ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Issues Paper 11: Catholic Church Final Hearing

SUBMISSION

1. Waller Legal welcomes and supports the work of the Royal Commission into Institutional Responses to Child Sexual Abuse ("the Royal Commission") and welcomes the opportunity to provide this submission to Issues Paper 11 in relation to the Catholic Church Final Hearing.

2. This paper seeks to outline the current responses of some Catholic Authorities to dealing with allegations of child sexual abuse.

Waller Legal

3. Since 2007 Waller Legal has worked exclusively to provide legal representation to those who have suffered sexual abuse. The firm generally does not do any other kind of legal work.¹ The Principal Solicitor is Dr Vivian Waller. Waller Legal has a total of 17 staff members and is located in Collingwood, Victoria. Waller Legal currently works with survivors in Western Australia, the Northern Territory, New South Wales, Queensland, Tasmania and Victoria.

4. Dr Vivian Waller has worked in the sexual assault field since her admission to practice in 1995. She completed her articles at Slater & Gordon in 1994 and worked for that firm during the early litigation against the Christian Brothers and St John of God Brothers. She subsequently worked at Maurice Blackburn for approximately 10 years, where, in 2005, she established the Sexual Assault Unit. We understand this was the first legal practice in Australia dedicated to the provision of legal services to those who had been sexually abused. In 2005 Dr Waller completed a PhD on Limitation Periods in Child Sexual Assault Litigation in Victoria and post-traumatic stress disorder.

¹ From time to time Waller Legal represents family members in claims for compensation for psychiatric injury following the unlawful death of person in circumstances such as murder or reckless driving.
5. In 2007 Dr Waller left Maurice Blackburn to set up Waller Legal, a firm dedicated to working with survivors of sexual assault. Waller Legal currently represents approximately 750 clients seeking compensation and acknowledgement in relation to allegations of sexual abuse. Predominantly these matters relate to child sexual abuse, although some relate to the sexual abuse of adults. In addition, we have represented 20 survivors and related witnesses in five Royal Commission hearings (Case Studies 16, 22, 28, 30 and 38).

6. Waller Legal adopts a trauma informed practice approach to the provision of legal services. Legal services are provided with an awareness that a sexual assault survivor may be triggered or re-traumatised by the legal process. We attempt to minimise this wherever possible. Key features of this approach include:

(a) The provision of trauma informed training to our legal and non-legal staff;

(b) Taking the time to explain the process to clients;

(c) Obtaining any documents which may be available in which the client has already given an account of events to see if it is possible to avoid taking a further statement;

(d) Empowering clients by giving them as much choice as possible. For example, by providing them with the option to meet in person or talk by telephone, bring a support person or come alone, write things down themselves or talk it through;

(e) Travelling interstate and to remote locations to meet clients who may experience difficulty with travel or telephone communication;

(f) Exploring alternative dispute resolution ("ADR") processes where possible;

(g) Negotiating with Defendants about tailoring dispute resolution processes to accommodate the needs of individual clients;

(h) Advocating on behalf of clients and ensuring that they do not have any direct contact with defendants, such as church personnel, unless they choose to; and

(i) Exploring ways to include pastoral responses where appropriate.

7. Waller Legal continues to provide cost effective services to sexual assault survivors. Predominantly, Waller Legal acts on a "No Win, No Charge" basis. In some matters we act in a pro bono capacity. In the past, we asked some clients who were employed to contribute to disbursements. We no longer ask clients to contribute,
upfront, to the cost of disbursements. We believe that access to justice should not be predicated on the financial resources of the client. In addition to our claims for compensation, our work in representing witnesses in the Royal Commission is funded by the Attorney-General’s Department.

The Christian Brothers: Cases Arising in Victoria

8. Following a further round of convictions against Christian Brother Robert Charles Best in the County Court of Victoria in 2011, Waller Legal was instructed by a large number of survivors with sexual abuse claims against various Victorian based Christian Brothers, including Brothers Dowlan and Fitzgerald (deceased).

9. In around 2012, prior to the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Organisations ("the Victorian Inquiry") and the Royal Commission, legal representatives for the Christian Brothers (Carroll & O’Dea Lawyers) expressed a willingness to negotiate an alternative dispute resolution process with Waller Legal ("the ADR process") to deal with this group of claims. This represented a significant improvement compared to earlier experiences acting in matters against the Christian Brothers over the previous 20 years.

10. The negotiation of the ADR process took some time and was complicated by the fact that Catholic Church Insurance ("CCI") was involved in some matters. CCI had, and continues to have, separate legal representation through law firm Colin Biggers & Paisley Lawyers ("CBP").

11. The ADR process with the Christian Brothers has been adjusted and improved over the years. Currently, the ADR process with the Christian Brothers (as opposed to matters involving CCI) has the following features:

   (a) The client is independently legally represented;

   (b) The client does not have to deal directly with any church authority or church representative unless they choose to;

   (c) Waller Legal takes a statement using a trauma informed practice model;

   (d) The Christian Brothers are put on notice of the claim;

   (e) The Christian Brothers are asked, and generally agree, to suspend the running of any limitation period and to not rely on any happening or fact that may occur since notification which might prejudice a fair hearing;3

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2 No Win No Charge arrangements are universally offered to meritorious cases.
3 Although there have been amendments to the Limitation of Actions Act 1958 (Vic) abolishing limitation periods for child sexual abuse, some Defendants have made it clear that they will seek to
(f) Relevant records about the client are sought by Waller Legal and provided by the Christian Brothers (such as school or orphanage records);

(g) Waller Legal requests and receives the appointment history of any Brother against whom an allegation is made;

(h) Waller Legal requests and receives the complaint history of any Brother against whom an allegation is made. The complaint history does not contain any data that identifies other victims. It specifies the number of other complaints the Christian Brothers have received in relation to individual brothers and whether that complaint related to physical or sexual abuse;

(i) Supporting evidence including medical material is obtained and exchanged with the Christian Brothers. Generally, the Christian Brothers are willing to rely on the medico-legal psychiatric assessment arranged by Waller Legal, if a medico-legal assessment is required;*4

(j) An informal settlement conference takes place. Should the matter not resolve in the first instance, negotiations generally continue. If the matter does not resolve, or the matter is particularly complex, an independent mediator may be involved;

(k) Offers for compensation are generally held open indefinitely, and/or not taken off the table without sufficient notice, allowing clients to take their time to consider the offer;

(l) Clients can choose to attend the settlement conference in person or to participate by telephone. There is no necessity for a client to meet with any person unless they wish to. Clients are welcome to be accompanied by a support person;

(m) Waller Legal asks our client whether they would like a written apology from the Christian Brothers, and if so, one is sought and received;

(n) Waller Legal asks our client whether they would like a pastoral meeting with a Christian Brother or a Christian Brother representative, where a personal apology can take place and any questions can be addressed. If so, one is arranged. The pastoral component can take place with Waller Legal personnel present, or not, as the client wishes;

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*4 There may be existing medical material and/or treating psychologist or psychiatric reports, making a medico-legal psychiatric assessment unnecessary.
(o) Letters of apology and/or pastoral meetings are not tied to the resolution of the complaint and can take place prior to settlement or indeed if the matter does not resolve. Generally, they take place after negotiations are concluded, whether or not the matter has resolved at that stage;

(p) Complainants are asked to sign a release which does not contain confidentiality clauses; and

(q) This process also allows for revisiting previously settled cases where Waller Legal can demonstrate that the previous settlement was unfair or unsatisfactory, such as where the complainant was previously unrepresented, the quantum was manifestly unfair or there was some significant deficiency in the previous process.

12. Waller Legal makes the following observations about this process:

(a) It allows for claimants to be independently advised and represented by suitably experienced lawyers;

(b) Unlike those involved in the Towards Healing process, clients are not required to have contact with Church authorities unless they wish to;

(c) Unlike those involved in the Towards Healing process, clients are empowered by being able to make choices about how they wish to participate in the process;

(d) Waller Legal independently negotiates the process according to a client’s specific needs. For example, there may be a need to have travel and accommodation expenses paid for the client or for a support person, or a matter might need to be expedited due to physical or mental health concerns. Urgent counselling or other assistance might be requested. A client may have a particular reluctance about attending a medico-legal assessment and it can be agreed to proceed without one;\(^5\)

(e) Generally, the Christian Brothers, through Carroll & O’Dea Lawyers, have responded in a timely, flexible and accommodating way to special requests. Such matters are considered and negotiated on a case-by-case basis;

(f) A pastoral meeting can provide significant comfort and assistance to a client in the right circumstances, but may have the opposite effect if the client does not want such a meeting. Importantly, the possibility of a positive outcome to

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\(^5\) There may be existing medical material and/or treating psychologist or psychiatric reports, making a medico-legal psychiatric assessment unnecessary.
any pastoral meeting is enhanced by the fact that the client retains complete control over whether it occurs at all;

(g) The process is not unduly invasive of privacy. Generally, the Christian Brothers do not request a client’s medical clinical notes;

(h) Generally, clients report that the process has been a positive one, in which they feel that they have had a strong advocate representing their interests, rather than being at the mercy of a predetermined process designed by a Church Authority;

(i) Claims might be resolved on a plus costs or inclusive of costs basis; and

(j) The ADR process is cost-effective for the client by allowing them to explore whether it is possible to resolve their claim prior to making any decision about litigation.

13. Since around 2013 Waller Legal has resolved approximately 70 cases against the Christian Brothers for matters arising in Victoria. Of those 70 cases approximately 40 did not involve CCI.

14. CCI are involved in some Victorian Christian Brothers cases and are represented by CBP. Generally, these matters proceed through the same broad ADR process, described above, however the following observations are noted in cases where CCI is involved:

(a) It generally takes longer to resolve a claim;

(b) CCI is more likely to request a client’s medical clinical notes from current and past treating medical practitioners. These requests can span many decades;

(c) Increasingly an expert medico-legal psychiatric assessment is required by CCI in addition to the one arranged by Waller Legal;

(d) An offer to fund 10 sessions of counselling is generally made;

(e) Generally, there appears to be less flexibility on CCI’s part to respond quickly to individual client requests or needs;

(f) CCI generally requires that discussions about the ADR process and any discussions at individual settlement conferences remain confidential;

(g) Generally, claims are resolved on an inclusive of costs basis only; and
(h) Generally, offers are open for a finite time only, after which they expire if not accepted. We note that requests for short extensions of the time period for acceptance are generally considered favorably by CCI.

15. Waller Legal has resolved approximately 30 Christian Brother matters involving CCI since around 2013.

The Christian Brothers and the identification of a Defendant

16. Generally, despite repeatedly indicating that they were willing do to so, it has been difficult to obtain from the Christian Brothers the actual identification of a defendant capable of being sued. Although this situation now seems to be remedied, it took considerable perseverance and a long exchange of correspondence spanning about seven months before actual defendants were offered. Further information can be provided should this matter be of interest to the Royal Commission.

17. A significant improvement in recent months has been the provision by the Christian Brothers of information allowing individual defendants to be identified and the provision of entities capable of being sued.

18. If specifically requested, and on a case by case basis, the Christian Brothers may provide the name of the relevant individual defendants, normally the provincial and/or the principal of a school at the relevant time. The Christian Brothers usually indicate if these persons are deceased. If requested, the Christian Brothers may provide other entities to be named in the event that the relevant individual is deceased and/or agree to indemnify the estate.

19. Notably, the Christian Brothers generally refuse to indemnify persons convicted of criminal offences. This is problematic where the alleged offender is also the principal of a school, such as Brother [REDACTED] who was the principal of a school.

20. Recent progress has been made on the issue of the identification of entities capable of being sued in Christian Brother matters, including those involving CCI.

The Christian Brothers: cases arising in Western Australia

21. Since the completion of Royal Commission Case Study No 11, Waller Legal has resolved approximately 100 sexual abuse claims against the Christian Brothers arising in Western Australia ("the WA claims").

22. All but the first of the WA claims have been resolved using the ADR process described earlier, with some additional features. Importantly, none of the WA claims have involved CCI, allowing for a streamlined, fast and co-operative approach to resolution. It was particularly important to resolve these matters quickly, given the
advanced age and frail health of many of the clients. The WA claims included reopening previous settlements (both Towards Healing and litigated matters) and also matters where there had been no previous compensation paid to the client.

23. The WA claims settled by Waller Legal have resulted in approximately $7.4 million being paid to clients as compensation. All matters were resolved on a plus costs basis. Since the establishment of the Western Australian ADR process with the Christian Brothers, none of the clients in the WA claims group have been charged for disbursements. It was negotiated that the Christian Brothers would cover the cost of disbursements, including medical reports, travel and accommodation. Waller Legal generally chooses not to charge solicitor client costs in any WA claims, settling each matter on a plus costs basis negotiated directly with the legal representatives for the Christian Brothers. The decision to negotiate the payment of costs and disbursements directly with the Christian Brothers was made in recognition of the negative experiences that many in the WA claims group have previously had when trying to access justice.

24. There remains a small number of WA claims to be resolved, mostly for clients who have only contacted Waller Legal in recent times.

25. Generally, Waller Legal has not sought the identification of a Defendant capable of being sued in WA claims due to the inflexible and restrictive nature of the laws of limitation in Western Australia which would make litigation extremely difficult in any event.

26. We understand that there may shortly be legislative amendment in Western Australia in this regard.

**The Diocese of Ballarat and Bishop Bird**

27. Waller Legal currently acts on behalf of approximately 51 clients who allege sexual abuse by priests of the Diocese of Ballarat, including many clients who instruct that they were sexually abused by Father Gerald Ridsdale ("claims against the Diocese of Ballarat").

28. Generally, Bishop Bird, for himself and on behalf of the Diocese of Ballarat, has agreed to the broad ADR process. Additionally, and to his credit, Bishop Bird has agreed, on a case by case basis, to stand in the shoes of deceased former Bishop Mulkerns and deceased former Bishop O’Collins. Further, Bishop Bird has agreed not to take "Ellis" type defences in claims against himself and the Diocese of Ballarat.

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6 Save for two matters: the first claim brought in Western Australia and one unusually complex matter.
29. Waller Legal has issued proceedings in the Supreme Court of Victoria on behalf of 17 clients with claims against the Diocese of Ballarat. These proceedings are currently adjourned pending the outcome of the ADR process.

30. Bishop Bird and/or the Diocese of Ballarat are represented by CBP. There is CCI involvement for some but not all of the claims against the Diocese of Ballarat. CCI is also represented by CBP.

31. The defendants require that negotiations and discussions about the ADR process remain confidential.

32. Waller Legal sought instructions from clients to hold in abeyance any claims against the Diocese of Ballarat where there was an active police investigation into, or prosecution of, an alleged offender.

33. We note that the criminal case against Father Ridsdale concluded in April 2014. Even so, very few claims have resolved against Bishop Bird / the Diocese of Ballarat (save for a small number of claims that involve another defendant, such as the Christian Brothers). None of the claims in which there has been a recent conviction against Father Ridsdale have yet resolved, however, settlement discussions are ongoing.

The Salesians of Don Bosco

34. Waller Legal currently acts on behalf of 34 clients who allege sexual abuse by members of the Salesians of Don Bosco (“claims against the Salesians”). Most of these allegations arise out of sexual abuse at Salesian College in Rupertswood, Victoria.

35. Waller Legal sought instructions from clients to hold in abeyance any claims against the Salesians where there was an active police investigation into, or prosecution of, an alleged offender. Many of these criminal proceedings were completed in mid-2015.

36. The Salesians are represented by CBP. There is CCI involvement in most of the claims against the Salesians. CCI is also represented by CBP.

37. The Salesians and/or CCI have generally agreed to an ADR process, however, the Defendants require that discussions about the process be kept confidential.

38. To date, none of the claims against the Salesians have resolved, including those where there have been convictions against members of the Salesians.
The Melbourne Response

39. Since 2007, Waller Legal has been actively advising, representing and supporting clients through the Catholic Archdiocese of Melbourne’s ("the Archdiocese") ADR process, the Melbourne Response. To date, we estimate that we have assisted over 50 clients submit or progress one or multiple claims for ex gratia compensation through this process. This figure includes claims that have resolved and claims that remain ongoing.

40. These complaints have involved allegations of sexual abuse against several clergy and laypeople within the jurisdiction of the Archdiocese, including complaints against some of the Archdiocese’s most notorious pedophile priests, such as, Fathers Wilfred Baker, Kevin O’Donnell, Ronald Pickering, Desmond Gannon, Anthony Bongiorno and Nazareno Fasciale.

41. In our view the Melbourne Response process is deeply flawed and Waller Legal accepts and endorses the Submissions of Counsel Assisting and the findings of the Royal Commission in Case Study 16. Waller Legal represented Christine Foster in that case study. In our experience and opinion, the difficulties identified by the Royal Commission have not been addressed.

42. On 4 April 2014, Archbishop Hart announced a consultation process and review into Melbourne Response ("the Review"). The Honourable Mr Donnell M Ryan QC was appointed to conduct the review. The scope of the review was set by the Terms of Reference to examine and evaluate:

(a) Whether the current cap of $75,000.00 should be increased or removed;

(b) If a cap is to be retained, the amount of the cap having regard to the amounts available under existing or proposed redress schemes responding to victims of sexual abuse;

(c) How the amount of compensation to be paid to victims should be determined;

(d) How past cases where compensation has been paid should be reviewed and the procedures that should apply to any such review; and

(e) Any changes to the structure, practices, policies, protocols and procedures of the Melbourne Response arising from any increase in the cap or its removal.

43. We are disappointed that approximately 26 months have elapsed since the announcement of the review and the outcome remains unknown. Consequently, the Melbourne Response process remains unreformed.
44. In 2013, Waller Legal acted on behalf of Mr Darcy Higgins. A finding was made that Mr Higgins had been sexually abused by Father Kevin O’Donnell. The matter was referred to the Compensation Panel. Our client was made an offer of compensation that, he felt, was disappointing and inadequate. We shared our client’s view.

45. Subsequently, in August 2013, Waller Legal wrote to Mr Richard Leder of Corrs Chambers Westgarth, solicitors for the Archbishop and the Archdiocese, seeking that the Archbishop reconsider the offer of compensation. We note that this request was refused.

46. Waller Legal wrote again to Mr Leder in August 2014 and September 2014, requesting that our client’s offer of compensation be reconsidered in light of the Review which had been announced by the Archbishop only some months prior. We also noted our client’s ill health.

47. This request was again denied and we were advised that Corrs Chambers Westgarth were not in a position to take the matter further prior to the outcome of the review.

48. In reply, Waller Legal wrote to Mr Leder seeking to ascertain the anticipated timeframe for the outcome of the Review.

49. In November 2014, we were informed by Mr Leder that the Review was underway but that it may take some time for the Honourable Mr Ryan to formulate his report and recommendations. It was indicated that the review would be complete by the first quarter of 2015. We note that this did not occur.

50. We note that our client subsequently chose to accept the offer of compensation made to him, primarily due to his failing health and heart condition. Waller Legal formed the view that the amount offered to our client by the Archdiocese was inadequate. In order to effect maximum benefit to our client we considerably reduced our fees. The client had not made any request for us to reduce our fees. We continue to act for this client in the hope that the Archdiocese will respond and that our client may be eligible for some additional compensation. In July 2016, we have again written to Mr Leder seeking a response in this matter.

51. Mr Higgins has given his permission to provide this information to the Royal Commission and wishes to state that should the Royal Commission seek to look further into his matter he would agree to release information about his case to the Royal Commission.

52. On 12 October 2015, Waller Legal wrote to Mr Leder, seeking an update as to the status of the review. This correspondence did not pertain to any particular client.

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7 Mr Higgins has provided his consent to be identified.
53. Waller Legal received a brief reply, dated 28 October 2015, stating that the Archbishop would be making an announcement in relation to the outcome of the review in coming weeks. We note that this did not occur.

54. It has been indicated that any changes made to the Melbourne Response process would be retrospective to the date the review was announced. We understand this to mean that, in the event that the cap on compensation is increased, clients who have settled their matters on or after 4 April 2014 may be eligible to receive a further payment of compensation. This commitment, we understand, remains unchanged.

55. We believe that this is grossly inadequate and suggest that any increase to the cap should be applied retrospectively to all matters settled through Melbourne Response since its inception in 1996.

56. We note that upon the establishment of the Melbourne Response, compensation payments were subject to a cap of $50,000.00. This increased to $55,000.00 in 2000 and increased once more to the present cap of $75,000.00 in 2008. We believe that it would be a great injustice not to review all matters that have previously resolved for an amount of compensation that is vastly less than the amount that a comparable matter would resolve for today through the same process. Of particular concern are the matters which resolved prior to the implementation of the present cap in 2008 when the Compensation Panel were empowered to award substantially less.

57. By way of context, Waller Legal acts for approximately 40 clients who have received compensation through the Melbourne Response. Of these, approximately 16 of those received compensation prior to the 2008 cap increase and, of those, approximately four have received compensation prior to the 2000 cap increase. These matters remain on hold indefinitely, pending the outcome of the review.

58. We are further troubled by the lack of clear and concise guiding principles and policies that the Compensation Panel ought to have available to enable them to make fair and consistent recommendations regarding quantum. To date, we understand that no such principles or policies have been implemented despite recommendations being made by the Royal Commission in Case Study 16 that there is an obvious need to have written procedures that are published and consistently followed. Such procedures, in our view, could and should be implemented regardless of the pending Review.

59. Further, we understand that it remains the case that the Melbourne Response provides no written reasons for decisions, nor is there any capacity to seek review or appeal.
Towards Healing

60. It is the view of Waller Legal that the Towards Healing process is deeply flawed and potentially traumatic for those survivors who engage in it. We do not intend to articulate our criticisms in this forum. We note that this subject is well traversed by the Victorian Parliamentary Inquiry and the Royal Commission.

61. In spite of the Royal Commission’s Findings and notwithstanding the degree of criticism faced by Towards Healing, Waller Legal continues to be referred to the process by a number of Catholic Dioceses and Orders who seem unwilling to deal with our clients’ complaints outside of the Towards Healing process.

62. Three examples are:
   (a) The New Norcia Benedictine Community (“the Benedictines”);
   (b) The Catholic Diocese of Darwin; and
   (c) The Catholic Diocese of Sandhurst.

63. In December 2015 Waller Legal corresponded with Cornwall Stodart, legal representatives for the Benedictines. At this time, Waller Legal was acting for a group of former child migrants with claims against the Christian Brothers in Western Australia. The Christian Brothers do not insist on using the Towards Healing process. As described above, the Christian Brothers have agreed to an effective ADR process involving independent legal representation of the survivor and informal settlement conferences. A subset of those clients with allegations against the Christian Brothers also made allegations against priests of the Benedictine Order. Waller Legal had arranged a series of informal settlement conferences with the Christian Brothers, which were scheduled to occur in February 2016, and we asked the Benedictines to attend, where relevant.

64. In our correspondence in December 2015 we sought confirmation from the Benedictines that they would participate in the settlement discussions in connection with a particular client. With our client’s consent we exchanged relevant information to enable the Benedictines to understand and assess our client’s circumstances. We did not receive a written reply prior to the settlement conferences and accordingly Waller Legal made several phone calls to Cornwall Stodart. We were eventually informed in late January 2016 that the Benedictines did not intend to participate in the settlement discussions.

65. We did not receive a written reply from Cornwall Stodart until April 2016. The letter advised that the Benedictines would be prepared to meet with our client to discuss and try to resolve the claim by way of the Towards Healing procedure. In their correspondence, Cornwall Stodart suggested that our client contact the Director of the West Australian Professional Standards Office. Cornwall Stodart also
requested full details of all or any compensation payments received or to be received by our client in relation to their claim.

66. Waller Legal finds the approach of the Benedictines disappointing in a number of significant respects. Firstly, our clients have generally arranged legal representation because they do not wish to deal with Catholic Authorities or processes themselves. Secondly, the approach of the Benedictines essentially forces these clients to go through two separate processes. Thirdly, we note the substantial criticisms and observations about Towards Healing made by the Victorian Parliamentary Inquiry and the Royal Commission.

67. By way of further example, in April 2016, Waller Legal, on behalf of clients who had alleged incidents of sexual abuse at Garden Point Mission on Melville Island, wrote to the Diocese of Darwin. We sought to confirm that the Diocese of Darwin was the entity responsible for running the Mission at the relevant times and asked that they provide the contact details of their legal representatives. We indicated our interests in engaging in discussions on behalf of our clients. We have not, to date, received any reply from the Diocese of Darwin.

68. Waller Legal did receive a reply dated 2 May 2016 from Dr Sharon McCallum, from a Queensland address, referring to our letter of 21 April 2016. She identified herself as the Director of Professional Standards for the Catholic Church NT. The Director indicated the Diocese preference for the complaint to be referred to Towards Healing so the Diocese may participate fully and said that she was looking forward to “beginning the Towards Healing process on behalf of your clients.” The Director did not address our query as to whether the Diocese of Darwin was the entity responsible for Garden Point Mission, Melville Island.

69. We have written further correspondence to the Bishop of Darwin and to Dr Sharon McCallum asking again for information as to the entity responsible for running the mission. These letters were dated early July 2016 and as at the time of writing, neither the Bishop nor Dr McCallum would have had a reasonable opportunity to reply as yet.

70. By way of our third example, the Catholic Diocese of Sandhurst refuses to deal with complaints about the sexual abuse of children outside the Towards Healing process. Further, it seems that the Diocese of Sandhurst and/or Towards Healing refuses to deal with our office, inviting our client to contact them directly and failing to respond to our correspondence over a period of some months since then. Further information can be provided to the Royal Commission if this line of inquiry is of interest to the Commissioners.
Concluding remarks about current approaches of Catholic Authorities

71. Whilst not the focus of this paper, other Catholic Orders have resolved matters using an ADR process. Such orders include the Missionaries of the Sacred Heart and the De La Salle Brothers.

72. By focusing on the Christian Brothers we hope to illuminate a positive example in which there has been a significant change of approach in the last few years. We also hope to encourage other Catholic Authorities to utilise the ADR process as it has proven to be a flexible, compassionate and cost effective approach.

73. However, there are still significant difficulties faced by sexual abuse clients depending on which Catholic Authority is involved.

74. As a general observation it is noted that where a Catholic Authority has legal representation separate to that of the insurer there may be greater scope to reach timely agreement on flexible and compassionate ADR processes. Perhaps this is because the order is assisted, by its own legal representatives, in dealings with their insurer. We query whether potential conflicts of interest may arise where one legal representative acts for both the religious order and the insurer.

75. It is also noted, as a general observation, that matters involving CCI generally take longer and are more intrusive in terms of requests for historical clinical notes and requirements to attend an additional medico-legal.

Concluding remarks

76. Thank you for the opportunity to submit this paper. Waller Legal invite the Royal Commission to contact us if we can be of any further assistance or provide any further information.

Waller Legal
ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO
CHILD SEXUAL ABUSE

Issues Paper 11: Catholic Church Final Hearing

SUPPLEMENTARY SUBMISSION

Introduction

1. Waller Legal welcomes and supports the work of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). We thank the Royal Commission for this opportunity to provide this supplementary submission to Issues Paper 11 in relation to the Catholic Church Final Hearing.

2. This paper provides brief comments and observations as to factors that may have contributed to the occurrence of child sexual abuse in the Catholic Church and factors that may have affected the institutional response. These comments are informed by the instructions provided to Dr Waller over the 20 years that she has worked with survivors of abuse.

Waller Legal

3. Since 2007 Waller Legal has worked exclusively to provide legal representation to those who have suffered sexual abuse. The firm generally does not do any other kind of legal work.¹ The Principal Solicitor is Dr Vivian Waller. Waller Legal has a total of 17 staff members and is located in Collingwood, Victoria. Waller Legal currently works with survivors in Western Australia, the Northern Territory, New South Wales, Queensland, Tasmania and Victoria.

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4. Dr Vivian Waller has worked in the sexual assault field since her admission to practice in 1995. She completed her articles at Slater & Gordon in 1994 and worked for that firm during the early litigation against the Christian Brothers and St John of God Brothers. She subsequently worked at Maurice Blackburn for approximately 10 years, where, in 2005, she established the Sexual Assault Unit. We understand this was the first legal practice in Australia dedicated to the provision of legal services to those who had been sexually abused. In 2005 Dr Waller completed a PhD on Limitation Periods in Child Sexual Assault Litigation in Victoria and post-traumatic stress disorder.

5. In 2007 Dr Waller left Maurice Blackburn to set up Waller Legal, a firm dedicated to working with survivors of sexual assault. Waller Legal currently represents approximately 750 clients seeking compensation and acknowledgement in relation to allegations of sexual abuse. Predominantly these matters relate to child sexual abuse, although some relate to the sexual abuse of adults. In addition, we have represented 20 survivors and related witnesses in five Royal Commission hearings (Case Studies 16, 22, 28, 30 and 38).

Factors that may have contributed to occurrence of sexual abuse in Catholic institutions

6. Survivors we work with often have poignant insights about factors they perceive as contributing to the occurrence of sexual abuse in Catholic institutions. We offer the following distilled examples.

7. Many of our clients identify the specific teachings of the Catholic Church, particularly around sex and sexuality, as factors that helped to create the circumstances in which abuse could occur and continue undetected. For example, many clients instruct us that they were taught that certain sexual activities, such as masturbation, were evil or sinful. We have acted in matters where a religious person has questioned a teenage boy about masturbation and, having elicited a confession, used this to further abuse the boy under threat of telling his parents. The supposed sinfulness of masturbation and other sexual activity was therefore used in this way as a tool to reduce the risk of disclosure.

8. Many clients tell us that they were taught by the Catholic Church that homosexuality, masturbation and sex outside marriage were forbidden and deeply shameful. However, sexual assault by a priest or brother often involved each of these. Clients recount the confusion, shame and guilt they felt as a result and tell us that these emotions were a particularly strong barrier to disclosure.

9. Clients commonly emphasise the powerful role occupied by religious people, particularly priests and brothers, in their family, school, church and community. Some clients instruct that, for them, their family and community, the priest was seen as God’s representative on earth and the intermediary between God and the individual. Clients often tell us that, by virtue of his religious role, the offender was commonly viewed as beyond reproach or criticism. This acted as a powerful disincentive to disclosure. For many of our clients, the offender’s power was solidified by their experience of disclosing the abuse to a parent or other adult and being told that a ‘man of God’ was not capable of such acts.
10. Many clients tell us that the offender's power was amplified by their position as the recipient of intimate knowledge about the client's family. For example, a priest, through his official role, would often know which child had a difficult home life, an absent father or an unwell mother. Clients describe the way in which offenders used this knowledge as part of the grooming process, for example, by taking the child aside to talk about the difficulties the child was experiencing. Clients often tell us that it was under the guise of providing support and comfort that the offender was able to gain the client's trust.

11. Clients commonly instruct us that they felt unable to disclose the abuse to a family member because of the priest or brother's close relationship with the family. We have acted for clients whose abuser has comforted their mother following a miscarriage, buried their grandmother and performed the marriage of an older sibling. Clients tell us that the offender's relationship with their family prevented them from disclosing the abuse due to doubts that they would be believed over the trusted 'man of God'. For others, the offender's involvement in their family life brought the client into closer and more frequent contact with the offender, creating more opportunities for abuse.

12. We have acted for many clients abused by Catholic offenders in institutions run specifically for vulnerable children, such as orphanages for children who were wards of the state or British child migrants. These clients often talk about having no one outside the institution to care for or check on them. Many clients feel that this made them even more vulnerable to predation. Some clients who had family outside the institutions instruct us that their families were forbidden from visiting or having contact with them by the offender or other religious people involved in the institution.

13. Many clients instruct that they were sexually abused in the context of experiencing or witnessing physical abuse, either by the same offender or another religious person at the school or institution. Some clients instruct that, especially where there had been a history of physical abuse prior to the sexual assaults, the fear of being physically assaulted made them more compliant and/or too scared to disclose the abuse to another priest or brother. Clients have made this observation irrespective of the severity of the physical assaults and whether it could be argued that the assaults constituted 'acceptable' punishment at that time. For some clients, reporting the abuse to other members of the clergy resulted in them being physically punished — sometimes severely — for 'lying'.

Factors that may have affected the institutional response of the Catholic Church to child sexual abuse

14. Over the years, clients have offered the following as factors that they feel have affected the response of the Catholic Church to child sexual abuse:

(a) Some clients perceive that, by systematically failing to report child sexual abuse, the Catholic Church has considered itself 'above the law' and the criminal justice system;
(b) Clients have commented that, by sending offenders to 'treatment' and/or simply moving offenders to a different location, while offering no or little support to survivors, the Church has appeared most concerned with the moral failings of the offender, rather than the wellbeing of children. For these same reasons, some clients opine that the Church seems to have hoped that the moral failing of the offender would be cured by prayer and confession and that shortly thereafter, or contemporaneously, an offender could return to working with children;

(c) Some clients perceive that, by not reporting abuse or offering appropriate compensation to survivors, the Church has appeared most concerned about protecting its name, status and wealth, rather than assisting those who have been abused;

(d) Some clients who have engaged in the Church's own compensation schemes, such as Melbourne Response or Towards Healing, have told us that they found the process demeaning, disempowering or disingenuous, which has had the effect of causing more harm than good; and

(e) Clients have also suggested that the Church's response to child sexual abuse may have been negatively influenced by the institution's strict hierarchy in which questioning authority is difficult and strongly discouraged and decision-making power is concentrated in the hands of a few elite men. Some clients have wondered whether the involvement of people with more diverse life experience, such as women and/or parents, may have resulted in more survivor-centered decisions in relation to, for example, reporting the abuse to police, removing offenders from contact with children and the types and extent of support offered to survivors.

Concluding remarks

15. Thank you for the opportunity to submit this paper. Please do not hesitate to contact our office if we can be of further assistance.