation to abuse. This study is in its preliminary stages.
8. A document of principles and standards for clergy and religious. This is also called a "code of conduct". It has been published as the document *Integrity in Ministry* in June 1999.

CONFLICT WITH CIVIL LAW (1)

The bishops of Australia must do all in their power to observe both the laws of the Catholic Church and the laws of the Commonwealth of Australia. Most of the time there is no problem, but some conflicts do arise in relation to sexual abuse and they can cause serious problems. The first conflict is in relation to the concept of "unacceptable risk".

In a criminal trial the jury must be certain "beyond reasonable doubt" before it can convict a person of a crime. In a civil case the matter is decided "on the balance of probabilities", which is similar to the canonical concept of "moral certainty". In the matter of sexual abuse of children, however, a third category has been introduced, that of "unacceptable risk." It is based on the principle that the protection of children from sexual abuse must be given a very high level of importance.

> Case 1. A retired layman, an accountant, assisted several Catholic schools with their finances on a volunteer basis. He was also a catechist in State schools. Then complaints came to the police from four different small girls between the ages of six and eight years from three different Catholic schools and one State school. All four complaints told of identical sexual actions by the same man. The man was arrested and brought to court, but it become a matter of his word against that of a small child, so he was acquitted. On advice from the

police the priests concerned have declared him an unacceptable risk, withdrawn his appointment as a catechist and forbidden him access to Catholic schools. If one of the priests did not withdraw his appointment and a new offence occurred, the priest could be liable to arrest and prosecution.

Case 2. A priest was brought to court on a charge of sexual abuse of a minor but, for lack of evidence, was acquitted. Then three different families approached the bishop and told him stories of sexual abuse against their sons. They wanted the Church to take action but would not go to the police because they feared the effect of a court case on their sons and they feared the threats the priest had made against their sons. The bishop decided that all three stories recounted the same kind of abuse and that there was no reason to suspect collusion between the families. He came to the conclusion that the priest constituted "an unacceptable risk" under Australian law. The bishop knew that, if he gave the priest an appointment and a new offence occurred, he himself could be sent to prison for child abuse. He also believed that, even if the law is put aside, he could not in conscience before God give the priest a new appointment that would give privileged access to children.

This law is an attempt to protect innocent children from sexual abuse in cases where no conviction or admission exists, but there are good reasons to fear the risk of abuse. In Australia these cases are matters of law, but throughout the world they can easily be matters of conscience. The laws and procedures of the Church must not prevent a bishop from obeying the reasonable laws of the State and they must not prevent a bishop from following his conscience. This matter needs to be discussed at this meeting.

CONFLICT WITH CIVIL LAW (2)

The second conflict with civil law concerns the matter of prescription. The bishops and religious leaders of Australia have so far kept hidden from the public the fact that canon law has a prescription of a mere five years in cases of offences. If this fact became publicly known, we would be in a quite impossible and indefensible situation. On this point it is essential that the Church law canonise the civil law.

CONFLICT WITH CIVIL LAW (3)

The third conflict with civil law occurs over the question of administrative leave for a person accused of abuse. In Australian law a person is automatically required to stand aside from his office when accused of a

serious offence. A few years ago even the first Minister of the largest state in the country had to do this. The advantage of this system is that, because it is automatic, it involves no judgement on the guilt or innocence of the person accused. If he is found to be innocent, he can later be restored to his office and good name.

In canon law, the person is asked to stand aside only after the penal process has begun, and this means only when there is already a substantial case against the person.

If the Church does not ask that an accused person stand aside, it is accused of protecting the guilty and putting children at risk. The canon law should canonise the civil law also on this point.

CONFLICT WITH CIVIL LAW (4)

The procedure that has been adopted in Australia seeks to provide a "level playing field", that is, a situation where neither accuser nor accused has an advantage over the other. For example, it does not require that the person complaining appear before three judges, a notary and a promotor of justice, all priests, for this alone would prevent many victims from appearing.

The Australian Church believes that any procedure adopted from this meeting should follow this principle.

CONFLICT WITH CIVIL LAW (5)

In Australia there are 28 Latin rite dioceses, 3 Eastern Rite dioceses and a Military Vicariate. There are also about 150 provincial leaders of different religious institutes. This means that in Church law there are about 180 different independent Church authorities in the country. And that in turn means that we have 180 different kinds of response to incidents of sexual abuse. They range all the way from the very good to the very bad. It is inevitably the very bad responses that get into the newspapers, with the consequent accusation that the whole Church is responding badly. When one bishop or religious leader fails, the whole Church suffers.

There is a need to have a constant and uniform response from the whole Church of a nation. To have one hundred and eighty different voices on a subject as important as sexual abuse is to invite disaster. The national Church needs to have the authority to present a national response. In a matter such as this, therefore, the Conference of Bishops needs to have the power to impose its will on individual bishops.