

Submission from the

**North Queensland Catholic Clergy Abuse  
Reference Group**

**Royal Commission into Institutional Responses  
to Child Sexual Abuse**

**Consultation Paper | Criminal Justice**

**23 Nov 2016**

Justice Peter McClellan AM  
Chair  
Royal Commission into  
Institutional Responses to Child Sexual Abuse

24 Nov 2016

Via email:

Dear Justice McClellan,

The North Queensland Catholic Clergy Reference Group is a small group of concerned citizens made up of victims, witnesses, family members, legal, education and counselling professionals who live in regional, remote and isolated areas of northern Australia.

We have no funding, few resources and have voluntarily compiled this submission.

We wish to respond to the Royal Commission's consultation paper on Criminal Justice.

- We believe laws need to be irrefutable and enforceable with penalties to change an entrenched culture and endemic pattern of cover-up by a faith-based institution and its leadership.
- We believe the laws need to be able to change the deliberate concealment and protect and support the most under-resourced and vulnerable rural communities in Australia where the church is most influential and the best resourced entity.
- We believe the Church, at the highest levels, is incapable of dealing effectively with the issues of sexual abuse of children and vulnerable adults, as well as the trafficking of child pornography.
- We believe the Church lacks the courage and the ethical standards to reform its policies and processes.
- We believe further, that the Church must rely on outside secular authorities for enforcement and moral guidance.
- We believe there should be protection and support for courageous persons who speak out against failures of institutional responsibilities.

Yours sincerely,

**Patricia Boylan**

## The North Queensland Catholic Clergy Abuse Reference Group

The North Queensland Catholic Clergy Abuse Reference Group is a voluntary group of concern citizens living in northern Australia.

### Background

The Cairns Diocese is one of the largest in Queensland covering 377,000 km<sup>2</sup> from Cardwell in the south, west to the Northern Territory Border including the Atherton Tablelands, and north to the Torres Strait Islands and the Gulf of Carpentaria.<sup>1</sup> The Diocese's 29 Catholic schools and colleges educate almost 11,000 children – over 6,200 primary students and over 4,500 secondary students. A Flexi School at Manoora (in Cairns) and Cooktown (including boarding) opened in 2015. Catholic Education Services also manages boarding schools for children from remote and isolated areas. Not all students are Catholic or come from Catholic families or backgrounds. Many students in boarding schools are Indigenous and from the most disadvantaged families in Australia.

- The North Queensland Catholic Clergy Abuse Reference Group is committed to living in a community free from child abuse and acknowledges the devastating harm caused by systemic failure in the Catholic Church to deal with sexual misconduct over recent years.
- The Reference Group observes that the Church's failure to be transparent is based on a variety of factors; one of them being the hierarchical structure of the Catholic Church.
- Understanding the Church's hierarchical governance system is essential to understanding the practical role of canon law and the culture of secrecy.
- The Pope is the supreme authority in the Church and free of judicial inspection without any scrutiny of his decisions. The Holy See is a country with six non-voting seats on the UN, approximately 800 residents living on a 1.4-hectare block of land. Importantly, the Holy See has no extradition treaties with any country.
- A Bishop or Cardinal heads each geographical division in the church, known as an Archdiocese or Diocese. In each Diocese, the Bishop possesses full judicial, legislative, and executive power.
- Queensland has the narrowest mandatory reporting laws in Australia. **Queensland Bishops and clergy are not required to report clergy abuse, yet allowed to manage 29 schools in the Cairns Diocese.**
- Regional, remote and many isolated communities have inadequate access to support services, expert legal advice on clergy abuse, education or financial resources to take action against religious entities such as Marist Order, Cairns Diocese, Catholic Education Services and other religious entities.
- Living in regional Australia amplifies the impact of reporting clergy abuse. This is often too challenging for many victims and their families as evidenced in the Royal Commission's Report of *Case Study 13 The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton.*

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<sup>1</sup> (Catholic Education Services, Cairns Diocese, 2016)

## Introduction

1. **The North Queensland Catholic Clergy Abuse Reference Group** believes there should be a mandatory reporting criminal law which is national and consistent requiring every citizen to disclose abuse.  
That there be a penalty for lack of reporting similar to the penalty for non-disclosure in Northern Territory legislation. That the penalty be enforceable effective and able to stop individual's deflection of responsibility.
2. The Consultation Paper - Criminal Justice, on which the Royal Commission now seeks submissions, deals with child sexual abuse in an institutional context and persons other than the perpetrator of the abuse to have criminal liability for their action or inaction.  
Chapter 6 of the paper seeks submission on:
  - Whether there should be a criminal offence in relation to failure to report and, if so, whether it should apply to all serious criminal offence, to child sexual abuse offences or to institutional child sexual abuse offences only;
  - If a targeted reporting offence were to be introduced, how should the elements of the offence be formulated, including the age. Should a victim's wish that the offence not be reported be respected, what standard of knowledge, belief or suspicion should be applied and what exceptions or defences should also be applied.
  - An offence of failure to protect should be introduced into the criminal law.
  - We support the Victorian offence which aims to target and protect the ability of institutions to provide children's services.
  - It is desirable or necessary to make an institution itself criminally liable for child sexual abuse that occurs within the institution.
3. The Consultation Paper also seeks submissions on whether a criminal offence designed to protect whistle-blowers who disclose institutional child sexual abuse from detrimental action would encourage reporting the abuse.
4. This submission of the North Queensland Catholic Clergy Sexual Abuse Reference Group addresses each of those matters. Due to the voluntary nature of our group, time constraints and a lack of resources, it does not address the range of other matters covered by the Consultation Paper.

## Scope of any offence relating to failure to report

5. The limitations and difficulties associated with the offences of concealing a serious indictable offence as set out in section 316 of the Crimes Act 1900(NSW) are discussed in the Consultation Paper. The North Queensland Catholic Clergy Abuse Reference Group would advocate for a general reporting offence to be duplicated in other jurisdictions. The systemic failure of the leader of the global Catholic Church to

obliged by the request of the United Nations for Church authorities to hand over clergy abuse documents to police in all countries provides a strong message which continues to show a blatant disregard for human rights of children.

6. The **UN Convention on the Rights of the Child** states, ‘the Committee regrets that the same approach has not been followed in relation to its internal laws, including Canon Law. The Committee is also concerned that some of the rules of Canon Law are not in conformity with the provisions of the Convention, in particular those relating to children’s rights to be protected against discrimination, violence and all forms of sexual exploitation and sexual abuse’.<sup>2</sup>
7. The Vatican’s Cardinal Sean O’Malley issues a statement, “That the crimes and sins of sexual abuse of children must not be kept a secret any longer...” That clergy are obligated to disclose abuse under the civil law (of the country or state).<sup>3</sup>  
***The civil law in Queensland does not require clergy to report child abuse.*** This inconsistency means that Vatican requirements do not apply to Queensland clergy to disclose child abuse to the police.  
*Police in Queensland are also not required to report child abuse.*
8. The North Queensland Catholic Clergy Abuse Reference Group supports nationally consistent criminal law provisions and penalties for all Australians. This requires persons who have information to form a reasonable belief that a sexual offence has been committed against a child are required under the law to disclose that information to the police.

### **Other circumstances**

A national **public data base** of registered **international priests** working in Australia is **required** and should be accessible by citizens to check background clergy history. The newly established Australian Ministry Registry (AMR)<sup>4</sup> or data base is not available to the Catholic community; it is blocked. Parishioners trying to access information about both Australian and international priests have been advised to obtain this information from diocesan leadership team. The Truth Justice and Healing Council, Australian Catholic Bishops Conference and Diocesan media

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<sup>2</sup> (UN Convention on the Rights of the Child 2014)

<sup>3</sup> (Vatican, 2016)

<sup>4</sup> (Truth Justice and Healing Council, 2016)

spokespersons, and other Church authorities state that they are unable to or refuse to provide information on background checks, information or support services about overseas priests in Australia. The Truth Justice and Healing claims the internal data base is designed to make it easier to check the background of priests and brothers exercising a ministry in another diocese or church body, but only for clergy and executives, not community members. At any one time there are numerous priests and brothers moving between states and overseas.

### **International Clergy**

In regional Australia, the Catholic Church is increasingly recruiting priests from overseas seminarians; a strategy with inherent problems and devoid of long term plans.

The Reference Group believes a public data base such as that used by most professions (lawyers, teachers, doctors etc.) would be adequate for parishioner to make history checks. Overseas clergy have abused children in Cairns Diocese.

Details of an incident can be found on <http://brokenrites.org.au/drupal/node/180>; [http://www.bishop-accountability.org/news2011/05\\_06/2011\\_06\\_02\\_King\\_FormerAtherton.htm](http://www.bishop-accountability.org/news2011/05_06/2011_06_02_King_FormerAtherton.htm)<sup>5</sup>

The Federal Government requires that sponsors of overseas trained religious workers (visas 401 and 428) report criminal misconduct of clergy within five years of the event<sup>6</sup>.

### **Police reporting provisions in Victorian Crimes Act**

9. In response to the report of the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, the Crimes Act 1958(Vic) was amended in 2014 to introduce a targeted provision for the reporting to police of possible sexual offences against children. Section 327 of that Act makes it an offence for an adult (whether in Victoria or elsewhere) who has information leading his or her to form a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child. Failure to disclose the information to a member of the Victorian Police is an offence.
10. The offence is subject to a number of exceptions.
11. The North Queensland Catholic Clergy Abuse Reference Group believes in the interest of child safety that the reporting of sexual abuse over the age of 16 should be required and disclosed to Police. It is our experience that reporting at all ages provides evidence to allow investigation into matters where some child abuse is not reported. Research shows that only 4% of victim's report and only 6 % of the 4%

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<sup>5</sup> [http://www.bishop-accountability.org/news2011/05\\_06/2011\\_06\\_02\\_King\\_FormerAtherton.htm](http://www.bishop-accountability.org/news2011/05_06/2011_06_02_King_FormerAtherton.htm)<sup>5</sup>

<sup>6</sup> (border.gov.au - Annual Report, 2015)

take any action.

12. The reporting provision in Victoria mentioned above also contains an exception for information that is communicated on an occasion of privilege. The North Queensland Catholic Clergy Abuse Reference Group believes an exception should not apply in the context of religious confessions (similarly to doctors, psychiatrists and psychologists).
13. The North Queensland Catholic Clergy Abuse Reference Group believes that the law should not provide an exception for ministers of religion to report suspected child abuse if the information is received during a religious confession. This matter is over publicised as many practicing Catholics are no longer engaging in private confession.

### **Targeted Institutional Child Sexual Abuse Offence**

14. The Consultation Paper refers to the recommendation made in January 2012 by the *Protecting Victoria's Vulnerable Children Inquiry (Cummins Inquiry)* for an amendment of the Crimes Act to impose on ministers of religion and persons working in religious organisations a duty to report a reasonable suspicion that a child is being, or has been, physically or sexually abused by an individual within the organisation.
15. The North Queensland Catholic Clergy Reference Group supports such a provision. 'In the past, victims, witnesses and families though Church officials believed them when they reported sexual misconduct.'<sup>7</sup> People in our community recently and some still today place 'complete faith in the assurances given by the leadership team that the abuse of clerics would be dealt with properly.'<sup>8</sup> The Reference Group believes many Catholics for cultural and emotional reasons trust that the church will act according to the law. As Australian Psychologist, Frances Moran says the decree of secrecy has been the means by which the church has averted a profound theological crisis. 'It provides the means by which the crisis has been avoided. Consequently, it marks a point that is productive of the most unwitting, intense defense by church personnel who garner the anger of both victims and the general public in reaction to the revelations made as a result of the numerous inquiries and commissions across the world'.<sup>9</sup> A culture of silence has been deeply embedded within the mind-set of the hierarchy, who deal with allegations of misbehavior. The child abusing priest is a 'theological impossibility'. 'The child is faced with a man who is believed, and claims, to act in the Name-of-the Father'.<sup>10</sup> He stands for God. The Vatican's laws allow the church to hide from itself. The Reference Group believes there is a crucial distinction between a criminal person who sexually abuses children and a criminal priest who sexually abuses children. The actions of catholic clergy cannot be allowed and seen to blend-in and

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<sup>7</sup> Doyle, T & Rubino, S. Catholic clergy sexual abuse meets the civil law, Fordham Urban Law Journal, 2004

<sup>8</sup> Ibid p 555

<sup>9</sup> Moran, Frances, In the name of the Father, *The Vatican's Secret Re-visited* 2016 p17

<sup>10</sup> Ibid p19

share the blame with regular pedophiles or child abusers. Evidence shows that regular child abusers are on the police radar within five years, but clergy child abusers are protected by the institution allowing their reign of child abuse to continue for more than four decades. Faith based institutions not only provide access to children, but provide professional roles often with access to children. These employment positions often afford respect from a naive and trusting regional community. Thus the church entity provides protection for a criminal who can disappear into the church fold, relocate into regional and remote areas across Australia, disappear overseas with the protection of enablers, concealers and hiders. Canon Law reflects the belief that the members of the clergy are spiritual elite and therefore superior to the average lay person. Consequently researchers note that abuse by a priest is much more devastating and traumatic to a believing Catholic because the victim has been conditioned cognitively and emotionally to believe that the priest takes the place of Christ. The difficulty with regional investigations into to clergy child abuse is that both the priest and the police share authority, trust, isolation, discretion, lack of supervision and a sub culture of secrecy and maintaining the status quo. The priest's residence is often located on or close to the school grounds in most communities in regional Australia. Research shows 41% of all abuse occurs within the priest's residence.

### **Catholic Regional Community Reaction**

Child abuse has impacts on a whole community and has lasting first, second and third generation impacts.

A final element, especially relevant to the clergy abuse context is that *extreme reaction of the community, especially in regional and remote Australia*. The behaviour by the Bishop and church executives in a regional community and abuse by the church community towards victims, families and witnesses is suggested to be amplified in regional communities.

### **Failure to Protect**

16. The North Queensland Catholic Clergy Abuse Reference Group supports the national implementation of a new criminal legislation which came into force in Victoria imposing on individuals in positions of authority within institutions a duty to reduce or remove a risk that a child will become a victim of sexual abuse committed by a person associated with the institution. We believe this act should be extended to include vulnerable adults. The offence set out in s 49C (2) of the Crimes Act 1958 (Vic). We recommend this Act to be implemented in all states and territories of Australia.

### **Offences by Institutions**

17. The crime of failure to protect set out in s 49C (2) of the Crimes Act 1958 (Vic) applies to individuals within an institution, not just the institution itself. This court

transcript provides one recent example of why the church should be made criminally liable if abuse occurs within the institution.

The North Queensland Catholic Clergy Abuse Reference Group supports a model to address the endemic child and vulnerable adult abuse and the need for corporate criminal responsibility to be found in contexts such as work, health, safety and environmental law.

18. A model should be developed for the Catholic Church which is largely an unincorporated not for profit and where clergy are 'not employees'. Changes should be made to require that clergy become registered employees.
19. The Catholic Church has a cultural disposition of 'not knowing' or 'wanting to know about clergy abuse'. Church leaders have often done little to stop the abuse, intimidate victims and witnesses and persist in treating all in an adversarial manner. The Act must make provisions for and demand that the church/education/social service institution be responsible for all employees whether they are on loan from a religious order or an international priest in Australia for a two year stay. The institution must take responsibility for the conduct of all personnel whether it is international clergy on a 401 or 428 religious workers visa working in the parish or a Queensland registered teacher.  
We believe all entities, including global well-resourced and influential institutions, need to be highly accountable for offences committed against children and vulnerable adults.

### **Whistle blower protection**

20. North Queensland Catholic Clergy Sexual Abuse Reference Group's limited experience notes that whistle blower protection is required when dealing with the Catholic Church – an entity that is a foreign country with a significant global network managing limitless resources and political influence.

Whistle blowers interviewed for this paper all stated they would be tentative and reluctant to disclose clergy abuse again due to the influence of the church and its impact on their work and families.

We believe;

- there should be a national public and private sector whistle-blower legislation,
- an independent statutory office for public interest disclosure,
- immunity from legal action,
- direct assistance for legal costs in defending actions,
- the right to disclose information to the media,
- the strengthening of penalties for threatening reprisals against a person because they have made disclosure,
- penalties to include imprisonment
- a fund to provide for legal fees

- support whistle-blowers whose future employment is in jeopardy due to disclosure.

The law and its implementation is required to change the unlawful culture of child and vulnerable adult abuse in faith based institutions. The aim is to prevent systemic failures by institutions 'caring for children' and ingrained failures of leadership to shift the blame and extinguish itself from moral or legal accountability and responsibility.