



Submission from the  
Truth Justice and Healing Council

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

Issues Paper No. 2 | Towards Healing

**30 September 2013**

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## Our Commitment

The leaders of the Catholic Church in Australia recognise and acknowledge the devastating harm caused to people by the crime of child sexual abuse. We take this opportunity to state:

- 1 Sexual abuse of a child by a priest or religious is a crime under Australian law and under canon law.
- 2 Sexual abuse of a child by any Church personnel, whenever it occurred, was then and is now indefensible.
- 3 That such abuse has occurred at all, and the extent to which it has occurred, are facts of which the whole Church in Australia is deeply ashamed.
- 4 The Church fully and unreservedly acknowledges the devastating, deep and ongoing impact of sexual abuse on the lives of the victims and their families.
- 5 The Church acknowledges that many victims were not believed when they should have been.
- 6 The Church is also ashamed to acknowledge that, in some cases, those in positions of authority concealed or covered up what they knew of the facts, moved perpetrators to another place, thereby enabling them to offend again, or failed to report matters to the police when they should have. That behaviour too is indefensible.
- 7 Too often in the past it is clear some Church leaders gave too high a priority to protecting the reputation of the Church, its priests, religious and other personnel, over the protection of children and their families, and over compassion and concern for those who suffered at the hands of Church personnel. That too was and is inexcusable.
- 8 In such ways, Church leaders betrayed the trust of their own people and the expectations of the wider community.
- 9 For all these things the Church is deeply sorry. It apologises to all those who have been harmed and betrayed. It humbly asks for forgiveness.

The leaders of the Catholic Church in Australia commit ourselves to endeavour to repair the wrongs of the past, to listen to and hear victims, to put their needs first, and to do everything we can to ensure a safer future for children.

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## *Towards Healing: Key Documents*

### **A. The Protocol**

- 1 *Towards Healing* (January 2010)
- 2 *Towards Healing* (as at June 2008)
- 3 *Towards Healing* (December 2000)
- 4 *Towards Healing* (December 1996)

### **B. Companion Principles**

- 5 *Integrity in the Service of the Church* (September 2011)
- 6 *Integrity in Ministry* (June 2004, reprinted April 2010)
- 7 *Integrity in Ministry* (June 1999)

### **C. Guidelines and Companion Documents**

- 8 *Implementation of Towards Healing: Notes for People involved in the Process* (December 2012)
- 9 *Towards Healing: Quick reference for Accused Clergy* (November 2012)
- 10 *Towards Healing: Guidelines for Church Authorities* (February 2011)
- 11 *Summary of Process for those Accused of Abuse* (February 2011)
- 12 *Summary of Process for Persons wishing to bring a Complaint of Abuse* (February 2011)
- 13 *Information for Legal Personnel Referring Clients to the Towards Healing Process* (2010)
- 14 *Landmarks Leaflet: Towards Healing* (2003)

### **D. Earlier Protocols**

- 15 ACBC, Special Issues Committee, *Protocol for Dealing with Allegations of Criminal Behaviour*, 1992
- 16 ACBC, Special Issues Committee, *Protocol for Dealing with Allegations of Criminal Behaviour*, Amended Draft, April 1991
- 17 ACBC, Special Issues Committee, *Protocol for Dealing with Allegations of Criminal Behaviour*, 1989

### **E. Pastoral Statements and Letters**

- 18 *A Pastoral Statement from the Australian Catholic Bishops' Conference and the Australian Conference of Leaders of Religious Institutes*, 29 November 1996
- 19 ACBC, *Pastoral Letter to the Catholic People of Australia*, 26 April 1996

- 20 *A Pastoral Statement on Child Protection and Child Sexual Abuse from the Australian Catholic Bishops' Conference, January 1993*
- 21 *A Pastoral Statement on Child Protection and Child Sexual Abuse from the Australian Catholic Bishops' Conference and Australian Conference of Leaders of Religious Institutes, 19 December 1992*

#### **F. Reviews and Commentary**

- 22 Professor Patrick Parkinson, *Final Report: Towards Healing Review*, April 2009
- 23 Professor Patrick Parkinson, *Assessing complaints when the offence occurred a long time ago*, February 2004
- 24 Professor Patrick Parkinson, *Concealing an offence – the obligation to report criminal offences to the Police*, February 2004
- 25 Professor Patrick Parkinson, *The relationship between Towards Healing and civil legal action*, undated

#### **G. NCPS Charter**

- 26 Charter of the National Committee for Professional Standards (2009)
- 27 Charter of the National Committee for Professional Standards (1997, as amended 2003, 2008)

#### **H. Submissions**

- 28 *Facing the Truth, A Submission by the Catholic Church in Victoria to the Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations*, 21 September 2012

## Authorising Church Bodies

The following Catholic Church bodies have authorised the Truth Justice and Healing Council to represent them at the Royal Commission:

### Dioceses

Archdiocese of Adelaide	Diocese of Broome	Diocese of Sandhurst
Archdiocese of Brisbane	Diocese of Bunbury	Diocese of Toowoomba
Archdiocese of Canberra-Goulburn	Diocese of Cairns	Diocese of Townsville
Archdiocese of Hobart	Diocese of Darwin	Diocese of Wagga Wagga
Archdiocese of Melbourne	Diocese of Geraldton	Diocese of Wilcannia-Forbes
Archdiocese of Perth	Diocese of Lismore	Diocese of Wollongong
Archdiocese of Sydney	Diocese of Maitland-Newcastle	Eparchy of Saints Peter & Paul of Melbourne
Diocese of Armidale	Diocese of Parramatta	Military Ordinariate of Australia
Diocese of Ballarat	Diocese of Port Pirie	Personal Ordinariate of Our Lady of the Southern Cross
Diocese of Bathurst	Diocese of Rockhampton	
Diocese of Broken Bay	Diocese of Sale	

### Religious Institutes

Adorers of the Blood of Christ	Franciscan Missionaries of the Divine Motherhood	Presentation Sisters – Queensland Congregation
Augustinian Recollect Sisters	Franciscans of the Immaculate Holy Cross – Congregation of Dominican Sisters	Presentation Sisters – Tasmania
Augustinian Sisters, Servants of Jesus and Mary	Hospitaller Order of St John of God	Presentation Sisters – Victoria
Australian Ursulines	Institute of Sisters of Mercy Australia & Papua New Guinea	Presentation Sisters – Wagga Wagga Congregation
Blessed Sacrament Fathers	Loreto Sisters	Presentation Sisters WA
Brigidine Sisters	Marist Brothers	Religious of the Cenacle
Canons Regular of Premontre (Norbertines)	Marist Fathers Australian Province	Salesians of Don Bosco
Canossian Daughters of Charity	Marist Sisters – Congregation of Mary	Salvatorian Fathers
Capuchin Friars	Ministers of the Infirm (Camillians)	Servants of the Blessed Sacrament
Christian Brothers	Missionaries of God's Love	Sisters of Charity of Australia
Cistercian Monks	Missionaries of the Sacred Heart	Sisters of Jesus Good Shepherd “Pastorelle”
Columban Fathers	Missionary Franciscan Sisters of the Immaculate Conception	Sisters of Mercy Brisbane
Congregation of the Mission – Vincentians	Missionary Sisters of Mary, Queen of the World	Sisters of Mercy North Sydney
Congregation of the Most Holy Redeemer – Redemptorists	Missionary Sisters of St Peter Claver	Sisters of Mercy Parramatta
Congregation of the Passion – Passionists	Missionary Sisters of Service	Sisters of Nazareth
Congregation of the Sisters of Our Lady Help of Christians	Missionary Sisters of the Sacred Heart	Sisters of Our Lady of Sion
Daughters of Charity	Missionary Sisters of the Society of Mary	Sisters of St Joseph
Daughters of Mary Help of Christians	Missionary Society of St Paul	Sisters of St Joseph of the Apparition
Daughters of Our Lady of the Sacred Heart	Oblates of Mary Immaculate	Sisters of St Joseph of the Sacred Heart
De La Salle Brothers	Order of Brothers of the Most Blessed Virgin Mary of Mount Carmel (Carmelites)	Sisters of St Joseph, Perthville
Discalced Carmelite Friars	Order of Friars Minor Conventual	Sisters of St Paul de Chartres
Dominican Friars	Order of Saint Augustine	Sisters of the Good Samaritan
Dominican Sisters of Eastern Australia & The Solomons	Order of the Friar Servants of Mary (Servite Friars)	Sisters of the Good Shepherd
Dominican Sisters of North Adelaide	Our Lady of the Missions	Sisters of the Little Company of Mary
Dominican Sisters of Western Australia	Patrician Brothers	Sisters of the Resurrection
Faithful Companions of Jesus	Pious Society of St Charles – Scalabrinians	Society of African Missions
Family Care Sisters	Poor Clare Colettines	Society of Catholic Apostolate
Franciscan Friars	Presentation Sisters – Lismore	Society of Jesus
Franciscan Missionaries of Mary		Society of St Paul

## Other Entities

Australian Catholic Bishops  
Conference  
Catholic Religious Australia  
Catholic Church Insurance Limited  
Professional Standards Office  
NSW/ACT  
Professional Standards Office  
Northern Territory  
Professional Standards Office  
Queensland  
Good Samaritan Education and  
Lourdes Hill College  
Good Samaritan Education and  
Mater Dei  
Good Samaritan Education and  
St Mary Star of the Sea College  
Good Samaritan Education and  
St Patrick's College  
Loreto Mandeville Hall Toorak  
Trustees of Mary Aikenhead  
Ministries



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## The Truth Justice and Healing Council

- 1 The Catholic Church in Australia (the Church) welcomes the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse as an opportunity to acknowledge the truth about child sexual abuse within the Church, and to have these issues investigated and considered, objectively and publicly. It is an opportunity to bear witness to the suffering of the many victims of this abuse.
- 2 The Church is committed to cooperating fully with the Royal Commission, without reservation or qualification.
- 3 In February 2013 the Australian Catholic Bishops Conference (ACBC) and Catholic Religious Australia (CRA)<sup>1</sup> jointly established the Truth Justice and Healing Council (the Council) to coordinate and oversee the Church's overall response to and appearance at the hearings of the Royal Commission.
- 4 The Council is a body of 13 people, with expertise spanning such fields as child sexual abuse, trauma, mental illness, suicide, psycho-sexual disorders, education, public administration, law and governance. The majority of Council members are lay, two of its members are bishops, and one of its members is a Brigidine sister. Four of the Council members are either themselves victims of abuse or have immediate family members who are victims. The Council provides independent advice to the ACBC and CRA, through a Supervisory Group, which is comprised of the Permanent Committee of the ACBC, and representatives of CRA. The Supervisory Group may accept or reject such advice. The Supervisory Group fully endorses this Submission. The members of the Supervisory Group are listed in Annexure A.
- 5 The Council is chaired by the Hon Barry O'Keefe AM QC, former Chief Judge of the Commercial Division of the Supreme Court of New South Wales and a former Commissioner of the NSW Independent Commission Against Corruption.
- 6 The current members of the Council are:
  - (a) Dr Sue Gordon AM, former Magistrate of the Children's Court of Western Australia
  - (b) Archbishop Mark Coleridge, Archbishop of Brisbane
  - (c) Professor Maria Harries, Adjunct Professor at Curtin University and Research Fellow in Social Work and Social Policy at the University of Western Australia
  - (d) Jack Heath, CEO of SANE Australia
  - (e) Associate Professor Rosemary Sheehan, Department of Social Work, Faculty of Medicine, Nursing and Health Sciences, Monash University
  - (f) Hon Greg Crafter AO, former South Australian Minister of Education

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<sup>1</sup> The Australian Conference of Leaders of Religious Institutes is the peak body for leaders of religious institutes and societies of apostolic life resident in Australia. Catholic Religious Australia (CRA) is the public name of that peak body. CRA is the term used in this Submission to refer to that body.

- (g) Sister Maree Marsh, former Congregational Leader of the Brigidine Sisters and psychologist with Anti-Slavery Australia at the University of Technology Sydney, Faculty of Law
  - (h) Bishop Bill Wright, Bishop of the Diocese of Maitland-Newcastle
  - (i) Professor Greg Craven, Vice-Chancellor of the Australian Catholic University
  - (j) Elizabeth Proust AO, former Secretary to the Victorian Department of Premier and Cabinet, and Chairman of the Bank of Melbourne and Nestlé Australia and member of other boards
  - (k) Stephen Elder, former Member of the Victorian Legislative Assembly and Parliamentary Secretary for Education and currently Executive Director of Catholic Education for the Archdiocese of Melbourne, and
  - (l) Dr Marian Sullivan, child and adolescent psychiatrist.
- 7 The CEO of the Council, Francis Sullivan, has worked in government and private practice and has held positions as Secretary-General of the Australian Medical Association, Chief Executive of Catholic Health Australia and consultant to the Pontifical Council for the Pastoral Care of Health Care Workers at the Vatican. He is also an Adjunct Professor at the Australian Catholic University.
- 8 The Council oversees the Church's engagement with the Royal Commission, including by:
- (a) speaking for the Church in matters related to the Royal Commission and child sexual abuse
  - (b) coordinating the Church's legal representation at, and the Church's participation in, the Royal Commission.
- 9 The Council's role extends to:
- (a) initiating research into best practice procedures, policies and structures to protect children
  - (b) assisting in identifying any systemic institutional failures that have impeded the protection of children
  - (c) providing information to the Royal Commission concerning the various procedures, policies and structures that have been successively put in place by Church organisations over the past 25 years to deal with complaints and instances of child sexual abuse and any improvements which might be made to them to provide greater protection for children
  - (d) seeking to promote lasting healing for the victims and survivors of abuse.
- 10 To date, 31 dioceses and 91 religious institutes (commonly referred to as congregations and orders) have given an authorisation to the ACBC or CRA, authorising those bodies to represent and act for them in the engagement of the Church with the Royal Commission.

- 11 The ACBC and CRA have in turn delegated that authority to the Council. The Council therefore seeks to appear at the Royal Commission for all the authorising bodies, and will speak with one voice for all of them.
- 12 Pursuant to these arrangements, the Council thus acts for all archdioceses and dioceses in Australia, with the exception of three of the Eastern Rite Eparchies, and for all the major religious institutes. The Council also acts for a number of other Catholic organisations including Catholic Church Insurance Limited (CCI).
- 13 For practical purposes, the Council will ordinarily speak for the whole Church: its dioceses, its religious institutes, its priests and religious, in the Royal Commission.
- 14 The Catholic Church in Australia today is an extensive and diverse religious organisation committed to worship, prayer and pastoral care. It is involved in providing pastoral, educational, health, human and social services across Australia.<sup>2</sup>
- 15 Notwithstanding that all the dioceses and religious institutes are autonomous and independent, each from the other, with no one central or controlling authority, and with each free to govern its affairs separately and independently, all are united in their support for the principles stated in the Commitment at the head of this Submission.
- 16 Those principles are also fully shared by all the innocent and high-minded priests and religious whose long years of devoted and selfless service have been admirable and who are heartbroken by the revelations of sexual abuse which have emerged in recent decades.
- 17 The Council's aim is to do everything in its power to ensure that the Royal Commission has available to it from the Church all the material that it needs for the work it seeks to do, so as to ensure that a light is shone on dark places and times and events, and to ensure that nothing is concealed or covered up in respect of what Church personnel did or failed to do.
- 18 The Council seeks to fulfil that role, on behalf of the Church, in a spirit of honesty, openness and genuine humility.

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<sup>2</sup> See Annexure B

## 1 *Towards Healing*

### Key points:

- *Towards Healing* is a process offered by the Church to a person who has been abused by a priest, religious or other Catholic Church personnel.
- Pastoral care is at the heart of *Towards Healing*, which seeks to put the victim at the forefront of the process.
- *Towards Healing* is a “living” process. It has been reviewed and amended several times with a view to improving its effectiveness.
- The experiences of victims in *Towards Healing* will vary. Some people have found it to be beneficial, healing, and of value to them. Others have found it did not deliver what they were seeking, and are critical of the process.
- The Church seeks to listen to and learn from victims’ experiences respectfully, and with humility.

### 1.1 Introduction

- 1 *Towards Healing* offers a person who has been abused, by a priest or religious or other Church personnel, the opportunity to tell his or her story, personally and directly, to someone in authority in the Church, who will accept responsibility for what happened to him or her, acknowledge the damage he or she has suffered, give a sincere apology, and offer pastoral care and reparation.
- 2 The offering and provision of pastoral care to victims is at the heart of *Towards Healing*. The word “pastor” is derived from the Latin word referring to a “shepherd”. Hence the 23<sup>rd</sup> psalm says: “*The Lord is my shepherd. ... He restores my soul.*” Pastoral care is the spiritual care of a person or of a body of people such as a parish or a diocese.
- 3 The *Towards Healing* process, with its pastoral emphasis, is one whose features will appeal to some, and not to others. While one victim may choose *Towards Healing*, others may choose one or more of the other possible ways of dealing with the abuse that he or she has suffered.
- 4 *Towards Healing* states, and seeks to give effect to, the Church’s commitment to seven principles in responding to complaints of abuse – truth, humility, healing for the victims, assistance to other persons affected, a just response to those who are accused, an effective response to those who are guilty of abuse, and the prevention of abuse.
- 5 *Towards Healing* is a public statement of the Church’s position. It sets out in some detail, in uncomplicated language, how the Church will approach complaints where a victim chooses to use *Towards Healing*, and the process which will be followed. The document is easily accessible on Church websites.
- 6 *Towards Healing* applies to complaints received in all archdioceses, dioceses and religious institutes throughout Australia, with the exception of complaints relating to priests, religious and

lay persons holding an appointment from the Archbishop of Melbourne. The Archdiocese of Melbourne handles such complaints under the *Melbourne Response*.

- 7 *Towards Healing* seeks to place the position of the victim at the forefront of the process, giving each person an opportunity to tell the Church the truth of what has happened to him or her. It is a process which seeks to respond to the needs of victims. Each victim is offered counselling and support. In particular, each victim is encouraged to take his or her case to the police where it involves criminal behaviour.
- 8 The Church fully acknowledges and recognises that sexual abuse is a devastating experience, with a wide range of personal consequences that can persist for years, and for some, a lifetime.
- 9 The Church also understands that for children, the effect of abuse may also reflect the way their initial disclosure is received. Acceptance, validation and support are crucial. If silence or neglect or disbelief follow abuse, voices that invoke shame and fear can inhabit the inner world of the child, and later the adult. The combined effect can be to diminish the self in terms of esteem and trust, creating vulnerability, helplessness and inadequacy. Accordingly, the Church acknowledges with great regret that every time a truthful victim was disbelieved, the harm to that victim was increased.
- 10 Victims of child sexual abuse can experience difficulties in relationships and lifestyles.<sup>3</sup> Some victims' lives are characterised by crises such as job disappointments, relocations, failed relationships and financial setbacks, often the result of unresolved childhood abuse issues. Functioning in 'crisis mode' can be exhausting and dispiriting, contributing to feelings of helplessness and hopelessness.<sup>4</sup>
- 11 When a child is abused by a Church representative, there can be profound spiritual, as well as psychological, consequences. Victims can struggle to integrate their beliefs and values with the losses imposed by sexual abuse, and are often deeply burdened by guilt and shame.
- 12 In order to take action, which is essential for long-term recovery, those violated must first overcome the sense of devastation and betrayal and any sense that they themselves bear any responsibility for having been abused. It is imperative to help the victim to understand clearly that the responsibility is that of the offender and not the victim.
- 13 All of these factors, among many others, have the consequence that the experience and aftermath of child sexual abuse, for the victim, can be devastating and complex. For such an experience, affecting large numbers of people and where the consequences can be so significant and so variable, in a sense no response process can ever be adequate. The harm done may in that sense truly be irreparable.
- 14 Nor can any single response process, however flexible, meet the needs or expectations of every individual victim. Any response process will involve difficult judgments in striking a balance in various ways, for example, between flexibility and fairness, between transparency and privacy, and between independence and personal engagement and empathy.

<sup>3</sup> C Henderson, *Reframing Responses: Improving Service Provision to Women Survivors of Child Sexual Abuse who Experience Mental Health Problems* (2006) Mental Health Coordinating Council Victims of Violent Crimes Grants Program, quoted in *Impact of Child Abuse*, ASCA Australia. <http://www.asca.org.au/>

<sup>4</sup> The Morris Center, 1995, quoted in *Impact of Child Abuse*, ASCA Australia. <http://www.asca.org.au/>

- 15 The Church offers *Towards Healing* as its best attempt at striking such a balance. It is a balance that is very different from that inherent in court processes. *Towards Healing* provides a way for each victim to seek a pathway to healing for the harm done to him or her, without having to negotiate the challenges of a court system which is based on adversarial positioning rather than mutual and respectful listening and engagement.
- 16 The decision to introduce *Towards Healing* was made in 1996, and the first *Towards Healing* cases commenced in 1997. Since then, the Church has progressively developed, reviewed and improved the process.
- 17 Since its inception the Church has engaged with many victims of child sexual abuse through *Towards Healing*. For all victims, the process of re-opening and revisiting the events can be painful and traumatic. However, it is the Church's experience, and sincere understanding, that many victims have found the process to be moving, beneficial and healing, and have greatly valued the acceptance of the genuineness of the complaint, the apology from the Church, and the acknowledgement of the harm done to them. For some, other features such as the provision of counselling, the support provided to them through the process, or the provision of financial assistance, have been important.
- 18 The Church recognises, however, that *Towards Healing* has not worked as it should have in every case. Some victims have been disappointed, even bitterly disappointed, in the process, because it did not deliver what they were seeking, or was not well handled in some way. The Church very much regrets any such instances, and is continually seeking to learn and improve from them. The Church will, in the Royal Commission, listen respectfully and with humility to the experiences of victims who have gone through the *Towards Healing* process.
- 19 Under *Towards Healing*, no two cases are the same. The process is substantially driven by the victim, each of whom has a different history, different objectives and different expectations. The process also depends heavily on the approach taken by the individuals who take part on behalf of the relevant Church body (Church Authority). Compassion and understanding from those people are critical to the success of the process. Each case, and each outcome, depends on the individuals involved on both sides and their engagement, and each case differs.
- 20 *Towards Healing* is a "living" process, one which does and should evolve over time, in response to the lessons which come out of the many separate engagements with individual victims. *Towards Healing* has been the subject of two external and independent reviews by Professor Patrick Parkinson<sup>5</sup> and, on each occasion, the Church has made significant changes and enhancements in response to those reviews. The process remains, and will remain, under constant and ongoing review.
- 21 The Church recognises that the *Towards Healing* process nevertheless still attracts criticism. In some cases the criticism goes to the policy, in other cases to its implementation. The Church readily accepts that some of the criticism may well have force, that all such criticism should be examined and that, where appropriate, changes should be made.

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<sup>5</sup> Professor of Law at the University of Sydney. Professor Parkinson chaired a review of child protection legislation in the 1990s that led to the enactment of the *Children and Young Persons (Care and Protection) Act 1998*. He has written a book on child sexual abuse in church communities, *Child Sexual Abuse and the Churches*. He has also conducted a study of sexual abuse allegations in the Anglican Church of Australia.

- 22 Nevertheless, the Church offers the *Towards Healing* process as a sincere and positive way for the Church to encourage victims of child sexual abuse to come forward, for the Church to acknowledge and apologise for the wrong done to each of those victims, and for the Church to provide reparation.
- 23 The Church is open to making further changes to *Towards Healing* to ensure that it works as compassionately and effectively for victims as possible. The Royal Commission's examination of *Towards Healing* provides an important opportunity for the whole Australian community to hear from victims, and examine both the process of *Towards Healing* and its implementation in that light.

## 1.2 A Restorative Justice Approach

- 24 *Towards Healing* draws upon the principles of restorative justice.
- 25 Some features of restorative justice programs include:
- (a) a focus on the harms and needs of victims
  - (b) a flexible response to a crime, that considers each case individually
  - (c) an approach that can be used in conjunction with traditional criminal justice processes and sanctions
  - (d) a response that focuses on the healing of victims.
- 26 When *Towards Healing* was adopted some 17 years ago, 'best practice' approaches to responding to sexual abuse complaints had yet to be identified. The same is arguably still true today. Commentators have recognised that "*evaluation research on restorative justice is at such a rudimentary stage that our claims about what is good practice and what is bad practice can rarely be evidence-based*".<sup>6</sup>
- 27 Sexual assault cases present challenges for restorative justice models,<sup>7</sup> because of the underlying difficulty in achieving the philosophical ideals of restoration when the issue centres on the exploitation of one of the parties by the other. Yet if effective and meaningful responses are not made, trauma for victims may be compounded and their recovery delayed.<sup>8</sup>
- 28 Some research confirms the potential value of the approach. Latimer *et al* in 2001 concluded after a review of 22 studies (which examined the effectiveness of 35 individual restorative justice programs) that victims were significantly more satisfied with participation in restorative justice programs than those whose case had been dealt with by the traditional criminal justice system.<sup>9</sup> Victims were found to be satisfied with their experiences of emotional restoration, the amount of information they obtained about their cases, levels of fairness, and with simply having had the

<sup>6</sup> A Cossins, "Restorative Justice and Child Sex Offences" (2008) 48 *Brit. J. Criminol.* 359 at 372. J Braithwaite, "Setting Standards for Restorative Justice", (2002a) *Brit. J. Criminol.* 563 at 565

<sup>7</sup> B Hudson, "Restorative Justice and Gendered Violence: Diversion of Effective Justice?" (2002) 42 *Brit. J. Criminol.* 616 at 617

<sup>8</sup> J Death, "They Did Not Believe Me: Adult Survivors' Perspectives of Child Sexual Abuse by Personnel in Christian Institutions" (2013) Crime and Justice Research Centre, Queensland University of Technology

<sup>9</sup> J Latimer, C Dowden and D Muise, "The Effectiveness of Restorative Justice Practices: A Meta-Analysis" (2001) Department of Justice Canada

opportunity to participate and to be heard. Other researchers have identified issues in the approach for victims of sexual abuse or assault.<sup>10</sup>

- 29 Restorative justice approaches such as *Towards Healing* will always need to be refined as more research is conducted and feedback received, particularly with respect to the satisfaction of victims with the process and outcomes.
- 30 However, such approaches can lead to outcomes which are in many ways superior to those provided in the criminal or civil legal systems of justice.<sup>11</sup> Noll and Harvey described the benefit of these processes as follows:

*“Restorative mediation is attractive to victims because they can experience a sense of justice not obtainable in the criminal or civil courts. The very act of confronting and conversing with church authorities and hearing them take responsibility for the wrong is sometimes all a victim seeks. Survivors of sexual abuse want the offender or offender’s religious community to be accountable and remorseful. In addition, victims seek assurance that others will not be harmed and there is appropriate treatment for the abuser. In some cases, compensation may be secondary and symbolic only to the degree of accountability and culpability accepted by the church. In other cases, victims want to be compensated for their treatment or assistance for healing. Some want monetary compensation for their injuries. Monetary and nonmonetary outcomes can be handled in the same restorative mediation session.*

*In addition, some victim-survivors want to know the present location of the offender, if there are other victims, and if there have been life changes for the offender. Victim-survivors may also want the offender or the offender’s religious community to know firsthand the impact the abuse has had on their lives. Most of the needs or objectives will not be met in criminal or civil court action; all of these objectives are possible in a restorative mediation conference.”<sup>12</sup>*

- 31 By contrast, it is well-accepted that litigious processes are problematic as a tool for responding to cases of child sexual abuse, both due to conflicts between the process itself and the needs of the victims, and in the limited outcomes which those processes can achieve.<sup>13</sup>
- 32 The outcomes of litigation are particularly limited by comparison with the variety of pastoral responses which can be offered by restorative justice approaches such as *Towards Healing*.
- (a) After successful criminal proceedings, the victim may have a sense of vindication and the knowledge that the offender cannot commit further abuse while in prison, but he or she is unlikely to have any ‘closure’.
- (b) Balboni and Bishop commented, in relation to civil litigation, that “*the unfortunate postscript ... was that the conclusion of these suits often left people feeling, at best, underwhelmed,*

<sup>10</sup> A Cossins, “Restorative Justice and Child Sex Offences” (2008) 48 *Brit. J. Criminol.* 359 at 363

<sup>11</sup> D E Noll and L Harvey, “Restorative Mediation: The Application of Restorative Justice Practice and Philosophy to Clergy Sexual Abuse” (2008) *Journal of Child Sexual Abuse*, Vol 17(3-4), 377 at 395

<sup>12</sup> D E Noll and L Harvey, “Restorative Mediation: The Application of Restorative Justice Practice and Philosophy to Clergy Sexual Abuse” (2008) *Journal of Child Sexual Abuse*, Vol 17(3-4), 377 at 389

<sup>13</sup> See sections 7 and 8 of this Submission



*at worst, used or duped by lawyers in the quest for money” and that “the centrality of money at the conclusion of these suits was usually a bitter pill to swallow for survivors”.*<sup>14</sup>

### 1.3 *Towards Healing* in 1996

- 33 The introduction of *Towards Healing* in 1996 was a watershed moment in the Church's approach to dealing with child sexual abuse within the Church. The development of *Towards Healing* began in the late 1980s, as the Church struggled to frame its response to the emerging revelations in that regard. Work commenced through a committee of the ACBC, with the involvement of leaders of the religious congregations through CRA.
- 34 As the extent of child sexual abuse within the Church began to be more fully recognised, a series of committees worked to develop a uniform Church response. Given the structure of the Church as a loose “federation” of autonomous dioceses and religious institutes,<sup>15</sup> the Church faced significant hurdles in developing a process which would be accepted nationwide by all those different dioceses and institutes.
- 35 The adoption of *Towards Healing* was thus the culmination of many years of work. The history of its development reflects both a growing recognition of the extent of the problem, and a growing if belated determination that the Church should adopt a victim-oriented approach which focused on the needs of victims as more important than protecting the rights of accused clergy or the reputation of the Church.
- 36 Especially in the context of the time, the adoption of *Towards Healing* was a breakthrough for the Catholic Church in Australia:
- (a) At that time, to our knowledge, in no other country had the Church developed a single national protocol or process for responding to victims of child sexual abuse, one which applied universally across all the different dioceses and religious institutes in the country.<sup>16</sup>
  - (b) The *Towards Healing* process was endorsed and adopted by virtually all parts of the Church in Australia - both religious institutes and dioceses - despite the real and long-standing autonomy with which each of them was and is endowed.<sup>17</sup>
  - (c) The process was adopted by the Church in Australia in deliberate preference to relying solely on canon law processes, which are not victim-focused and are mainly concerned with dealing with accused persons.
  - (d) For the first time in Australia, the bishops and religious leaders established joint structures to oversee and manage the task of engaging with this issue. The National Committee for Professional Standards (NCPS) was the first, and remains the only, joint committee of the ACBC and CRA.<sup>18</sup>

<sup>14</sup> J M Balboni and D M Bishop, “Transformative justice: survivor perspectives on clergy sexual abuse litigation” (2010) Vol 13, No. 2, *Contemporary Justice Review*, 133 at 151–2

<sup>15</sup> See section 2

<sup>16</sup> Canada established a process on 1 December 1987, but that applied only to dioceses and not to religious institutes

<sup>17</sup> The only diocese not to adopt the *Towards Healing* process was Melbourne, which set up the “*Melbourne Response*” in 1996 as a separate process. The only congregation not to adopt *Towards Healing* on its introduction was the Society of Jesus (the Jesuits), who subsequently adopted *Towards Healing* in 2004.

<sup>18</sup> The Supervisory Group established in connection with the Church's response to the Royal Commission is a joint ACBC/CRA body

37 The introduction of *Towards Healing* was the centrepiece of a broader response by the Church to the problem of child sexual abuse within the Church. For example, the Church has released *Integrity in Ministry* in 1999, and *Integrity in the Service of the Church* in 2011, which respectively set out the standards of behaviour expected by priests and members of religious institutes, and by lay people. The Church also supports *Towards Healing* by proactive work on child protection and the prevention of abuse, through the NCPS.

#### 1.4 *Towards Healing Today*

38 All of the main religious institutes in the Catholic Church in Australia today participate in *Towards Healing*, as does every diocese other than Melbourne, together with the eparchies and the ordinariates.

39 *Towards Healing* today operates through a nationwide structure of offices, including a national office. There are Directors of Professional Standards appointed for the States and Territories, who are responsible for assisting victims and managing the cases in their regions. The process depends on having trained and effective contact people, assessors and facilitators, and the NCPS provides training which aims to ensure professional standards are met.

40 In brief, although the process is flexible and will change from case to case, the usual main steps under *Towards Healing* for complaints of child sexual abuse are:

- (a) The Church Authority or Director of Professional Standards receives a complaint.
- (b) A contact person meets the victim, and explains the process. Any mandatory reporting occurs, and counselling is also usually offered to the victim.
- (c) The contact person or Director encourages the victim to go to the police. If he or she declines to do so, the Director should make a non-identifying report to the police.<sup>19</sup>
- (d) Once the written complaint is received, if the victim has chosen not to go to the police, the allegations will be passed on to the relevant Church Authority, who will put them to the accused person if possible. At that point, the accused person is usually stood aside pending investigation.
- (e) If the allegations are denied, and the Church Authority believes it necessary, an independent assessor may be appointed to investigate the allegations and make findings.
- (f) A facilitator is then appointed to moderate a process and a meeting between the victim and the Church Authority. The outcomes of that meeting typically include an apology, payment of counselling costs, and agreed financial assistance or reparation.
- (g) Where the claim is accepted or admitted, or substantiated by the assessment process, the Church Authority has to decide what action it should take with respect to the perpetrator.
- (h) An independent review process is available for people not satisfied with the process or the finding of an assessment.

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<sup>19</sup> See section 8.5

41 As *Towards Healing* has developed, the initial emphasis on the provision of an apology and pastoral care, with some financial support, has tended to give way to a greater emphasis by many victims on seeking financial reparation. Similarly, there has been an increasing involvement of lawyers in the process. These aspects of the more recent history of *Towards Healing* process are discussed in later sections of this Submission.

### 1.5 Alternative Processes

42 *Towards Healing* is by no means the only process available to victims of child sexual abuse by Church personnel.

43 Some victims have the option of taking civil action. In fact, however, relatively few victims pursue court action to finality. The reasons are discussed in section 7 of this Submission.

44 Also, as noted above, every victim is encouraged to take his or her complaint to the police where it involves criminal behaviour.

45 Victims now frequently approach the Church outside *Towards Healing*, either personally or through a lawyer or a victims group. Indeed nowadays more victims adopt such an approach than choose *Towards Healing*. Many such cases are dealt with through legal engagement between lawyers acting for the Church Authority and lawyers acting for the victim. This sometimes involves a meeting of the victim and the Church Authority, not unlike a *Towards Healing* facilitation, at which the outcome of the civil claim is mediated and negotiated.

46 *Towards Healing* is still, however, a process built around pastoral care for the victim. It remains the central uniform and structured process offered by the Church to engage with and provide support and assistance to victims.

### 1.6 Not a Disciplinary Scheme

47 As Professor Parkinson has noted, *Towards Healing* was never intended to operate as a disciplinary scheme for priests or members of religious institutes accused of abuse.<sup>20</sup> *Towards Healing* cannot, and does not, embody a disciplinary code with standard penalties to be imposed on offenders. Inherent in the structure of the Church is the fact that each diocese or religious institute retains responsibility for decisions regarding the priests in that diocese or the members of that institute.

48 The accused person (even one who has admitted to the abuse or in respect of whom an assessment has found the complaint substantiated) also has legal rights, and is to be treated fairly under the *Towards Healing* procedures.

49 What *Towards Healing* does do is to set down a clear standard which every Church Authority should apply to its decisions regarding the accused, namely, that no-one should be permitted to exercise a public ministry if doing so presents an “*unacceptable risk*” of abuse to children and young people. Embedded in that standard is the principle that accused persons will be removed

<sup>20</sup> P Parkinson, *Towards Healing – Assessing complaints when the events occurred a long time ago*, Unpublished paper

from such ministries where such an “unacceptable risk” exists, regardless of whether the guilt of such a person has been admitted or proved.

- 50 *Towards Healing* also provides support and guidance for Church leaders in making their decisions, by the establishment of Consultative Panels. The Directors of Professional Standards and the Executive Officers of the NCPS are also available to advise Church leaders.
- 51 Decisions as to what is to be done in relation to accused persons involve a difficult balance of many factors - including the extent of the authority and power of each diocese or institute, the independent view from the Consultative Panel, the requirements of canon law, the need to consider the rights of the accused, and - of the highest priority - the need to eliminate as far as possible the risk of any further abuse.

### 1.7 Not a Compensation Scheme

- 52 *Towards Healing* is not, and was never intended to be, a scheme for providing “compensation” to victims. Rather, its principal aim was and is to provide pastoral care. In most cases, however, a contribution of some financial assistance, as a form of reparation, is made.
- 53 The distinction between compensation and reparation is important. *Towards Healing* outcomes are intended to be based on, and are reflective of, each person’s needs and current situation, regardless of whether legal liability could be established. They are not tied to any table or template of levels of payment.
- 54 Accordingly, it is submitted that criticism of the varying amounts which have been provided to victims through *Towards Healing* is to some extent misconceived. Each outcome in which assistance is provided to a victim as a result of the *Towards Healing* process is a tailored and individual outcome, responding to that individual’s circumstances, his or her present needs, and his or her own views about what would assist at that point in his or her life, work and relationships.

## 2 The Nature of the Catholic Church in Australia

### Key points:

- The Catholic Church in Australia is not a single or discrete entity, but is a community of faith made up of many different groups and individuals.
- There are 34 dioceses and over 180 religious institutes and societies of apostolic life within the Church in Australia, each of which is substantially independent and autonomous.
- The adoption of *Towards Healing* in 1996 was an important development within the Church in Australia, securing national consensus from those various Church bodies on processes for responding to the issue of child sexual abuse within the Church.
- The varying outcomes which emerge from the *Towards Healing* process reflect among other things how the process is applied by Church bodies across the country.

### 2.1 Overview

- 1 Central to an understanding of *Towards Healing* is an understanding of the way the Church exists and is organised in Australia.
- 2 Contrary to what is often supposed or assumed:
  - (a) there is no single or discrete entity which is “the Catholic Church”, either in Australia or worldwide
  - (b) rather, the Church as a community of faith is made up of an intricate complex of disparate groups and individuals
  - (c) there is no vertical “structure”, comparable or analogous to those employed by most large companies, whereby reporting lines and chains of command flow from a board of directors, and/or a CEO, down through layers of senior and middle management, and on to various levels of general staff
  - (d) on the contrary, each individual diocese (through its bishop) and each individual religious institute (through its respective leader) is autonomous and independent, substantially if not completely, in terms of how it regulates and orders its own affairs
  - (e) no archbishop or bishop has authority or control over any other bishop nor do they effectively control religious institutes
  - (f) the degree of control exercised by a bishop over a priest, or by a religious leader over members of a religious institute, is limited, and is quite unlike that which applies, for example, in the non-church context of “employment”.

- 3 Numerous consequences flow from this state of affairs, including, importantly for present purposes:
- (a) the difficulties associated with achieving a national consensus on a matter as important and sensitive as the appropriate process for responding to complaints of child sexual abuse within the Church in Australia
  - (b) the scale of the achievement embodied in doing so, in the form of *Towards Healing*
  - (c) the inevitability of varying outcomes emerging from the *Towards Healing* process in particular cases, depending in part on which particular diocese or religious institute is involved in implementing the process in any given case
  - (d) the significance of the role to be played in this Royal Commission by the Council, which represents, and speaks for, all of the dioceses, and most of the religious institutes in Australia.

## 2.2 What is the Catholic Church?

- 4 In the Christian context, the expression “the church” usually refers to the whole body of people who have a common religious belief founded on Jesus Christ. “The Catholic Church” thus comprises a grouping of people, rather than a discrete entity or thing.
- 5 The nature of the Church, both worldwide and in Australia, is a complex and intricate compilation of arrangements. Many of those arrangements are governed by, or organised in accordance with, canon law. Many of them have been considered in cases decided by Australian courts, including the High Court, under the general law: see for example section 2.3 below.
- 6 This Submission does not attempt or purport to state those arrangements in any complete or authoritative way. The following paragraphs merely outline the general effect of some of them, which bear particularly upon the way *Towards Healing* operates.

### Bishops and Dioceses

- 7 “Bishop” is a word derived from the Greek *episkopos*, meaning “overseer”. Bishops (seen as the successors of the 12 apostles) are priests who have been ordained to the office of bishop, being that of a chief pastoral leader.
- 8 All the bishops of the world share and participate with the Pope (the Bishop of Rome) in teaching and governing the Church. In principle it is the College of Bishops, with the Pope as its head, which holds pre-eminent authority within the Church.
- 9 A “diocesan” bishop exercises pastoral leadership in a local community known as a “diocese”, which has been entrusted to him by the Pope. As well as “diocesan” bishops, there are also in some large dioceses “auxiliary” bishops, whose role broadly is to assist diocesan bishops.
- 10 Neighbouring dioceses are gathered into groupings called “provinces”. There are usually between three and 10 dioceses in a province in Australia. Those dioceses are usually grouped around a larger or older city, where the diocese is called an archdiocese. The bishop of the archdiocese is designated an archbishop, and is also known as the “metropolitan” of the province.

- 11 In Australia there are 28 dioceses which are territorially defined, and there are six other non-geographical dioceses: the four Eastern Rite Eparchies (the Chaldean, Maronite, Melkite and Ukrainian rites), the Military Ordinariate of Australia which is responsible for those in the Australian Defence Force and the Personal Ordinariate of Our Lady of the Southern Cross which caters to the needs of former members of the Anglican Church.
- 12 There are five ecclesiastical provinces in Australia, namely Adelaide, Brisbane, Melbourne, Perth and Sydney.
- 13 The Pope appoints most bishops, and confirms the election of bishops in those dioceses (none in Australia) which have the right to elect their bishops.
- 14 Cardinals are a particular group of bishops, appointed by the Pope to advise him. Those under 80 years of age are responsible for electing the Pope.<sup>21</sup> Many cardinals are diocesan bishops. In Australia, most Archbishops of Sydney have been appointed cardinal. This position gives cardinals no power of governance outside their own diocese, and no jurisdiction over other bishops.
- 15 The authority given to a diocesan bishop is exercised in his own name, not in any sense as the delegate or subordinate of the Pope.
- 16 Each diocese is entirely autonomous and independent of the others. No bishop or archbishop has authority or power over any other. The Pope has primacy among all bishops, but his authority does not replace or supersede that of the local bishop in his diocese; rather, it complements it. A bishop's power is seen as personal and received from God.<sup>22</sup>
- 17 All of the bishops in Australia form an assembly known as the Australian Catholic Bishops Conference (ACBC), which seeks to promote common pastoral action amongst dioceses and foster good relations amongst bishops. The ACBC, which normally meets twice annually, is not a governance body.<sup>23</sup> From its membership, it elects a president for a two-year term of office to preside over meetings, but he has no power of governance over the other bishops. He may serve as such for a maximum of three consecutive terms.

### Priests and Parishes

- 18 Within a diocese, a bishop establishes parishes (usually smaller areas within that diocese, although parishes need not be defined territorially), led by priests known as parish priests.
- 19 The priesthood is understood to be a vocation from God. The priest exercises it in union with the bishop of his diocese.
- 20 A parish is not simply a branch, or administrative unit, of a diocese. Rather, it too has its own autonomy. The parish is entrusted by the bishop to the parish priest, "as its proper pastor".<sup>24</sup> The bishop oversees the pastoral care of the parish, but the parish priest is a pastor independent of his bishop. The power or jurisdiction exercised by the parish priest is exercised in his own name, and not as the bishop's delegate or employee.

<sup>21</sup> Code of Canon Law, canon 349

<sup>22</sup> See section 4.3 of *Facing the Truth, A Submission by the Catholic Church in Victoria to the Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations*, 21 September 2012 (Facing the Truth)

<sup>23</sup> Canon law prescribes only some very limited responsibilities for episcopal conferences such as the ACBC

<sup>24</sup> Code of Canon Law, canon 515. See also section 4.5 of *Facing the Truth*.

- 21 There are over 1,300 parishes in Australia.
- 22 The capacity of a bishop to restrain or prevent a parish priest from functioning as such is limited in various ways. Removal from office (as distinct from “withdrawal of faculties”) is not a step which a bishop can take unilaterally; it requires compliance with various procedures under canon law: see section 10 of this Submission.

### Religious Institutes and Societies of Apostolic Life

- 23 Some individuals within the Church commit themselves to a life of poverty, chastity and obedience in a public fashion, in “religious institutes”. The general terms “consecrated life” and “religious life” are often used to describe such a state.
- 24 Those who belong to religious institutes (eg religious women or “sisters”, religious “brothers”, and some priests) lead a community life and are often referred to collectively as “religious”.
- 25 Religious institutes are established by either the Holy See (institutes of pontifical right) or the diocesan bishop (institutes of diocesan right).
- 26 Religious institutes have autonomy in their internal governance.<sup>25</sup> Thus each institute has its own discipline, and each has a leader to whom the members are answerable.
- 27 There are some 180 religious institutes in Australia.
- 28 Societies of apostolic life resemble religious institutes. Their members also live a life in common. They do not take religious vows but also undertake to live lives of poverty, chastity and obedience.
- 29 Many religious institutes and societies of apostolic life are also, or commonly, referred to as “orders” and “congregations”.
- 30 CRA is their peak body (previously known as the Australian Conference of Leaders of Religious Institutes).

### 2.3 Some Civil Law Consequences of the Nature of Church Bodies

- 31 Under Australian law, archdioceses, dioceses and religious institutes (and indeed churches themselves) are generally treated as voluntary unincorporated associations.<sup>26</sup> As such they are not legal entities under the civil law, nor can they have a representative who can be sued in a representative capacity.<sup>27</sup>
- 32 Such a voluntary or unincorporated association, not being a legal entity, cannot own property under civil law.<sup>28</sup> However, legislation in the various States and Territories creates statutory bodies corporate to act as trustees of Church land: see for example in New South Wales, the

<sup>25</sup> Code of Canon Law, canons 578 and 586

<sup>26</sup> *Attorney-General for the State of New South Wales v Grant* (1976) 135 CLR 587,600; *Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565, [47]. A different structure applies in Western Australia where the bishop of each diocese is a corporation sole.

<sup>27</sup> *Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565

<sup>28</sup> *Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565



*Roman Catholic Church Trust Property Act 1936*, and in Victoria, the *Roman Catholic Trusts Act 1907*.

- 33 These statutory bodies exist for the specific purpose of holding property and dealing with it on behalf of the Church. They have no part to play in the appointment or supervision of bishops or priests. Hence they have no legal responsibility for the conduct of such persons.<sup>29</sup>
- 34 None of these features of the organisation of the Church, including in Australia, is new, or even recent. None of them was brought into existence for any particular purpose, still less to avoid or reduce any legal liability that might otherwise exist. On the contrary, all of them are old, dating from decades if not centuries before the existence and extent of child sexual abuse by priests and religious began to become known.

## 2.4 Some Other Consequences

- 35 As mentioned above, there are in the Church in Australia 34 dioceses and over 180 religious institutes. Each of them is autonomous and independent, and each has its own bishop or leader. The extent to which any particular one of them has had to confront the reality of the issue of child sexual abuse varies greatly from diocese to diocese, order to order, congregation to congregation.
- 36 The task of securing a national consensus among so many disparate groups, with so many different experiences and perspectives on the issue, was a difficult one. *Towards Healing*, with whatever imperfections or shortcomings it may be considered to have, nevertheless represents the achievement of just such a consensus.<sup>30</sup>
- 37 The scale of that achievement was considerable. *Towards Healing* was freely adopted by bishops and leaders of religious institutes, despite the autonomy that each of them had, under canon law and generally, for dealing independently with the issue.
- 38 The adoption of *Towards Healing* as a national protocol for dioceses and religious institutes, in that context, reflected the determined recognition across the whole of the Church leadership in Australia, in all its disparateness and individuality, that the tragedy of child sexual abuse by Church personnel in Australia demanded a cohesive, principled, national response to victims and their families.
- 39 The story of how *Towards Healing* was developed in the 1980s and 1990s, and introduced in 1996, is outlined in section 5 of this Submission. The various reviews and changes since 1996 are discussed in section 6.
- 40 One obvious feature of the history of *Towards Healing* since 1996, which is at least in part a direct result of the autonomous and independent nature of the many dioceses and institutes in Australia, is that varying outcomes, both pastoral and financial, can emerge from the process in particular cases, depending in part on which particular diocese, order or congregation is involved in implementing the process in any given case.

<sup>29</sup> *Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565

<sup>30</sup> Subject to the separate protocol, the *Melbourne Response*, covering priests, religious and lay people holding an appointment from the Archbishop of Melbourne

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- 41 Some may see this as a drawback. Others may consider that the emphasis placed on the individual role of the Church leader, in promoting healing for the individual victim, is an advantage or even an essential element.
- 42 Finally, it is respectfully submitted that the very existence of the Council indicates the seriousness of purpose with which the Church in Australia is approaching the Royal Commission. The Council's *raison d'être* is to be the single body which will represent, and speak for, the many dioceses and religious institutes which have authorised it to do so. The Council aims therefore to participate in the work of the Commission in a spirit of openness, honesty and humility, informed - as is the whole Church in Australia - by a deep sadness for the failures and shortcomings of the past and by a determination to act to redress the wrongs of the past and to assist the Commission to point the way to a better future.

### 3 Responsibility for the Application of *Towards Healing*

#### Key points:

- The Church has established a number of *Towards Healing* professional bodies and structures in the States and Territories.
- *Towards Healing* complaints are usually managed by the Director of Professional Standards in the State or Territory in which the victim resides.
- The National Committee for Professional Standards oversees and promotes the application of *Towards Healing* across Australia.

#### 3.1 Overview

- 1 The responsibility for applying *Towards Healing* is shared across numerous Church bodies, committees and individuals. The spread of roles and responsibilities reflects both the essentially pastoral nature of the *Towards Healing* response, and also the autonomous nature of the many dioceses, orders and congregations within the Church.
- 2 Primary responsibility rests with the bishop, religious leader or senior administrative authority responsible for the Church Authority to which the accused person was connected at the time of the alleged abuse.
- 3 The main bodies and individuals responsible for the application of *Towards Healing* are:
  - (a) **National Committee for Professional Standards (NCPS):** the NCPS, and its executive officers and staff, oversee and promote the application, review and development of *Towards Healing* and other protection and prevention policies.
  - (b) **State/Territory Directors of Professional Standards (Directors):** the Director receives complaints, and manages the process of *Towards Healing* in that State or Territory.
  - (c) **A network of State/Territory Professional Standards Offices (PSOs):** in some States/Territories, there is an office, the PSO, providing administrative support to the Director in carrying out his or her duties.
  - (d) **Professional Standards Resource Groups (PSRGs):** the PSRG is a State or Territory based body whose members have a diverse range of relevant skills and can provide advice and support to the Director and Church Authorities in responding to complaints. Prior to the establishment of PSOs the PSRGs were the key structure in each State, with a Convenor heading each group.
  - (e) **Liaison Committee:** a subcommittee of bishops and leaders of religious institutes in the relevant State, with responsibility for appointing and overseeing the PSRG, and appointing, supervising and supporting the Director.

- (f) **Church Authority:** the Church Authority is usually the relevant bishop or leader of a religious institute, or his or her delegate. The Church Authority determines the pastoral response to the victim in the *Towards Healing* process and takes the appropriate actions in relation to the accused.
- (g) **Consultative Panels:** Consultative Panels are comprised of skilled professionals and must be consulted by the relevant Church Authority in certain circumstances, including in relation to management of the accused.
- (h) **National Review Panel (NRP):** receives and processes applications for review of the *Towards Healing* process or the findings of an assessment.
- (i) **Key personnel:** contact persons, assessors and facilitators.

4 The roles and functions of these bodies and individuals are described below.

### 3.2 National Committee for Professional Standards

#### Role of the NCPS

- 5 The NCPS is a committee of the ACBC and CRA. It operates under the “Charter of the National Committee for Professional Standards” (Charter).
- 6 Under *Towards Healing*, it is envisaged that the NCPS will “*oversee the development of policy, principles and procedures in responding to complaints of abuse against Church personnel*”.<sup>31</sup>
- 7 In addition to policy development, the NCPS office assists Directors with the application of *Towards Healing*. Although the NCPS office is able to provide advice and assistance as needed, the NCPS does not have any formal authority over the Directors or the PSOs.

#### Structure and Personnel

- 8 The NCPS is comprised of 10 members, who are men and women with proven expertise in a relevant area, and includes a representative of CCI.<sup>32</sup> The members of the NCPS receive no remuneration other than reimbursement of agreed expenses.<sup>33</sup>
- 9 The current co-chairs of the NCPS are Sister Clare Condon (Congregational Leader for the Good Samaritan Sisters in Australia) and Bishop Bill Wright (Bishop of Maitland-Newcastle).
- 10 The current members of the NCPS are:

Ms Sue Cain, Director of Professional Standards, South Australia

Father Steve Curtin, Provincial of the Society of Jesus

Sister Moya Hanlen, Canon Lawyer, Chancellor of the Diocese of Wollongong

Father John Hannon, Canon Lawyer and Parish Priest in Manly, NSW

<sup>31</sup> Clause 35.1, *Towards Healing*

<sup>32</sup> Articles 3.1 and 3.4, *Charter of the National Committee for Professional Standards* (2009)

<sup>33</sup> Article 3.6, *Charter of the National Committee for Professional Standards* (2009)

Mrs Bev Patterson, with a background in investigations, child protection and abuse counselling

Mr Peter Rush, CEO of CCI

Mr Michael Salmon, Director of Professional Standards NSW/ACT

Bishop Les Tomlinson, Bishop of Sandhurst

- 11 A list of the past chairs, members and executive officers of the NCPS is at Annexure C of this Submission.

### Functions of the NCPS

- 12 Article 4 of the Charter sets out the mandate of the NCPS. This mandate includes:
- (a) providing advice to the ACBC and CRA, and their respective members and other Church entities, on all aspects of the formulation of policy regarding professional standards and the implementation of such policies
  - (b) revising as necessary *Towards Healing*, and presenting for consideration to the ACBC and CRA other policy documents from time to time
  - (c) implementing *Towards Healing* and having oversight as to its operation, including working with State Directors to promote national consistency
  - (d) authorising and/or conducting research, where appropriate, on aspects of professional standards relevant to the Catholic Church
  - (e) participating in consultations with similar committees in other denominations and in the broader Catholic Church
  - (f) working with the State Directors of Professional Standards in maintaining compliance with the *Towards Healing* protocols and competence of personnel involved.
- 13 The Charter also sets out certain NCPS responsibilities in pursuance of this mandate, under "Guidelines/Procedures".<sup>34</sup> These responsibilities include:
- (a) continuing to review and update *Towards Healing*
  - (b) continuing to build up a list of principles and procedures for offering support and assistance to victims of abuse, including ways of addressing the spiritual impact of abuse
  - (c) continuing to build up a list of principles and suggestions for the support of other people (eg parents, family members) and communities (eg parishes, schools) affected by abuse
  - (d) providing opportunities for ongoing professional development for leaders
  - (e) investigating procedures to deal with the transfer of personnel between dioceses following mandatory procedures

<sup>34</sup> *Charter of the National Committee for Professional Standards* (2009), pp 5–6

- (f) developing programs to promote a positive and pro-active approach to protection and prevention
- (g) providing opportunities for ongoing education on issues of abuse
- (h) providing information about best practice programs to Church Authorities for the treatment of clergy and religious suffering from any of a range of disorders including psychosexual disorders
- (i) being available to assist Church Authorities in maintaining effective practice in the selection and formation of candidates for priesthood, religious life and church ministry, and the ongoing formation and training of those in pastoral ministry in the Church, and
- (j) continuing to liaise with other bodies working in areas of response to abuse and prevention of future abuse.

### Functions of the NCPS Office

14 The NCPS office employs:

- (a) two Executive Officers, who are responsible for coordinating the activities of the NCPS and responding to requests for advice and assistance.<sup>35</sup> The current Executive Officers of the NCPS are Father Tim Brennan and Sister Denise Fox
- (b) a National Protection and Prevention Officer, who is responsible for promoting and disseminating child protection and prevention policy within Church organisations, and assisting Church Authorities with the development and application of policy. The current National Protection and Prevention Officer is Narelle McMahon
- (c) a Records Officer, and
- (d) an Administrative Officer.

15 In practice, the primary function of the NCPS office is to support Church Authorities and Directors in the application of *Towards Healing*. More than half of the time of the NCPS Executive Officers is spent on matters relating to providing advice and training in relation to *Towards Healing*, such as by:

- (a) responding to requests for advice from Church Authorities and Directors about the application of *Towards Healing*
- (b) training new Directors in the application of *Towards Healing*
- (c) working towards national consistency by engaging with the Directors on an ongoing basis, and
- (d) meeting with PSOs approximately three to four times a year for training and discussion about the best practice application of *Towards Healing*, and for enabling the sharing of experiences and trends in the application of *Towards Healing*.

<sup>35</sup> Article 5.3, *Charter of the National Committee for Professional Standards* (2009)

- 16 Other functions of the NCPS office include:
- (a) developing, implementing and reviewing the Church's child protection policies, including *Integrity in Ministry* and *Integrity in the Service of the Church*
  - (b) case management in limited circumstances, including where allegations concern bishops or congregation leaders, overseas cases, difficult or sensitive cases, or cross-jurisdictional matters
  - (c) providing pastoral services in certain circumstances to people who contact the NCPS in relation to the impact of child sexual abuse or the impact of an allegation of child sexual abuse
  - (d) working with the Canon Law Society, especially in relation to the rights of the accused and guidelines for withdrawal from ministry
  - (e) managing the National Review Panel process
  - (f) providing information about *Towards Healing* on request
  - (g) supporting Church Authorities with their ongoing responsibilities in relation to both known offenders and those considered to be an "unacceptable risk"
  - (h) training and presentations to congregations, dioceses, contact persons, assessors and other groups as required
  - (i) developing a national database of complaints dealt with under *Towards Healing*
  - (j) liaising with other bodies responding to past abuse, the National Council of Churches, and professional standards personnel from other churches nationally and internationally, and working to prevent future abuse, and
  - (k) assisting women's congregations with abuse issues specific to them.
- 17 To promote consistency in the application of *Towards Healing*, the NCPS has produced or commissioned the production of a number of guideline and explanatory documents, including:
- (a) "Assessing complaints when the offence occurred a long time ago" by Professor Patrick Parkinson (2004). This document offers some guidance to assessors about such issues as fading memories and the problem of prejudice to the accused
  - (b) "Information for Legal Personnel Referring Clients to the Towards Healing Process" (2010)
  - (c) "Guidelines for Church Authorities" (February 2011). These guidelines expand upon the protocol set out in *Towards Healing*, for example in relation to pastoral care of the congregation, negotiating financial settlements and dealing with the accused
  - (d) "Summary of Process for Persons wishing to bring a Complaint of Abuse" (February 2011). This brochure sets out the choices available to a person who wishes to bring a complaint of abuse, and describes the *Towards Healing* process

- (e) “Summary of Process for those Accused of Abuse” (February 2011). This brochure describes what will happen under *Towards Healing*, so far as an accused person is concerned, and what support he or she is entitled to
- (f) “Principles/Guidelines for those involved in implementation of *Towards Healing*” (July 2012). This document sets out the roles and responsibilities of people involved in the *Towards Healing* process, including the Directors, contact persons and assessors, and discusses the appropriate level of pastoral care
- (g) “Quick Reference for Accused Clergy” (November 2012). This short document deals with such matters as obtaining the services of a canon or civil lawyer, and the position of clergy in relation to being informed of the complaint and responding to it, and
- (h) “Implementation of *Towards Healing* – Notes for People involved in the Process” (1<sup>st</sup> ed 2003; 2<sup>nd</sup> ed December 2012). This booklet sets out, in greater detail than the “Principles/Guidelines for those involved in implementation of *Towards Healing*”, what is expected of each person involved in administering the *Towards Healing* process.

## Reporting

- 18 The Executive Officers and the National Protection and Prevention Officer report to the NCPS at regular meetings about their ongoing work, and receive instructions about further work to be undertaken.
- 19 The NCPS also presents formal reports about its activities, and general trends in *Towards Healing* complaints, to:
  - (a) the ACBC, at their meetings in May and November each year
  - (b) CRA, at their conference in June, and
  - (c) the CRA Executive in November.

## Review and Reforms of *Towards Healing*

- 20 It was intended from its commencement that *Towards Healing* be a living document, responsive both to the changing environment in which it is used and to the varying individual needs of those who turn to it.
- 21 Since it was first drafted in 1996, *Towards Healing* has undergone a number of revisions at the instigation of the NCPS.
- 22 The reviews conducted by Professor Patrick Parkinson are outlined and discussed in section 6 of this Submission.
- 23 As well as such formal reviews of *Towards Healing*, the ACBC and CRA from time to time have amended discrete areas of *Towards Healing* in response to proposals from the NCPS. The NCPS continually seeks feedback from the bodies and individuals engaged in the day-to-day operation of *Towards Healing*, as well as information and advice from relevant experts. For example, in 2003, the National Review Panel and Consultative Panels were introduced to *Towards Healing*, after consultation with David Landa OAM (former NSW Ombudsman) and



Professor Parkinson, but outside of a formal review process. These 2003 amendments are also discussed in section 6 of this Submission.

### Encompass

- 24 When established in 1996, the NCPS was also given responsibility for coordinating the establishment of “a program to treat those clergy and religious who suffer from psycho-sexual disorders”.<sup>36</sup> The NCPS accordingly worked to establish Encompass Australasia Limited (Encompass), which commenced operation in August 1997.<sup>37</sup> Encompass was a treatment centre for clients with a wide variety of psychological and other issues, a small proportion of which related to psycho-sexual disorders.
- 25 Encompass had treatment centres in Sydney and Melbourne. There was a widely held view at the time that psychiatric or psychological treatment was appropriate and effective for people with “psycho-sexual disorders”, and that such therapy could be an important component of rehabilitation.
- 26 Encompass ceased operations in 2008 as a result of financial issues. However, the NCPS still responds to requests from Church Authorities (or from clergy or religious themselves) for information about ‘best practice’ programs for the treatment of clergy or religious who suffer from disorders, including psycho-sexual disorders, or who are in need of a vocational or other assessment. Individuals are now referred to private external services.

### Monitoring the Application of *Towards Healing*

- 27 The NCPS has worked with Directors, to promote consistency in the application of *Towards Healing*, since its inception.
- 28 After the second major revision of *Towards Healing* in 2010, it became clear that it would be useful to attempt to measure the extent of compliance with and understanding of *Towards Healing* across Australia. Accordingly, in 2010, the NCPS sent a survey to Church Authorities (dioceses and religious institutes), which sought to ascertain:<sup>38</sup>
- (a) whether the relevant Authority held a copy of *Towards Healing* (January 2010), and/or *Guidelines for Bishops and Religious Leaders and Integrity in Ministry* (2004), in its relevant offices
  - (b) whether the Authority had a Consultative Panel or access to a Consultative Panel
  - (c) if so, the members of the Consultative Panel and the competencies of its members
  - (d) whether the Authority had appointed child protection personnel
  - (e) the most recent training attended by members of the diocese or religious institute
  - (f) the processes used in relation to transferring, or visiting, clergy or religious

<sup>36</sup> Australian Catholic Bishops Conference Plenary Meeting, *Pastoral Letter to the Catholic People of Australia* (April 26, 1996)

<sup>37</sup> National Committee for Professional Standards, Report to the ACBC Plenary Meeting, 6 April to 15 April 1999

<sup>38</sup> National Committee for Professional Standards, Survey for Religious Institutes for the Period 1 July 2007 to 31 December 2009

- (g) arrangements in place for referring victims to the appropriate process for responding to complaints of misconduct, including *Towards Healing*, and
  - (h) the process used for dealing with allegations of professional misconduct.
- 29 There was a response rate of approximately 50% to the survey. A survey report was produced on 8 August 2010.<sup>39</sup> A working party of Sister Angela Ryan, Sister Veronica Hoey, Sue Cain and Sister Ailsa Mackinnon was convened and made the following recommendations:<sup>40</sup>
- (a) that an audit of the *Towards Healing* process be conducted on a triennial basis, and
  - (b) that professional development be conducted on a regular basis.
- 30 Following these recommendations, in 2011 the NCPS began working on the development of an audit model to review the Church Authorities' past and present practices in the area of professional standards (Compliance Audit). The Compliance Audit has since been given in principle support from the ACBC and CRA.

### 3.3 Preventative Measures

- 31 *Towards Healing* is primarily a pastoral response aimed at trying to assist the victim to find healing and, if possible, some measure of reconciliation with the Church, and so only contains a limited disciplinary aspect. The process is principally a reconciliatory, backwards-looking, complaints-based process, as opposed to one principally designed to be preventative.
- 32 However, a number of preventative initiatives have also been employed in conjunction with *Towards Healing*, including *Integrity in Ministry* and *Integrity in the Service of the Church*, as well as various initiatives by the NCPS. These are discussed below.
- 33 Moreover, the very existence of the *Towards Healing* process serves as a preventative measure in itself, in at least two ways.
- 34 First, it contributes to the changed culture whereby the likelihood of a perpetrator's abusive conduct being reported and found out is much higher than in years gone by. In other words, it contributes to a higher probability that perpetrators will be caught.
- 35 Second, it has the effect that as soon as one complaint is made about a priest or religious, that person's name is known in this context, and the deployment and treatment of that person thereafter can be informed by that awareness.
- 36 Thus for example Mr Whitlam QC found, in his review of the Armidale case of Father F, that "*had procedures for reporting child abuse laid down in [Towards Healing] been in force in 1984 and observed in Moree at the time, 'F' would have been stopped in his tracks,*" and that "*if those procedures had been in place in 1989 and followed in 'F's' case, there is no chance that [the Bishop of Parramatta] would have agreed to take him on.*"<sup>41</sup>

<sup>39</sup> National Committee for Professional Standards, *Towards Healing Survey for the Period 1 July 2007 to 31 December 2009: Dioceses and Religious Institutes – Men and Women, Report*, 8 August 2010

<sup>40</sup> *Report to Bishops and Congregation Leaders – Towards Healing Survey 1 July 2007–31 December 2009*

<sup>41</sup> Honourable Antony Whitlam QC, *Report commissioned by the Bishops of Armidale and Parramatta into processes related to the management of "F"*, January 2013

- 37 *Towards Healing* operates against a background of child protection laws in force in each of the States and Territories.

### ***Integrity in Ministry and Integrity in the Service of the Church***

- 38 The NCPS developed *Integrity in Ministry* as a code of conduct for clergy and religious. It sets out ethical standards which the Church is committed to upholding, and includes clear statements about professional boundaries, including in relation to the use of touch. *Integrity in Ministry*, along with, more recently, *Integrity in the Service of the Church* (for lay employees and volunteers), assists in raising awareness of the issue and sets boundaries for unacceptable conduct, in an effort to prevent such conduct from occurring.<sup>42</sup>

### **Role of the National Protection and Prevention Officer**

- 39 The NCPS employs a full-time National Protection and Prevention Officer to oversee the work of the NCPS, implementing the knowledge and insight gained through their experience with the *Towards Healing* process to assist in the appropriate development of the NCPS's preventative initiatives.
- 40 In 2006, the NCPS appointed Sister Angela Ryan as its first Protection and Prevention Officer, in addition to her role as Executive Officer. The role was subsequently shared by the Executive Officers, until July 2011, when the NCPS employed a designated protection and prevention officer.
- 41 The National Protection and Prevention Officer assists Church Authorities with the development of their protection and prevention policies by:
- (a) conducting workshops and training programs about child protection policy
  - (b) conducting acculturation training programs for priests and religious newly arrived from overseas, and
  - (c) advising and supporting Church Authorities and groups in the application of child protection and risk management policy.

### **Recent NCPS Protection and Prevention Programs**

- 42 Recently, the NCPS has been engaged with a number of projects aimed at providing support for parishes and other Church organisations that may not be otherwise covered by a structured child protection regime, including by:
- (a) promoting "Safe Church Organisations" during training sessions and workshops which recommend a national framework of strategies and structures directed to the safeguarding of children, young people and vulnerable adults
  - (b) assisting CCI's Risk Management Team during the development of the e-learning module, "Protecting Children and Vulnerable Adults", which is specifically designed for parishes

<sup>42</sup> For further information on codes of conduct, see Chapter 11 of *Facing the Truth*, 'Codes of conduct – Catholic Church of Australia'

- (c) working with the Office of Employment Relations and CCI in the promotion of a program entitled “Keeping Your Parish Safe” for dioceses and parishes through a series of lectures and working sessions
- (d) recommending agreement between the Chairmen of the Bishops Commission and the National Catholic Education Commission, relating to the ways in which Catholic Education authorities could assist develop a more seamless approach to a safe environment for children
- (e) working with the World Youth Day Risk Assessment Committee
- (f) assisting with the implementation of a program of professional standards training that specifically addresses principles outlined in *Towards Healing*, *Integrity in Ministry* and *Integrity in the Service of the Church*
- (g) providing material for Child Protection Sunday to all Church groups to raise awareness of efforts in the area of child protection, and
- (h) participating as a committee member for the planning of the biennial “Safe as Churches” Conferences run by the National Council of Churches.

### Future NCPS Protection and Prevention Programs

- 43 The NCPS continues to develop policy and implement projects in light of its experiences overseeing the application of *Towards Healing*. The NCPS has proposed, or is engaged in implementing, the following projects:
- (a) **Australian Catholic Ministry Register (ACMR):** the objective of the ACMR is to implement a secure and auditable web-based system that records the clearance status of priests and male religious. It will allow Church Authorities to check the references of priests and male religious who are visiting or transferring interstate or from another diocese. The ACMR is intended to support the application of clauses 45.6 and 45.7 of *Towards Healing*, which sets out requirements relating to transferring clerics or religious.
  - (b) **Compliance Audit Review:** this is a proposal to review the Church Authorities' past and present practices in the area of professional standards. The Compliance Audit has been given in principle support by the ACBC and CRA.
  - (c) **National Strategy for Engagement with Seminaries:** the NCPS is planning to host a gathering day in early 2014 with persons responsible for the formation of clergy at seminaries, with a view to better incorporating professional standards into the formation process.

## 3.4 State/Territory Professional Standards Offices

### Directors of Professional Standards

- 44 Since the revision of *Towards Healing* in 2000, which introduced State and Territory Directors, *Towards Healing* has built a national network of seven Directors in Queensland, the Northern Territory, Western Australia, South Australia, Tasmania, Victoria and NSW/ACT. The Director of

each State or Territory PSO is the central point for communication about, and the management of, cases brought to *Towards Healing* from someone in their region. A list of the PSO Directors is at Annexure C.

- 45 Each of the Directors is appointed by and accountable to the Liaison Committee in their State, with the exception of South Australia and the Northern Territory where the appointment is by the relevant bishop. They operate autonomously, with responsibility for the conduct of *Towards Healing* in their State or Territory, and they are not subject to the central authority or direction of the NCPS office. In practice, however, the State and Territory Directors meet regularly, and liaise closely, with the (national) NCPS office, and one another, on aspects of their work.
- 46 *Towards Healing* provides that if the Director is advised of any complaints received by a Church Authority in that State or Territory, or receives complaints directly, they should:
- (a) determine whether the complaint falls within *Towards Healing*
  - (b) determine which is the relevant Church Authority to deal with the complaint
  - (c) appoint a contact person to assist the victim in writing down details of the complaint
  - (d) make recommendations about the management of the complaint or the response to the victim by the Church Authority
  - (e) make recommendations concerning any immediate action that needs to be taken in relation to the protection of children
  - (f) report allegations to the police where the victim does not wish to go through the criminal process, without providing details which could lead to the identification of the victim
  - (g) appoint assessors and facilitators where required
  - (h) communicate the findings of the assessor to the victim, the accused and the Church Authority
  - (i) ensure that the victim is kept informed of the progress of the complaint, often with the assistance of the contact or support person, and
  - (j) refer any requests for review to the National Review Panel.
- 47 State Directors generally tend to report to and utilise the State PSRGs in relation to general complaints management, rather than the NCPS.

### Professional Standards Offices

- 48 The PSO works to support the Director in carrying out his or her duties under *Towards Healing*.
- 49 In NSW, Victoria, Western Australia and South Australia, the position of Director is a full time position, and the Office includes additional staff. In Queensland, Tasmania and the Northern Territory, the position of Director is part-time.

50 In some States and Territories, depending on the resourcing of the PSO, the Office has taken over some of the tasks assigned to the PSRG under *Towards Healing*, such as maintaining lists of suitable assessors and support persons.

### 3.5 Professional Standards Resource Groups

51 *Towards Healing* provides that there is to be a PSRG for each State and the Northern Territory. A PSRG is generally comprised of one priest or religious, and up to 10 other people of diverse backgrounds with skills in appropriate areas such as child protection, social sciences, civil or canon law or industrial relations.

52 The members of the PSRG are appointed by the bishops and leaders of religious institutes via the Liaison Committee in that State. The PSRG supports the application of *Towards Healing* by:

- (a) advising the Director within the relevant State or Territory about professional standards
- (b) maintaining lists of suitable contact persons, support persons, assessors and facilitators, and
- (c) conducting training sessions for contact persons, assessors, facilitators and Church Authorities.

53 *Towards Healing* also provides that the PSRG should act in a proactive manner in responding to requests for assistance, and should offer advice within its mandate to any Church body in the State or Territory as it sees fit.

54 In practice, the role of the PSRG varies between the States and Territories, relative to the resourcing of the PSO and the need within that particular area. The Northern Territory has so few cases that it does not maintain a PSRG. Its functions in the Territory are generally performed by the Consultative Panel, and the Director sources assessors and facilitators through other Directors.

55 Generally, Directors meet regularly with their PSRG to report on general trends in complaints, to consult about particular complaints, and to seek advice about bringing complaints to completion.

56 The PSRG reports to the Liaison Committee in order to assist the Liaison Committee in its responsibility for the accountability of the Director.

### 3.6 Liaison Committees

57 The Liaison Committee is a subcommittee formed by the bishops and leaders of the religious orders and congregations in each State. This subcommittee has responsibility for the appointment and accountability of the State/Territory Director and the PSRG.

58 The subcommittee is not called the "Liaison Committee" in every State, and may vary in form according to the particular arrangement between the bishops and leaders of religious institutes of that State or Territory.

- 59 Where the Liaison Committee structure is used, it usually comprises two bishops and two leaders of religious institutes. The functions of the Liaison Committee include:
- (a) appointing the State/Territory Director
  - (b) supporting the Director
  - (c) arranging for performance appraisals of the Director
  - (d) appointing members of the PSRG
  - (e) receiving progress reports from the PSRG
  - (f) ensuring that the Director has professional supervision
  - (g) arranging for the regular review of salary and conditions for the Director
  - (h) receiving and taking action about issues relating to the Director's employment conditions or interactions with other Church Authorities, and
  - (i) liaising with other bishops and congregational leaders about the financing of professional standards.

### 3.7 Church Authorities

- 60 The relevant Church Authority in any given instance is "*a bishop, a leader of a religious institute ... and their authorised delegates, responsible for the Church body to which the accused person is or was connected at the time of the alleged abuse*".<sup>43</sup>
- 61 The Church Authority is the only entity in the *Towards Healing* process with the authority to decide upon the nature of the response which is ultimately offered to a victim. It is an important feature of the pastoral approach of *Towards Healing* that the diocese, order or congregation that was responsible for the accused is the entity which responds to the allegation and which, if the claim of abuse is sustained, has the responsibility to provide the victim with assistance to assist him or her to move on with his or her life.
- 62 This approach recognises and reflects the independence and autonomy of the many dioceses, orders and congregations within the Church. Each archdiocese, diocese or religious institute retains the individual authority to determine its response to a complaint against one of its priests or members.
- 63 The Church Authority is also responsible for bearing the ordinary and reasonable expenses of *Towards Healing* processes, including:
- (a) assessors' reports and investigations
  - (b) any reports sought about the impact of abuse on a victim
  - (c) the facilitation process

<sup>43</sup> Definitions, *Towards Healing* (January 2010), p 3

- (d) legal advice obtained by a victim on a proposed deed of release, and
- (e) review by the National Review Panel.

### 3.8 Consultative Panels

- 64 A Consultative Panel is available to each Church Authority during significant stages of the *Towards Healing* process.
- 65 A Consultative Panel consists of at least five members who collectively provide the necessary expertise, experience and impartiality for advising the Church Authority in relation to allegations of abuse. *Towards Healing* provides that the panel must be consulted in the following circumstances:
- (a) where a priest or religious is charged with a criminal offence in relation to a complaint of abuse
  - (b) in any decision concerning whether a person constitutes an “unacceptable risk” to children, young people or vulnerable persons
  - (c) when the assessors consider a complaint to be substantiated and action is required
  - (d) in determining how to respond to the victim, and
  - (e) in determining outcomes relating to the accused, including whether an accused should be stood aside or relieved of their duties.
- 66 The Consultative Panel is also available to provide advice in other situations, as requested by the Church Authority.
- 67 It is the responsibility of each Church Authority to appoint and maintain a Consultative Panel. In smaller dioceses or congregations where it may be difficult for bishops and leaders to have access to persons with the appropriate level of expertise, the Church Authority should use the services of the Consultative Panels maintained in larger dioceses.
- 68 The NCPS 2010 survey showed a variable approach to the establishment and use of Consultative Panels by religious institutes, with some relying on PSO Directors or their own leadership group for advice.

### 3.9 National Review Panel

- 69 The NRP has existed since 2004. It was established following advice from former NSW Ombudsman, David Landa OAM, and Professor Patrick Parkinson. The NRP is currently chaired by Gerald Gleeson AC (former Head of the Premier’s Department of New South Wales), who has held that position since the NRP was established. A list of the members of the NRP is at Annexure C.



- 70 The NRP is comprised of up to nine independent members, no more than three of whom shall be required for a particular case. It is empowered to review, in respect of any given case:
- (a) the conduct of the *Towards Healing* process, or
  - (b) the findings of an assessment (as to whether a complaint has been made out or not).
- 71 The NCPS refers requests for review to the NRP. If the request is accepted for review, the NRP appoints a reviewer who evaluates the grounds on which the review is sought.
- 72 The review is not a review of the outcomes decided by a Church Authority. Neither the NCPS nor the NRP has the authority to overrule the decisions of the Church Authority in that regard. *Towards Healing* is limited to being a process to assist the Church Authority to make a decision about the appropriate pastoral response to an allegation of abuse. That decision itself, once it has been made, is not susceptible of review.

### 3.10 Key Personnel in the *Towards Healing* Process

#### Contact Persons

- 73 Contact persons are appointed by the PSRG. They are chosen because of their skills and experience in listening and responding, at a personal level, to complaints of this nature.
- 74 The contact person meets with the victim after an initial approach has been made to the Church Authority or Director. He or she may assist the victim to put the allegation into writing, and thereafter serves as a point of contact for the victim throughout the process.
- 75 A contact person may also be chosen by the victim to act as a support person throughout the *Towards Healing* process.

#### Assessors

- 76 Assessors are usually people with professional experience in carrying out investigations of the kind required by *Towards Healing*, including retired police officers and barristers. The role of the assessor is to:
- (a) collect evidence relating to the complaint
  - (b) review the evidence relating to the complaint
  - (c) examine areas of dispute
  - (d) make written findings as to whether they consider the complaint to be substantiated or not substantiated on the balance of probabilities, and
  - (e) provide written reasons for their findings.
- 77 Assessors are also selected from a list held by the PSRG or the PSO, and must be independent of the victim, accused and Church Authority.

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## Facilitators

- 78 Facilitators are usually selected from an approved list held by the PSRG or the PSO. A facilitator should have training or experience which makes him or her a suitable person to understand the needs of victims of abuse. Facilitators must also be independent of the victim, the accused and the Church Authority.

## 4 A Process for Victims

### Key points:

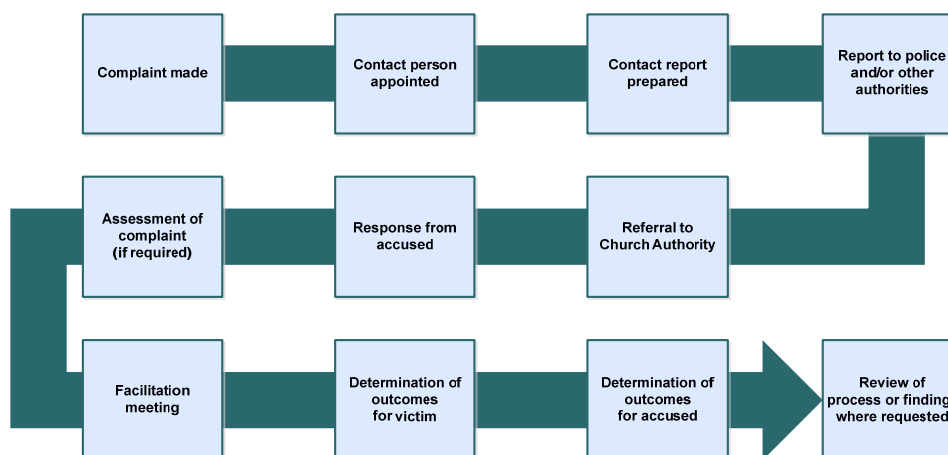
- The *Towards Healing* process essentially involves:
  - the appointment of a contact person to receive a complaint and liaise with the victim
  - encouragement to the victim to report crimes to the police
  - the assessment of the complaint, where necessary
  - a facilitated meeting with the Church Authority
  - outcomes for the victim, usually including an apology, pastoral care, and financial and other assistance
  - decisions by the Church Authority with respect to the accused.
- In keeping with the pastoral nature of *Towards Healing*, the Church Authority's response to the victim in each case is shaped by the needs of the victim.

### 4.1 What is *Towards Healing*?

- 1 *Towards Healing* is a set of principles and procedures to respond to the needs of victims of abuse. It sets out a series of steps for receiving and responding to complaints of sexual and other abuse, where the accused is a priest or religious, an employee or a volunteer in the Church.
- 2 Since its adoption in 1996 and commencing operation in March 1997, *Towards Healing* has undergone a number of reviews and revisions. An outline of the history of *Towards Healing*, both before and since 1996, is found in section 5 of this Submission. This section describes the process as it is today.
- 3 In this Submission we will refer to all those people who seek help from the Church in respect of abuse as “*victims*” rather than “*complainants*”. While it may be that not every single complaint of abuse is genuine, the sad experience of the Church has been that most complaints have indeed been genuine, either in whole or at least in part. The use of the word “*victim*” in this Submission is intended to indicate the Church's acceptance of, and respect for, that genuineness.
- 4 The main steps in the process today are:
  - (a) the appointment of a contact person to receive a complaint and to liaise with the victim,
  - (b) the assessment of the complaint if the facts are disputed, or there is a need for further information, and
  - (c) a facilitated meeting with the Church Authority, in which the needs of the victim are sought to be addressed.

5 The Church's approach to the different parts of the *Towards Healing* process has evolved with time and experience. The process can be somewhat flexible in its application, reflecting differences in the way each individual victim may want to approach the process and the way it is administered by the Church Authorities.

6 The process typically involves some or all of the following steps:



7 The overriding objective of *Towards Healing* is to try to help each individual victim, if it is possible to do so, to reach a point where he or she might begin the process of healing the damage done to him or her by Church personnel. Thus at the core of *Towards Healing* is pastoral care for the victim. While in many cases a financial payment or payments form part of the outcome which is reached, and while such payments can often play a useful part, as reparation, in helping a victim to move forward, the process is not primarily aimed at “compensation”. For that reason, any payments provided to victims in the *Towards Healing* process are referred to as “reparation” or “financial assistance”, not “compensation”. For those victims who seek only compensation, and not pastoral support or other engagement with the Church, other avenues may be followed. Victims who bring a civil claim are still able to come to *Towards Healing* after those proceedings have been finalised.

## 4.2 Receipt of Complaint and Commencement of the Process

### Initial Contact with the Church

8 A complaint may be made by the victim of the alleged abuse, or by someone else on the victim's behalf. It may be made in writing or orally. Complaints are usually made to:

- (a) a Church Authority – the bishop or leader of a religious institute
- (b) the Professional Standards Director in the State or Territory where the complainant lives, or
- (c) a priest or religious.

- 9 Each State or Territory PSO has its own contact phone number, published on the Church's *Towards Healing* webpage and distributed in Church communications.<sup>44</sup> There is a PSO for NSW (with responsibility also for ACT complaints), Queensland, Victoria, South Australia, Western Australia, Tasmania and the Northern Territory.
- 10 In the first few years of *Towards Healing*, each State prepared and distributed a brochure explaining *Towards Healing*. In 2003, the NCPS distributed to parishes and Centacare a brochure called "*Landmarks, Towards Healing*", which described the process of making a complaint and provided the relevant contact details for the Professional Standards Directors and Offices.<sup>45</sup> Each parish also receives information about *Towards Healing* on "Child Protection Sunday", an annual event organised by the Church at the end of National Child Protection Week in September.
- 11 Victims sometimes choose to contact members of the Church who are known to them or to whom they have been referred, such as a priest or counsellor. Where that happens, that person is encouraged to put the victim in contact with a Director or contact person.<sup>46</sup>
- 12 In situations where mandatory reporting laws apply (usually where the victim is still a child), *Towards Healing* requires that Church personnel comply with the reporting requirements, and notify the Church Authority of any report.<sup>47</sup>
- 13 *Towards Healing* also contains guidance in relation to reporting matters to the police, emphasising the Church's strong preference that matters are reported to the police.<sup>48</sup>
- 14 Otherwise, however, it is not mandatory that Church personnel report a complaint to the PSO. The victim may not want them to do so. The victim may want to deal with the complaint outside the *Towards Healing* process. It is fundamental to *Towards Healing* that it is a voluntary process available to those seeking a response from the Church which is significantly pastoral in nature. Hence no victim is compelled to take any particular course, or to refer the complaint to the PSO.

### Appointment and Role of Contact Person

- 15 Following an initial approach to *Towards Healing*, the first step is usually to put the victim in touch with a contact person.
- 16 In some cases, the Director himself or herself performs the functions of the contact person. Even where the Director does not perform the role of contact person, he or she may still make early contact with the victim, either before the contact interviews commence, or during the course of those contact interviews, so that the complainant has an opportunity to talk to the Director personally and understand his or her role in the process.
- 17 Directors may also send the victim an information pack, containing documents describing the *Towards Healing* process. The documents included in the pack vary from State to State, but may include:
  - (a) the *Towards Healing* booklet

<sup>44</sup> [http://www.catholic.org.au/index.php?option=com\\_content&view=article&id=1139&Itemid=190](http://www.catholic.org.au/index.php?option=com_content&view=article&id=1139&Itemid=190)

<sup>45</sup> *Landmarks, Towards Healing* (2003)

<sup>46</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 7

<sup>47</sup> Clause 37.5, *Towards Healing*

<sup>48</sup> See paragraphs 25 and following below, and section 8.5

- (b) an explanatory brochure called “*Towards Healing, Summary of Process for Persons wishing to bring a Complaint of Abuse*”
  - (c) a State brochure
  - (d) the “*Landmarks, Towards Healing*” brochure.
- 18 Sometimes a brief statement of the incident is obtained first, or the material about the process is provided, for the victim to decide whether to proceed before being referred to a contact person
- 19 The role of the contact person is central to the way a victim experiences the *Towards Healing* process from the outset. It is a role for which sensitivity, empathy, understanding and patience are vital.
- 20 It is important that the contact person has the skills, experience and resilience to enable him or her to listen to and receive accounts of sexual abuse both professionally and compassionately.
- 21 The Directors maintain lists of appropriate contact persons in the relevant State or Territory. For example, in NSW there is a panel of around 40 contact people available to assist victims. The Church Authority is responsible for payment of any fees for the contact person.
- 22 The role of the contact person will include some or all of the following features:
- (a) they explain to the victim how *Towards Healing* works
  - (b) they encourage the victim to report the complaint to the police
  - (c) they explain the other options available to the victim, including civil proceedings for damages and criminal prosecution of the accused
  - (d) they assist the victim, if necessary or desired, to put an oral complaint into writing
  - (e) they act as an intermediary between the victim and the Director
  - (f) they sometimes remain a contact for enquiries and concerns regarding the *Towards Healing* process as it unfolds
  - (g) they prepare a “contact report” for the consideration of the Church Authority (in the absence of a detailed written complaint)
  - (h) they can provide emotional support to those victims who may not have suitable or sufficient other support networks to assist them through the process
  - (i) they may have a role ensuring that victims are updated from time to time on the progress of their complaint
  - (j) they may recommend to the Director that counselling or other assistance be provided to the victim or his/her support person through the complaint process, and
  - (k) if appropriate and desired, they can help the victim prepare for the facilitation.

- 23 At the initial meeting with the victim, the contact person provides general advice about how the *Towards Healing* process will be conducted, the pastoral approach the Church Authority will take, and the way the procedure and outcomes may vary according to each victim's needs. The contact person talks to the victim about his or her expectations of the process, and asks him or her to identify ways in which his or her healing might be assisted, such as through counselling, an apology or financial assistance.
- 24 The contact person also explains, among other things, that so far as financial payments are concerned, the reparation aspect of *Towards Healing* aims to assist the victim and is not intended to be equated to the compensation which might be awarded by a court in civil proceedings for damages.

#### *Consideration of Criminal Proceedings, and Reporting to the Police*

- 25 The contact person explains the other options available besides *Towards Healing*, including civil and criminal legal processes. A victim's choice among the various options will reflect that victim's particular needs. For example, a victim who wants an accused person held accountable by a Court may not benefit from *Towards Healing*, at least in the first instance, but may seek that outcome through criminal or civil processes.
- 26 Where any mandatory reporting requirements apply in the relevant State or Territory, *Towards Healing* requires them to be complied with.<sup>49</sup>
- 27 The contact person tells the victim, as *Towards Healing* requires, of the Church's strong preference that complaints involving allegations of criminal behaviour be reported to the police.<sup>50</sup> The victim is actively assisted to do this if desired. The Director or the contact person will usually provide the details of police officers or units who specifically deal with sexual abuse.
- 28 If the victim does report the matter to the police, it is obviously important that the police investigation and any prosecution not be affected by any simultaneous Church process. Hence the *Towards Healing* process cannot proceed, and is suspended, while the criminal process is underway. The contact person explains this to the victim. The Director may nevertheless make recommendations to the Church Authority in relation to counselling or other assistance in the meantime. The victim is also advised that he or she is free to approach *Towards Healing* again once the criminal process has been concluded.<sup>51</sup>
- 29 However, as *Towards Healing* recognises, many victims in fact do not want to go to the police, and do not want their complaint to become a subject of police investigation. The wishes of those victims naturally must be respected.
- 30 Victims who choose not to go to the police are normally asked to sign a statement confirming their decision not to go to the police before the *Towards Healing* process can commence.<sup>52</sup>
- 31 Even where a victim chooses not to go to the police, since 2010 *Towards Healing* has stated that the Director should report all cases to police which concern allegations of sexual abuse, apart

<sup>49</sup> Clause 37.5, *Towards Healing*

<sup>50</sup> Clause 37.1, *Towards Healing*

<sup>51</sup> Clause 37.2, *Towards Healing*

<sup>52</sup> Clause 37, *Towards Healing*. Some States may not require this where the victim is legally represented. See also paragraph 23(c) in section 8.5.

from details that could lead to the identification of the victim (unless the victim gives the Director permission to provide such details as well).<sup>53</sup>

### *The Possibility of Civil Proceedings*

- 32 Sometimes a victim will have foreshadowed or even started civil proceedings before coming to *Towards Healing*, or has approached *Towards Healing* through lawyers, perhaps indicating that they would take legal action if the matter cannot be resolved through *Towards Healing* or otherwise.
- 33 If a victim is not seeking any form of pastoral support or other engagement with the Church, then usually the matter would proceed outside *Towards Healing*, in accordance with the usual civil processes.<sup>54</sup> In that case the victim will be entitled to approach *Towards Healing* after those civil proceedings have concluded, for pastoral purposes. If the victim chooses to proceed with a civil process, the contact person may recommend to the Director that the Church Authority offer to fund counselling for the victim in the meantime. The Church Authority typically accepts the recommendation and does not require there to be certainty that the allegations are accurate.
- 34 In some cases, where litigation has been foreshadowed or commenced, the complaint is accepted in *Towards Healing*, provided that the person agrees to put the civil claim on hold pending the outcome of *Towards Healing*. However, if a victim completes, and is satisfied with the outcomes of, *Towards Healing*, the civil claim would not proceed. If the victim is not prepared to accept the outcome offered under *Towards Healing* as satisfactory, he or she could choose to continue the civil claim.

### **Victims' Varying Expectations of the Process**

- 35 Each victim approaches *Towards Healing* with needs and expectations that are unique to his or her personal circumstances. While the Church does not presume to speak for victims, it is the experience of the Directors generally that individual victims may be seeking any one or more of a range of outcomes from *Towards Healing*, including:
- (a) an acknowledgement of the fact that the abuse occurred
  - (b) an apology for the abuse
  - (c) a path by which he or she can move on with his or her life, and separate himself or herself from the abuse
  - (d) financial reparation from the Church Authority
  - (e) finding out whether the accused is a multiple offender who also abused others
  - (f) particularly if that is so, being satisfied that steps have been taken to ensure the accused is prevented from reoffending
  - (g) removal of the accused from ministry

<sup>53</sup> But see section 8.5, paragraph 23

<sup>54</sup> Clause 36.5, *Towards Healing*



- (h) seeking punishment for the accused, or an acknowledgement directly from the accused in relation to the abuse
  - (i) assurances that improved prevention measures are in place generally
  - (j) reconciliation with his or her faith and/or Church Authority.
- 36 The needs of some victims change or evolve over time. Some victims make further approaches to the Church Authority for assistance following the conclusion of a *Towards Healing* process.

### Preparation of the Written Complaint and/or Contact Report

- 37 The point at which the *Towards Healing* process formally commences is the receipt of a contact report or complaint which has been reduced to writing and signed by the victim.<sup>55</sup>
- 38 If the initial complaint has been made orally, or is lacking in details, and if desired, the contact person assists the victim to prepare a detailed contact report, which the victim can then sign.
- 39 This may occur over more than one session, to ensure that the victim has an opportunity to become more comfortable with the contact person during what is often a difficult and traumatic process, and to have time to reflect on and include as many relevant details as possible. The victim is invited to bring a support person to the meeting.
- 40 So that the contact report is prepared in a non-adversarial and non-threatening environment, one over which the victim has some control, the contact person:
- (a) may suggest that the victim chooses the meeting place
  - (b) will endeavour to use appropriate interviewing techniques, including open questioning, providing adequate time for the victim to allow the story to unfold, and providing non-judgemental responses, and
  - (c) will endeavour to record the complaint in the language of the victim.
- 41 The contact person's role is not to test the accuracy of the victim's recollection, or his or her motivation for approaching *Towards Healing*, but merely to assist him or her to set down an account of what happened, and to help clarify what he or she is looking for from the process.
- 42 Among the advantages of obtaining a detailed statement of the complaint at the outset of the process are:
- (a) to limit the number of times the victim needs to revisit the experience, and
  - (b) to provide the Church Authority, and if appointed, the assessor, with as much information as possible to consider and/or investigate the complaint.
- 43 If a complaint is prepared on behalf of the victim, the victim is given an opportunity to review it before signing. Contact persons often prefer to show it to the victim in person, rather than sending it by post or email, as experience shows that the receipt of the written account can be very emotional and could adversely affect the victim. Occasionally, the contact report might be

<sup>55</sup> Clause 36.1, *Towards Healing*

sent to another person, such as the victim's psychiatrist or support person, so that that person can assist the victim to read and deal with it.

- 44 In most cases, the victim is accompanied through the process by a friend or family member, or lawyer, as a support person, although, in some cases, the contact person could act as an ongoing support person for the victim during the *Towards Healing* process.

### 4.3 Referral to the Church Authority

#### Recommendations and Determinations by the Director

- 45 Once the Director has received a written complaint or contact report under *Towards Healing*, he or she is responsible for:
- (a) determining whether the complaint concerns conduct which could reasonably be considered to fall within the definition of abuse under *Towards Healing*,<sup>56</sup> and
  - (b) referring the matter to the relevant Church Authority, sometimes with a recommendation about actions which could be taken.<sup>57</sup>
- 46 Unless the complaint has initially come to the Director from the Church Authority, the Director's referral of the complaint to the Church Authority may be the first time the Church Authority becomes aware of the existence of the allegations.
- 47 The Church Authority needs to ascertain whether there is a significant dispute about the facts which have been alleged, and whether to have an assessment of the complaint. In some cases, the Church Authority accepts the complaint without an assessment, for example because of past cases which have been alleged or proven against the accused, and move straight to a facilitation.
- 48 The Director also asks the Church Authority to provide information about the accused person, including whether they are alive, remain in active ministry, and are employed or have contact with children.
- 49 Many of the accused are deceased. However, if the accused does have ongoing contact with children, the Director is to discuss with the Church Authority whether the accused should be asked to stand aside while the complaint is determined, taking into account the gravity of the allegations and the risk of harm to others, and make a recommendation.<sup>58</sup>
- 50 The Church Authority, after consultation with the Director, then informs the accused of the complaint.<sup>59</sup>
- 51 Standing an accused aside at this early stage may be appropriate, and will usually occur when there is a risk that the accused could continue to abuse others, especially children and young

<sup>56</sup> Clause 38.2, *Towards Healing*

<sup>57</sup> Clauses 38.3 and 38.4, *Towards Healing*

<sup>58</sup> Clause 38.10, *Towards Healing*

<sup>59</sup> See section 10.2

people.<sup>60</sup> It may also be appropriate when public knowledge of the accusations undermines the accused person's capacity to carry out their pastoral functions.<sup>61</sup>

- 52 If an accused person is stood aside from parish ministry, the parish "*should be told as much as is reasonably necessary to understand what is happening, consistent with the need to protect the privacy of all the individuals concerned*".<sup>62</sup>
- 53 The Director may also recommend at any time during the *Towards Healing* process that the Church Authority offer to fund counselling for the victim, even if the allegations have not yet been investigated.<sup>63</sup>

### Contact Between the Church Authority and the Victim

- 54 The Church Authority (meaning the relevant bishop or religious leader personally) sometimes meets with the victim at an early stage of the process.<sup>64</sup>
- 55 Such a meeting can help to "*break down barriers between the [victim] and the Church arising from anxiety, suspicion or anger*" and to put "*a human face on the Church Authority*".<sup>65</sup> Alternatively in some cases, the Church Authority may write a letter in acknowledgement of the complaint.

### Meeting With the Accused<sup>66</sup>

- 56 After receiving the complaint, the Church Authority also attempts to meet with the accused, if this is still possible, or requests that another person, such as the Director or someone delegated by the Church Authority, conduct an interview with the accused.<sup>67</sup> The accused is advised to bring a support person, who could be a legal representative.<sup>68</sup> At this meeting, or (if there is no meeting) by correspondence, the accused is advised of enough details of the complaint to allow him to prepare a response.<sup>69</sup>
- 57 As *Towards Healing* is focused upon responding to the victim, it can and will still proceed even if there is no response from the accused. However, the accused is given the opportunity to respond to allegations if at all possible.<sup>70</sup>
- 58 The accused is generally not given the victim's own written account, as this may contain, for example, personal information about the effect of the abuse upon the victim and his or her feelings about the abuse. However, as required by procedural fairness, the accused is provided with the substance of the allegations in the complaint.<sup>71</sup>

<sup>60</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 12

<sup>61</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 12

<sup>62</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 13

<sup>63</sup> Clause 38.4, *Towards Healing*

<sup>64</sup> Clause 36.8, *Towards Healing*

<sup>65</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 9

<sup>66</sup> "Dealing with the accused" is discussed in section 10 of this Submission

<sup>67</sup> Clause 38.5, *Towards Healing*, *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 10

<sup>68</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 9

<sup>69</sup> Clause 38.5, *Towards Healing*

<sup>70</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 9

<sup>71</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 10

- 59 The Church Authority also makes arrangements to receive the accused's response at a later date.<sup>72</sup>
- 60 A meeting with the accused person also allows the Church Authority (or their delegate) to explain the *Towards Healing* process to the accused.<sup>73</sup> Among other things, the Church Authority advises the accused that:
- (a) he or she has the right to obtain independent legal advice<sup>74</sup>
  - (b) the Church accepts the presumption of innocence unless proven otherwise,<sup>75</sup> and
  - (c) the Church's role is to provide pastoral care for the accused as well as the victim, while the *Towards Healing* process is worked through.<sup>76</sup>
- 61 The accused is offered a support person to assist throughout the *Towards Healing* process.<sup>77</sup> The Church Authority also has the discretion to assist the accused by meeting the cost of their legal advice during *Towards Healing*, by way of loan or reimbursement, if the accused is unable to afford legal assistance.<sup>78</sup>
- 62 Under the *Guidelines*, Church Authorities are advised not to tell the accused the address of the victim, and to instruct the accused "*not to make any contact with the complainant, because this may be perceived as intimidating*".<sup>79</sup>

#### 4.4 Assessment

##### Should There Be an Assessment?

- 63 Once the details of the complaint, and any response from the accused, have been received, *Towards Healing* may proceed to an assessment, which is the investigative stage of the process.<sup>80</sup>
- 64 An assessment would normally take place if the accused is alive, and disputes the claims made against him.
- 65 In some cases, the Church Authority may decide that a formal assessment is not needed, and that there is no need to investigate the complaint. For example, there may be no need for an assessment if:
- (a) the accused has already been convicted of the offence(s)
  - (b) the accused has a history of substantiated abuse complaints against him or her
  - (c) the Church Authority is otherwise satisfied about the validity of the complaint

<sup>72</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 10

<sup>73</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 9

<sup>74</sup> Clause 38.6, *Towards Healing*

<sup>75</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 10

<sup>76</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 10

<sup>77</sup> Clause 38.7, *Towards Healing*

<sup>78</sup> Clause 38.6, *Towards Healing*

<sup>79</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 10

<sup>80</sup> A complaint will not be assessed under *Towards Healing* where it involves a current lay employee of a Church organisation. Such complaints are dealt with in accordance with the relevant employment procedures. Clause 39.1, *Towards Healing*

- (d) there are no witnesses alive, or useful avenues of inquiry for any investigation, or
- (e) the victim appears unlikely to be able to cope with a formal assessment process.

Assessments now actually occur in only a minority of cases.

- 66 Circumstances in which the Church Authority may be satisfied of the validity of a complaint include where the accused is deceased and there is no opportunity for a meaningful investigation, but the circumstances described are consistent with other facts known to the Church Authority.
- 67 A Church Authority may also accept a complaint without assessment if a response to the complaint has been obtained from the accused and there is no significant dispute as to the facts or their seriousness.<sup>81</sup> Where an accused attempts to minimise the seriousness of the conduct, whether in respect of frequency or otherwise, it is important that an assessment be conducted to properly determine the seriousness of the offence.<sup>82</sup>
- 68 In some situations, a Church Authority may conduct some preliminary investigations to ascertain the basic facts before deciding whether to proceed to an assessment, such as making inquiries about where the accused was stationed at the relevant times, and whether there are records of the victim attending the relevant church or institution at the time of the complaint, or while the accused was also at that location.

### Appointment of Assessors

- 69 If the Church Authority determines that the complaint should be assessed, the Director makes a recommendation to the victim and the Church Authority of assessors from a list maintained by the PSRG.<sup>83</sup> Both the victim and the Church Authority must agree on the assessor, and the recommendation of the Director is usually accepted.<sup>84</sup>
- 70 Assessors must have the appropriate skill and background for conducting investigations of this nature.<sup>85</sup> *Towards Healing* deliberately does not specify the qualifications of assessors, so that there might be assessors available from a range of backgrounds.<sup>86</sup> Before conducting assessments, assessors are trained or must be skilled in the appropriate use of investigation and communication skills.<sup>87</sup>
- 71 In practice, assessors are often private investigators, former police officers, lawyers or social workers, and may have a background in conducting criminal investigations. In some States, two assessors will be appointed, unless the Director considers that one professional assessor is sufficient.<sup>88</sup> New South Wales, for example, normally appoints only one assessor. Queensland and Western Australia might appoint one or two, depending on the case.

<sup>81</sup> Clause 38.8, *Towards Healing*

<sup>82</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 11

<sup>83</sup> Clause 40.1, *Towards Healing*

<sup>84</sup> Clause 40.1.1, *Towards Healing*. If there is no agreement on the assessor, the matter is referred to the National Office for Professional Standards for a decision on the appointment.

<sup>85</sup> Clause 40.1.1, *Towards Healing, Implementation of Towards Healing: Notes for People involved in the Process* (December 2012) p 8

<sup>86</sup> *Implementation of Towards Healing: Notes for People involved in the Process* (December 2012) p 8

<sup>87</sup> See Victorian Parliament, Family and Community Development Committee, *Inquiry into the handling of child abuse by religious and other organisations* (Victorian Parliamentary Inquiry), Transcript, Evidence of Paul Murnane, APM, Assessor, 3 May 2013

<sup>88</sup> Clause 40.1, *Towards Healing*

- 72 Where appropriate, the Director might recommend that assessors with different backgrounds be appointed, so that complementary skills may be brought to the assessment task. The Director may also recommend that there be a male and a female assessor, so that the victim and the accused can be interviewed by a person of the gender with which he or she feels comfortable discussing the allegations. For such reasons, the Director generally consults with victims about the appropriate choice of assessor.<sup>89</sup>
- 73 The Church Authority is responsible for the payment of the fees and costs associated with the assessment.

### The Assessment Task

- 74 *Towards Healing* states that:

*“The purpose of an assessment is to investigate the facts of the case to the extent that it is possible to do so where there is a significant dispute or uncertainty as to the facts, or where there is a need for further information concerning the complaint.”<sup>90</sup>*

- 75 The assessment process is flexible, and assessors are able to carry out their investigation in the manner they choose. Church Authorities are expected to provide any witnesses required by the assessor for the purpose of the investigation.
- 76 Assessors are required to:<sup>91</sup>
- (a) collect evidence relating to the complaint, including by interviewing any relevant people
  - (b) review the evidence relating to the complaint
  - (c) examine the areas of dispute
  - (d) make findings about whether they consider the complaint to be substantiated, on the balance of probabilities, and
  - (e) provide reasons for their findings.
- 77 *Towards Healing* provides some specific guidance for interviewing the victim, including:<sup>92</sup>
- (a) the assessors should, at some stage of the process, put to the victim the accused’s version of events
  - (b) if the person who made the complaint is someone other than the victim, the assessors should not seek to interview the victim without first discussing the matter with that other person and the Director
  - (c) the victim should be invited to have a support person present at the interview
  - (d) under no circumstances should there be any attempt to intimidate a victim or dissuade a victim from proceeding with a complaint

<sup>89</sup> *Implementation of Towards Healing: Notes for People involved in the Process* (December 2012) p 8

<sup>90</sup> Clause 40.2, *Towards Healing*

<sup>91</sup> Clause 40.9, *Towards Healing*

<sup>92</sup> Clause 40.3, *Towards Healing*

- (e) no interview with a child or young person should take place if there is a risk that this will interfere with the proper process of civil or criminal law
  - (f) no interview with a child or young person should be conducted without the express written authority of the parent or guardian
  - (g) an interview with a child or young person should only be conducted by personnel who are professionally recognised as skilled practitioners in interviewing children, and
  - (h) special care should be taken in interviewing a person with an intellectual or psychiatric disability, and any such interview should only be conducted by an appropriately qualified and experienced person.
- 78 The assessor will also interview the accused, as well as any other people that the assessor considers might assist with the assessment process.<sup>93</sup> If the accused declines an interview, he or she will be given an opportunity to provide a written response to the allegations.<sup>94</sup> If the accused is dead, or refuses to participate (which is uncommon, but not unknown), the assessment may nevertheless proceed.
- 79 *Towards Healing* provides the following guidance for interviewing the accused:<sup>95</sup>
- (a) the assessor shall inform the accused that in both civil and Church law, a person is presumed innocent until proven guilty
  - (b) an accused person may be invited to admit an offence but is not bound to do so, nor may an oath be administered, and
  - (c) the accused should be invited to have a support person or legal adviser present during an interview.
- 80 As explained above, the *Towards Healing* process will only be engaged where the victim has chosen not to report the matter to the police so as to activate the criminal process. Nevertheless *Towards Healing* recognises that a victim might later change his or her mind, and/or that other circumstances might intervene such that a criminal investigation process might in fact take place. Accordingly, the *Guidelines* make clear that “*great care needs to be taken when the allegations concern a criminal offence, since there is a possibility that a criminal prosecution could follow a Church procedure under Towards Healing*”.<sup>96</sup> Such care includes ensuring that the accused is aware of his legal right to remain silent, and that the accused is given the opportunity to obtain legal advice before making admissions about wrongdoing.<sup>97</sup>

### Assessment Report

- 81 An assessor is required to determine whether he or she considers a complaint to be substantiated “*on the balance of probabilities*”, based upon the evidence available at the time of the assessment.<sup>98</sup>

<sup>93</sup> Clause 40.2, *Towards Healing*

<sup>94</sup> Clause 40.4, *Towards Healing*

<sup>95</sup> Clause 40.4, *Towards Healing*

<sup>96</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 11

<sup>97</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 11 to 12

<sup>98</sup> Clause 40.9, *Towards Healing*

- 82 The standard of proof is thus not the criminal standard of “*beyond reasonable doubt*”, but the lower civil standard.
- 83 The assessment and preparation of the report normally takes around 4–6 weeks, but can sometimes take longer if there are difficulties conducting the investigation.
- 84 Once the report is final, the assessor provides it to the Director. The Director is responsible for communicating the assessor’s findings to the victim, the Church Authority and the accused.<sup>99</sup>
- 85 In practice, Church Authorities almost invariably accept the findings and recommendations contained in an assessment report.
- 86 The Director may provide the assessor’s findings to the victim in a meeting with the victim, where the victim may choose to have a support person present. The Director will usually provide the victim with a copy of the assessor’s report if he or she asks for one, except for material which relates to a third party or is not relevant to the victim.
- 87 If an assessor is unable to determine whether the complaint is substantiated, he or she may still make recommendations to the Church Authority concerning what response should be made to the victim. This might include matters relevant to a risk assessment concerning the continuation of a person in a particular kind of ministry.<sup>100</sup>
- 88 Victims are encouraged to have a support person present during the assessment stage of the *Towards Healing* process.<sup>101</sup> The victim may choose to have a lawyer as such support person.<sup>102</sup> However, the lawyer’s only function in this part of the process is as a support to the victim.

### Professional Assessments

- 89 In some cases, particularly when there is no assessment process, the Church Authority may ask the victim to undergo an examination by a psychiatrist or psychologist, so that there is an independent report of the impact and effect of the abuse on the person.
- 90 On occasion, a report may also be obtained if a victim appears to be very fragile or at risk of suicide, so that the Director is satisfied that the victim can safely participate in the *Towards Healing* process.
- 91 Such reports are usually provided to a victim on request, except if the psychologist or psychiatrist does not agree, or expresses a view that the victim is not well enough to see the report.

## 4.5 Facilitation

### What is Facilitation?

- 92 If a complaint is substantiated after an assessment, or the veracity of the complaint is accepted by the Church Authority without an assessment, the *Towards Healing* process moves to a facilitation as the normal means of addressing the needs of the victim.<sup>103</sup>

<sup>99</sup> Clause 40.11, *Towards Healing*

<sup>100</sup> Clause 40.9.1, *Towards Healing*

<sup>101</sup> Clauses 40.3.2 and 40.5, *Towards Healing*

<sup>102</sup> Clause 40.5, *Towards Healing*



- 93 The Director normally also offers a facilitated meeting to a victim when a complaint is not substantiated, as a means of attempting to address the person's pastoral needs. Occasionally support or assistance is also offered at such a meeting.
- 94 The facilitation provides an opportunity for the victim to meet with a senior person from the Church Authority. This is usually the bishop, for a complaint about a diocesan priest, or the leader of a religious institute, for a complaint against someone in the congregation or a teacher in one of their schools. Sometimes the bishop or religious institute leader will have a delegate represent them, who would usually be a senior person in the diocese or institute.
- 95 The purpose of the facilitation is for the Church Authority to:<sup>104</sup>
- (a) acknowledge and apologise for the harm suffered by the victim
  - (b) demonstrate to the victim that his or her complaint has been heard and understood
  - (c) discuss the needs of the victim arising from the experience of abuse, and
  - (d) try to reach agreement with the victim about his or her needs and the response of the Church Authority to those needs.
- 96 Many victims have said that the most important part of facilitation for them is the experience of being listened to and acknowledged by the Church, particularly by someone senior in the Church. Meeting with the victim is intended to demonstrate the Church Authority's respect for the victim, as well as the importance of his or her individual complaint.
- 97 While the primary purpose of *Towards Healing* is pastoral – to provide healing to the victim and, if the victim desires, reconciliation with the Church – the facilitation also provides the opportunity for respectful listening and discussion as to how the Church can provide the victim with some assistance with some of the aspects of their life which have been affected by the abuse, and/or some reparation for what has occurred.

### Appointment of Facilitator

- 98 The facilitation part of the process usually starts with the Director appointing a facilitator, who is selected from a list of experienced facilitators or mediators. Usually consideration is given to whether the victim would prefer a male or female facilitator. Many facilitators are lawyers or psychologists, or experienced mediators. On occasions, the Director acts as the facilitator.<sup>105</sup> The Church Authority bears the costs of the facilitation.
- 99 The facilitator may have separate meetings with the victim and/or with the Church Authority, before the facilitation meeting. This allows the facilitator to talk to the victim about what to expect in the facilitation process, and to explore with the victim what they are seeking from the process. The facilitator may also try to gain an understanding of the approach the Church Authority is proposing to take, and the types of assistance it may be prepared to offer.

<sup>103</sup> Clause 41.3ff, *Towards Healing*

<sup>104</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), pp 14–15

<sup>105</sup> Under the Protocol, Directors should only participate in the facilitation where the special circumstances of the case mean that this would be appropriate, and with the written approval of the Executive Officer of the National Committee for Professional Standards. Clause 39.5, *Towards Healing*

## Structure of Facilitation

- 100 Those attending a facilitated meeting will usually be the victim with his or her support person and/or lawyer, and the representative from the Church Authority, and (if the victim attends with a lawyer) that Authority's lawyer.<sup>106</sup>
- 101 The facilitation meeting usually has two main parts – a pastoral part, which occurs first, and a reparation component, in which the issue of reparation and assistance is discussed. Usually these two aspects of the process are dealt with in the one meeting, although there are occasions on which separate meetings are held for the different purposes, and some Church Authorities prefer separate meetings which keep the issues of pastoral support and financial reparation separate. In some cases, it may be possible to reach an agreement on issues of financial reparation prior to the facilitation, so that only the meeting relating to the pastoral aspect takes place.<sup>107</sup>
- 102 Usually the meeting will involve as much time as the victim needs for the Church Authority to listen to the victim talk about his or her experience, what happened to him or her and how it affected him or her. The discussion is often emotional and traumatic, as the victim expresses and describes the feelings of distress, hurt, trauma and anger which he or she has experienced. The role of the Church Authority during this part of the meeting is mainly to listen, with respect and compassion, and try to understand.
- 103 The victim also has the opportunity to put questions to the Church Authority. Often victims understandably want to know, for example, if others have also complained of being abused by the accused, or are seeking assurances that others will not be at risk of abuse.
- 104 The Church Authority also has an opportunity to respond to the victim during this part of the process. The Church Authority acknowledges the person's experience and the truth of what he or she has said, and offers an apology.
- 105 It is fundamental to the pastoral nature of *Towards Healing* that there is an acknowledgment of the harm caused to the victim, and its effect on his or her life, and an acknowledgment that his or her complaint has been heard and taken seriously.
- 106 The facilitation normally then moves to a discussion of the victim's needs, including areas where the Church Authority may be able to offer some assistance to the victim, whether pastoral or financial, in dealing with the consequences of the abuse upon his or her life.
- 107 In many facilitations, there is a break of some kind at around this point - either a break in the discussion, or a clear break in the formal processes of the meeting, between the pastoral part of the facilitation and the discussion of financial reparation which might be offered to the victim.
- 108 If there are no lawyers present, the facilitator assists the victim and the Church Authority to reach an agreement on any financial reparation which the Church Authority may offer.
- 109 If lawyers are present, what tends to happen in practice is that they take control of this part of the process and in effect conduct a form of mediation or a negotiation. Sometimes the victim and the Church Authority move to separate rooms for this part of the facilitation, with the facilitator or the

<sup>106</sup> *Towards Healing*, p 25 fn 3

<sup>107</sup> Clause 41.4.3, *Towards Healing*

lawyers conveying the views and position of each party back and forth, until either an agreement is reached, or any proposal offered by the Church Authority is finally rejected.

- 110 With lawyers conducting this process, it can bear many of the hallmarks of the end stages of a traditional mediation, where the mediator moves between the parties and their lawyers in different rooms, attempting to broker an agreed settlement.
- 111 If an agreement has been reached, the parties come back together at the conclusion of the negotiation, to settle arrangements and paperwork. If there is no agreement, they may come together to discuss where to take the process and the next steps.
- 112 The conjunction or intersection of pastoral care and a financial negotiation may seem inappropriate in some ways. On one view, there could be an inherent tension between the dual purposes of a facilitation meeting – the pastoral purpose, and the interest in finding an agreed financial reparation. On another view, a discussion of possible financial outcomes can be seen as an extension of the pastoral component, particularly as it is not approached as “compensation” in the usual legal sense, but as providing the person with financial support based on his or her particular needs and circumstances.
- 113 The *Guidelines* offer advice as to resolving this tension between financial reparation and a pastoral response, including that:<sup>108</sup>
- (a) it may be appropriate to attempt to resolve issues of reparation prior to the facilitation, especially if the victim is legally represented, or
  - (b) in other cases, it may be appropriate to schedule a financial mediation on the same day as the pastoral meeting, but with different people present, so that the two are distinct.

#### Additional Functions of the Facilitator

- 114 Apart from arranging and conducting the facilitation meeting, the facilitator is also responsible for:
- (a) identifying any outstanding areas where the victim is not satisfied with the response from the Church Authority, and exploring with both parties the best means of dealing with those matters<sup>109</sup>
  - (b) ensuring that there is a record of both any agreement reached, and any outstanding areas of disagreement,<sup>110</sup> and
  - (c) informing the Director of Professional Standards of the outcome, and advising of any other processes which would assist in bringing the matter to a conclusion.<sup>111</sup>

<sup>108</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 16

<sup>109</sup> Clause 41.4.5, *Towards Healing*

<sup>110</sup> Clause 41.4.6, *Towards Healing*

<sup>111</sup> Clause 41.4.7, *Towards Healing*

## 4.6 Outcomes for the Victim

### A Pastoral Response

115 In keeping with the pastoral nature of *Towards Healing*, the response to the victim is shaped by the needs of the victim. Pastoral Care is defined in *Towards Healing* as:

*“the work involved or the situation which exists when one person has responsibility for the wellbeing of another or for a faith community of which the complainant is, or was, a part. It includes the provision of spiritual advice and support, education, counselling, medical care, and assistance in times of need. All work involving the supervision or education of children and young people is a work of pastoral care.”*<sup>112</sup>

116 A pastoral response may include, for example, any or all of:

- (a) an apology
- (b) provision of counselling services
- (c) payment of counselling costs
- (d) financial assistance or reparation
- (e) spiritual support from a Church Authority, such as prayers, or a special service of healing.

### Acknowledgement and Apology

117 The Church Authority and/or the Director may offer informal apologies at various stages of the *Towards Healing* process, such as:

- (a) at the initial meeting between Church Authority and victim, or
- (b) in a letter acknowledging the receipt of the complaint.

118 A formal apology is normally part of the outcome of *Towards Healing*. The victim and the Director may meet to discuss the form and substance of such an apology. This is to ensure that the victim’s experience is specifically and personally addressed, and that the victim is included in the process of formulating both the acknowledgement of the truth of the complaint and the harm caused by the abuse, and the apology for the conduct and the harm.

119 The victim sometimes requests an apology from the accused personally. If the Church Authority is able to obtain such an apology, it will also be offered to the victim, usually in a written form during a meeting between the victim and the Church Authority.

120 It is the experience of the Church that the offering and giving of a sincere apology by the Church, for the harm and distress suffered by the victim, is often a very significant contribution to the process of healing and reconciliation. The apology is offered, humbly, by the very institution to which the offender belonged, the very institution which may have been, or seemed, indifferent to the suffering he or she had experienced.

<sup>112</sup> *Towards Healing*, Part One, Definitions, p 4

- 121 The giving of such an apology under *Towards Healing* is one of the many ways in which a restorative process is fundamentally different from the adversarial processes which apply in civil litigation or criminal prosecutions.

### Reparation

- 122 Financial assistance provided in *Towards Healing* takes many forms, and comes in many shapes and sizes. Financial assistance is intended to be responsive to the individual circumstances of the victim.<sup>113</sup> Each case will therefore have an individual outcome. There is no table or chart specifying the financial outcomes, or range of outcomes, which might be expected or offered having regard to the type or degree of abuse suffered. Rather, case by case, the situation of the particular victim, and the approach of the particular Church Authority, determines the outcome.
- 123 The facilitator will usually explain to the victim during the facilitation that the financial assistance provided under *Towards Healing* cannot be, and is not intended to be, equated to the compensation which might be awarded by a court. The same point is also made by the contact person at the first meeting. It is not provided or calculated on the basis of legal liability, but on the moral need for a response where a person has been abused by a representative of the Church.<sup>114</sup> Any financial element or elements of *Towards Healing* are intended to recognise that abuse may have real economic consequences for victims, for whom some financial assistance may be important.<sup>115</sup>
- 124 Sometimes a financial outcome involves a direct payment to a victim. The amount of such payments may vary considerably from case to case. Some are relatively large, others relatively small. Sometimes, as an additional or alternative part of the financial reparation in a given case, assistance is provided in relation to such things as: self-education or school or university fees; finding employment; rent; purchase of equipment such as computers; a vehicle; family funeral expenses; or medical or dental costs. Sometimes the support is non-monetary.
- 125 Payments are sometimes made by the Church directly to service providers, such as counsellors, although the practice in many States is to provide funds to the victim to enable the victim to make the payments.
- 126 Financial assistance is also offered for particular purposes from time to time even where this is not specifically requested by the victim, but where the contact person, Director or Church Authority observes that the victim might be assisted by counselling, rehabilitation or some other specific form of practical assistance.

### Length of Process

- 127 If there are no particular problems that arise during the *Towards Healing* process, it might take about 6 to 9 months for an outcome to be reached. However, in some cases, the process may be delayed. For example, the victim may decide to put *Towards Healing* on hold, the Church Authority may be slow to deal with the matter, or there may be delays in the assessment process through difficulties in contacting witnesses. Ongoing assistance such as counselling may be provided during this period.

<sup>113</sup> See transcript of evidence of Sister A Ryan before the Victorian Parliamentary Inquiry on 3 May 2013, pp 17 and 19

<sup>114</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 15

<sup>115</sup> *Towards Healing: Guidelines for Church Authorities* (NCPS, February 2011), p 15

## 4.7 Conditions Placed on Victims Under *Towards Healing*

### Deeds of Release

- 128 If an agreement is reached about reparation, this is recorded in writing. Sometimes this is done relatively informally, in a letter of acknowledgement, and sometimes it is done in a formal deed.
- 129 The current practice with respect to releases varies. Some Church Authorities include a release in a deed, while others do not require a release at all. Others do not require a release for reparation of small amounts.
- 130 Where a release is given as part of *Towards Healing* it would usually preclude the victim from seeking further relief based on the same complaint through a civil claim. No victim is asked to sign a release without being given the opportunity to obtain independent legal advice for which the Church Authority will pay.<sup>116</sup>
- 131 A possible criticism of *Towards Healing* is that it is not appropriate to expect a victim to relinquish the right to bring future legal proceedings, when the financial payment being made under *Towards Healing* may not and is not intended to equate to the amount of compensation which might be awarded in such proceedings. An alternative view is that a victim who has chosen the *Towards Healing* option is likely to be one who prefers the pastoral focus of *Towards Healing*.
- 132 In addition, victims sometimes make subsequent approaches to the Church Authority or PSO for further assistance in relation to a complaint which was the subject of a previous *Towards Healing* process. In such cases the Church often provides further pastoral assistance, and there have been instances where such victims have also been provided with further financial assistance (sometimes exceeding the original assistance provided). The topic of ongoing contact after the conclusion of a *Towards Healing* process is discussed further at section 4.10 below.

### Confidentiality

- 133 In early days of the *Towards Healing* process, confidentiality provisions were sometimes included in deeds of release, requiring victims to keep confidential any information relating to the *Towards Healing* process such as the nature of the allegations, the amount of financial assistance received, any admissions of liability made by the Church Authority, and other details of the settlement.
- 134 In the light of successive reviews of *Towards Healing* since 1996, since about 2000 such provisions have no longer appeared in more recent iterations of deeds of release and other settlement documents.<sup>117</sup>
- 135 *Towards Healing* now specifically provides that victims are not to be required to give an undertaking imposing upon them an obligation of confidentiality concerning the circumstances which led them to make a complaint.<sup>118</sup>

<sup>116</sup> Clause 41.4.9, *Towards Healing*

<sup>117</sup> See also paragraph 35(n) in section 6

<sup>118</sup> Clause 41.5, *Towards Healing*

136 The Council has said publicly that in its view Church bodies should not seek to enforce any confidentiality provision contained in past deeds of release where victims make approaches to or respond to enquiries from the Royal Commission.<sup>119</sup>

#### 4.8 Outcomes for the Accused

137 Once the complaint has been assessed, or a conclusion about its validity has otherwise been reached, the Church Authority is able to consider its final response in relation to the accused.

138 Although it provides some assistance to Church Authorities in relation to responding to the accused, *Towards Healing* is not itself a disciplinary process. Rather, it is essentially a process for receiving complaints of abuse and responding to the victim.

139 If the accused is a lay employee, the response to the accused is determined in accordance with the relevant employment law procedures.

140 If the accused is a priest or religious, then the treatment of the accused by the Church – quite apart from whatever consequences may flow under the general law (for example where a criminal prosecution has occurred or may yet occur) – must be consistent with canon law.

141 The Church Authority must consider what action needs to be taken concerning the accused's future ministry. *Towards Healing* requires that the Church Authority “*be guided by the principle that no-one should be permitted to exercise a public ministry if doing so presents an unacceptable risk of abuse to children and young people*”.<sup>120</sup>

142 In practice, this requires the Church Authority to consider the degree of likelihood that the accused has abused a child, or may do so in the future. This is quite a different question from whether the particular allegation has been legally proved “beyond reasonable doubt”, or even “on the balance of probabilities”. If the degree of risk is considered unacceptable, regardless of whether these strict legal criteria are met, the Church Authority is to act accordingly.

143 The Church Authority's response to the accused will depend on a number of factors, including:

- (a) the degree of risk of further abuse
- (b) the seriousness of the violation of the integrity of the pastoral relationship
- (c) the advice of the Director
- (d) the advice of the Consultative Panel
- (e) the contents of any professional reports commissioned by the Church Authority, and
- (f) the outcome of any other necessary inquiries.

144 The way an accused may be dealt with is discussed more fully in section 10 of this Submission.

<sup>119</sup> Truth Justice and Healing Council, Media Release, 3 April 2013

<sup>120</sup> Clause 42.6, *Towards Healing*

## 4.9 Review of *Towards Healing* Process or Assessment

### National Review Panel

- 145 *Towards Healing* provides for a review process, which is conducted by the National Review Panel (NRP) and funded by the Church Authority.
- 146 The NRP is appointed by the NCPS and comprises up to nine independent members, no more than three of whom shall be required for any particular case. Members of the NRP during the period from 2005 to 2013, and their relevant qualifications, are set out in Annexure C.

### Grounds and Scope of Review

- 147 A victim, accused or Church Authority is able to seek a review of the *Towards Healing* process and/or the findings of the assessment.<sup>121</sup> The review is an independent evaluation, not only of whether there is substance in any of the grounds for complaint, but also of whether the principles of the *Towards Healing* process have been adhered to.
- 148 Importantly, however, the review is not a review of the outcomes determined by the Church Authority, as neither the NCPS nor the NRP has the authority to overrule the decisions of the Church Authority.<sup>122</sup>
- 149 A victim may seek a review within three months of the end of the facilitation process (or of the completion of the assessment, if the Church Authority has failed to offer a response within three months of that time).<sup>123</sup> A Church Authority or accused may also seek a review within three months of being provided with the assessment report.<sup>124</sup> A review is only available for the accused if he or she co-operated with the assessment process.

### Brief Summary of the Review Process

- 150 A brief summary of the review process is outlined below.
- (a) A request for review is made in writing to the Director, providing reasons for the dissatisfaction with the process or findings. The Director refers the request to the NCPS.
  - (b) The NCPS refers the request to the Chairperson of the NRP for consideration as to whether the request for review should be accepted or declined.
  - (c) If the request is accepted, the Chairperson of the NRP arranges for a reviewer to be appointed to undertake the review. Historically, the Chairman of the NRP has usually appointed either David Landa OAM (former NSW Ombudsman), or the Hon John Hannaford (a former Attorney-General of NSW).
  - (d) The reviewer determines the procedures for the conduct of the review and has access to all relevant documentation. If necessary, the reviewer may speak to persons concerned with the case.

<sup>121</sup> Clause 44.1, *Towards Healing*

<sup>122</sup> Clause 44.2, *Towards Healing*

<sup>123</sup> Clause 44.3, *Towards Healing*

<sup>124</sup> Clause 44.4, *Towards Healing*



- (e) The reviewer provides a written report, with recommendations, to the Chairperson of the NRP. The reviewer is to conduct the review expeditiously and within a three month period, unless an extension is given by the NRP.<sup>125</sup>
- (f) If the reviewer considers that there has been a failure to observe the *Towards Healing* principles or if the reviewer has identified deficiencies in the findings, the Chairperson discusses the case with the reviewer and at least one other member of the NRP.
- (g) Following consideration of the Reviewer's report and discussion, the NRP may:
  - (i) direct that a further assessment be undertaken
  - (ii) endorse the findings and/or recommendations set out in the reviewer's report, and/or
  - (iii) substitute its own findings for those of the assessor or assessors, provided that it has all the information available to do so.<sup>126</sup>
- (h) The NRP then makes such recommendations as it sees fit to the Director. Recommendations made by the NRP have included, for example:
  - (i) a recommendation that the Church Authority should pay for counselling for the victim for a period of two years
  - (ii) a recommendation that the NRP's view (that the accused should be excluded from exercising public ministry) should be conveyed to a bishop
  - (iii) a recommendation that an apology should be provided and a facilitation process undertaken with the victim
  - (iv) a recommendation regarding changes to the case management system for complaints
  - (v) a recommendation regarding the removal of certain aspects of an assessor's report and the issue of an apology to the victim regarding a statement included in that report.
- (i) A copy of the reviewer's report and the NRP's recommendations are given to the victim and the Church Authority, the Director of Professional Standards in the relevant State or Territory, the PSRG and the NCPS.<sup>127</sup>

#### 4.10 Ongoing Contact

- 151 Although *Towards Healing* contains no reference to or provision for second or subsequent approaches by victims after the *Towards Healing* process has concluded, in practice approaches are sometimes made by victims for additional assistance.

<sup>125</sup> Clause 44.6.2, *Towards Healing*

<sup>126</sup> Clause 44.9, *Towards Healing*

<sup>127</sup> Clause 44.10, *Towards Healing*

- 152 In most such cases to date, victims have initially made a direct approach to the PSO or Church Authority, outside of *Towards Healing*, for additional assistance. Such requests have been made, for example, when:
- (a) a family or personal tragedy has befallen the victim, causing further emotional trauma and grief
  - (b) the victim has lost his or her employment or primary form of income
  - (c) the victim has been struggling with debt or has made unfortunate financial investments, or
  - (d) the victim has become dissatisfied with the assistance provided under *Towards Healing*.
- 153 Where victims have received further assistance, that assistance has taken various forms, including:
- (a) interest-free loan arrangements
  - (b) further financial assistance and *ex gratia* payments in addition to the assistance provided under the initial *Towards Healing* application
  - (c) a subsequent *Towards Healing* process being commenced to supplement the initial application
  - (d) further arrangements and payments for counselling sessions
  - (e) pastoral assistance in various forms such as approaches made by the contact person or Church Authority representative to potential employers on the victim's behalf.
- 154 Over and above the foregoing, the Church may (where the victim wishes it) maintain ongoing contact with victims, and provides ongoing support, after the *Towards Healing* process has concluded. Such ongoing contact may include:
- (a) providing people with a support network when they encounter misfortune or emotional or financial tragedy
  - (b) helping to bridge rifts in relationships between the victim and his or her family
  - (c) helping to rebuild the relationship between the victim and the Church Authority and/or the Catholic Church, and
  - (d) providing victims with genuine friendship formed through the shared experience of the *Towards Healing* process.

#### 4.11 Role and Participation of Lawyers

- 155 Like most processes drawing on restorative justice principles, *Towards Healing* was never intended to be legalistic. However, lawyers are now routinely involved in *Towards Healing*, both on the part of the victim and (as a result) on the part of the Church Authority. The extent of this involvement varies, although it is likely to be significant where a victim is represented by a plaintiff

litigation firm. The growth of plaintiff lawyer practices, and the increasing number of victims who are represented by lawyers, has had a noticeable effect on the *Towards Healing* process.

- 156 If the victim is not legally represented, *Towards Healing* provides that it is inappropriate for the Church Authority to be legally represented at a facilitation.<sup>128</sup>
- 157 Victims can and do seek legal advice at any of a number of different points during the process, including:
- (a) prior to approaching *Towards Healing*
  - (b) after a meeting with the contact person, to seek legal advice about the various options available for dealing with their complaint as outlined by the contact person
  - (c) in relation to discussions of financial reparation
  - (d) when required by the Church Authority, in connection with a deed of settlement or release. The Church Authority is responsible for paying the reasonable costs of advice regarding a deed of release.<sup>129</sup>

Within the process, victims are routinely encouraged to seek legal support.

- 158 It is of course entirely up to the victim whether he or she chooses to be represented by a lawyer under *Towards Healing*. Sometimes, the victim has a lawyer from the outset, who makes the initial contact under *Towards Healing*, and who is then involved in the process with the victim from beginning to end. In other cases, a victim may proceed with the whole process under *Towards Healing* without ever involving a lawyer at all.
- 159 The involvement of lawyers was relatively uncommon when *Towards Healing* was first introduced, but is now much more prevalent. While detailed statistics are not kept on legal representation, it is estimated that today over 60% of victims in *Towards Healing* in both NSW and Victoria are legally represented for at least part of the process (not just at the point of seeking advice on a settlement deed). For some of the smaller States, the estimates are that only some 20–25% of victims (or less) are legally represented. In other States, almost every claimant is unrepresented.
- 160 When a victim has legal representation in the *Towards Healing* process, the Church Authority also typically has its lawyers involved.
- 161 Sometimes a victim's lawyer may make contact with the Church Authority directly, other than by way of invoking *Towards Healing*. When that happens, the Church Authority's own lawyers contact the victim's lawyer, and discuss whether the complaint will be dealt with under *Towards Healing*, or resolved by negotiation outside *Towards Healing*, or whether it will proceed by a civil action.
- 162 Of those claims which become the subject of civil actions for damages, it is noteworthy that many are now resolved through mediation, under procedures which in many respects parallel the *Towards Healing* procedures, including an apology, and the personal involvement of a representative of the Church Authority.

<sup>128</sup> *Towards Healing*, p 25, fn 3

<sup>129</sup> Clause 41.4.9, *Towards Healing*

- 163 Lawyers representing victims can play a very helpful and positive role under *Towards Healing*, assisting victims to come forward and providing them with support through the various stages of the process.<sup>130</sup> Some lawyers also act as a support person (ie not playing a legal role) during the pastoral part of the process.
- 164 On the other hand, the increasing legalisation of the process also has disadvantages. In particular, some lawyers seem not to appreciate or value the critical importance of the pastoral aspect of the process. This can affect the victim's willingness to engage with the Church in any way beyond seeking "compensation".<sup>131</sup> Sometimes the facilitation process, where it involves lawyers, can amount to little more than negotiations between the lawyer for the victim and the lawyer for the Church Authority (or the insurer if the claim is insured) or both.<sup>132</sup>
- 165 Professor Parkinson in his 2009 review of *Towards Healing* considered some of these issues, and concluded that in such circumstances, the process is really not one which is occurring in the spirit of *Towards Healing*. His view was that a process mainly conducted between an insurance company (for the Church Authority) and a lawyer for the victim/plaintiff is "*at best unnecessary and at worst unhelpful ... it undermines and debases the process of Towards Healing if it is little more than a label under which negotiations occur between lawyers in the shadow of the law concerning civil liability.*"<sup>133</sup>
- 166 In Professor Parkinson's view, if the victim is really seeking only to pursue a claim for compensation, this should occur without invoking the apparatus of *Towards Healing*. Rather the "well-known and familiar pathway of trying to settle the matter by negotiation between lawyers is the appropriate way forward."<sup>134</sup> That is essentially what *Towards Healing* now provides for in clause 36.5.
- 167 In 2010, the NCPS produced guidelines entitled "Information for Legal Personnel Referring Clients to the Towards Healing Process", which explain the process to lawyers not familiar with it.
- 168 The guidelines set out the limits to the role a lawyer can play under *Towards Healing*. For example, the guidelines explain that:
- (a) the victim must have direct personal contact with *Towards Healing* personnel
  - (b) the process cannot be conducted through an intermediary (such as a lawyer)
  - (c) a lawyer cannot be a contact person for the purposes of the *Towards Healing* process
  - (d) interaction between the victim and the contact person is integral to the pastoral process
  - (e) no legal fees are payable to support persons who are lawyers and who choose to sit in on meetings with the contact person or assessor as a support person
  - (f) the Director is responsible for managing the process and appointing assessors

<sup>130</sup> Professor Patrick Parkinson AM, "*Final Report: Towards Healing Review*", April 2009, p 16

<sup>131</sup> Professor Patrick Parkinson AM, "*Final Report: Towards Healing Review*", April 2009, pp 16–17

<sup>132</sup> Professor Patrick Parkinson AM, "*Final Report: Towards Healing Review*", April 2009, pp 16–17

<sup>133</sup> Professor Patrick Parkinson AM, "*Final Report: Towards Healing Review*", April 2009, p 17

<sup>134</sup> Professor Patrick Parkinson AM, "*Final Report: Towards Healing Review*", April 2009, p 17

- (g) when financial assistance or reparation is involved, lawyers can be of considerable assistance in making the victim's needs known and in working out what would be a reasonable amount for a payment
- (h) the Church Authority will not require a victim to sign a deed of release unless he or she has independent legal advice or has declined in writing to seek legal advice
- (i) the Church Authority will pay the reasonable costs of the victim obtaining legal advice on a deed of release
- (j) the Church Authority may recognise that, in a complex case, a greater level of legal assistance will be necessary and will make a greater contribution to legal costs in those cases, and
- (k) there are alternatives to *Towards Healing*, and that if the victim does not seek pastoral support or engagement from the Church, the matter should proceed outside *Towards Healing* by the normal means appropriate to the resolution of civil claims.

### Involvement of Insurers

- 169 Sometimes when a Church Authority is insured, a representative of the insurer attends facilitation meetings.
- 170 Views differ on this practice. Some Church Authorities take the view that they will not have representatives of insurers present at their facilitations, and any discussions with insurers are held separately. Their view is that the presence of a representative of the insurer can undermine the pastoral benefits of such a meeting. Other Church Authorities do choose to be accompanied to facilitations by a representative of the insurer. The practical advantage seen is that this enables an immediate response from the insurer to the Church Authority, as to the level of payment which the insurer will cover. CCI if present does not negotiate directly with the victim, but only with his or her legal representative or through the facilitator.

### Complaints against Bishops or Religious Leaders

- 171 Any complaint against a bishop or religious leader under *Towards Healing* is referred directly to the NCPS. The usual *Towards Healing* process of contact, assessment and facilitation proceeds as set out in the protocol. However, the co-chairs of the NCPS are responsible for overseeing and coordinating the *Towards Healing* process, rather than a Director of a State or Territory.<sup>135</sup>

<sup>135</sup> *Towards Healing*, clause 35.3.2 fn 1, p 14, sets out who is to be the Church Authority where a complaint concerns a bishop or archbishop, or a religious leader

## 5 History and Development of *Towards Healing*

### Key points:

- In 1988, the Australian Catholic Bishops Conference established a committee to respond to the issue of child sexual abuse by Church personnel. The committee developed an initial *Protocol for Dealing with Allegations of Criminal Behaviour*.
- In the early 1990s, the Protocol was revised on several occasions. However, it focused mainly on how to deal with accused persons, rather than reaching out to and supporting victims.
- *Towards Healing* was developed as a process that would focus on and provide support to victims, and was approved in 1996 as a replacement for the Protocol.
- *Towards Healing* was part of the Church's broader plan for responding to child sexual abuse, which included developing the code of conduct for priests and religious, *Integrity in Ministry*.

### 5.1 Introduction

- 1 Once the Church as an institution, and the many bodies which make up the Church, arrived at a realisation of the gravity of the reality and the extent of child sexual abuse within the Church, the Church did its best to develop policies and procedures to deal with the problem.
- 2 The first national protocol was approved by early 1990. By 1996, *Towards Healing* had been adopted, commencing in March 1997.
- 3 This section of the Submission outlines the history of the development of *Towards Healing*, from the late 1980s to 1996.
- 4 As previously submitted,<sup>136</sup> the Church sincerely seeks through the *Towards Healing* process to encourage victims of child sexual abuse to come forward, so that the Church may acknowledge and apologise for the wrong done to each of those victims, and may provide reparation.
- 5 However, the Church is only too well aware that in any consideration of what has happened serious questions remain. Why did it take so long, until the late 1980s, for the Church to begin to come to grips with the nature and scale of the problem within its ranks? Why was emphasis seemingly placed for so long, by too many, on protecting the reputation and position of the Church and of the accused, instead of on reaching out compassionately to the victims? Why were accused persons moved from one parish or location to another? Why was the sexual abuse of children not treated as a crime?
- 6 These are difficult and unpalatable questions to confront. There are many factors which might form part of the answers. They may include:
  - (a) a reaction of disbelief, among many in the Church, including Church leaders, that such conduct could possibly be or have been engaged in by priests and religious

<sup>136</sup> See section 1

- (b) a misguided sense of loyalty to the Church, and a correlative emphasis on avoiding scandal
  - (c) a view that the information was so shameful, personal or private, that it could not and should not be shared with anyone
  - (d) a focus on the concept of sin, and forgiveness of sin, with the result that there was a tendency to look towards ways of allowing the offender to continue or resume his ministry
  - (e) a lack of knowledge or understanding, or a source of information, as to what a Church leader should do to deal with offenders
  - (f) a belief that such conduct was indicative of a disorder, which could be treated and cured, or that once discovered, such conduct would never be repeated
  - (g) a tendency to accept too readily legal, medical and other professional advice without bringing independent judgment to bear
  - (h) specific instances of known or claimed abuse tended to be dealt with individually and locally, with information about each such case closely held by a bishop or Church leader, and not shared across Church leaders generally.<sup>137</sup>
- 7 Whatever the reasons, none of them provides an excuse. The Church acknowledges with great regret, shame and sadness that:
- (a) it failed to recognise the nature and extent of the problem for too long
  - (b) it failed to hear and believe the children and the parents who made complaints
  - (c) it was too slow to change, and
  - (d) the reasons why it was so slow included what can now be seen as naivety, ineptitude and blindness, as well as protection of its own reputation and those of its priests and religious.
- 8 The failures of the Church in these respects caused great damage to many people, for which the Church is deeply sorry.

## 5.2 Developing Awareness of Child Sexual Abuse

- 9 Until about the 1970s, there was what can now be seen as a grossly inadequate awareness, recognition and understanding of the existence, extent and impact of child sexual abuse.
- 10 In the 1970s and 1980s, new agencies, statutory responses and community programs began to emerge to address and combat the issue. In 1984, the *Community Welfare Act* in the Northern Territory was the first piece of Australian legislation to prescribe comprehensive mandatory

<sup>137</sup> In part this reflected the structure of the Church, the autonomy of each diocese and religious institute, and the absence of any overarching body with authority across the Church

reporting of suspected child abuse and neglect. Several States also established committees and statutory bodies to advise on child sexual assault.<sup>138</sup>

- 11 In 1974 in the United States, Congress passed the *Child Abuse Prevention and Treatment Act*, and the National Centre on Child Abuse and Neglect was established.<sup>139</sup>
- 12 In 1980, Canada established one of the first significant inquiries into child sexual assault by appointing the Committee on Sexual Offences Against Children and Youths, which reported in 1984 (the Badgley Report).<sup>140</sup> The Canadian Government followed the Badgley Report with legislative action between 1988 and 2001, introducing several significant reforms in relation to child abuse offences, reporting, and improved court procedures for dealing with child abuse offences.<sup>141</sup>
- 13 In 1988, the first English inquiry into child sexual abuse, known as the Cleveland Inquiry, was conducted by Lord Chief Justice Elizabeth Butler-Sloss.<sup>142</sup> The Cleveland Inquiry was the first of a series of inquiries into child sexual abuse in the United Kingdom.<sup>143</sup>
- 14 Alongside the growing awareness of child abuse in society generally, Church communities began to recognise that child sexual abuse was not only a problem, but a widespread problem, within the Church.
- 15 By the 1980s, accounts of sexual abuse of children by clergy were appearing in the press. In 1985, the *National Catholic Reporter* in the United States published a number of articles about child sexual abuse, and named 10 diocesan priests and one religious priest.<sup>144</sup>
- 16 In 1989–90, in Canada, four diocesan priests in St John’s, Newfoundland, Canada, pleaded guilty to sexual offences against adolescents. In 1990, allegations of sexual abuse by religious brothers at the Mount Cashel Orphanage, Newfoundland, Canada, were made public, despite having been reported to the Department of Social Services and to the Royal Newfoundland Constabulary in the 1970s.<sup>145</sup>
- 17 From around 1987, the Catholic Church around the world, including in Australia, began to work on the development of policies and procedures to help dioceses and religious institutes understand what they should do in responding to allegations of child sexual abuse.<sup>146</sup>
- 18 Since that time, there has been an ever-increasing awareness and recognition of the extent of the incidence of child abuse in institutions.

<sup>138</sup> Elizabeth M. Delaney sgs, “Canonical Implications of the Response of the Catholic Church in Australia to Child Sexual Abuse”, a doctoral dissertation submitted to the Faculty of Canon Law, Saint Paul University, Ottawa, Canada at p 82

<sup>139</sup> For further details, see section 5.4 of *Facing the Truth*, ‘Emerging Awareness of Sexual Abuse Issues: United States’

<sup>140</sup> Committee on Sexual Offences Against Children and Youths, *Sexual Offences Against Children: Report of the Committee on Sexual Offences Against Children and Youths*, Vol I, Ottawa, Department of Supply and Services, 1984

<sup>141</sup> Delaney, p 20. For further details, see section 5.5 of *Facing the Truth*, ‘Emerging Awareness of Sexual Abuse Issues: Canada’

<sup>142</sup> Elizabeth Butler-Sloss, *The Report of the Inquiry into Child Abuse in Cleveland 1987*, London, HMSO, Cmnd 412, 1988

<sup>143</sup> Other reports from inquiries include: A Levy and B Kahan, *The Pindown Experience and the Protection of Children: The Report of the Staffordshire Child Care Inquiry 1990*, Staffordshire County Council, 1991; Sir William Utting, *Children in the Public Care: A Review of Residential Child Care*, London, HMSO, 1991; N Warner, *Choosing with Care: The Report of the Committee of Inquiry into the Selection, Development and Management of Staff in Children’s Homes*, London, HMSO, 1992; Sir Ronald Waterhouse, *Lost in Care: The Report of the Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974*, London, The Stationery Office, 1999; *The Report of the Inquiry into the Removal of Children from Orkney in February 1991*, London, HMSO, 1992, Social Services Inspectorate, *Children Matter: A Review of Residential Child Care Services in Northern Ireland*, Belfast, Social Services Inspectorate, 1998. For further details, see section 5.8 of *Facing the Truth*, ‘Emerging Awareness of Sexual Abuse: United Kingdom’

<sup>144</sup> Delaney, p 16

<sup>145</sup> Delaney, p 18

<sup>146</sup> Delaney, p 38



- 19 In Australia, significant reports at the national level included the Senate Community Affairs Reference Committee “*Lost Innocents*” Report in 2001,<sup>147</sup> and their 2004 Report “*The Forgotten Australians*”, which examined the long-term social and economic consequences of child abuse and neglect.<sup>148</sup>
- 20 For further detail on the development of awareness of child sexual abuse in Australia and internationally, both generally, and in the Church, see Annexure D.

### 5.3 1987 to 1993: The First Coordinated Response in Australia

#### 1988: Establishment of the Special Issues Committee

- 21 As the incidence of child sexual abuse by clergy began to receive international attention in the 1980s, various people within the Church in Australia began to realise the seriousness of the issue and the need for the Church to acknowledge and respond to it.
- 22 The issue was canvassed at an ACBC meeting in late 1987, and then again at an ACBC meeting in 1988.
- 23 In an April 1988 meeting with the ACBC, Fathers Usher and Lucas both gave formal presentations about strategies to address the issue. Father Lucas was a lawyer as well as a priest. Father Usher had a background as a social worker and was a Director of Catholic Family Welfare for the Archdiocese of Sydney, now known as CatholicCare. Father Lucas’s presentation concluded with the recommendation:<sup>149</sup>
- “... that there be a national committee established forthwith by the Australian Catholic Bishops’ Conference and the Major Superiors which will monitor cases and be a resource for individual bishops. All complaints should be brought to its attention so that there is a consistency of approach.”*
- 24 The ACBC requested Fathers Lucas and Usher to devise terms of reference for such a committee. These were delivered to the ACBC on 28 November 1988.<sup>150</sup> On the same day the ACBC approved the terms of reference and established the Special Issues Committee on a two year interim basis.<sup>151</sup> The CRA was also involved in and supportive of the establishment of the Special Issues Committee.
- 25 One purpose of establishing the Special Issues Committee was to ensure that bishops and religious leaders did not have to deal with complaints in isolation. The Terms of Reference of the Special Issues Committee stipulated that it was to:<sup>152</sup>

<sup>147</sup> Australian Senate Community Affairs References Committee, *Lost Innocents Righting the Record : Report on child migration*, August 2001

<sup>148</sup> Australian Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, (August 2004), p 1

<sup>149</sup> Father Brian Lucas, “Brief Notes: Clergy and Child Sexual Assault”, prepared for the Australian Catholic Bishops Conference, 12 April 1988

<sup>150</sup> ACBC Meeting Minutes, November/December 1988

<sup>151</sup> ACBC Meeting Minutes, November/December 1988

<sup>152</sup> ACBC Meeting Minutes, November/December 1988

“... establish a protocol to be observed by Bishops and Major Superiors if an accusation is made against a priest or religious alleging criminal behaviour, and to advise on the implementation thereof.”

- 26 The Special Issues Committee was chaired for the first two years by Bishop Mulkearns, the then Chairman of the Committee for Clergy and Religious. The initial members of the committee were Bishop Connors, Fathers Brian Lucas, John Usher and Daniel Torpy, and Chris O'Malley, the General Manager of CCI. Later, Sister Angela Ryan, Provincial of the Brigidine Sisters, and Brother Frank Chappell, Provincial of the Christian Brothers, joined as representatives of the religious institutes.
- 27 In April 1989, as chairman of the Special Issues Committee, Bishop Mulkearns requested that the bishops notify him of any cases which had arisen.<sup>153</sup>

### 1989–90: The Initial Protocol

- 28 In 1989, the Special Issues Committee developed the first draft of the *Protocol for Dealing with Allegations of Criminal Behaviour* (the Initial Protocol). Work on the Initial Protocol was influenced by protocols developed in Chicago and Canada.<sup>154</sup>
- 29 In November 1989, the Special Issues Committee presented the first draft of the Initial Protocol to the ACBC for its consideration.<sup>155</sup> The draft was circulated and input from bishops, religious leaders and CCI was sought.
- 30 In May 1990, the Initial Protocol was approved in principle by the ACBC, for implementation on a trial basis for 12 months.<sup>156</sup> The Initial Protocol was also presented to the CRA, which approved the document in principle.
- 31 The Initial Protocol was the first official document adopted by the Church in Australia to provide assistance and guidance to those dealing with allegations of child sexual abuse. It recognised the “critical importance of adopting uniform approaches and working in close cooperation with each other”.
- 32 The Initial Protocol set out guidelines for bishops and major superiors to follow should they become aware of an allegation of criminal behaviour (especially relating to children) by clergy or religious, including:
- (a) the responsibilities of the bishops and major superiors
  - (b) how to receive complaints
  - (c) who to notify of a complaint
  - (d) how to respond to the accused
  - (e) the process to be followed in relation to the accused

<sup>153</sup> ACBC Meeting Minutes, April/May 1989

<sup>154</sup> The Canadian Protocol, on which the Special Issues Committee drew, was the “*Bishop’s Protection and Canonical Procedures relating to the Denunciation of a Priest for a Criminal Act*”

<sup>155</sup> Memorandum of Bishop Mulkearns 30 November 1989

<sup>156</sup> ACBC Meeting Minutes, 7 May 1990

- (f) treatment options for the accused, and
  - (g) preventative strategies.
- 33 The Initial Protocol also:
- (a) identified the need to ensure that those who have been involved in criminal behaviour were disqualified as candidates for ministry
  - (b) advocated the establishment of an advisory committee for each Province, to provide the bishops and religious leaders with advice and assistance, to assist in investigating complaints and interviewing the accused, and to make recommendations to the bishop or religious leader about what further action was required.
- 34 The advisory committees (Special Issues Resource Groups) would later form the basis of the “Professional Standards Resource Groups” which would be created in each State and in the Northern Territory. (The ACT was to be included in the New South Wales Group.)
- 35 From the vantage point of 2013 it can be seen that although the Initial Protocol contained many worthwhile features, and although it represented at least a beginning, it did not go far enough. In particular it did not sufficiently address or prioritise the needs of victims; rather it was mainly directed to the disciplining of priests and religious. In addition, it was not a public document; rather it was an internal document marked “*Strictly Confidential (for bishops and major superiors only)*”.
- 36 Some of the deficiencies of the Initial Protocol were well-captured in a letter to the Special Issues Committee from ethicist Nicholas Tonti-Filippini on 1 August 1990:
- “If one reads the list of responsibilities, the list includes defence of good reputation and image of individuals and the Church, the rights of members of the Church, the discipline and the settling of disputes, the management of allegations, the right to investigate, a uniform approach, and appearing to be impartial. Except under the general heading “all of Christ’s faithful” the need to protect victims of crime and to prevent further injury or injustice to them are not mentioned. Seeking justice and being impartial are surely important responsibilities.”*
- 37 The Initial Protocol did stress that any Church process must not interfere with any criminal justice process. This was expressed in various ways:
- (a) *That the bishop or major superior must act in accordance with the law and not in a way that will prejudice the process of law (6.6.3).*
  - (b) *The freedom of people, and in some instances, an obligation in law, to make a complaint to departmental officers must be respected. Under no circumstances should any attempt be made to dissuade a victim or family from approaching departmental officers.*
- Under no circumstance should any agreement be made that in return for an undertaking by the family not to approach departmental officers certain action will be taken against the accused (6.9).*

(c) *The accused must not be aided to escape the jurisdiction or otherwise to frustrate the legal process (7.4).*

38 The Initial Protocol also envisaged that there would be canonical consequences for the accused, including that in *“serious cases of criminal behaviour involving children, especially if there is a long history, laicisation or dismissal from the religious institute must be considered”* (8.11.1). In making decisions about the consequences for the accused, the bishop or major superior was directed to give *“first priority to preventing, as far as possible, any future risk to others, especially children”* (8.12).

### Cooperation between the Special Issues Committee and CCI

39 The growing awareness of the issue of child sexual abuse also raised the question of the Church’s possible exposure to civil liability for such acts committed by clergy or its employees, and how the various bodies within the Church might be able to meet any such claims. CCI, the Church’s principal insurer, began to consider whether Church bodies would be covered for claims of sexual abuse under existing policies, or whether a new form of coverage should be developed. CCI took positive steps to seek to ensure that insurance funds would be available against which sexual abuse victims could claim.<sup>157</sup>

### The 1992 Protocol

40 In April 1991, the Special Issues Committee circulated further amended drafts of the Initial Protocol in response to consultation and feedback. The ACBC approved the document, and agreed that an annual review of the Protocol would be conducted, and the document amended where desirable.<sup>158</sup> The CRA also approved the amended draft of the Initial Protocol.

41 In 1992, an amended Protocol was formally adopted by the Special Issues Committee (the 1992 Protocol). Before formal adoption of the 1992 Protocol, a number of amendments were made to the draft circulated in April 1991. The 1992 amendments were directed to concerns that the Initial Protocol had not been sufficiently focused on the victim, and was overly concerned with the reputation of the Church.

42 The 1992 Protocol applied to all dioceses, orders and congregations across the country. At that time, such a degree of uniformity had not been achieved anywhere else in the world.

43 Among the amendments introduced in 1992 were:

- (a) a statement that bishops and major superiors have *“a special concern for the victims of injustice and those who are vulnerable”* (3.1)
- (b) an exhortation that Church Authorities make *“every attempt”* to *“offer assistance to victims, victim’s families and complainants by way of confidential counselling or other pastoral support as soon as the complaint is received”* (6.5)
- (c) a clarification that Church Authorities must not only *“appear to be impartial during any process of investigation”*, but they must also be impartial (3.6)

<sup>157</sup> See section 9

<sup>158</sup> ACBC Meeting Minutes, 29 April 1991

- (d) the removal of a previous reference to Church Authorities needing to have a “*pastoral solicitude for those involved in criminal behaviour*”
  - (e) that the Church Authorities were no longer able to conduct their own investigation and act in accordance with their own judgment without involving the advisory committee, and
  - (f) new preventative strategies:
    - (i) prospective candidates for seminary or religious communities, and transferring priests and religious, would have to warrant that they were not aware of any circumstance that might lead to an allegation of criminal behaviour (12.6)
    - (ii) Church Authorities would also be asked to warrant that they were not aware of any circumstances that might lead to allegations of criminal behaviour against a cleric or religious seeking to minister outside their diocese or personal prelature (12.7).
- 44 However, again from the perspective of 2013, notwithstanding these improvements the 1992 Protocol did not represent the breakthrough that was needed. In particular its main focus continued to be the accused rather than the victim, its language and tone were still formal and official, and it gave considerable emphasis to a two-stage investigative process. The 1992 Protocol also remained a confidential document.

#### Internal Training and Public Statements

- 45 Between 1991 and 1993, the Special Issues Committee and CCI worked on raising internal and external awareness of the Church’s response to the issue of child sexual abuse.
- 46 The Special Issues Committee instituted training in the Protocols for clergy and religious, by conducting presentations and in-service days around Australia. For example, on 29 April 1991, during the ACBC Plenary meeting, the Special Issues Committee held a Pastoral Discussion Day on “Pedophilia”.<sup>159</sup> Members of the Special Issues Committee, lawyers, social workers and health practitioners gave presentations designed to enhance understanding of the problem and the procedures in place to deal with it.
- 47 On 19 December 1992, the ACBC and CRA issued *A Pastoral Statement on Child Protection and Child Sexual Abuse*. The statement included the following:

*“In the past, lacking the knowledge provided by the modern behavioural sciences, Church authorities sometimes denied or minimised the seriousness of such incidents or accepted too readily the promise by an offender that such behaviour would not be repeated. Mistakes have been made.*

*They need to be acknowledged and are being acknowledged.*

...

<sup>159</sup> National Catholic Association of Family Agencies, “Pedophilia, Pastoral Discussion Day”, Agenda 29 April 1991; ACBC Meeting Minutes, 29 April 1991

*The procedures which have been established and which are continually being reviewed, aim to ensure, as far as possible:*

1. *That all Church agencies have in place policies that aim to prevent children being at risk, including a policy that priests, religious and other Church workers will not be allowed to remain in a position involving risk to children if they are found to have offended.*
2. *That there will be care and support for any victims and their families;*
3. *That there is a speedy and decisive response to any allegations;*
4. *That the proper processes of the legal system will not be impeded in any way;*
5. *That those against whom allegations are made will be treated justly and compassionately; and*
6. *That an offender will be offered appropriate therapy and counselling.”*

48 In July 1993, the ACBC and CRA issued a further statement, titled *Sexual Offences and the Church*. This statement acknowledged “*harm that is caused by abuse and betrayal of trust can be serious and long lasting*”. It also affirmed the Church’s commitment to “*give first consideration to victims of sexual abuse and their families*”, and to provide assistance to those in the community who had suffered this harm.

49 *Sexual Offences and the Church* contained four objectives in dealing with child sexual abuse:<sup>160</sup>

- (a) *“To ensure a speedy, decisive and sensitive response to those who make a complaint;*
- (b) *To ensure that those who have been accused are dealt with justly;*
- (c) *To ensure that ongoing care is available to those who have been harmed; and*
- (d) *To ensure that the procedures are in place to minimise any risk to children.”*

#### 5.4 1993 to 1996: The Development of *Towards Healing*

##### **Review of the 1992 Protocol**

50 Some Church members realised that there was a need to do further work on the 1992 Protocol, in particular to make the victim central to the process.

51 In July 1993, the ACBC authorised consultation with interested persons and groups through the Catholic print media about drafting a new set of policies and procedures to replace the 1992 Protocol.<sup>161</sup> At the same meeting, the ACBC also approved the release of a public statement, “*Sexual Offences and the Church*”, in which they again pledged “*their support in working with others in the community to bring healing to those who have been hurt*”.<sup>162</sup>

<sup>160</sup> ACBC Meeting Minutes, July 1993

<sup>161</sup> ACBC Meeting Minutes, July 1993

<sup>162</sup> ACBC Meeting Minutes, July 1993

## Development of the *Towards Healing* Response

- 52 In early November 1993 the Special Issues Committee created a draft document entitled “*The Catholic Church’s Principles in Relation to Sexual Abuse and Professional Misconduct 4/11/93*”.
- 53 In April 1994, the ACBC established the Bishops Committee for Professional Standards (Bishops Committee), which replaced the Special Issues Committee. Bishop Geoffrey Robinson became the Chair of the new Bishops Committee. It included Sister Angela Ryan, Father John Usher, Father Brian Lucas, Father David Cappo, and Chris O’Malley, General Manager of CCI.
- 54 The Bishops Committee began to play a proactive role in advising the ACBC and CRA as to how bishops and religious leaders should respond to complaints. For example in the April 1995 ACBC meeting, the Bishops Committee recommended that bishops in each State contact the relevant police authorities concerning how the Church deals with “*disclosures concerning the sexual assault of minors*”.<sup>163</sup>
- 55 The Bishops Committee also offered advice to the ACBC, at the same 1995 meeting, in relation to bishops acting “*in a uniform manner in dealing with the decision as to whether an offender should return to ministry*”, including that “*the Committee is of the view that convicted or admitted Paedophiles are never to be reappointed to pastoral ministry*”.<sup>164</sup>
- 56 From the outset in 1994, the document which became *Towards Healing* was intended to be a victim-centred response. The Bishops Committee deliberately sought to design a process specifically for victims, particularly those who were unwilling to approach the police or unable to seek redress through the police as the offender had died.
- 57 Bishop Robinson and the Committee considered that, whilst the primary focus must be on encouraging victims to report criminal matters to police, many victims were wary or afraid of the criminal justice system and yet needed a means of access to justice, and the Church had an obligation to fill that gap.
- 58 From the time Bishop Robinson joined the Bishops Committee in 1994, he led the creation, review and amendment of *Towards Healing* over the ensuing years as part of the responsible committee.<sup>165</sup>
- 59 Bishop Robinson initially drafted two documents: a *Statement of Principles* in relation to sexual abuse by priests and religious, and a *Revised Protocol* for dealing with allegations of sexual abuse.<sup>166</sup> The tone and structure of the new protocol reflected a strong desire that it be an accessible document, which could readily be understood by both victims and accused.
- 60 The 1992 Protocol had been a confidential document for internal use by the dioceses and the religious. The new protocol was to be a public document. The rationale was a need for a document that clearly announced where the Church stood – that it would not tolerate any form of sexual abuse, and that it would cooperate with police and victims.

<sup>163</sup> ACBC Meeting Minutes, April 1995 at p 39

<sup>164</sup> ACBC Meeting Minutes, April 1995 at p 39

<sup>165</sup> Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, Transcript of evidence of Sister Angela Ryan, 3 May 2013, p 11

<sup>166</sup> Professional Standards Committee Report to ACLRI Conference, 1996

*The Nine Point Plan: the 1996 Pastoral Letter*

61 On the recommendation of the Bishops Committee, in April 1996 the ACBC adopted a Nine Point Plan in responding to child sexual abuse within the Church. On 26 April 1996, this plan was released to the media as a *Pastoral Letter to the Catholic People of Australia*.<sup>167</sup> The plan was as follows:

- (1) The Bishops Committee would continue to review and update the principles and procedures for dealing with allegations of abuse.
- (2) The Bishops Committee would take advantage of the opportunity presented by the New South Wales Police Royal Commission to make a submission, and would take account of any recommendations made by the Commission.
- (3) Dioceses and religious institutes would be asked to engage professional and independent persons to make suitable case studies of the handling of incidents of sexual abuse and how well or badly the needs of victims had been met, and what could be done now to assist victims.
- (4) Dioceses and religious institutes would be asked to make a study of how an incident of sexual abuse has been handled in relation to the community in which it occurred, what lessons might be learned, the effects of the abuse and the Church's response on the community, and what the Church body might do now to assist the community.
- (5) Meetings would be arranged through counselling services in which bishops and religious leaders might meet with persons who had suffered sexual abuse at the hands of a priest or religious, and hear their stories, hurts, concerns and needs directly.
- (6) A widely representative committee would be established to prepare codes of conduct for priests and religious. It would consult widely, and seek the advice of victims of sexual abuse.
- (7) The Australian Catholic Social Welfare Commission and Centacare Sydney would be asked to coordinate a study of factors peculiar to the Catholic Church which might lead to sexual abuse by priests, religious or other church workers.
- (8) In collaboration with the leaders of religious institutes, the ACBC would establish a program to treat clergy and religious suffering from psycho-sexual disorders.
- (9) The Bishops Committee would employ a full-time Executive Officer to coordinate these projects and to assist in carrying out this mandate.

62 Implementation of the plan included the following:

- (a) the review by the Bishops Committee led to the publication of *Towards Healing* in December 1996
- (b) the Bishops Committee provided a submission to the New South Wales Police Royal Commission on 20 September 1996

<sup>167</sup> Australian Catholic Bishops Conference, *Pastoral letter to the Catholic People of Australia*



- (c) a code of conduct was drafted and became known as *Integrity in Ministry* (1999)
- (d) a program for treating clergy and religious suffering from psycho-sexual and other disorders was made available within Encompass, established in 1997, and
- (e) Father David Cappo, previously the National Director of the Australian Catholic Social Welfare Commission, became the first full-time Executive Officer of the Bishops Committee in June 1996.

### 1996: Adoption and Release of *Towards Healing*

- 63 At the April 1996 ACBC meeting at which the Nine Point Plan was adopted, the Bishops Committee presented a complete draft of *Towards Healing* to the ACBC.
- 64 *Towards Healing* departed from the 1992 Protocol in several significant ways. Among those were the following:<sup>168</sup>
- (a) it opened with the Church's sincere apology
  - (b) it was essentially victim orientated
  - (c) it was written in a style that was simple, clear and accessible to victims
  - (d) it clarified and simplified the process of receiving and responding to complaints
  - (e) it introduced and relied upon contact persons to receive the complaint from a victim, rather than emphasising the role of the investigator
  - (f) it required that every victim be strongly encouraged to go to the police, and
  - (g) it provided for a facilitated meeting between the victim and the Church Authority.
- 65 At a Plenary meeting in November 1996, the ACBC approved *Towards Healing*, to come into operation on 31 March 1997.<sup>169</sup> CRA had also approved the document in principle.
- 66 Additionally, the ACBC carried a motion replacing the Bishops Committee with the National Committee for Professional Standards (NCPS). The NCPS was established as a joint committee of the ACBC and CRA, and was to be funded equally by and to be equally responsible to both.<sup>170</sup>
- 67 At its November 1996 meeting, the NCPS approved *Towards Healing* for implementation, and agreed that the Executive Officer, supported by members of the NCPS would:
- (a) ask Provincial Conferences of bishops and religious leaders to establish or re-establish Professional Standards Resource Groups (PSRGs) by the end of February 1997
  - (b) organise in-service workshops between April and June 1997 for all members of PSRGs in their capital city
  - (c) establish the national phone line in June 1997

<sup>168</sup> *Towards Healing*, December 1996

<sup>169</sup> See also *Facing the Truth, A Submission by the Catholic Church in Victoria to the Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations*, 21 September 2012, p 64

<sup>170</sup> ACBC Meeting Minutes, November 1996

- (d) ask each PSRG to print pamphlets indicating the names and phone numbers of contact persons and that these pamphlets be widely distributed, and
  - (e) liaise with the Convenors of PSRGs in July 1997 regarding the appointment of facilitators and reviewers in each province.
- 68 The NCPS was also engaged in arranging for the printing and distribution of *Towards Healing* to parishes and religious institutes across Australia. By April 1997, the NCPS had distributed 20,000 copies of *Towards Healing*.<sup>171</sup>
- 69 At the time that *Towards Healing* was introduced, Australia was still the only country to have adopted a policy that was designed for the whole country, rather than for a specific diocese or religious institute. Every diocese in Australia, other than the Archdiocese of Melbourne, and every religious order except the Society of Jesus (the Jesuits), agreed to implement *Towards Healing* in 1996. The Jesuits followed their own procedures until 2004 when they adopted *Towards Healing*.<sup>172</sup>

### The Melbourne Response

- 70 In October 1996 the Archdiocese of Melbourne introduced the *Melbourne Response*, a diocesan specific set of protocols and procedures to address allegations of abuse.
- 71 At the ACBC meeting of November 1996 the proposed text for *Towards Healing* which had been approved by the newly established NCPS was amended to take into account the fact that the Archdiocese of Melbourne had already implemented the *Melbourne Response*, whose procedures were of similar intent to those set out in *Towards Healing*. The amendments noted that the *Melbourne Response* was designed to meet the principles of *Towards Healing* by a related but different set of procedures.<sup>173</sup>
- 72 The *Melbourne Response* differs from *Towards Healing* in that assessment of complaints is determined by an independent commissioner, with compensation determined by a separate compensation panel. The compensation is subject to a cap, currently \$75,000, and pastoral care and counselling are provided through Carelink, a Church funded service.

<sup>171</sup> ACBC Meeting Minutes, May 1997

<sup>172</sup> The NCPS was formally notified of the adoption of *Towards Healing* by the Jesuits in May 2004.

<sup>173</sup> ACBC Meeting Minutes, November 1996

## 6 Reviews of *Towards Healing*

### Key points:

- Since its introduction, *Towards Healing* has undergone several reviews and revisions, including independent external reviews conducted by Professor Patrick Parkinson, Professor in Law at the University of Sydney, and an expert in child protection and child sexual abuse matters.
- Changes have been made to *Towards Healing* in response to those reviews, including in relation to confidentiality undertakings, reporting to police and dealing with the accused.

### 6.1 Introduction

- 1 Since 1996, there have been two formal external reviews of *Towards Healing*. The first was in 1999–2000 and the second in 2008–2009. Each review was conducted by Professor Patrick Parkinson.
- 2 Over the years, the ACBC and CRA have also made changes to *Towards Healing* as a result of their ongoing engagement in reviewing and revising the document.

### 6.2 1996 to 1999: The Early Years of *Towards Healing*

#### The Wood Royal Commission

- 3 In the background of the development and implementation of *Towards Healing*, the Wood Royal Commission into the NSW Police Service was proceeding.
- 4 In April 1996, a number of senior Church leaders gave evidence before the Wood Royal Commission. The Wood Royal Commission was particularly focused upon the protocols and procedures in place within the churches, and the handling of certain child sexual abuse allegations against clergy. The result was that there was significant public focus upon the Church and its response to child sexual abuse when *Towards Healing* was presented to the ACBC for the first time.
- 5 In September 1996, the Bishops Committee provided a submission to the New South Wales Police Royal Commission.
- 6 In July 1997, the bishops and leaders of religious institutes for the Catholic Church in NSW and ACT prepared a report for the Wood Royal Commission, updating it on the development of *Towards Healing* and other strategies to address the problem of clergy child sexual abuse.<sup>174</sup>
- 7 In August 1997, as part of the Final Report of the Wood Royal Commission, Volumes IV and V (*The Paedophile Inquiry*) were published. Volume V of the Report included a chapter on “The Churches”, including detailed examination of the Catholic Church Protocols for dealing with

<sup>174</sup> Royal Commission into the New South Wales Police Service, *Final Report, Volume V: The Paedophile Inquiry*. Volume V refers to: “Bishops and Leaders of Religious Institutes for the Catholic Church in NSW and ACT, Professional Standards Office, Report for the Wood Royal Commission, Fax to RCPS on 16/7/97”

allegations of sexual abuse, in which the Royal Commission commended the Catholic Church for the progress it had made in the development of *Towards Healing*.<sup>175</sup>

8 In the final report of the Wood Royal Commission, the Commissioner commented:

*“The Catholic Church’s] response to the matters disclosed by the Royal Commission is held up as a model for other Churches and religious organisations to follow ... The protocol [Towards Healing] has undergone considerable improvement since the 1992 version. It attempts to balance the rights of the victim and the accused fairly and it has lost the damage control element of previous protocols where the emphasis was on protecting the reputation of the Church. Commendably it deals with prevention and screening of potential clergy. Generally, it appears that Church policies are becoming more constructive.*

*The development of this protocol and the other steps outlined earlier indicate that the Catholic Church is now aware of its past deficiencies in dealing with allegations of sexual abuse and is making a concerted effort to overcome them.”<sup>176</sup>*

### Implementation and Training

- 9 The early years of *Towards Healing* saw many new victims come forward. The introduction of *Towards Healing* was seen as demonstrating that the Church was ready to hear the stories of victims and was committed to assisting victims move forward with their lives. The vast majority of new complaints were in respect of abuse that had occurred many years, even decades, earlier.
- 10 Father David Cappo, who had been the Executive Officer of the Bishops Committee since June 1996, continued as the Executive Officer of the NCPS from November 1996 until 1999 and was instrumental in the development and implementation of *Towards Healing*.
- 11 Between 1996 and 1998, the Executive Officer of the NCPS was engaged in:
- (a) coordinating the establishment of PSRGs in different States
  - (b) building capacity within the PSRGs, including by conducting training sessions
  - (c) meeting with PSRGs regarding the implementation of *Towards Healing*
  - (d) communicating decisions reached by the NCPS to PSRGs about the roles of contact person, assessor and facilitator.
- 12 The NCPS was also focused upon training and educating Church Authorities and other personnel about the new process, as well as resolving issues with its implementation. Some Church Authorities were initially slow to engage with the *Towards Healing* process, but the NCPS office engaged actively on developing and promoting the process.
- 13 The NCPS was also responsive to criticisms from those using *Towards Healing*. For example, in relation to criticisms of the definition of sexual assault in the document, the NCPS decided that

<sup>175</sup> Royal Commission into the New South Wales Police Service, *Final Report, Volume V: The Paedophile Inquiry*, Chapter 11 “The Churches”, 1997, p 1007, paragraph 11.90

<sup>176</sup> Royal Commission into the New South Wales Police Service, *Final Report, Volume V: The Paedophile Inquiry*, Chapter 11 “The Churches”, 1997, p 992, paragraph 11.5; p 1011, paragraphs 11.96 and 11.97

there was some urgency in providing clarity to the PSRGs, and agreed to amend the definition prior to the planned review of *Towards Healing*.<sup>177</sup>

### *Integrity in Ministry*

- 14 In accordance with the ACBC Nine Point Plan, the NCPS was also responsible for the development of a “code of conduct” for clergy and religious. That code of conduct became *Integrity in Ministry* in 1999.
- 15 *Integrity in Ministry* sets out the ethical standards which the priests and religious of the Catholic Church in Australia are committed to upholding. It includes clear statements about professional boundaries, including in relation to the use of touch. *Integrity in Ministry* also contains procedures to apply in cases where there is a breach of the standards contained in the document.
- 16 In early 1996, the NCPS formed a Code of Conduct advisory committee for the development of the code of conduct,<sup>178</sup> with Bishop Patrick Power as its chair. In early 1997, the advisory committee issued a questionnaire to all dioceses and religious institutes, requesting their comments on the issue of a code of conduct. The NCPS found there to be “*overwhelming support*” for the need for a code.<sup>179</sup>
- 17 On 25 September 1997, a draft of *Integrity in Ministry* was presented to the NCPS, which approved the document for circulation to clergy, religious and other interested persons for consultation. The consultation took place throughout 1998.<sup>180</sup>
- 18 On 16 February 1999, the Code of Conduct committee sought NCPS approval of the second draft of *Integrity in Ministry*.<sup>181</sup> The NCPS put the document to the ACBC meeting in April and the CRA meeting in May. The document was adopted for a trial period of 2 years.
- 19 Over the next two years, the NCPS continued to conduct consultations with and give presentations to clergy and religious responsible for using the document.

### *Processes for Transferring Clergy*

- 20 The first edition of *Towards Healing* reflected an awareness of this issue, stating at 10.4:

*“Whenever a cleric or religious makes a request to transfer from one diocese or institute to another, or to carry out a ministry or apostolate in another diocese or institute, the appropriate Church authority shall ask for a written statement from the priest or religious that there are no known circumstances that could lead to a complaint of sexual abuse”*
- 21 The NCPS established a subcommittee on transfer procedures, which developed a “Process for the transfer of clergy and religious” which was approved by the ACBC in November 1997.<sup>182</sup>
- 22 The purpose of the policy was to ensure that people were not placed at risk of harm through professional misconduct of Church personnel, and to provide that there should be full and frank

<sup>177</sup> NCPS Meeting Minutes, 29 October 1998

<sup>178</sup> NCPS Meeting Minutes, 4 March 1997

<sup>179</sup> NCPS Meeting Minutes, 9 April 1997

<sup>180</sup> NCPS Meeting Minutes, 25 November 1997; NCPS Meeting Minutes, 24 February 1998

<sup>181</sup> NCPS Meeting Minutes, 16 February 1999

<sup>182</sup> *Process for the transfer of clergy and religious*, approved by the ACBC and CRA, November 1997

disclosure concerning any past incidents or risk factors that might give rise to a concern in the future in the context of the transfer of a clergy or religious.

- 23 The process imposed a duty on both the transferring body and the person being transferred to make an honest disclosure, and a duty on the transferee to make a reasonable inquiry. The policy was mandatory, to apply to all transfers of clergy and religious. A person being transferred therefore had to disclose to the transferee Church Authority any matter reasonably likely to expose them to future liability, with a similar disclosure from the transferor Authority. The process set out the text to use in the relevant correspondence involved in the transfer.

### 6.3 1999 to 2001: The First Parkinson Review

#### Planning for the Review of *Towards Healing*

- 24 The Introduction to the first version of *Towards Healing* recognised that it was not to be the “*last word*” and that the publication of the document was “*intended as a means of seeking the comments of all interested persons in the community.*”

- 25 In 1999, the NCPS began the process of planning the first review of *Towards Healing*, with the aim that:<sup>183</sup>

*“it would not be a radical change from the current procedures but a development and improvement of areas identified as causing concerns or delays in the current process. It would be about continuity: improving something good rather than creating something new.”*

- 26 The NCPS agreed to engage a reviewer full time, and decided to implement an “*open consultation process*”. The NCPS had responsibility for managing the review process, although any changes to *Towards Healing* had to be accepted by the ACBC and CRA.
- 27 In April 1999, Professor Parkinson was engaged to conduct the first review of *Towards Healing*. Professor Parkinson was chosen for his relevant experience,<sup>184</sup> and his interest in the *Towards Healing* process and the Church’s response to complaints of child sexual abuse.
- 28 In July 1999 Professor Parkinson wrote to bishops acknowledging his appointment and requesting the distribution of a questionnaire to the priests of each diocese and its return to Sister Angela Ryan, the then Executive Officer of the NCPS.<sup>185</sup>
- 29 Professor Parkinson also requested that a committee be established to assist with the review process. The NCPS established a Support Committee, consisting of Sister Helen Clarke (previously of the NCPS), Jeannie Hunt (Catholic Education Office), Father Bryan Jones (Diocese of Wollongong) and Sister Angela Ryan (Executive Officer of the NCPS) with whom Professor Parkinson met regularly during the course of the review. The process of consultation began in late 1999.

<sup>183</sup> NCPS Meeting Minutes, 16 February 1999

<sup>184</sup> Professor Parkinson was a Professor in Law at the University of Sydney

<sup>185</sup> Letter from P Parkinson to Bishops, 27 July 1999

- 30 The review was intended to be broad-ranging. The NCPS also specifically asked Professor Parkinson to advise on:<sup>186</sup>
- (a) how to proceed “where a complainant chooses not to report, or the police decide not to lay charges”, and
  - (b) clarifying the definitions in the *Towards Healing* document.

### 1999: Consultation Process

- 31 In addition to the regular Support Committee meetings, Professor Parkinson also met personally with a number of relevant groups, including the PSRGs, which at that time were involved in the local implementation of *Towards Healing*,<sup>187</sup> and attended the National Meeting of the Convenors of the Resource Groups in October 1999.<sup>188</sup>
- 32 Additionally, questionnaires seeking comments on the *Towards Healing* process were sent widely including to:
- (a) bishops and congregational leaders
  - (b) Convenors
  - (c) victims of abuse
  - (d) persons accused of abuse
  - (e) contact persons, assessors, support persons, facilitators and reviewers
  - (f) priests and religious
  - (g) victim support groups
  - (h) Catholic Education Commissions and Centacare in capital cities, and
  - (i) other potentially interested parties.
- 33 By early October 1999 the questionnaires had been distributed and responses were being received.

### 1999-2000: Professor Parkinson’s Recommendations

- 34 Towards the end of 1999, following the completion of the consultation process Professor Parkinson prepared a draft of the revised *Towards Healing* and presented it to the ACBC, CRA and NCPS. Key recommendations included that:<sup>189</sup>
- (a) the definition of sexual abuse be amended
  - (b) *Towards Healing* be extended to apply to physical and emotional abuse

<sup>186</sup> NCPS Meeting Minutes, 16 September 1999

<sup>187</sup> NCPS Meeting Minutes, 9 July 1999

<sup>188</sup> Notes of National Meeting of the Convenors of the Resource Groups 11/12 October 1999

<sup>189</sup> NCPS Meeting Minutes, 23 November 1999

- (c) the Convenors become Directors of Professional Standards, responsible for managing the process
- (d) the requirement that an assessment be conducted be relaxed, so that where there was no significant dispute about the facts, an assessment would not need to be undertaken, and
- (e) it be clarified that *Towards Healing* is a response to victims, and that the primary response to the accused would be through canon law (in the case of priests and religious) or the Catholic Commission for Employment Relations (in the case of lay personnel).

35 In February 2000, Professor Parkinson presented formal recommendations to the NCPS, which the NCPS endorsed, as follows:<sup>190</sup>

- (a) *Towards Healing* should be extended to physical and emotional abuse of children and young people in the care of the Church
- (b) Convenors should be called Directors of Professional Standards
- (c) the Director of Professional Standards should manage the process of handling complaints under *Towards Healing*, while Church Authorities remain responsible for implementing recommendations and determining outcomes. The Director should have an initial screening role (with the reservation that a complaint should only be denied at that stage after consultation with the PSRG)
- (d) the first step in responding to an allegation of abuse should be for the Church Authority (or its delegate) to interview the accused and to determine whether the allegations are significantly disputed
- (e) cases involving employees should be dealt with by the relevant body in each State or Territory concerned with employment relations
- (f) in cases other than those involving current employees, assessors should be appointed where there is a significant dispute about the facts
- (g) assessors should investigate matters even where the accused is unwilling to cooperate
- (h) even where assessors are unable to reach a conclusion on the matter with a sufficient degree of certainty, they should be able to make recommendations concerning the outcome of the case (although it was suggested that '*outcome*' be replaced with '*appropriate response*')
- (i) Church Authorities should comply with reasonable requests for access to documents
- (j) the persons involved in the matter are entitled to know the findings of the assessment and to be given reasons for decisions
- (k) express provisions should be included concerning the preservation of documents
- (l) *Towards Healing* should make explicit reference to the issue of reparation

<sup>190</sup> NCPS Meeting Minutes, 23 February 2000



- (m) each Church Authority should have processes for responding to the needs of victims of abuse
  - (n) confidentiality agreements should not operate to silence victims concerning the abuse
  - (o) no one should be permitted to exercise a public ministry if doing so presents an unacceptable risk of abuse to children or young people (although it was suggested that 'children and young people' be deleted), and
  - (p) the accused ought to be entitled to a review of process.
- 36 The NCPS agreed to engage in further discussion about the following recommendations from Professor Parkinson:<sup>191</sup>
- (a) sexual abuse should be defined in terms of assault, harassment and the sexualisation of pastoral relationships, and
  - (b) *Towards Healing* should apply to all other Church personnel who are appointed to positions by the Church which involve pastoral responsibility.
- 37 The review process also went some way towards clarifying the scope of *Integrity in Ministry* in relation to *Towards Healing*, which at that stage dealt only with sexual abuse. The NCPS agreed that *Towards Healing* should deal with the sexual, physical and psychological abuse of children or adults, and that *Integrity in Ministry* should deal with a serious breach of the principles set out in that document which was not a matter of sexual, physical or psychological abuse.<sup>192</sup>
- 38 The NCPS also recommended that *Towards Healing* be extended to cover any person, not only children and young people.
- 39 Consideration of Professor Parkinson's recommendations by the ACBC was postponed until after the Australian bishops' visit to Rome and there had been further consideration of the interaction of *Towards Healing* with canon law, described below.

#### 2000–2001: Finalising the First Revision of *Towards Healing*

- 40 On 11 July 2000, the Convenors of the PSRGs presented a motion to the NCPS, that "*in the revised version of Towards Healing, the number and source of the assessors ... not be specified*". The reasons expressed by the PSRGs for this motion included that:<sup>193</sup>
- (a) the best assessors are often those who know and understand the process, and these might include members of the PSRG
  - (b) in remote areas there may be no alternative to the members of the PSRG
  - (c) members of the PSRG are seen to be independent of the victims and the accused, and
  - (d) the decision about the number of assessors may be better made at a local level.
- 41 This motion was accepted by the NCPS on 12 July 2000.<sup>194</sup>

<sup>191</sup> NCPS Meeting Minutes, 23 February 2000

<sup>192</sup> NCPS Meeting Minutes, 16 September 1999

<sup>193</sup> NCPS Meeting Minutes, 12 July 2000

- 42 At this meeting, Bishop Robinson also presented a paper on a possible structure for the revised *Towards Healing*, responding to Professor Parkinson's paper about canon law and taking into account discussions with the Convenors of the PSRGs.<sup>195</sup> The paper also sought to incorporate some of the conclusions about canon law put forward by Bishop Robinson, set out at paragraph 53 below. The NCPS generally agreed to the structure of Bishop Robinson's paper, but suggested that some minor redrafting take place.<sup>196</sup>
- 43 In September 2000, Professor Parkinson prepared a further revision of *Towards Healing*, which was provided to the members of the NCPS and to the State and Territory Convenors for comment.<sup>197</sup> The NCPS made a number of suggestions about the Parkinson revision, including that:<sup>198</sup>
- (a) the placing of "*issues concerning reparation*" before the section on facilitation "*may remove some of the potential of this phase of the healing process and may lead to an undue focus on compensation*", and that the point should become part of the section on facilitation, and
  - (b) the section indicating that the Church Authority would cover all ordinary and reasonable expenses of the process of facilitation should be retained.
- 44 In November 2000, Professor Parkinson provided a further revised draft of *Towards Healing* to the NCPS.
- 45 In December 2000, the ACBC approved the revised version of *Towards Healing* for publication.<sup>199</sup> The amendments were also approved by CRA.

#### **Guideline Documents**

- 46 Following ACBC approval of the revised *Towards Healing* in December 2000, the NCPS also worked with Professor Parkinson to prepare secondary documents to assist in the application of *Towards Healing*, including:<sup>200</sup>
- (a) *Guidelines for Bishops and Leaders of Religious Institutes, and*
  - (b) *Implementation of Towards Healing: Notes for People involved in the Process.*

#### **Adoption and Dissemination of the Revised Document**

- 47 The revised *Towards Healing* document came into effect on 1 March 2001. Prior to that date, copies were sent to:<sup>201</sup>
- (a) each bishop and diocese
  - (b) each congregational leader and congregation
  - (c) each Education Commission and Catholic Education Office, with copies for each school

<sup>194</sup> NCPS Meeting Minutes, 12 July 2000

<sup>195</sup> NCPS Meeting Minutes, 12 July 2000

<sup>196</sup> NCPS Meeting Minutes, 12 July 2000

<sup>197</sup> NCPS Meeting Minutes, 18 October 2000

<sup>198</sup> NCPS Meeting Minutes, 18 October 2000

<sup>199</sup> ACBC Meeting Minutes, 8 December 2000

<sup>200</sup> NCPS Meeting Minutes, 2 May 2001

<sup>201</sup> NCPS Meeting Minutes, 14 February 2001

- (d) each Centacare Director and Centacare office
- (e) each Director and PSRG member
- (f) all known victim support and advocacy groups, and
- (g) Australian Catholic Council for Employment Relations, Catholic Commission for Employment Relations, Unions and Employment Relations personnel.

#### *Training on the Revised Document*

- 48 During the process of finalising the draft of the revised *Towards Healing*, the NCPS began planning for training the bishops and congregational leaders.<sup>202</sup> Professor Parkinson also assisted by preparing some instructional points for different groups, including bishops, congregational leaders, Directors, contact persons and assessors.<sup>203</sup>
- 49 Training days were offered in each State and the Northern Territory, conducted by the Executive Officer and the relevant Director, to which leaders of religious institutes, Catholic Education Office staff, Centacare staff, health care staff, welfare staff and principals were invited. Separate training days were also held for PSRG personnel.<sup>204</sup>

#### **2000–2002: *Towards Healing* and Canon Law**

- 50 The bishops and religious leaders were concerned about the interaction of *Towards Healing* with canon law, primarily in relation to dealing with the accused. In April 2000, on behalf of the ACBC, Bishops Geoffrey Robinson and Philip Wilson attended a meeting in Rome under the direction of the Congregation for the Clergy, where the issue of *Towards Healing* and canon law was raised.<sup>205</sup>
- 51 Bishops Robinson and Wilson reported “a significant part of the time was devoted to considering responses to sexual abuse which are possible within the current provisions of canon law”.<sup>206</sup> The Australian bishops gave a presentation about the Australian response at that meeting.
- 52 It was subsequently agreed by the NCPS that Bishops Robinson and Wilson would meet with Professor Parkinson to discuss the meeting in Rome and its implications for the review.<sup>207</sup>
- 53 If any permanent penalties were to be imposed upon an offender, canon law required that there be a judicial process under canon law. However, Bishop Robinson suggested that:
- (a) due to the statute of limitations under canon law, only a very small proportion of cases would be able to proceed to a judicial process
  - (b) canons 1041 and 1044 refer to incapacity to fulfil ministry due to psychological infirmity, and might be used in these circumstances. However, they are not a penal process and *Towards Healing* could easily be used in their place, for example, by referring the accused to services such as Encompass, and

<sup>202</sup> NCPS Meeting Minutes, 18 October 2000

<sup>203</sup> NCPS Meeting Minutes, 5 December 2000

<sup>204</sup> NCPS Meeting Minutes, 14 February 2001

<sup>205</sup> NCPS Meeting Minutes, 23 February 2000; ACBC Meeting Minutes, 18 May 2000

<sup>206</sup> NCPS Meeting Minutes, 10 May 2000

<sup>207</sup> NCPS Meeting Minutes, 10 May 2000

- (c) canons 1740 to 1747 set out a process for the removal of a parish priest, which is likewise also not a judicial process, so that the use of *Towards Healing* would also be possible instead of a judicial process.<sup>208</sup>
- 54 Professor Parkinson prepared a memorandum for the NCPS responding to points that had been raised by Bishop Robinson, suggesting that there be some restructuring of the draft and some minor rewording of particular provisions, in light of canon law. Professor Parkinson noted that “*the effect of canon law rules would only be in relation to disciplinary action towards the accused, not in relation to moves taken to bring healing to a survivor of abuse*”.<sup>209</sup>
- 55 In mid 2001, the ACBC received a letter from the Congregation for the Doctrine of the Faith concerning crimes “*against the sixth commandment committed by a cleric with a person under the age of eighteen years*”. The letter noted that hearings of these cases concerning clerics were reserved to the Congregation.<sup>210</sup>
- 56 On 26 November 2002, the NCPS carried the following motion unanimously:<sup>211</sup>
- “That the Bishops and Congregational Leaders re-commit to Towards Healing as the normal means of responding to complaints of abuse. But in those cases where a cleric strongly denies the allegation then case by case one considers the use of the canonical process. In those cases the Towards Healing process would provide the preliminary investigation under canons 1717 – 1719”*
- 57 On 29 November 2002, the ACBC also carried a similar motion:<sup>212</sup>
- “That the bishops and congregational leaders continue to use the procedures they have adopted as the normal means of responding to complaints of abuse. But when a cleric denies the allegation, then case by case the use of canonical process should be considered. In these latter cases the agreed Australian procedures shall be the preferred option in carrying out preliminary investigation required under canons 1717 – 1719.”*

## 6.4 2003: Further Amendments

### International Developments

- 58 In the early 2000s, there was continued international attention given to the issue of clergy child abuse.
- 59 In the UK, on 17 September 2001, Lord Nolan’s second report to the President of the Bishops’ Conference for England and Wales, *A Programme for Action: Final Report of the Independent Review on Child Protection in the Catholic Church in England and Wales* (Nolan Report) was published, advocating greater openness in the process of dealing with child sexual abuse within the Catholic Church.

<sup>208</sup> NCPS Meeting Minutes, 12 July 2000

<sup>209</sup> Patrick Parkinson, *Re: Towards Healing: Response to Bishop Robinson’s Proposals Following the Rome Meeting*

<sup>210</sup> NCPS Meeting Minutes, 14 September 2001

<sup>211</sup> NCPS Meeting Minutes, 26 November 2002

<sup>212</sup> ACBC Meeting Minutes, 29 November 2002

- 60 In late 2002, bishops from the United States of America published the document titled, *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests and Deacons* (US Document).<sup>213</sup> The process described in the US Document included a review panel, which proved influential in the introduction of consultative panels to *Towards Healing*.
- 61 This international context, and a growing Australian experience in handling allegations of child sexual abuse, led the NCPS to consider further amendments of *Towards Healing* in 2003.<sup>214</sup>

### Consultative Panels and Review Mechanism

- 62 A number of proposals were put forward at the NCPS meeting held on 26 November 2002, including that the NCPS should establish:<sup>215</sup>
- (a) a Nolan-type independent committee of inquiry, responsible for publicly reporting as to the effectiveness of responses to allegations of abuse, and making recommendations to improve the effectiveness of the response
  - (b) a National Compliance Board responsible for an annual compliance audit of the NCPS and PSRGs
  - (c) a Review Board, like that in the US Document, to assist the PSRG in managing the case at the time when the Church Authority is involved
  - (d) consultative panels, as proposed by Bishop Robinson, and
  - (e) an appeal mechanism.
- 63 The NCPS favoured the establishment of a review board, and a national review committee. The NCPS also agreed that the process for dealing with an allegation against a bishop or congregational leader should be clarified.<sup>216</sup>
- 64 On 29 November 2002, the ACBC considered the issues of the compliance board, the review board, a State panel with power to make decisions, and an appeal mechanism.
- 65 The ACBC also decided that in relation to the various proposals from the NCPS, the Professional Standards Committee should continue to research the idea of a review panel, the idea of an appeal mechanism, and the process to be used in the case of an allegation against a bishop or congregational leader.
- 66 At the NCPS meeting on 10 April 2003, three papers were presented to assist the NCPS in deciding upon the appropriate processes to adopt.<sup>217</sup>
- (a) *Towards Healing Consultative Panel*, by Bishop Robinson. This paper outlined a proposal for consultative panels (rather than “review boards”) which would act as a resource to Church Authorities. Church Authorities were to consult with them in particular situations, including considering how to respond to the accused

<sup>213</sup> NCPS Meeting Minutes, 26 November 2002

<sup>214</sup> NCPS Meeting Minutes, 12 October 2002; NCPS Meeting Minutes, 26 November 2002

<sup>215</sup> NCPS Meeting Minutes, 26 November 2002

<sup>216</sup> NCPS Meeting Minutes, 26 November 2002

<sup>217</sup> NCPS Meeting Minutes, 10 April 2003

- (b) *An Appeal Mechanism in Towards Healing*, by Professor Parkinson. David Landa, former NSW Ombudsman, also joined the meeting to discuss a potential appeal mechanism. Mr Landa agreed to prepare a document for the NCPS to consider regarding an appeals mechanism in May 2003, and
  - (c) *Towards Healing – Complaints Procedures – Bishops and Congregational Leaders*, by Brother Julian McDonald. The NCPS agreed that as far as possible, the processes for bishops and congregational leaders should be the same for priests and religious, and that the co-chairs of the NCPS would act as Directors for cases involving bishops and congregational leaders.
- 67 In May 2003, the ACBC agreed to adopt the procedure proposed by the NCPS in relation to complaints of abuse against a bishop or congregational leader.
- 68 Also in May 2003 the ACBC approved the changes to *Towards Healing* regarding the introduction of consultative panels.<sup>218</sup> CRA also approved these changes.

### Reporting of Criminal Offences

- 69 The NCPS decided in April 2003 that Bishop Robinson should re-draft the section of *Towards Healing* regarding referring criminal offences to the police.<sup>219</sup>
- 70 At the meeting of the ACBC on 15 May 2003, the NCPS also put forward motions regarding reporting to the police. The changes proposed the following requirements to those already in *Towards Healing*:
- (a) that the contact person explain the limitations of the *Towards Healing* process, and express the Church's "*strong preference that the allegation be referred to the police and, if desired, the complainant will be assisted to do this*" (37.1)
  - (b) that "*in all cases other than those in which reporting is mandatory, if the complainant indicates an intention not to take the matter to the police, this shall be recorded by the Contact Person and confirmed by the signature of the complainant*" (37.2)
  - (c) that even when the complainant has expressed an intention not to go to the police (which had been confirmed by their signature), "*the Church will still inform the police of the name of the alleged offender and the details of the alleged offence. It will not, however, inform the police of the name of the complainant without his or her consent*" (37.3).
- 71 These motions were carried by the ACBC.<sup>220</sup> However, the new 37.3 did not immediately proceed, following CRA concerns that the proposal was specific to the regulatory context of New South Wales, and a broader approach might be required.<sup>221</sup>

<sup>218</sup> ACBC Meeting Minutes, 15 May 2003

<sup>219</sup> NCPS Meeting Minutes, 10 April 2003

<sup>220</sup> ACBC Meeting Minutes, 15 May 2003

<sup>221</sup> NCPS Meeting Minutes, 9 July 2003

### May–June 2003: Amendments to *Towards Healing*

- 72 The following amendments were made to *Towards Healing* in mid-2003:<sup>222</sup>
- (a) provision was made for Consultative Panels consisting of at least five members, which must be consulted by the bishop or congregational leader in relation to a number of decisions, including whether a person constitutes an “unacceptable risk” to vulnerable persons (35.8)
  - (b) the introduction of a requirement that the contact person explains the limitations of the *Towards Healing* process (37.1), and that a person who does not wish to take a complaint to the police sign the statement referred to in section 8.5, paragraph 23(c) below, and
  - (c) the introduction of the process for dealing with a complaint of abuse against a bishop or religious leader, with guidelines for the designation of the Church Authority in these cases (38.4.1).
- 73 The NCPS also subsequently accepted the National Review Panel proposal.<sup>223</sup> In November 2003, the ACBC approved the Parkinson/Landa proposal for an independent National Review Panel.<sup>224</sup> The amendments approved by the ACBC were all incorporated into *Towards Healing*.
- 74 It was not until 2007 that the review process changed to allow a review of the findings of an assessment, as well as of a review of the process.<sup>225</sup>

### Implementation of the 2003 Amendments

- 75 Following the 2003 amendments, Consultative Panels began to be formed by dioceses and congregations, or jointly by the bishop and congregational leaders in rural dioceses, and by the State Conference of Leaders of Religious Institutes, who retained a pool of appropriately qualified persons to be available as needed for congregations with few cases.<sup>226</sup>
- 76 In July 2005, the NCPS appointed the following persons to be members of the National Review Panel: David Landa OAM, Diane Armstrong, John Hannaford, Leonard Levy SC, Gerald Gleeson AC, Garth Blake SC and Di Sansom.<sup>227</sup> In the period before their appointment, Mr Landa conducted a number of reviews and made suggestions for streamlining and improving the review process. These suggestions were implemented by the NCPS,<sup>228</sup> and the amendments were accepted by the ACBC and CRA in 2005.<sup>229</sup>
- 77 In November 2005, the NCPS appointed Gerald Gleeson AC as Chairperson for the National Review Panel for three years. Mr Gleeson remains the chairperson today.

<sup>222</sup> NCPS, *Amendments to Towards Healing document – May/June 2003*

<sup>223</sup> NCPS Meeting Minutes, 11 September 2003

<sup>224</sup> ACBC Meeting Minutes, 28 November 2003

<sup>225</sup> ACBC Meeting Minutes, 10 May 2007

<sup>226</sup> NCPS Meeting Minutes, 25 November 2003

<sup>227</sup> NCPS Meeting Minutes, 13 July 2005

<sup>228</sup> NCPS Meeting Minutes, 16 September 2004

<sup>229</sup> ACBC Meeting Minutes, 11 May 2005

## 6.5 2005–2007: Reviews of the NCPS

78 Article 6.4 of the Charter provides that “*the NCPS will be the subject of a review of its operation commissioned by the ACBC and CRA as appropriate*”.<sup>230</sup>

### The Mahoney Report

79 Towards the end of 2004, the Presidents of the ACBC and CRA appointed retired Judge Barry Mahoney QC to conduct an appraisal of the NCPS. In conducting the appraisal, Mr Mahoney QC consulted widely.

80 In his report published on 22 April 2005 (Mahoney Report), Mr Mahoney QC made a number of recommendations about the operational efficiency of the NCPS, including in relation to such matters as: succession planning for the NCPS Executive Officer positions; clearly defining the roles and responsibilities of the Executive Officers; allocating tasks to a number of subcommittees; revising *Towards Healing*; the Charter of the NCPS and the quality of NCPS documents; and enhancing the budget of the NCPS.<sup>231</sup>

81 Mr Mahoney QC described the “*high praise*” he had encountered for the work of the NCPS Executive Officers during the process of review, and observed that “*the distinct impression gained is that it has operated since its inception on a shoe string budget and could not have operated at all without the level of commitment and dedication displayed in turn first by Msgr David Cappo, and now by Sr Angela Ryan and Brother Julian McDonald*”.

82 In concluding his report, Mr Mahoney QC remarked that:

*“Given the groundbreaking task which began in 1987 and resulted in [Towards Healing] of 1996 ..., the performance of NCPS has been remarkable. It is easy to overlook the fact that, when the task was begun, those involved were embarking on uncharted waters. [Towards Healing] was developed only with the goodwill and co-operation of 32 dioceses and over 150 religious institutes. Achieving a 99.5 per cent consensus across such a large number of diverse and scattered entities is nothing short of remarkable. Although there are various respects in which NCPS could be improved, the level of national standardisation and efficiency which has in fact been reached to date by a voluntary, as opposed to an imposed, method is outstanding.”*

83 The Mahoney Report set out a number of specific recommendations, including that the NCPS should:

- (a) explore the amalgamation of *Towards Healing* with the system operating in the Archdiocese of Melbourne
- (b) ensure the review and amalgamation of the Jesuits’ process for handling child abuse complaints into the *Towards Healing* protocol if appropriate
- (c) evaluate the possibility of grading complaints of alleged abuse
- (d) review the status and functions of PSRGs

<sup>230</sup> Article 6.4, *Charter of the National Committee for Professional Standards* (2009)

<sup>231</sup> Barry Mahoney QC, *Appraisal of National Committee for Professional Standards*, 22 April 2005



- (e) revise the format of *Towards Healing*, for example, by publishing a loose-leaf version which could more easily be updated
- (f) become more proactive by focusing on the prevention of child abuse
- (g) require all State/Territory Directors and PSOs to report any operational problems to the NCPS and provide copies of any reports commissioned to the NCPS
- (h) complete the computerisation of a national database of NCPS statistics
- (i) be available to assist in the selection of the pastoral care offered to a complainant
- (j) require all Church personnel to hold “accreditation cards” before embarking on ministry or employment involving contact with children or young persons
- (k) improve the publicity of *Towards Healing*
- (l) prepare a simple brochure for accused persons (the NCPS was already in the process of drafting such a brochure)
- (m) specify the eligibility criteria and role specification for a contact person and facilitator
- (n) distribute a flow chart of *Towards Healing* protocols
- (o) require applications for review of the outcome of a case to specify, in writing, the grounds for their application.

84 The Mahoney Report also recommended that the Executive Officers work with the NCPS to develop a feasible standard timetable for the various steps to be taken by Church personnel in the handling of cases in accordance with *Towards Healing*.

#### *Implementation of Mahoney Recommendations*

85 In April 2006, a position of Prevention and Protection Officer for the NCPS office was established, in response to Mr Mahoney’s recommendation that the NCPS needed to be more proactive in its response to the issue of child sexual abuse.<sup>232</sup> Sister Angela Ryan took up the role of Prevention and Protection Officer, which since 2011 has been undertaken by an additional member of staff full time.

86 In September 2007, an Implementation Committee of Bishop Morris, Sister Sue Richardson, Father Tim Brennan and Norm Griffiths (CCI) was formed by the ACBC and CRA. The Implementation Committee focused on four areas identified in the Mahoney Report:

- (a) matters relating to staff at the National Professional Standards Office
- (b) financing of NCPS operations
- (c) an alternative model
- (d) the Mandate/Charter of the NCPS.

<sup>232</sup> Yolande Schilt-Smith, *Review of the Mahoney Report Recommendations Relevant to the Executive Officers of the National Committee for Professional Standards*, 9 October 2007, p 10

87 Each of these areas was addressed as follows:

- (a) In October 2007, Yolande Schilt-Smith (then at the NSW PSO, previously of Centacare), prepared a review of the Mahoney Report<sup>233</sup> for the Implementation Committee. She concluded that most of the recommendations from the Mahoney Report in this area had been implemented in full or were generally reflected in established practice.
- (b) Between 2007 and 2009, representatives of the ACBC and CRA examined the issue of financing the NCPS. In 2009, the funding of the NCPS was guaranteed for the next five years.<sup>234</sup>
- (c) It was agreed that the alternative model could be considered in the 2009 Parkinson Review.<sup>235</sup>
- (d) In 2009, a revised draft of the Charter and Mandate of the NCPS was approved by the ACBC and CRA and entered into use.<sup>236</sup>

## 6.6 2008 to 2010: The Second Parkinson Review

### Preparing for the Second Review

- 88 Towards the end of 2008, the NCPS decided that another process of external consultation and review should address whether there were any further modifications that should be made to *Towards Healing*.<sup>237</sup> In late 2008, Professor Parkinson was approached to manage the consultation and review process (Second Review).<sup>238</sup>
- 89 The NCPS issued invitations to make submissions to the Review Panel, to bishops and other senior Church leaders, facilitators, lawyers, current and former Directors, victim support groups, victims and other related groups. In that invitation, the NCPS stated that the review would:
- “aim to ensure that the principles and processes of Towards Healing*
- *conform with best practice in rendering quality assistance to victims*
  - *provide effective processes to see that children and vulnerable adults are protected*
  - *also provide procedural fairness for those accused’*
- 90 Approximately 70 submissions were received in total, including submissions from the following individuals and organisations:<sup>239</sup>
- (a) complainants and their relatives (29 submissions)
  - (b) Church representatives

<sup>233</sup> *Review of the Mahoney Report Recommendations Relevant to the Executive Officers of the National Committee for Professional Standards*, 9 October 2007

<sup>234</sup> NCPS Meeting Minutes, 18 March 2009

<sup>235</sup> NCPS Meeting Minutes, 18 March 2009

<sup>236</sup> NCPS Meeting Minutes, 15 July 2009

<sup>237</sup> NCPS Meeting Minutes, 24 September 2008

<sup>238</sup> NCPS Meeting Minutes, 13 November 2008

<sup>239</sup> Professor Patrick Parkinson, *Final Report: Towards Healing Review* (April 2009) pp 1–2

- (c) members of the National Review Panel
- (d) current and former Directors
- (e) facilitators
- (f) lawyers who had been involved in the *Towards Healing* process, both on behalf of victims and on behalf of the Church
- (g) a trauma psychologist
- (h) Broken Rites Australia
- (i) Healesville Education and Awareness Raising Group re Clergy Professional Misconduct and Sexual Abuse (HEAR Group)
- (j) MacKillop Family Services, and
- (k) Christian Brothers Ex-Residents and Students (CBERS).

91 A broad range of views and ideas were raised in the submissions. No one group of individuals was entirely supportive or entirely critical of the current process. For example, some victims described positive experiences of *Towards Healing* and were supportive of the process remaining as it was, while other victims described negative experiences and were not supportive of any part of the process. The different views expressed included:

- (a) that there had been some problems in the implementation of *Towards Healing*, including delays in responding or progressing complaints, a lack of sensitivity by some participants in the process, and negative perceptions of the process caused by the attendance of lawyers and representatives of insurance companies at facilitations
- (b) that many victims had reported satisfactory outcomes from *Towards Healing* to some victims groups, especially when compared with outcomes from civil law processes
- (c) that there was a need for national compliance and consistency
- (d) that the quality of some people in the roles of contact persons, assessors and facilitators needed to be improved
- (e) that others in *Towards Healing* roles were dedicated, compassionate and sensitive and made a significant contributions to positive experiences of victims
- (f) that some victims felt re-abused by the process, or did not feel that the apology offered was genuine
- (g) that some victims would not approach *Towards Healing* in its current form due to an inability to trust the Church
- (h) that some accused, and support persons for accused, did not understand the process, or their rights, and
- (i) that *Towards Healing* posed some difficulties in relation to canon law.

- 92 Although the submission period closed on 15 January 2009, Professor Parkinson continued to receive, consider and respond to submissions provided after this date. During the process of receiving submissions, Sister Angela Ryan, then one of the Executive Officers of the NCPS, visited and assisted individuals who had requested help with the transcription of a response to the review of *Towards Healing*.
- 93 The submissions contained a number of suggestions for amendments to the *Towards Healing* process, including:
- (a) that the Church should make some contribution to funding the victim's legal costs associated with the process
  - (b) that some assessments should be conducted by a senior lawyer or a retired judge, and take the form of a quasi-hearing
  - (c) that there should be timeframes within which each stage of *Towards Healing* should occur
  - (d) that there should be an independent panel of experts to advise about compensation, and
  - (e) that any apology and discussion of financial redress should occur at different meetings (although equally strong views were expressed that this should take place in the same meeting).
- 94 The NCPS sent a letter of acknowledgement to each person who made a submission. At the conclusion of the review process, the NCPS wrote to each person who had made a submission detailing the proposed revisions to *Towards Healing*.

### 2009: Interim Parkinson Report

- 95 On 18 March 2009, Professor Parkinson presented an interim report to the NCPS. The report recommended a number of changes, including that:<sup>240</sup>
- (a) definitions be placed at the beginning of *Towards Healing*, and expanded or re-worded if necessary
  - (b) reference be made to reporting complaints to police while still protecting the identity of victims (while recognising that this was already the practice in some States)
  - (c) necessary negotiations concerning settlement should, where possible, be carried out before or after the facilitation, rather than during facilitation
  - (d) it be made clear that *Towards Healing* support measures are not suspended once matters go to the police, although investigative processes are to be suspended
  - (e) it be specified that where the victim is seeking to pursue a claim for compensation only, this should occur outside *Towards Healing*
  - (f) reference be made to parishes and faith communities affected by allegations of abuse, and that the needs of those groups not be forgotten, and

<sup>240</sup> NCPS Meeting Minutes, 18 March 2009

- (g) the Directors be able to 'depart from process' with the written approval of the Executive Officer of the NCPS if doing so would better fulfil the principles of *Towards Healing*.

### 2009: Second Parkinson Report

96 In April 2009, Professor Parkinson completed his final report (the 2009 Parkinson Report), which was released to bishops and religious leaders.<sup>241</sup> The 2009 Parkinson Report proposed the following amendments to the *Towards Healing* text, in addition to the recommendations outlined at 95:

- (a) the inclusion of references to the importance of confidentiality in handling a complaint
- (b) expanding the section relating to strategies for prevention
- (c) giving Directors the particular responsibility of ensuring the expeditious resolution of cases and for keeping victims and accused informed of progress in the resolution of the matter
- (d) clarification of the roles of contact persons and support persons for accused
- (e) clarification about how complaints are received and dealt with
- (f) reference to a possible personal meeting between the Church Authority, Director and complainant at an early stage of the process
- (g) clarification that assessors are to make findings on the balance of probabilities, and
- (h) that the National Review Panel should have the power to substitute its own findings for those of assessors.

97 The Parkinson Report proposed that in addition to recommended changes to the *Towards Healing* text, a number of changes be made in the implementation of *Towards Healing*, including:

- (a) the introduction of exit surveys to assess the effectiveness of *Towards Healing*
- (b) that the Church should cooperate with police investigations, including by requiring priests or members of religious orders to return to the country where the alleged offences occurred, and taking disciplinary action against a priest or religious who fails to comply with such instructions
- (c) the involvement of more non-Catholics in *Towards Healing*, especially in PSRGs, as assessors, and on the National Review Panel
- (d) that lawyers or ex-judges be available to assist in the writing of assessment reports
- (e) that levels be set for legal fees for deeds of release and that the Church should meet the reasonable costs of obtaining advice on a deed of release, and
- (f) the possible reorganisation of the National Office/State Offices of Professional Standards model.

<sup>241</sup> Professor Patrick Parkinson, *Final Report: Towards Healing Review* (April 2009)

- 98 The 2009 Parkinson Report also examined *Towards Healing* more broadly. It set out careful responses to various views expressed during the review process. Such views included that:
- (a) complaints of criminal conduct should be dealt with by police, not under *Towards Healing*
  - (b) claims for compensation should be dealt with independently of the Church, and
  - (c) the issue of redress should be dealt with by compensation panels in order to achieve consistency of outcome.
- 99 In relation to the police role in dealing with criminal conduct, Professor Parkinson noted that:<sup>242</sup>
- (a) some complaints will not be resolved by the criminal justice system, including because victims may be fearful of giving evidence in a criminal trial, and because of the effect of delay in proving a case in the criminal courts
  - (b) not all of the issues important to the Church will be resolved by a criminal investigation. For example, where there is not enough evidence to press charges, or where the case is not pursued by the Director of Public Prosecutions because there is insufficient likelihood of conviction, this does not resolve the issue of whether a person poses an “unacceptable risk” to children, and
  - (c) a police investigation and/or prosecution is not designed to assist the victim, but is only concerned with the punishment of the accused. *Towards Healing* exists because “*the Church took the view that whether or not it had any legal obligation, it should do something to address [victims’ needs]*”.
- 100 In relation to an independent process for seeking compensation, Professor Parkinson observed that the option of commencing a civil claim already existed. However, he noted that the civil process has significant limitations, including:<sup>243</sup>
- (a) that the Limitation Acts of various States may bar an application
  - (b) the cost and stress of litigation
  - (c) the problem of identifying a person or entity against whom litigation can be viably brought, and
  - (d) the problem of establishing legal responsibility, especially where abuse usually occurs in secret.
- 101 The Report also considered aspects of *Towards Healing* in comparison with aspects of the *Melbourne Response*, which includes an independent compensation panel. Professor Parkinson expressed the view that even with such compensation panels, consistency in monetary awards would be difficult to achieve because:
- (a) the purpose of monetary payments is to meet the needs of the victim, and where possible, to tie the payments to something specific. Monetary payments would vary as people’s

<sup>242</sup> Professor Patrick Parkinson, *Final Report: Towards Healing Review* (April 2009), pp 4–5

<sup>243</sup> Professor Patrick Parkinson, *Final Report: Towards Healing Review* (April 2009), p 8

needs varied, and a compensation panel would also remove some of the flexibility in meeting the tangible needs of victims currently available under *Towards Healing*

- (b) congregations vary considerably in their resources, and a particular congregation might not be able to meet the payment recommended by the compensation panel, where the liability is not insured, and
- (c) even in relation to insured claims, the insurance company may not be willing to pay the amount awarded by a compensation panel in the circumstances.

102 Professor Parkinson noted that “*the numbers who wrote in with complaints represented quite a small proportion of those who have been through Towards Healing over the years*”. However, he also commented that:<sup>244</sup>

*“Policy can only go so far. It is only as good as its implementation. In particular, the process of Towards Healing is only as good as a complainant’s personal experience of it. It is now widely recognised that people’s experience of the processes of justice is as important as the outcome.*

...

*Towards Healing, as a document, may espouse the most admirable principles and seek to give effect to those principles with a suitable process, but if the reality falls far short of the intent, then a lot of harm can be done. However, it is possible to learn from the failures of implementation in improving policy, as long as there is a willingness amongst all leaders of the Church to adhere to the improved policies in the future, and not to continue with their own variations on it.”*

### 2009: Approval of Revised *Towards Healing*

- 103 In September 2009, the 2009 Parkinson Report and the draft further revision of *Towards Healing* were put before the State Directors in a joint meeting with the NCPS. The Directors agreed that the revised *Towards Healing* should be published, and expressed the view that the 2009 Parkinson Report should form the basis for rewriting the Guidelines for bishops and leaders.<sup>245</sup> The NCPS agreed to take the views of the Directors to Professor Parkinson.<sup>246</sup>
- 104 A briefing note to the NCPS recorded Professor Parkinson’s satisfaction “*that his observations have been taken note of by the Bishops, Congregational Leaders, Members of the National Committee and Directors of Professional Standards*” and the hope “*that the work done by Directors and the National Committee on implementation strategies following the Review will take into account Patrick’s observations and, where appropriate, some of his explanations or reflections may be included in any material published by the National Committee*”.<sup>247</sup>

<sup>244</sup> Parkinson Report, p 2

<sup>245</sup> Minutes of the joint meeting of the NCPS and Directors, 16 September 2009

<sup>246</sup> NCPS Meeting Minutes, 16 September 2009

<sup>247</sup> NCPS Meeting Minutes, 18 November 2009

105 In November 2009 the revised edition of *Towards Healing*, including changes drafted by Professor Parkinson, was put before the ACBC and CRA and approved for publication.<sup>248</sup> Significant amendments included the following:

- (a) if a victim is represented by a lawyer and is not seeking any pastoral support or other engagement with the Church, the matter should proceed outside *Towards Healing* by the normal means appropriate to the resolution of civil claims (36.5)
- (b) in responding to a victim, every effort should be made to minimise the number of times the victim has to tell his or her story (36.7)
- (c) provision for the Director to provide assistance to the victim at an early stage of the process (36.8 and 37.2)
- (d) where a victim does not wish to take the matter to the police, all Church personnel should pass details to the Director, who should provide the information to the police without details that could lead to the identification of the victim (37.4)
- (e) if not resolved at facilitation, monetary reparation, other than the provision of counselling costs or meeting the other needs of the victim, should be dealt with outside the facilitation (41.4.3)
- (f) the Church Authority should not require the victim to sign a deed of release unless the victim has had independent legal advice or has indicated in writing that he or she declines to seek legal advice (41.4.9)
- (g) the Church Authority should pay for the reasonable costs involved in obtaining legal advice on a deed of release (41.4.10), and
- (h) the Church Authority should consider the effect upon communities and families, and the steps that should be taken to assist those affected (43.1).

#### 2010: Implementation of Revised *Towards Healing*

106 The revised *Towards Healing* was published in January 2010. By February 2010, copies of the revised *Towards Healing* had been sent to each priest, bishop's office, congregational leader, religious, and State PSO, as well as other interested groups. In February 2010, *Towards Healing* was also posted on the ACBC website.<sup>249</sup>

107 In early 2010, the NCPS directly supported the implementation of the amended *Towards Healing* by conducting many training sessions, including:

- (a) a workshop for Wollongong priests
- (b) a workshop for Sydney priests
- (c) workshops for individual religious congregations
- (d) a Directors' workshop

<sup>248</sup> ACBC Meeting Minutes, 27 November 2009

<sup>249</sup> NCPS Meeting Minutes, 4 February 2010



- (e) meetings with the PSRGs, bishops, religious leaders and others involved in professional standards in Melbourne, Perth, Darwin and Adelaide
- (f) meetings with the Dioceses of Toowoomba and Townsville, and
- (g) training for bishops and leaders.

108 In September 2010, the NCPS prepared and distributed a revised version of *Guidelines for Church Authorities*.<sup>250</sup>

### Implementation of Other Parkinson Recommendations

109 In addition to accepting the revised draft of *Towards Healing*, the NCPS implemented other recommendations from the 2009 Parkinson Report as follows:

- (a) preparation and distribution of exit surveys from participants in *Towards Healing*
- (b) developing and tabling a discussion paper about a possible restructuring of Professional Standards
- (c) running training days for assessors, including sessions in quality report writing, and
- (d) introducing advice into *Information for Legal Personnel* that lawyers attending facilitations as support persons not be remunerated for their role, but that the Church would pay the reasonable costs of victims obtaining legal advice on any deed of release, and contribute to the costs of other professional advice and assistance incurred in the process of resolving the matter.<sup>251</sup>

### 2010: Parkinson Report concerning the Salesians of Don Bosco

110 During his Second Review, Professor Parkinson had referred to concerns as to whether the Salesians of Don Bosco had dealt appropriately with three priests accused of child sexual abuse. In May 2009, Professor Parkinson wrote to the NCPS outlining his concerns, and suggesting that the Church invite the Victorian Government to launch a formal inquiry into the action of the Salesians. The NCPS referred the letter to Father Frank Moloney, the Provincial Superior of the Salesians.

111 In September 2009, Professor Parkinson was given access to relevant documents by the Salesians, and prepared a report which was finalised in August 2010.<sup>252</sup> That report criticised various aspects of the way in which the Salesians had dealt with the three accused priests.

112 The Salesian Provincial took issue with Professor Parkinson's conclusions. In about August 2010, Professor Parkinson became critical of the NCPS including because he believed that his report into the Salesians should have been released publicly.<sup>253</sup>

<sup>250</sup> NCPS Meeting Minutes, 15 September 2010

<sup>251</sup> NCPS Meeting Minutes, 4 February 2010

<sup>252</sup> Professor Parkinson, *Submission: Inquiry into Handling of Child Abuse by Religious and Other Non-Government Organisations*, p 9

<sup>253</sup> Professor Parkinson, *Submission: Inquiry into Handling of Child Abuse by Religious and Other Non-Government Organisations*, p 10

- 113 In September 2010, the NCPS agreed to initiate an inquiry to address the issue.<sup>254</sup> However, that inquiry subsequently did not proceed. Instead discussions took place about the form and content of material relating to the report which might be made available on the NCPS website.
- 114 Agreement on that issue was not reached, and on 29 August 2011 Professor Parkinson wrote to the Victorian Attorney-General about the issue.
- 115 In July 2012, Professor Parkinson submitted his report detailing his concerns about the Salesians to the Inquiry into the Handling of Child Abuse by Religious and Other Organisations conducted by the Parliament of Victoria.<sup>255</sup>

#### 2011: Further NCPS Review

- 116 In 2011, Professor Anne Cummins, Deputy Vice-Chancellor of the Australian Catholic University, conducted a second review of the NCPS and its role in the professional standards framework.<sup>256</sup> The review process included telephone interviews with key stakeholders and an online survey of a wider stakeholder group.
- 117 Professor Cummins' recommendations included that the NCPS be appropriately resourced both financially and in terms of personnel, and that the profile of the NCPS should be heightened to build confidence within the community in the Church's proactive and pastoral responses to victims of abuse.
- 118 In 2012, the NCPS began working on a communications strategy to assist with the implementation of this recommendation, and employed an additional person whose work includes protection and prevention.

### 6.7 Conclusion

- 119 Since its adoption, *Towards Healing* has undergone extensive independent review, most notably by Professor Parkinson, who has contributed extensively to the development and enhancement of the process. Professor Parkinson's suggested amendments to the text of *Towards Healing* have been welcome, and the text of the document has been amended in accordance with his proposals.
- 120 As a result of those reviews and the consequent amendments, the *Towards Healing* process has been improved in important respects, as outlined above.
- 121 It is respectfully submitted that the changes made to *Towards Healing* since its introduction demonstrate that the Church has taken an open and engaged approach to the ongoing review and improvement of the *Towards Healing* Protocol. Both the 1999–2000 and the 2008–2009 reviews involved extensive consultation to gather views about the process and how *Towards Healing* could be improved.
- 122 No doubt further lessons can be drawn from further experience and consultation, from material which will be provided in connection with future reviews, and from the work of the Royal

<sup>254</sup> The NCPS engaged David Curtain QC for the purpose of conducting the inquiry, and initial meetings were held with Professor Parkinson and Father Moloney

<sup>255</sup> Professor Parkinson, *Submission: Inquiry into Handling of Child Abuse by Religious and Other Non-Government Organisations*

<sup>256</sup> Professor Anne Cummins, *Review of the Structures of the State and National Professional Standards Offices*, October 2011

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Commission. The Church remains open to enhancing and improving its processes for safeguarding children and providing pastoral care and support and assistance for victims of abuse.

## 7 Interaction with Civil Law

### Key points:

- *Towards Healing* is a process which is quite different from a claim for damages in the civil courts.
- Many victims do not want to bring their claims in the civil courts, for various reasons including a wish to avoid dealing with such private and sensitive matters in a public forum.
- Civil claims also face various legal complexities, some of them related to the structure of the Church in Australia.
- In most cases where a victim does institute civil proceedings, a settlement is reached, often through mediation, before the case reaches the trial stage.
- *Towards Healing* provides a process for victims which is inexpensive, private and not restricted by legal complexities.

### 7.1 Options for Redress

- 1 People who allege abuse by present or former Church personnel currently have a range of possible ways of proceeding, including:
  - (a) reporting the matter to the police and engaging the criminal justice system
  - (b) seeking a response under *Towards Healing*
  - (c) making a direct approach to the relevant Church Authority outside the *Towards Healing* process
  - (d) commencing or foreshadowing civil proceedings for damages
  - (e) negotiating a settlement (sometimes by mediation) before, or during, civil proceedings,
  - (f) making a claim under a statutory compensation scheme for victims of crime.
- 2 *Towards Healing* is a process, which seeks to assist the victim to find healing and, in some cases, reconciliation with the Church. It is not designed as a dispute resolution process, or as a binary alternative to litigation. The pastoral aspect is integral to the *Towards Healing* process. *Towards Healing* is accessible to those who are unwilling, or unable, to utilise the criminal or civil legal processes. No statute of limitations prevails and all cases, even those involving people now deceased, can be assessed. Importantly, the victim does not need to go public with his or her experiences, in order to receive assistance.
- 3 *Towards Healing* provides an opportunity to a victim to:
  - (a) reveal to the Church the whole truth of what happened, in all its contextual complexity

- (b) let go of the shame and the responsibility for his or her suffering and place it where it belongs
  - (c) see the Church Authority admit and acknowledge the truth of the allegations, accept responsibility on behalf of the accused, and apologise to the victim for the harm done to him or her by Church personnel.
- 4 The Church does not seek to impose *Towards Healing* on anyone. It is entirely up to the victim to choose the approach best suited to his or her needs.
- 5 Where, however, the victim has chosen not to report the matter to the police or other civil authority, or the civil authorities have decided not to take further action under the criminal law or child protection legislation, and the victim does want to proceed under *Towards Healing*, the Church Authority must act on the complaint by engaging in the *Towards Healing* process.<sup>257</sup>
- 6 People who allege abuse are fully entitled to pursue a civil claim for compensation by initiating civil proceedings.<sup>258</sup> Where a victim chooses to take that course, after the civil proceedings have been completed or settled, he or she may nevertheless approach the Church Authority for some form of pastoral engagement. Alternatively, the Church Authority may want to write to the victim personally to express regret for the harm caused or to offer to meet the victim in a facilitated meeting.<sup>259</sup> That can be achieved without going through the *Towards Healing* process in its entirety.<sup>260</sup>

## 7.2 Potential Difficulties with Civil Claims Compared to *Towards Healing*

- 7 There are well-known difficulties in the path of a victim who may be giving consideration to bringing civil proceedings. Many of these have been noted by impartial analysts such as Professor Patrick Parkinson.<sup>261</sup> Some of the more significant issues, and the contrast with *Towards Healing*, are discussed below.

### Publicity

- 8 A civil action for damages is conducted and dealt with in public. Many victims do not want to approach these painful and sensitive matters in that way, for various reasons which in any given case might include:
- (a) feelings of embarrassment or even shame, however unwarranted, about what happened to them
  - (b) unwillingness to undergo the ordeal of cross-examination, either about the details of the abuse itself or about other aspects of their lives before or since,
  - (c) concern, on the part of the victim, for the impact on the accused or on the Church.

<sup>257</sup> Clause 37.6, *Towards Healing*

<sup>258</sup> *Towards Healing: Guidelines for Church Authorities*, February 2011, p 8

<sup>259</sup> *Towards Healing: Guidelines for Church Authorities*, February 2011, p 8

<sup>260</sup> *Towards Healing: Guidelines for Church Authorities*, February 2011, p 8

<sup>261</sup> Professor Patrick Parkinson AM, "Final Report: *Towards Healing Review*", April 2009, pp 8–9; Professor Patrick Parkinson AM, "The Relationship between *Towards Healing* and civil legal action", undated, p 1

- 9 By contrast, *Towards Healing* is conducted in private, by a process which is confidential to the extent that the victim wishes it to be.

### Evidentiary Problems: the Facts, Causation and Standard of Proof

- 10 In civil proceedings, in order to succeed, the victim/plaintiff must prove each of the essential elements of the cause or causes of action relied upon. In cases of sexual abuse, the plaintiff will generally have to prove, at least:
- (a) that the abuse alleged actually did occur, and
  - (b) that the damage for which he or she claims compensatory damages was caused by the abuse.
- 11 Proving the facts relevant to the abuse itself, when the events occurred a very long time ago, is not easy, particularly where there is no corroboration and relevant witnesses may be deceased.
- 12 Further, proving that the plaintiff's present condition was caused by the abuse may also present problems of some difficulty and complexity. There may have been a range of factors in a person's life, whether before and/or after the events being sued upon, which might in some instances be thought to have contributed to a greater or lesser extent to the problems apparent or relied upon as at the time of a trial. Disentangling those factors, and their various respective effects on the plaintiff, is a complicated task and one which can involve considerable focus on other aspects of a plaintiff's life which can be unpleasant or embarrassing or painful to remember. This has implications for both liability and damages.
- 13 Again, the position under *Towards Healing* is very different. In particular, causation does not come into play as a matter to be considered in any analytical way, essentially because the process is not directed at "compensation" as such.
- 14 Although the standard of proof in civil proceedings is the balance of probabilities, just as it is under *Towards Healing*,<sup>262</sup> the rules of evidence apply to civil proceedings, whereas no rules of evidence apply under *Towards Healing*. Thus, whilst evidence might be rejected as inadmissible in civil proceedings (for example, as hearsay) or only be admitted for limited purposes, such impediments do not exist under the *Towards Healing* process.

### Uncertainty and Stress

- 15 There are risks in bringing any legal proceedings. Those risks are very real in the case of proceedings for alleged sexual abuse of a child, especially where such allegations concern events that happened many years, sometimes decades, ago.
- 16 The passage of time can have a serious impact on the availability of key witnesses, and on the ability of witnesses, including the victim/plaintiff, to remember events. The accused may be dead or so disabled by age or illness that he or she cannot provide any response to the complaint. Important records, on which one or both sides might wish to rely, may have been lost or destroyed in the ordinary course of events in the intervening years. A plaintiff may well walk away with little or nothing at the conclusion of a lengthy, costly and emotionally taxing process,

<sup>262</sup> Clause 40.9, *Towards Healing*

especially when regard is had to the amount that may be charged to plaintiffs by the lawyers that he or she retains.

- 17 The uncertainties surrounding the outcome of formal court proceedings inevitably impose stress on those involved in such proceedings. There are also other aspects of the litigation process which are unavoidably stressful, such as: the unfamiliar and (to many people) threatening or forbidding nature of the process including the courtroom itself; delay; cost; and the worry and anxiety surrounding the giving of evidence in a court, and being cross-examined, about such sensitive matters.
- 18 *Towards Healing* attempts to minimise this stress and uncertainty by offering a different kind of response – a pastoral response focusing upon the needs of victims of abuse rather than a response consisting of the adjudication of legal claims. As outlined in section 4 of this Submission, the outcome of a facilitation under *Towards Healing* where the complaint has been accepted as genuine (the majority of cases) invariably includes many more facets than the payment of a monetary amount, including those which many victims have found to be particularly significant such as the meeting between the bishop or religious leader and the victim in which the victim's suffering is acknowledged and an apology offered.

### Limitation Periods

- 19 Since many, if not most, claims of sexual abuse involve events alleged to have taken place many years ago, often decades in the past, most civil claims are likely to be barred by the operation of statutory limitation periods.<sup>263</sup> As a result, victims will generally need to seek from the Court an extension of time in which to bring proceedings. The application will involve additional cost and delay.
- 20 In determining whether or not to grant an extension of time, Courts take into account a range of factors including:
- (a) whether the justice of the case requires that the application be granted<sup>264</sup>
  - (b) the expiry of insurance cover<sup>265</sup>
  - (c) whether a fair trial is possible having regard to the time that has elapsed since the events in question, and such factors as (where they apply) the death or unavailability of the accused and/or witnesses, the unavailability of relevant documents, and so on
  - (d) the length of the delay, and any explanation for it
  - (e) whether the granting of an extension would result in significant prejudice to the defendant (and, *prima facie*, a defendant is prejudiced by being deprived of the protection of the limitation period).
- 21 The onus is on the victim to satisfy the Court that the limitation period should be extended. The decision to extend time is discretionary, and the outcome of the application is uncertain.

<sup>263</sup> Each Australian jurisdiction has a limitation statute setting out the rules governing the period of time in which a plaintiff must commence a civil proceeding. The prescribed limitation periods range from 3 to 6 years for tortious claims. An application to extend the limitation period may be made in all States and Territories.

<sup>264</sup> For example, see *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541; *Holt v Wynter* (2000) 49 NSWLR 128; and *Itek Graphix Pty Ltd v Elliott* (2002) 54 NSWLR 207

<sup>265</sup> *Windsurf Holdings Pty Ltd v Leonard* [2009] NSWCA 6 at [90]

A Church Authority may be prepared to waive reliance on a limitation defence in some cases, but that would be a decision to be made on a case by case basis by the individual Church Authority depending on the facts and circumstances of each such case.

- 22 There are no such problems in making a complaint under *Towards Healing*. Limitation periods do not apply. Any complaint is able to be addressed, no matter how long ago the events occurred and regardless of whether the accused or other witnesses are alive and/or available.

### Defendant and Liability Issues

- 23 As noted in section 2 of this Submission, under Australian law a church or a diocese is generally treated as a voluntary or unincorporated association.<sup>266</sup> They are not entities which can be sued under the civil law. Action could perhaps be brought against the relevant bishop or religious leader (or other person in some position of managerial or other control over an accused at the time of the events in question) personally, but only if that bishop or religious leader or other person were still alive. Any successor to such a person bears no personal legal responsibility for acts done or not done by his predecessors.<sup>267</sup>
- 24 Moreover, even if, for example, the relevant Church leader were still alive, and available to be sued as a defendant, there is a further serious difficulty, namely the issue of vicarious liability. As Professor Parkinson explained in his 2009 review of *Towards Healing*:

*"[Legal] responsibility is most likely to be found if the leader of the time knew of the abusive behaviour and did not remove the person from ministry; but what if the leader knew nothing of the abuse, nor did anyone else in the organization? Sexual abuse usually occurs in secret. The responsibility for the abuse is in the first instance that of the offender. Establishing the liability of an organization to which that offender belonged is not at all straightforward."*<sup>268</sup>

- 25 The principles of vicarious liability are not engaged if a plaintiff can point to no more than that the direct tortfeasor was a fellow member of the association: the relationship between members of a church such as the Catholic Church, and individual office holders in that church, has been held to be "far remote from any category that has been found to entail vicarious liability".<sup>269</sup>
- 26 Further, as also noted in section 2 of this Submission, those Church bodies which are regarded as unincorporated voluntary associations (such as dioceses and some religious institutes) cannot own property. The trustees who hold Church property under legislation such as the *Roman Catholic Church Trust Property Act 1936* (NSW) and the *Roman Catholic Trusts Act 1907* (Vic)

<sup>266</sup> *Attorney-General for the State of New South Wales v Grant* (1976) 135 CLR 587, 600. A voluntary association is a body of people who have combined to further some common end of interest, be it social, sporting, political, scientific, religious, artistic or humanitarian, which is not about private gain and material advantage. *Cameron v Hogan* (1934) 51 CLR 358, 370

<sup>267</sup> *Trustees of Roman Catholic Church v Ellis* (2007) 70 NSWLR 565 at [47]–[51] per Mason P. The position in regard to some religious institutes may be different.

<sup>268</sup> Professor Patrick Parkinson AM, "Final Report: Towards Healing Review", April 2009, p 8

<sup>269</sup> *Trustees of Roman Catholic Church v Ellis* (2007) 70 NSWLR 565 at [52]–[53] per Mason P; see also *New South Wales v Lepore* (2003) 212 CLR 511; *Maga (by his Litigation Friend, the Official Solicitor) v Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] 1 WLR 1441; *Catholic Child Welfare Society & Ors v Various Claimants and The Institute of the Brothers of the Christian Schools* [2012] UKSC 56; *JGE v The Portsmouth Roman Catholic Diocesan Trust* [2012] EWCA Civ 938 (12 July 2012); Wangmann J, 'Liability for Institutional Child Sexual Assault: Where does Lepore leave Australia?' (2004) 28 *Melbourne University Law Review* 1, 169



have no part to play as trustees in the appointment or supervision of bishops or priests. Hence they have no legal responsibility for the conduct of such persons.<sup>270</sup>

- 27 By contrast, the *Towards Healing* process involves none of these difficulties. There is no requirement for a victim to identify the correct or specific entity or person against whom to sheet home responsibility, as legal liability for the abuse does not have to be established. If the Church Authority is satisfied of the validity of the complaint, it is accepted, and the facilitation part of the process proceeds. In this way, the Church aims to accept moral responsibility for abuse matters regardless of the strict legal position in any particular case.

## Other Issues

### Costs

- 28 Even if a civil action is successful, the plaintiff is likely to incur very large costs, a proportion of which will not generally be recoverable. As Professor Parkinson has noted,<sup>271</sup> although some lawyers may agree to conduct such actions on a “no win, no fee” basis (in which case there may be no up-front costs for the plaintiff), eventually, the amount awarded in a successful action is likely to be reduced to some considerable extent by legal costs. If the plaintiff loses the civil action, the costs awarded against him or her can obviously be very substantial.
- 29 By contrast, unless a victim chooses to be legally represented, victims are not obliged to incur any legal costs under *Towards Healing*. If a victim is unrepresented and an agreement on reparation is reached, the Church Authority will pay for the reasonable costs involved in the victim obtaining legal advice in relation to any deed of release. The Church Authority may also pay a contribution towards the reasonable costs of other professional advice or assistance, incurred in the process of reaching an agreement.<sup>272</sup>

### Delay

- 30 Civil action is inherently likely to take an appreciably longer period of time to resolve (usually measured in years) than the *Towards Healing* process, although the length of time for the latter will depend on all the circumstances, including the pace at which the victim is comfortable for the matter to be dealt with.

### Formality

- 31 Civil litigation is highly formalised, being subject to rules of practice and procedure which govern every aspect of the proceedings from commencement to final determination. This formality can be daunting and can add to the stress imposed, and to the costs incurred. The formal procedures will inevitably compel a person to retell his or her story on a number of occasions and this in itself is very stressful and risks re-traumatising the victim.
- 32 In contrast, as outlined elsewhere in this Submission, the processes under *Towards Healing* involve minimal formalities.

<sup>270</sup> *Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565

<sup>271</sup> Professor Patrick Parkinson AM, “*Final Report: Towards Healing Review*”, April 2009, p 8

<sup>272</sup> Clause 41.4.10, *Towards Healing*

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## Conclusion

- 33 *Towards Healing* is inherently a far simpler process than, and one which avoids the many risks and complexities of, civil action. In particular, achieving an outcome under *Towards Healing* is not dependent upon proof that the Church Authority is legally liable for the abuse alleged. As Professor Parkinson has said:<sup>273</sup>

*“Towards Healing offers another kind of response. It is a pastoral response which does not depend on proving that the Church is legally liable. It is a response to the needs of victims of abuse, rather than a response driven by settling legal claims. It aims to promote healing, and one of its central features is the meeting between Bishop or the leader of the religious order and the [victim]. In this meeting, the [victim]’s suffering can be acknowledged, truth can be told, apologies offered in a response given to the needs of the [victim].”*

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<sup>273</sup> Professor Patrick Parkinson AM, “*Final Report: Towards Healing Review*”, April 2009, p 8

## 8 Interaction with the Criminal Justice System

### Key points:

- It is the strong preference of the Church that matters involving alleged criminal conduct be reported to the police.
- However, many victims do not want to go to the police or to engage with the criminal justice system.
- In many cases the police are unable to pursue a complaint, for example where the accused is deceased.
- If the victim does take a matter to the police, the *Towards Healing* assessment is suspended so as to avoid any possible interference with the criminal process. Once the criminal process has concluded, the victim may approach *Towards Healing* again.
- The criminal justice system is directed to the offender and his punishment, whereas *Towards Healing* is focused on the victim and his or her pastoral needs.

### 8.1 Introduction

- 1 *Towards Healing* recognises that the most appropriate avenue for the investigation of allegedly criminal conduct is the police. It states expressly that the strong preference of the Church is that matters that involve alleged criminal conduct should be reported to the police.<sup>274</sup>
- 2 A complaint concerning alleged criminal conduct will not be investigated under *Towards Healing* unless and until the victim specifically declines, in writing, to go to the police or other appropriate authority, despite having been encouraged to do so.<sup>275</sup>
- 3 Under *Towards Healing*, a Church investigation must not be undertaken in a manner that would interfere in any way with the proper processes of criminal or civil law, whether such processes are already underway or anticipated in the foreseeable future.<sup>276</sup>
- 4 Sometimes, for a variety of reasons, victims do not want to, and choose not to, report the matter to the police. Victims have the right to adopt that course if they wish.
- 5 *Towards Healing* aims to strike an appropriate balance between the rights of an adult victim to privacy and confidentiality when seeking assistance from the Church, and the public interest in ensuring that the police are able to investigate and prosecute crimes by encouraging victims to report alleged crimes to police.

<sup>274</sup> Clause 37.1, *Towards Healing*

<sup>275</sup> Clause 37.3, *Towards Healing*

<sup>276</sup> Clause 37.6, *Towards Healing*

## 8.2 Differences Between an Investigation Under *Towards Healing* and a Criminal Prosecution

- 6 Although *Towards Healing* involves inquiring into complaints of abuse and sometimes requires an assessment of disputed allegations, as does a criminal investigation and trial, *Towards Healing* is not a quasi-criminal process. There are many differences between *Towards Healing* and a criminal prosecution, including the following.
- (a) *Purpose*: The main purpose of *Towards Healing* is pastoral.<sup>277</sup> It is victim-focused. On the other hand, the criminal justice system is focused on the accused/offender. Its main purposes include punishment of the offender, protection of the community, deterrence and rehabilitation.
  - (b) *Parties*: The victim is the moving party in the *Towards Healing* process and has a crucial role to play in determining how the process is conducted and ultimately resolved. In contrast, in a criminal prosecution, the victim is a mere witness with no right to control the process or have any say at all in whether it commences, how it proceeds or the ultimate result.
  - (c) *Issue*: The purpose of an assessment (the investigative stage of *Towards Healing*) is to investigate the facts (where there is a significant dispute or uncertainty as to the facts), so that findings can be made as to whether the complaint is true on the balance of probabilities.<sup>278</sup> The fundamental issue in criminal proceedings is whether or not the accused is guilty of a specific crime having specific legal elements.
  - (d) *Standard of proof*: Under *Towards Healing*, the assessment as to whether a complaint is true is to be made “on the balance of probabilities upon the evidence available at that time”.<sup>279</sup> In criminal proceedings, the guilt of an accused must be proved to the criminal standard of “beyond reasonable doubt”.
  - (e) *Evidence*: The rules of evidence do not apply to an investigation under *Towards Healing*, whereas the rules of evidence apply strictly to a criminal prosecution.
  - (f) *Consequences*: If found guilty in criminal proceedings, the accused will be punished under the general law, by the sentence of the Court. The particular punishment will depend on the circumstances but can include imprisonment. The victim may be eligible for assistance pursuant to a victims’ support scheme. This assistance may take the form of counselling, financial assistance and/or a recognition payment for the injury (or injuries) they have received.<sup>280</sup>
- 7 Under *Towards Healing*, if a complaint is found to be substantiated, the Church Authority seeks to provide a response which meets the victim’s needs.<sup>281</sup> As discussed more fully elsewhere in this Submission, this may include the giving of an apology on behalf of the Church, the provision of counselling or the payment of counselling costs, and/or financial assistance or reparation. The Church Authority also determines the consequences that should follow, within the Church, for the

<sup>277</sup> *Towards Healing: Guidelines for Church Authorities*, February 2011, p 3

<sup>278</sup> Clause 40.2 and 40.9, *Towards Healing*

<sup>279</sup> Clause 40.9, *Towards Healing*

<sup>280</sup> See Annexure G

<sup>281</sup> Clause 41.1, *Towards Healing*

offender. This aspect of the *Towards Healing* process is discussed in section 10 of this Submission.

### 8.3 Purpose of *Towards Healing*

8 The main purpose of *Towards Healing* is the pastoral one of trying to assist the victim to find healing, and where possible and desired, to experience some measure of reconciliation with the Church.<sup>282</sup> It aims to be an expression of the Church's teaching on justice and compassion, not merely a means for the resolution of disputes or an alternative to litigation.<sup>283</sup> This is a crucial and significant point of difference between *Towards Healing* and the criminal justice system.

9 *Towards Healing* also deals with:

- (a) the response to offenders, a topic which is discussed in section 10 of this Submission,
- (b) the issue of prevention in the future. For example:
  - (i) It provides that, if abuse has been admitted or substantiated, serious offenders, particularly those responsible for sexually abusing a child or young person, or whose record of abuse of adult pastoral relationships indicates that they could well engage in further sexual exploitation of vulnerable adults, will not be given the power they have abused and that may mean being removed from ministry.<sup>284</sup>
  - (ii) It contains provisions concerning information-sharing between dioceses and religious orders,<sup>285</sup> whenever a cleric or a religious is to transfer from one diocese or institute to another (whether within Australia or coming from overseas) or is to carry out a ministry or apostolate in another diocese or institute.<sup>286</sup>

### 8.4 Reasons Why Victims May Prefer Not to Report the Matter to the Police

10 There are many reasons why a victim may not want to report the matter to the police. Some of those mirror the reasons why many victims also do not want to bring civil proceedings (referred to in section 7 of this Submission). Additional reasons, besides not wanting the story aired in public and reluctance to give evidence or be cross-examined in a court setting about the details of the complaint, can include:

- (a) fear of the accused
- (b) fear of being isolated from other members of their particular communities
- (c) reluctance to deal with the police.

<sup>282</sup> "Towards Healing: Guidelines for Church Authorities", published by the National Committee for Professional Standards, February 2011, p 3

<sup>283</sup> "Towards Healing: Guidelines for Church Authorities", published by the National Committee for Professional Standards, February 2011, p 3

<sup>284</sup> Clauses 27 and 42, *Towards Healing*

<sup>285</sup> Clauses 45.6 and 45.7, *Towards Healing*.

<sup>286</sup> "Towards Healing: Guidelines for Church Authorities", published by the National Committee for Professional Standards, February 2011, p 3

- 11 There are also circumstances when a police investigation or prosecution, in relation to a complaint of child sexual abuse, is not possible in any event. Some of these circumstances are:
- (a) where the accused is deceased, or of advanced years and not competent, so there can be no effective police investigation
  - (b) where police see no reasonable prospects of establishing a crime beyond reasonable doubt such as where there has been a significant delay between the incident and complaint (as is common in cases of child sexual abuse)
  - (c) where there are limitations on the admissibility of evidence in criminal proceedings
  - (d) where the victim is unable to identify the alleged offender
  - (e) where key witnesses do not wish to be involved, are deceased or cannot be found
  - (f) where essential records have been lost or destroyed.
- 12 Professor Parkinson has made similar observations about how *Towards Healing* and the criminal justice system interact.<sup>287</sup>

## 8.5 Reporting Matters to the Police or Other Authorities

- 13 Child sexual abuse is a crime. Police are best placed to investigate allegations of sexual abuse, not the Church. The Church's strong preference is for victims to report potential criminal matters to the police.

### Mandatory Reporting Requirements

- 14 All jurisdictions within Australia have similar but not identical mandatory reporting legislation.<sup>288</sup> Mandatory reporting is a requirement imposed on specified classes of people to report suspected cases of child abuse and neglect to government authorities. The Church is keenly aware of the mandatory reporting requirements and Church Authorities endeavour to ensure that all relevant Church personnel comply with those requirements.
- 15 However, that legislation applies essentially to situations where the abused child is still a child at the relevant time. Where the abuse in question occurred in the past, and where the child is now an adult, the mandatory reporting requirements are usually not enlivened.

### Reporting to Police

- 16 *Towards Healing* nevertheless contains provisions expressly dealing with the reporting to police of complaints which concern an alleged crime (whenever it was committed).
- 17 Clause 37.1 of *Towards Healing* explicitly states the Church's strong preference that any complaint concerning an alleged crime be referred to the police so that it can be dealt with appropriately through the criminal justice system.<sup>289</sup>

<sup>287</sup> Professor Patrick Parkinson AM, "Final Report: *Towards Healing Review*", April 2009, pp 4–5

<sup>288</sup> See Annexure E for a summary of the mandatory reporting requirements in the various Australian jurisdictions

<sup>289</sup> Clause 37.1, *Towards Healing*

- 18 If the victim wishes, the Church will assist him or her to report the matter to the police.<sup>290</sup>  
In practice, many of the Directors of Professional Standards do so by, for example, offering to call a police officer from his or her office whilst the victim is present, so that the victim can speak to the officer. Directors sometimes also assist in other ways, for example, by providing the victim with a police officer's name and contact details or, if the victim wishes, by accompanying the victim to the police station.
- 19 If the victim does take the matter to the police, the *Towards Healing* process is suspended pending the outcome of the criminal justice process.<sup>291</sup>
- 20 Nevertheless, in such circumstances, the Director may make recommendations to the Church Authority concerning the funding of counselling or such other assistance for the victim in the meantime.
- 21 Victims are also advised that they may approach the Church again under *Towards Healing* when the criminal justice process has been concluded.<sup>292</sup>
- 22 Further, if a victim does decide to go to the police, Church personnel are not to bring the matter to the attention of the accused.<sup>293</sup>
- 23 If a complaint is made which does cover behaviour of a criminal kind, but the victim does not want the matter referred to the police, *Towards Healing* sets out the following procedures:
- (a) The matter is nonetheless to be reported if mandatory reporting applies.<sup>294</sup>
  - (b) The relevant Church personnel should pass details of the complaint to the Director, who should provide the police with information other than giving those details that could lead to the identification of the victim.<sup>295</sup> In practice, Directors in the different States have adopted different reporting practices. If victims decline to go to the police, in most jurisdictions the Directors adopt a practice of reporting the information to the police without identifying the victim. For the position in Victoria, see section 16 of *Facing the Truth*. It is also not the standard practice to make a non-identifying report to the police in Western Australia, where the victim declines to go to the police.
  - (c) The Church is not to take any action under *Towards Healing* unless and until the victim signs a statement such as that set out below:<sup>296</sup>

*"The Catholic Church has strongly urged me to take my complaint to the police or other civil authority. It has been carefully explained to me that any process the Church establishes will not have the same powers to investigate the matter and to test evidence as the courts have. A Church process cannot impose the same penalties as a civil court. Aware of these limitations, I still state that I do not wish to take my complaint to the police or other civil authority at this time and I ask that a Church process be established."*

<sup>290</sup> Clause 37.1, *Towards Healing*

<sup>291</sup> Clauses 37.1 and 37.2 *Towards Healing*

<sup>292</sup> Clause 37.2, *Towards Healing*

<sup>293</sup> Guideline, "Towards Healing Summary of Process for those Accused of Abuse", p 2

<sup>294</sup> Clause 37.5, *Towards Healing* and Annexure E

<sup>295</sup> Clause 37.4, *Towards Healing*

<sup>296</sup> *Towards Healing*, p 8, fn 2

- (d) Thereafter, however, the Church must act on the complaint (ie under *Towards Healing*).<sup>297</sup>
- (e) No Church investigation should be undertaken in such a manner as to interfere in any way with the proper processes of criminal or civil law, whether such processes are in progress or contemplated for the foreseeable future.<sup>298</sup>
- 24 If in the course of a Church procedure, allegations emerge for the first time which indicate that a criminal offence may have been committed, under *Towards Healing*, the Church procedure must cease immediately and clauses 37.1–37.6 are again engaged.<sup>299</sup>
- 25 Similarly, if a victim changes his or her mind during the course of an investigation under *Towards Healing*, and decides to report the matter to police after all, the Church process must stop.<sup>300</sup>

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<sup>297</sup> Clause 37.6, *Towards Healing*

<sup>298</sup> Clause 37.6, *Towards Healing*; *Towards Healing: Guidelines for Church Authorities*, February 2011, p 11

<sup>299</sup> Clause 39.4, *Towards Healing*

<sup>300</sup> Clause 37.1 and 37.2, *Towards Healing*



## 9 Role of Catholic Church Insurance Limited

### Key points:

- CCI is a registered insurance company which provides about 80% of Church organisations with insurance services.
- CCI provides unique insurance products to Church organisations in circumstances where normal commercial insurers would not.
- CCI played a part in:
  - the development of the *Towards Healing* process
  - identifying the risk of future civil claims in respect of child sexual abuse
  - putting insurance arrangements and funds in place so that Church organisations would be able to make financial payments to victims of sexual abuse
  - providing financial and non-financial support to the Church to assist with the prevention of sexual abuse.

### 9.1 About CCI

- 1 Catholic Church Insurance Limited (CCI) is an unlisted public company. Its shares are held by or on behalf of a range of Australian Catholic Church bodies. It was established in 1911 initially to provide insurance for Church property against fire and allied risks and since then has expanded to provide a full range of insurance policies to Church bodies.
- 2 Most CCI policy holders are organisations within the Church – such as dioceses, religious institutes, schools, and hospitals. CCI estimates that it provides about 80% of the insurance services used by Church bodies. All Australian dioceses and about 70% of religious orders insure through CCI. Church organisations which do not insure through CCI either use services from commercial insurers or self-insure.
- 3 CCI's constitution provides that it has been established for charitable purposes, being the advancement of religion and, in particular, the Catholic Church in Australia. This objective is achieved by the provision of insurance services to Church organisations, as well as through the distribution of surpluses to the Church organisations which are its shareholders and policy holders. CCI is registered as a tax exempt charity with the Australian Taxation Office.
- 4 While CCI is a company limited by shares, in some ways it operates more like a mutual society for the benefit of its policy holders. CCI policy holders pay premiums each year, commensurate with market terms, and surplus profits (subject to satisfying all applicable prudential regulatory requirements and paying shareholders a fixed annual dividend of 40 cents per share) are distributed to policy holders.

- 5 CCI's particular relationship with the Church, and the consideration it gives to the Church's interests, distinguish it from other insurers. CCI manages risk and responds to its policy holders' circumstances differently from a purely commercial insurer. For example:
- (a) CCI is committed to providing insurance against all risks associated with the properties and activities of the Church, be they religious, educational, healthcare, or social welfare. No proposal is declined even though the exposure to risk may be higher than what might be considered acceptable to a commercial insurer.
  - (b) CCI's portfolio includes a disproportionate amount of risk in relation to older (and expensive to repair) Church buildings. CCI's role as the Church's insurer means that cover for these buildings will always be provided.
  - (c) It does not generally have regard to the claims history of a prospective policy holder in deciding whether or not to underwrite a proposed risk, because it aims to provide insurance services to all Church bodies.
  - (d) CCI does not have the scale, or capacity for diversification of risk, of other commercial insurers. In accordance with the requirements of APRA, it charges premiums which are commensurate with the specific risks of its portfolios and seeks to maintain a suitably conservative level of claims reserves.
- 6 CCI is nevertheless subject to the prudential and other legislative requirements that apply to corporations generally and insurers in particular. For example:
- (a) it is regulated in the same way as any other insurer, and is obliged to comply with the requirement to maintain adequate claims reserves and file returns with APRA, ASIC and other regulatory bodies
  - (b) it is required to comply with Australian corporations laws, and
  - (c) in line with usual insurance practice, it acquires reinsurance in respect of its portfolios and some of its larger policies, and owes contractual duties to its reinsurers.
- 7 From time to time these contrasting interests and duties can result in tensions which are not faced by other insurers. For example, CCI's aim of providing support for Church organisations may favour underwriting a particular risk which a commercial insurer would be unwilling to take on, while on the other hand its prudential and legal obligations require it to be prudent and profitable. Within CCI this tension is sometimes referred to as being one of "mission versus margin".

## 9.2 Insurance Cover for Sexual Abuse Claims

- 8 CCI took a number of steps to assist the Church in responding to the problem of child sexual abuse and developing *Towards Healing*, including:
- (a) CCI established a pool of funds, in association with a retrospective Special Issues Liability policy, to provide support to Church bodies to enable them to make payments to victims of past incidents of sexual abuse

- (b) CCI required that the availability of cover be conditional on Church bodies undertaking to comply with protocols established by the ACBC for dealing with sexual abuse claims
- (c) CCI has made financial and non-financial contributions to the ACBC and the NCPS to assist in responding to and preventing child sexual abuse
- (d) in relation to *Towards Healing* (and the *Melbourne Response*), it accepts the integrity of these processes and consequently:
  - (i) it almost always regards the information available through these processes as sufficient to assess a claim so that it is rarely necessary for CCI to conduct its own investigations, and
  - (ii) it is prepared to settle claims through *Towards Healing* and the *Melbourne Response* even though these processes do not take into account the potential availability of limitation or other legal defences.

### The Public Liability Policy and the Special Issues Policy

- 9 CCI first issued Public Liability insurance on 1 July 1969. CCI also began providing workers' compensation policies at this time. Prior to that date, insurance provided by CCI related solely to fire and similar coverage for the physical assets of the Church.
- 10 In mid-1988, Chris O'Malley, then the General Manager of CCI, visited the United States. He discussed with the Catholic Mutual Group (a US insurer of Catholic Church bodies) the response of Church-related insurers in that country to child sexual abuse claims. He learned that Catholic Mutual had used the concept of a pool of funds as a vehicle for self-insurance against these risks.<sup>301</sup>
- 11 CCI gave consideration to whether its policy holders were insured in respect of this risk. There was considerable doubt about whether the Public Liability policy in its terms covered sexual abuse.
- 12 Other problems were also identified in relying upon the existing Public Liability policies to respond to claims of sexual abuse:
- (a) it was only on 1 July 1969 that CCI first issued Public Liability insurance policies. They were "event occurring" policies, meaning that they covered claims in respect of events that occurred during the period of the insurance policy. Thus events occurring prior to 1969 were not covered
  - (b) the limits of liability provided by policies issued in the early years were quite low
  - (c) there was concern that reinsurers might seek to exclude sexual abuse claims.
- 13 These issues caused CCI to consider introducing a US-style self-insurance pool for these claims, at least until the question of whether the Public Liability policies provided cover was resolved. At a CCI Board Meeting held in September 1988, Chris O'Malley submitted a paper entitled "The Pools Concept and Uninsurable Risks". The paper outlined the pool concept and sought the

<sup>301</sup> Catholic Church Insurances Limited, "The Pools Concept & Uninsurable Risks", presented to CCI Board Meeting, 29 September 1988

approval of the Board to seek actuarial advice and investigate further the possible establishment of a “special issues pool”.

- 14 In November/December 1988, the ACBC conference established the Australian Catholic Bishops Conference Special Issues Committee Relating to Priests and Religious.<sup>302</sup> Chris O’Malley, as General Manager of CCI, was a member of the Committee.
- 15 Discussions about the establishment of a pool to fund claims for sexual abuse continued at meetings of the Committee during the following two to three years.
- 16 Pending development and acceptance of the “pool” concept, CCI set aside, in each of the years 1989 and 1990, provisions of \$600,000 as contributions towards a fund intended to provide financial support in relation to claims of sexual abuse. These provisions were described by CCI as follows:<sup>303</sup>

*“The cover available under this temporary scheme is \$200,000 per claim (i.e. per offender) with an aggregate limit for all claims of \$600,000. CCI is providing this cover from our own funds without reinsurance support and we are providing it free of charge.”*

- 17 John Taylor was CCI’s underwriting manager. On 18 September 1990 he made a written submission to the ACBC describing in detail the Pool concept and the proposed Special Issues Liability Policy that would accompany it. The submission stated:<sup>304</sup>

*“CCI’s aim is to assist the Church by providing protection in a difficult area and one which is increasingly being excluded by worldwide insurance markets. We intend treating this insurance as a special accommodation line for the Church and the policy will not be ‘underwritten’ on a normal commercial basis. The premiums paid for this policy will be held in a separate holding account (or a self insured pool) and will be used to pay for the cost of obtaining reinsurance cover for the Special Issues Liability Policy. Surplus funds will remain in the holding account to build up a pool bearing in mind that in the years to come, it may be impossible or uneconomic to obtain reinsurance support. Should this eventuate, CCI would still wish to provide some form of cover at rates and conditions to be determined.”*

- 18 In April 1991 the ACBC resolved to accept a proposal from CCI that it establish a Special Issues Pool in association with a liability insurance policy.<sup>305</sup> In July 1991 CRA also resolved to accept the proposal.<sup>306</sup>
- 19 Under the proposal, insurance would be provided by means of a Master Policy under which the insureds would be those dioceses and religious institutes which contributed to the Special Issues Pool. Among the central features of the proposal were:<sup>307</sup>
- (a) the policy would provide cover specifically for claims arising from “*actual or attempted sexual activity with a child or any other person that constitutes a criminal act*”, thus

<sup>302</sup> ACBC Meeting Minutes, November/December 1988. See section 5.

<sup>303</sup> John Taylor, CCI, “Pastoral Discussion Day: Risk Management Procedures”, 29 April 1991

<sup>304</sup> John Taylor, CCI, “Submission to the Australian Catholic Bishops Conference: Special Issues Liability Insurance”, 18 September 1990, p2

<sup>305</sup> ACBC Meeting Minutes, April 1991

<sup>306</sup> John Taylor, paper presented to the CRA, 11 July 1991

<sup>307</sup> John Taylor, “Submission to the Australian Catholic Bishops Conference: Special Issues Liability Insurance”, 18 September 1990

- eliminating any doubt about whether such conduct would attract cover under the Public Liability policy
- (b) the policy would be on a “claims made” basis rather than an “event occurring” basis. That is, the policy would provide cover for all claims made during the period when the policy was in force, irrespective of when the sexual abuse occurred. This meant it would cover events occurring prior to 1969
  - (c) there would be a limit of \$1,000,000 per claim (or series of claims relating to a single offender) and an aggregate limit, for all claims from all participants, of \$5,000,000 in the first year. These sums were significantly higher than the limits in the Public Liability policy which in early years had been as little as \$40,000 per claim, and
  - (d) the policy would apply only to those insured dioceses and religious orders which agreed to become subject to the “Protocol for Dealing with Allegations of Criminal Behaviour” that had been approved by the ACBC in May 1990.
- 20 The obligation for policy holders to be bound by the Protocol became special condition 1 to the Special Issues Liability Policy.
- 21 The Pool and the Special Issues Policy were initiated with effect from 1 July 1991. Those dioceses and religious institutes which responded to the invitations to join and contributed funds to the establishment of the Pool were issued with a Special Issues Liability Policy.<sup>308</sup>
- 22 Funds in the Pool were used to pay premiums on reinsurance policies specifically negotiated with reinsurers for special issues claims. In return for these premiums, reinsurers agreed to cover these claims to the extent they exceeded \$225,000 per claim, with a limit of \$1,000,000 per claim.
- 23 For any claims made under the Special Issues Policy, the first \$25,000 for each accused was required to be contributed by the insured and the next \$225,000 came from CCI’s own funds. The balance (up to \$1,000,000) would come from reinsurers. CCI’s payments for its layer of liability (above \$25,000 and up to \$250,000 per claim) were made from its own resources rather than from the Pool.
- 24 The first Special Issues Policy was issued for 12 months with effect from 1 July 1991, and was replaced by a new policy on 1 July 1992 and again on 1 July 1993. The aggregate limit of indemnity available under the Special Issues Policy of \$5,000,000 for all insured entities in its first year of operation increased to \$15,000,000 in its second and third years.
- 25 In June 1994, the Special Issues Pool was discontinued, and the amounts remaining (approximately \$434,000 by the time it was repaid in May 1995) were returned to participants.
- 26 For the 1994-95 year, CCI replaced the Special Issues Policy with a more traditional form of cover under an ‘Ethical Standards Liability Insurance Policy’ (Ethical Standards Policy), which was available only to those who had a current Public Liability policy.
- 27 This policy was on similar terms to the Special Issues Policy, including that it provided cover on a “claims made” basis. However, in order to ensure reinsurance cover was maintained, it contained

<sup>308</sup> Letter from Brother P Noonan, ACLRI Representative Special Issues Committee and Sister A Ryan, ACLRI President addressed to the Congregational Leaders, re “Special Issues (Criminal Sexual Behaviour) Insurance”, 23 September 1991

more restrictive conditions, including only providing indemnity for claims arising from circumstances which occurred on or after 1 January 1976.

- 28 The Ethical Standards Policy had an aggregate limit for all claims of \$25,000,000, and also had a \$25,000 deductible for each claim, rather than for each accused as had been the case for the Special Issues Policy.

### The Current Insurance Position

- 29 CCI no longer issues Special Issues Policies or Ethical Standards Policies.
- 30 By 1995 CCI had determined that the terms of the Public Liability policy did and do cover child sexual abuse claims, other than:
- (a) where the insured Church authority had prior knowledge of the propensity of the accused to commit acts of sexual abuse. The 'prior knowledge' must have been held by someone in a position to influence the conduct of the accused, such as a bishop or a vicar-general. If propensity were only known by, say, a local parish priest, this is not deemed to be the knowledge of the insured Church body
  - (b) for any incidents occurring before 1 July 1969 (or the date the relevant insured first obtained the cover), and
  - (c) where the abuse does not occur whilst the accused is "in the ordinary course of business" of the insured. For example, there have been some instances where abuse by a priest has occurred within a family context, rather than within the context of the priest's duties with the Church.
- 31 The Public Liability policy provides indemnity only to the insured (ie the Church body). No cover is provided for the individual whose conduct gave rise to the claim, in either criminal or civil matters.
- 32 CCI continued to respond to claims made under the Special Issues Policies (issued in 1991-1994) and the Ethical Standards Policy (issued in 1994-1995), provided the claim was made while the policy was in force.
- 33 In summary, therefore:
- (a) the Public Liability policies cover events occurring during the year of the policy from 1969 onwards, irrespective of when the claim is made
  - (b) the Special Issues policies cover events before and after 1969, but only if claims in respect of those events were made when the policies were in force between 1991–1994
  - (c) the Ethical Standards Liability Policy covers events occurring from 1976 onwards, but only if a claim was made when that policy was in force in 1994–1995
  - (d) the only applicable policy for a claim made today is the Public Liability policy that was in force at the time the event occurred.

### 9.3 The Development and Application of *Towards Healing*

- 34 As outlined above, CCI played a role in identifying the risk that the Church would be exposed to liability for child sexual abuse, and in the deliberations leading to the establishment of appropriate insurance arrangements to assist Church organisations to make financial payments to victims.
- 35 CCI's General Manager was a member of the Special Issues Committee established in 1988, which was responsible for the development of the first Protocol for Dealing with Allegations of Criminal Behaviour.
- 36 This Committee later evolved into the NCPS, and the Protocol was in due course replaced by *Towards Healing*. The representation of CCI on the NCPS by its General Manager or Chief Executive Officer continues to the present day.
- 37 In 2005, the NCPS created the full-time position of the National Protection and Prevention Officer, whose role is to develop and implement risk management programs in the area of child sexual abuse in the Church. This is a forward-looking role, aimed at preventing future occurrences of child sexual abuse, rather than a backward-looking role designed to deal with allegations of past offences. CCI provides the funding for this position.
- 38 From 1988, CCI's objectives have been:
- (a) to ensure that Church organisations are supported where possible by insurance arrangements to enable them to make financial payments to victims of sexual abuse
  - (b) to support the pastoral intent of *Towards Healing* subject to contractual and regulatory obligations, and
  - (c) to encourage the taking of steps to reduce the prospect of future offending within the Church and thereby to minimise the emergence of future claims.

### 9.4 Claims Management

- 39 Upon receipt of a claim, including a claim involving allegations of child sexual abuse, CCI, as with any insurer:
- (a) considers whether the policy under which the claim is made responds, and
  - (b) if so, decides upon the quantum that CCI needs to reserve in respect of the claim.

#### **Determining Whether Policy Responds**

- 40 CCI's Public Liability policies are "event occurring" policies. This means that the policy responds to claims, whenever made, where the event giving rise to the claim occurred during the period when the policy was in force. The consequence of this is that these policies have a very long "tail" – a claim may be made in 2013 relating to an event that occurred in, say, 1970, and so it is necessary to refer to the terms of the applicable policy in 1970 to ascertain whether it responds and, accordingly, whether CCI will provide indemnity in respect of the claim.

- 41 Matters that are normally checked to ascertain whether the policy responds include:
- (a) whether the accused was an employee or someone with a relevant association with the insured Church body at the time the event occurred
  - (b) whether the accused was in a pastoral relationship with the victim (for example where the victim was a student or resident at a Church institution at which the accused served) at the relevant time
  - (c) whether the accused was known to the insured Church body, at the time of the event, as someone with a propensity to offend or a history of offending. CCI's Public Liability policies do not respond in such cases.
- 42 An important part of CCI's investigation into whether the policy responds to a claim is the assessment of whether the insured had any prior knowledge about the accused as at the time of the event which is the subject of the claim.
- (a) Sometimes there have been prior claims relating to the same accused. In such cases CCI already knows, from its investigations in respect of a previous claim, the date upon which the insured became aware of the conduct of the accused, and consequently whether it was before (policy will not respond) or after (policy will respond) the date of the incident which is the subject of the current claim.
  - (b) In other cases, where the accused is not someone already known to CCI, a basic review of the claim is conducted by a CCI claims officer or, if solicitors have been appointed, by the solicitors. Where the accused is still alive (including where he is imprisoned), this investigation can also include an interview with the accused (with the insured's permission).
- 43 In some cases a review of the victim's psychological report is all that is needed to consider whether the policy responds. For example, this is so in cases where CCI has previously investigated a particular accused and simply needs to satisfy itself that the harm to the victim as reported by the psychologist is consistent with the conduct of that accused. Where the victim has already undergone psychological assessment, CCI often accepts this report rather than subject the victim to a further assessment.

### Calculating Reserves

- 44 In accordance with APRA regulatory requirements, CCI is required to hold assets, known as claims reserves, that are at least equal in value to the level of insurance liabilities (payments on claims) that it is required to meet.
- 45 As soon as CCI opens a new claim file its processes require that a claim reserve is set for that file. This represents the amount that CCI estimates is likely to be payable on the claim. At the outset, especially where there is not a large amount of information about the claim, the claim reserve will be set on a "best estimate" basis, which is then kept under review and adjusted as more information becomes available.
- 46 In general, CCI takes a conservative approach to its assessments of reserve amounts, based on "pessimistic realism".



- 47 The total amount of capital reserved by CCI for future claims is the sum of two separate reserves:
- (a) first, the aggregate of claims reserves for all claims made that have not yet been settled, and
  - (b) secondly, the likely quantum of liability for claims that have been “incurred but not yet reported” (IBNR) – that is, the likely liability for claims where an insured event has occurred but a claim has not yet been made.
- 48 CCI’s external actuary estimates the level of IBNR twice each year and CCI adjusts its reserves at the conclusion of each financial year. The actuary’s findings are reported to APRA.

## 9.5 CCI’s Role in Various Kinds of Claims

### Role in Legal Proceedings

- 49 Some sexual abuse victims file legal proceedings and serve papers on the relevant Church organisation or its solicitors. Others prepare court papers and serve them unfiled. In these cases CCI instructs one of its panel firms of solicitors in respect of the claim and usually takes carriage of the matter.
- 50 In the early years after sexual abuse claims began to become more common, and until the 1990s, CCI treated these claims in much the same way as it treated other insurance claims. For example, it usually required an insured to make no admissions, and it raised limitation defences and other technical defences when they were available.
- 51 In more recent times that has changed. If a particular insured wishes in a particular case to raise such a defence, CCI will not prevent it from doing so. However CCI’s usual approach is to move toward a rapid resolution of sexual abuse litigation, including by way of an acknowledgement and apology to the victim, in most cases before the matter proceeds beyond the pleading stage.
- 52 CCI’s very strong preference is for sexual abuse claims to be moved out of litigation and into an alternate dispute resolution process such as mediation to achieve an early resolution. As well as reducing cost and delay, it is CCI’s view that ADR processes are far better adapted than litigation to the needs of victims.
- 53 Typically, within weeks after litigation is initiated or foreshadowed, CCI proposes to the solicitors for the plaintiff that a mediation be held. Normally, a CCI claims officer attends the mediation. This is for two reasons:
- (a) to communicate to the plaintiff that CCI wants the mediation to succeed and for a fair settlement to be reached, and
  - (b) to negotiate with the solicitors for the plaintiff as to quantum.
- 54 How a mediation is conducted is largely at the prerogative of the mediator. To the extent that the mediation involves pastoral or non-financial elements, CCI representatives are not involved and are normally not even in the same room. In negotiations as to quantum, CCI prefers (subject to the wishes of the mediator, the victim and the Church Authority) to deal with legal representatives

for the victim, rather than with the victim personally. If there are no legal representatives CCI prefers to negotiate through the mediator rather than directly with the victim.

- 55 CCI does not allow the availability of technical defences such as vicarious liability to stand in the way of a negotiated settlement. Settlement offers are made despite the potential availability of these defences, although CCI's view as to an appropriate quantum may be affected by the availability of a strong defence, as well as, amongst other things, the nature and severity of the abuse and the impact on the victim. Every case has its own particular features. The insured Church Authority may be guided by CCI's views but the final decision as to quantum lies with the insured Church Authority. In some cases the Church Authority may wish to settle for a sum higher than the amount which CCI is prepared to pay. In such cases the insured contributes the balance.

#### **Role in a *Melbourne Response* Claim**

- 56 The *Melbourne Response* protocol applies to all claims made against the Archdiocese of Melbourne. It is an adjudicative process managed by an independent Commissioner who is an experienced Queen's Counsel. He makes an independent assessment of whether an alleged instance of sexual abuse is likely to have occurred, and if it is, then the matter is referred to a separate independent compensation panel for determination of quantum. The independent Commissioner has no regard to the availability of defences such as limitation defences. He simply determines whether it is likely that sexual abuse occurred.
- 57 CCI routinely accepts the result of the *Melbourne Response* process without conducting any independent review. By arrangement with the Archdiocese of Melbourne, CCI is notified of claims only after they have been resolved through the *Melbourne Response*. Upon notification, CCI opens a claim file, makes an assessment as to whether the policy responds to the claim, and if so, draws a cheque in the amount recommended by the compensation panel.

#### **Role in a *Towards Healing* Claim**

- 58 CCI supports and seeks to facilitate the pastoral nature of *Towards Healing*.
- 59 Claims are normally notified to CCI by the insured Church Authority.
- 60 CCI then gathers some basic information (such as psychological reports, details of the appointments held by the accused, any court or police documents, school records and employment records) to ascertain whether the policy responds. CCI may also ask the Church Authority for a copy of the *Towards Healing* assessment.
- 61 CCI participates in the facilitation process to a varying extent. There are some Church organisations which prefer to run the process with limited involvement or no involvement from CCI. Others prefer CCI to be in attendance and to provide guidance or advice through the process. In such cases it is common for a CCI claims officer to be present during parts of the facilitation process. If the victim is legally represented at the facilitation, CCI may instruct its solicitors to attend as well. In these cases, the facilitation tends to run in much the same way as a civil mediation.

- 62 CCI supports the inclusion of one or more pastoral sessions, usually early in the process, but does not involve itself in these sessions; its role as insurer is to participate in negotiating the financial aspects.
- 63 CCI encourages the giving of apologies as part of the *Towards Healing* and other processes, and does not treat the apology as prejudicing the insured Church Authority's right to be indemnified on the ground that it is an admission of liability.
- 64 Where the victim is legally represented, discussions about the quantum of any amount to be paid to the victim, and any legal issues which might have bearing on the appropriate quantum, will occur between CCI (and its solicitors) and the victim's lawyers, preferably not in the presence of the victim. If the victim is not represented, negotiations concerning quantum are made through the facilitator rather than directly with the victim.
- 65 CCI is not always involved in *Towards Healing* claims. Not all Church Authorities have a CCI policy, and some claims relate to events that occurred before a policy was in force.
- 66 CCI strongly supports the *Towards Healing* process and has confidence in its integrity and fairness. It is also mindful of not encroaching on the pastoral aspect of the process. CCI recognises the sensitivities which can arise and the need to avoid causing further harm.
- 67 In light of CCI's involvement in the development of the protocols since their inception and its experience of the *Towards Healing* process since 1997, CCI considers that a *Towards Healing* assessment and facilitation is likely to result in an outcome that is both fair to victims and consistent with CCI's legal obligations under its policies of insurance as well as its prudential obligations and its obligations to reinsurers.
- 68 Therefore, CCI's approach is normally to accept the outcome of the *Towards Healing* process and contribute towards payments to victims in accordance with those outcomes, unless there are clearly apparent deficiencies in the assessment which require attention. Typically there is a limited amount of objective evidence available about an incident of abuse. Normally, the standard of proof used at the assessment stage of the *Towards Healing* process suffices for CCI to accept liability.
- 69 However, there have been a few instances where the assessment was insufficient for CCI to discharge its legal and prudential obligations and has had to be reviewed, for example by obtaining a second, independent psychological report, although due to the impact this can have on victims this is rare.
- 70 Mainly in order to satisfy its reinsurers, CCI requires a deed of release to be signed at the end of the *Towards Healing* (or other mediation) process. Whilst historically it included clauses requiring the settlement to be kept confidential, this is no longer a requirement.

## 10 Dealing With the Accused

### Key points:

- In addition to any criminal or civil law outcomes, *Towards Healing* may lead to consequences for the accused as determined by the relevant Church Authority, having regard to canon law.
- The guiding principle is that no-one should be permitted to exercise a public ministry if that would present an unacceptable risk of abuse to children and young people.
- If an allegation is substantiated against a cleric or religious, outcomes may include (for a priest) removal of priestly faculties or dismissal from the clerical state, and (for a religious) dismissal from the congregation.
- If the accused is an employee of a Church body, his or her position will be determined in accordance with employment law.

### 10.1 Introduction

- 1 *Towards Healing* is primarily a victim-focused process. The nature of the process, from the main vantage point namely that of the victim, is outlined in section 4 of this Submission.
- 2 However, *Towards Healing* does also concern itself to some extent with how the accused is to be dealt with, both during and after the process.
- 3 Many, but not all, complaints of child sexual abuse made under *Towards Healing* require the Church Authority to consider the steps to be taken with respect to the person accused of the conduct. This issue will not always arise because, for example, the accused person may be deceased, no longer be in pastoral ministry or in prison.
- 4 Where the issue does arise, decisions need to be made in relation to the accused, both during the interim period while the complaint is investigated, and on a final basis once it is known whether the complaint has or has not been admitted or established.
- 5 If a complaint relates to alleged criminal conduct, investigation of the matter under *Towards Healing* will not proceed pending conclusion of any criminal justice process.<sup>309</sup> In such an instance and where the Church Authority is aware of the police investigation, the accused is typically removed from public ministry by the Church Authority pending the outcome of the investigation and any proceedings.
- 6 Where the complaint is dealt with under *Towards Healing*, the way the process works in relation to the accused is outlined in this section.
- 7 *Towards Healing* does not set out or purport to prescribe what punishment or other consequences (in terms of the position of the accused within the Church) should or must apply to an accused person in any given case. Outcomes for the accused, at both the interim and final

<sup>309</sup> See section 8

stages, are the responsibility of the relevant Church Authority, which has regard to (among other things) the requirements of canon law in such matters.

## Canon Law

- 8 Canon law is the internal body of law governing of the structure and discipline of the Church. The present Code of Canon Law was promulgated by Pope John Paul II in 1983 (the 1983 Code).<sup>310</sup> There is also a separate Code of Canons for the Eastern Catholic Churches (the Eastern Code), promulgated by Pope John Paul II in 1990. In this section references are given only to canons in the 1983 Code.
- 9 Sexual abuse of children is a crime under canon law<sup>311</sup> just as it is under the general law of Australia.
- 10 There is nothing in the 1983 Code that is in conflict with any applicable civil law obligations relating to the reporting of allegations of child sexual abuse.
- 11 Thus for example in May 2011 the Congregation for the Doctrine of the Faith (CDF)<sup>312</sup> issued a Circular Letter which included the following statement:

*“Sexual abuse of minors is not just a canonical delict [offence] but also a crime prosecuted by civil law. Although relations with civil authority will differ in various countries, nevertheless it is important to cooperate with such authority within their responsibilities. Specifically, without prejudice to the sacramental internal forum [ie the confessional], the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed. This collaboration, moreover, not only concerns cases of abuse committed by clerics, but also those cases which involve religious or lay persons who function in ecclesiastical structures.”*

- 12 Similarly on 6 February 2012 the then Prefect of the CDF, reiterating the statement of the Circular Letter, said:

*“... the cooperation of the Church with civil authorities in these cases recognizes the fundamental truth that sexual abuse of minors is not only a crime in canon law, but it is also a crime that violates criminal laws in most jurisdictions. .... The Church has an obligation to cooperate with the requirements of civil law regarding the reporting of such crimes to the appropriate authorities. Such cooperation naturally extends also to accusations of sexual abuse by religious and laity who work or volunteer in Church institutions and programs. In this regard, Church officials must avoid any compromise of the sacramental internal forum [ie the confessional], which must remain inviolable.”*

- 13 On 30 April 2001 Pope John Paul II issued an Apostolic Letter, *Sacramentorum sanctitatis tutela* (SST). That letter promulgated certain “substantive norms” and “procedural norms”, having

<sup>310</sup> The official text of the 1983 Code is in Latin. The English translation approved for use in Australia is *The Code of Canon Law New Revised English Translation*, prepared by the Canon Law Society of Great Britain and Ireland in association with the Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society (London: HarperCollins, 1997). Canons quoted in this section are taken from this translation.

<sup>311</sup> Canons 695, 1395

<sup>312</sup> The departments in the Vatican bureaucracy are known as congregations. Each is headed by an official, normally a cardinal, whose title is prefect. The function of the CDF is to promote and safeguard the Church's teachings on faith and morals.

the force of canon law. Those norms were revised, and promulgated as so revised, by Pope Benedict XVI in 2010.

## 10.2 The Initial Interview With the Accused<sup>313</sup>

- 14 After receiving notice of a complaint, the Church Authority is to consult with the Director and arrange for a meeting between the accused and the Church Authority, unless the accused is deceased, cannot be located or is disabled.<sup>314</sup> In arranging the meeting, the Church Authority should invite the accused to bring a support person (who may be a legal representative) to the meeting.<sup>315</sup> Spiritual counsel and support may also be necessary and should be offered.<sup>316</sup>
- 15 During the meeting, the substance of the allegations must be put to the accused.<sup>317</sup> The accused is informed of the identity of the victim (but not his or her address) and the approximate time period and location in which the incidents concerned are alleged to have occurred. The accused should be instructed to make no contact with the victim.
- 16 The accused is assured that the Church Authority accepts the presumption of innocence until proven otherwise<sup>318</sup> and that the Church Authority is prepared to provide pastoral care both to the victim and to the accused.
- 17 If the accused denies the allegations, he or she is assured that the complaint will be investigated fully and carefully,<sup>319</sup> and that he or she is entitled to obtain independent legal advice.<sup>320</sup>

## 10.3 Requirement for an Assessment

- 18 Where an accused disputes all or some of the allegations, the Church Authority usually requires that an assessment be conducted. This is an important process in circumstances where the allegations, if substantiated, may require adverse action to be taken against the accused, often in the face of that person's objection. Procedural fairness needs to be afforded to the accused, so that the accused has the opportunity to know of the allegations made against him or her, and to respond.
- 19 Where the accused is deceased or incapable of responding to the complaints, or an assessment is otherwise unlikely to be fruitful, the Church Authority usually does not require an assessment unless there is some particular concern as to the truth of the complaint. If the accused has been convicted of offences, relating to the subject matter of the complaint, there will be no need for further investigation to determine the truth of the allegations. The issue then becomes the implications of that conviction for future ministry.

<sup>313</sup> See section 4, paragraphs 56 to 62

<sup>314</sup> If the priest has left the service of the Church, he should still be given the opportunity to respond to the allegations if that possibility exists. The bishop or his delegate should make reasonable efforts to contact him to arrange a meeting; Clause 38.5, *Towards Healing*

<sup>315</sup> Clause 38.7, *Towards Healing*

<sup>316</sup> Clause 38.7, *Towards Healing*

<sup>317</sup> Clause 38.5, *Towards Healing*

<sup>318</sup> Clause 26, *Towards Healing*

<sup>319</sup> See section 4 on the assessment steps

<sup>320</sup> Clause 38.6, *Towards Healing*

- 20 The Church Authority may also dispense with the need for an assessment where a new victim comes forward making allegations in respect of an accused against whom there is a history of substantiated complaints of abuse. Instead of a full assessment process under *Towards Healing*, the Church Authority may take more limited steps to enable it to be satisfied of the probability that the victim was impacted by abuse perpetrated by the accused. For example, the Church Authority may seek some corroborative evidence that the victim attended a particular school or orphanage at the relevant time. The Church Authority might also seek a medical report as to the health effects of the alleged abuse on the victim.

#### 10.4 Interim Steps With Respect to the Accused

- 21 At the time of forwarding the complaint to the Church Authority, the Director may make a recommendation concerning any immediate action that should be taken in relation to the protection of children, young people and vulnerable adults.<sup>321</sup> In some cases, the need to take such action will not be apparent at the outset of the complaint (for example, where the initial complaint does not involve an allegation of sexual abuse, but such allegations emerge during the investigation or assessment). To account for this, the Director may at any time during the *Towards Healing* process recommend to the Church Authority that the accused be asked to stand aside from his or her responsibilities, pending investigation of the complaint.<sup>322</sup> In making a recommendation, the Director is required to take into account the gravity of the allegations and the risk of harm to others if the allegations are true.
- 22 Where the complaint involves an allegation of child sexual abuse, the Director usually recommends, at the time of forwarding the complaint to the Church Authority, that the person be stood aside from any current duties including active ministry. The Church Authority would ordinarily accept such a recommendation, and may have already come to that decision itself.
- 23 Similarly, when the accused has admitted the abuse, the Church Authority would take immediate steps to stand the accused aside.
- 24 Under *Towards Healing* the Church Authority should seek the advice of the Consultative Panel before such a decision is made, unless urgent action is required to address a significant risk of abuse.<sup>323</sup> There might or alternatively also be a more general discussion between the Director and the Church Authority as to the steps the Church Authority ought to take with the accused. A congregational leader may also consult his or her leadership group. A Church Authority would ordinarily attempt to persuade the accused to agree to be stood aside, before considering any further steps.
- 25 If the accused will not consent to stand down and the Church Authority is of the view that the accused should be stood aside while an investigation occurs, the Church Authority has authority under canon law to require the accused to stand aside on an interim basis.<sup>324</sup>
- 26 If the accused stands aside or is stood aside, he or she is not to engage in public ministry. If possible, during the period he or she is stood down, the accused should be given some suitable

<sup>321</sup> Clause 38.4, *Towards Healing*

<sup>322</sup> Clause 38.10, *Towards Healing*. See transcript of evidence of Sister A Ryan before the Victorian Parliamentary Inquiry on 3 May 2013, pp 19–20

<sup>323</sup> Clause 38.10, *Towards Healing*

<sup>324</sup> Canon 1722; article 19 of the procedural norms

activity, which does not involve children.<sup>325</sup> While stood down, the accused is to be recognised as on leave<sup>326</sup> and to receive normal remuneration and related entitlements.<sup>327</sup> In order to protect the reputation of the accused in the event that the allegation is not sustained, the accused is advised to maintain a prudent silence by communicating with as few people as possible during the investigation.<sup>328</sup>

- 27 Any interim measures adopted by the Church Authority in respect of the accused should remain in place until the outcome of the assessment or other investigatory process is known to the Church Authority. At that point, the Church Authority may be required to take further more permanent steps depending upon the outcome of the process. Such steps are taken after having regard to the requirements and procedures of canon law.

### 10.5 Final Outcomes for the Accused

- 28 If the accused is an employee of a Church body, and not a priest or religious, the future of the accused must be determined in accordance with employment law.<sup>329</sup>
- 29 Where the accused is a priest or religious, the following considerations apply.

#### If the Accused Did Not Commit the Alleged Abuse

- 30 If the police investigation, civil process or Church procedure exonerates the accused, the Church Authority is to take whatever steps are necessary to restore the good reputation of the accused, in consultation with him or her.<sup>330</sup>

#### If the Abuse is Admitted or Established

- 31 *Towards Healing* does not prescribe the specific response a Church Authority must or should make in the case of an accused who has admitted to, or been found to have engaged in, child sexual abuse.
- 32 The Church Authority must consult with the Director and the Consultative Panel with respect to the outcomes for the accused, but should otherwise take the steps which the Church Authority leader considers necessary and appropriate,<sup>331</sup> taking account of the degree of risk of further abuse and the seriousness of the violation of the integrity of the pastoral relationship. The Church Authority may also commission other professional reports in order to determine what action should be taken.<sup>332</sup>
- 33 The Church Authority is to be guided by the principle that no-one shall be permitted to exercise a public ministry if doing so presents an “unacceptable risk” of abuse to children and young people.<sup>333</sup>

<sup>325</sup> Clause 38.10.2, *Towards Healing*

<sup>326</sup> Clauses 26 and 38.10.2, *Towards Healing*

<sup>327</sup> Clause 38.10.2, *Towards Healing*

<sup>328</sup> This advice is included in the brochure, *Towards Healing, Summary of Process for those Accused of Abuse* (NCPS, February 2011)

<sup>329</sup> Clause 42.4, *Towards Healing*

<sup>330</sup> Clause 42.2, *Towards Healing*

<sup>331</sup> Clause 42.6, *Towards Healing*

<sup>332</sup> Clause 42.3, *Towards Healing*

<sup>333</sup> Clause 42.6, *Towards Healing*



- 34 The decision of the Church Authority is to be made in a way that is not inconsistent with canon law.<sup>334</sup>
- 35 An act of child sexual abuse is a serious and profound breach of trust. *Towards Healing* provides that those found responsible for sexually abusing a child or young person will not be given back the power they abused.<sup>335</sup>
- 36 The Church Authority or its delegate is required to meet with an accused who has admitted to or been found guilty of abuse, to communicate the findings of an assessment and to discuss openly and honestly the offender's future options.<sup>336</sup> A part of this discussion will include the Church Authority emphasising the seriousness of the conduct and situation. A support person and/or legal adviser may accompany the accused at the meeting.<sup>337</sup>
- 37 The Church Authority should not hold out to an accused any hope of return to ministry when it is clear that this will not be possible.<sup>338</sup> In general, if a complaint of child sexual abuse is substantiated, the serious nature of that abuse means that there will be no possibility that the accused will be allowed to return to pastoral ministry or any other work involving children.

#### *Priests*

- 38 Under canon law, a "cleric" is a bishop, priest or deacon. The norms promulgated under the Apostolic Letter SST, referred to at paragraph 13 above, reserve to the CDF (in the case of clerics only, not non-clerical religious ie brothers and sisters) the offence of child sexual abuse, so far as action to be taken with respect to the accused (but not the victim) is concerned.<sup>339</sup>
- 39 The CDF may proceed either by a judicial process or by a non-judicial (administrative) process. In either case it may delegate to the Church Authority the task of carrying out the necessary steps.<sup>340</sup>
- 40 At the conclusion of such process as may be undertaken, possible outcomes for an accused cleric include:

(a) *Removal of priestly faculties:*

A "faculty" is the ecclesiastical power or authorisation necessary for performing lawfully an act of ministry or administration in the name of the Church. Faculties include preaching, hearing confessions and celebrating marriages. No priest can exercise public ministry without the authorisation or "faculties" of the local bishop.

A bishop may revoke any or all of the faculties that he himself or one of his predecessors has granted. (The bishop cannot revoke faculties granted by law at ordination with the exception of the faculty to preach.<sup>341</sup>)

<sup>334</sup> Clause 42.5, *Towards Healing*

<sup>335</sup> Clause 27, *Towards Healing*

<sup>336</sup> Clause 42.5, *Towards Healing*

<sup>337</sup> Clause 42.5, *Towards Healing*

<sup>338</sup> Clause 42.5, *Towards Healing*

<sup>339</sup> SST, articles 6, 8, 16ff

<sup>340</sup> Canons 1717ff; SST procedural norms articles 16, 21

<sup>341</sup> Canon 764

A priest who has had some or all of his faculties revoked nevertheless remains a member of the “clerical state”.

(b) *Dispensation from the obligations of the clerical state, or “laicisation”:*

In some cases, at the request of the cleric himself, a dispensation from the obligations of the clerical state (undertaken with ordination) can be given. This is also referred to as “laicisation”, as in law the cleric is now a lay person.

(c) *Dismissal from the clerical state:*

The sexual abuse of a minor by a priest is an offence sufficiently serious to warrant dismissal from the clerical state.<sup>342</sup> Such a priest may not use the title of a priest, wear the attire of a priest or perform any ministry reserved to a priest.

### Religious

41 Possible final outcomes for an accused religious include:

(a) *Withdrawal or removal from ministry:*

A religious leader has authority, usually derived from the constitution of the religious institute in question, to withdraw a religious from ministry.

(b) *Dispensation from vows:*

A member of a religious institute may apply for a dispensation from vows. The congregational leader will forward it to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, which can grant the dispensation.<sup>343</sup> This is a voluntary procedure, similar to laicisation in the case of a cleric.

(c) *Dismissal from the congregation:*

A religious leader may determine that a religious should be dismissed from the congregation. In such a case, all documentation must be forwarded to the congregational leader, who will consider the matter with his or her council and, if the case is judged to be true, issue a decree of dismissal. The decree of dismissal has no effect unless it is confirmed by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life.<sup>344</sup>

### Generally

42 In some cases, subject to an assessment of the risks, an accused might be permitted to engage in a limited position of ministry, such as a chaplaincy to adults, but typically in administrative or other internal work for the Church Authority, where the accused will have no involvement with children or young people.

<sup>342</sup> Canon 1395; SST, article 6

<sup>343</sup> Canons 691–693

<sup>344</sup> Canons 695–703, 1395

- 43 Limitations can also be placed on the accused's living arrangements.<sup>345</sup>
- 44 So far as it is within its power to do so, the Church Authority must also require the accused to address the question of reparation to the victim and to the Church community.<sup>346</sup>
- 45 Under *Towards Healing*, the accused is entitled to seek a review of the process, and/or the findings of the assessment if they have cooperated with the assessment process.<sup>347</sup>

#### **If the Allegations are Unsubstantiated, But Concerns Remain**

- 46 Sometimes a Church Authority is faced with a situation where a complaint is not substantiated, or where criminal processes do not lead to a conviction (including where an appeal overturns a conviction), but the Church Authority nevertheless holds concerns as to the suitability of the accused to remain in ministry. Such problems are difficult to resolve. The accused is entitled to a presumption of innocence, and may assert that it is unfair to take steps against him in circumstances where a complaint has not been upheld. At the same time, the Church Authority has an overriding obligation to protect children from harm, and must not allow an accused to continue in public ministry if this would present an unacceptable risk of abuse to children and young people.<sup>348</sup>
- 47 While the result of a criminal process may be conclusive on the issues of guilt and punishment so far as the civil authorities are concerned, the Church Authority has to answer a different question where, for example, a person has been charged but acquitted. The issue is whether in all the circumstances it is nevertheless responsible to allow the person to continue ministering in the name of the Church. Each case must be assessed on its facts. The guiding principle remains that no-one should be permitted to exercise a public ministry if doing so presents an unacceptable risk of abuse to children and young people.<sup>349</sup>
- 48 The “unacceptable risk” test requires the Church Authority to go beyond the fact that an allegation has been made, and beyond the outcome of court proceedings or a *Towards Healing* assessment. The primary consideration is the degree of likelihood that the accused has abused a child or may do so, given the behaviour that has been demonstrated. The “unacceptable risk” test looks to the future, in light of what is known of the past.

### 10.6 Conclusion

- 49 There are significant and difficult decisions for a Church Authority to make in relation to an accused against whom an allegation of child sexual abuse has been made, both at the interim stage and where an accused has admitted or has been found to have committed child sexual abuse. The circumstances of each case will differ, but the guiding principle for the Church Authority in making decisions concerning the accused turns on the protection of children and young people from an unacceptable risk of abuse.

<sup>345</sup> Canon 1336

<sup>346</sup> Clause 42.7, *Towards Healing*

<sup>347</sup> Clause 44, *Towards Healing* (see section 4.9 re reviews)

<sup>348</sup> Clause 42.6, *Towards Healing*

<sup>349</sup> *Towards Healing, Guidelines for Church Authorities* (February 2011), p 17

## 11 Overall Assessment and Response to Criticisms

### Key points:

- *Towards Healing* provides many victims with support and assistance in seeking justice, healing and closure.
- *Towards Healing* has also been criticised, for example as to its transparency and accountability, its level of independence, and the consistency and quality of its application.
- The Church is open to improvements and changes which could be made to *Towards Healing*.
- In the meantime, the Church is considering the following options:
  - strengthening governance, standards and consistency of *Towards Healing*
  - the possibility of separating the pastoral aspects of *Towards Healing* and its reparation aspects
  - appointing independent compensation commissioners
  - introducing greater public reporting
  - strengthening the national committee and introducing an independent national board to set and administer standards, monitor adherence and report on compliance.

### 11.1 *Towards Healing* Today

- 1 The Church readily accepts that *Towards Healing* is not a complete, or perfect, solution for what is a complex and very difficult issue, and that it will inevitably have shortcomings from the perspective of some victims.
- 2 As this Submission has outlined, *Towards Healing* is a process offered by the Church to victims of abuse perpetrated by Church personnel. It is principally pastoral in its approach and objectives. It seeks to focus on the needs of individual victims, including the need for acknowledgement of, and apology for, each victim's suffering.
- 3 Where money is paid, it does not equate to, and is not calculated by reference to, awards of damages which might hypothetically be awarded in adversarial civil proceedings, the pursuit of which has disadvantages for many victims.
- 4 The Church welcomes the opportunity provided by this Royal Commission to consider, and respond to, criticisms and suggestions for change.

## 11.2 Features and Criticisms

- 5 The main features of the *Towards Healing* process, as discussed earlier in this Submission, may be summarised briefly as follows:
- (a) pastoral
  - (b) victim-focused
  - (c) restorative
  - (d) optional
  - (e) confidential – the victim need not have his or her story in the public domain
  - (f) non-adversarial
  - (g) relatively quick and inexpensive
  - (h) tailored to the needs of each victim as an individual
  - (i) facilitates re-establishment of relationship with the Church if that is desired
  - (j) offers an apology and acknowledgement by the Church Authority
  - (k) can provide financial payment as reparation, not compensation
  - (l) assists in prevention of future abuse
  - (m) seeks to assist in the psychological and spiritual healing of people affected by incidents of abuse.
- 6 All of those features contribute to making the process one which offers support for many victims and which can help victims begin the journey towards healing.
- 7 *Towards Healing* can and does provide many victims with the assistance they need in the very challenging process of seeking justice and healing, and potentially a degree of closure. It offers the possibility of outcomes which are not available or as readily achieved through other methods of dealing with the harm that has been suffered as a result of child sexual abuse.
- 8 However, *Towards Healing* has also attracted criticism of various kinds. Some of the more recurrent criticisms, and some proposals for change, are addressed in the following paragraphs.

### Inconsistent Implementation?

- 9 Some have criticised *Towards Healing* on the basis that while the process might seem reasonable on paper, its implementation is unsatisfactory, or inconsistent across the Church.
- 10 The Church recognises and accepts that the implementation of the process in one case will inevitably differ from its implementation in another. That flows mainly from two things:
- (a) the fact that every individual victim's experience and circumstances are different from those of any other victim

- (b) the fact that different dioceses, orders and congregations, and different State PSOs and Directors, approach the process in different ways.
- 11 For example:
- (a) Some Church Authorities may more readily accept the veracity of a complaint than others. This could mean, for example, that one victim might move more quickly to a facilitation process than another, whose complaint may be subject to an assessment process.
- (b) The types of pastoral responses made available can vary from victim to victim, diocese to diocese, and order to order.
- (c) The levels of financial redress made available to victims may also vary among the many dioceses and orders.
- 12 *Towards Healing* seeks to respond to the differing circumstances and needs of individual victims. It does not attempt to produce like outcomes of the process for different victims. Even where two victims might have suffered similar forms of abuse, the effect on each may be materially different depending on their individual responses, circumstances and needs. Thus Rooney and Ross commented that “*many victims of what could be described objectively as at the minor end of the scale of abuse suffer profound emotional damage while others with horrendous stories of sexual abuse have developed remarkable survival skills*”.<sup>350</sup>
- 13 Each Church Authority acts autonomously in relation to outcomes under *Towards Healing*, as outlined in section 2. The flexibility of the process and its implementation by the Church Authority most closely connected to the abuse enables it to respond in an appropriately tailored way to a wide range of different needs and circumstances. In many ways this is a strength. But it is acknowledged that the consequential differences and variations could also be seen as inconsistency, and thus a weakness.
- 14 The fact that different levels of financial reparation may be paid to two victims who have suffered similar kinds of abuse may be criticised as arbitrary or unfair. In addition, the fact that there is no objective scale or set of guidelines to guide the negotiation of these amounts may be criticised as inappropriate or unsatisfactory.
- 15 The Church acknowledges that a victim-focused approach can and will lead to different outcomes under *Towards Healing*, both those of a pastoral kind and those of a financial kind. Achieving the right balance between flexibility and consistency represents a significant challenge and the Church welcomes the opportunity for discussion and debate on this issue.

### Is There Sufficient Independence and Transparency?

- 16 A related criticism of *Towards Healing* is that the ‘in-house’ nature of the process is such that it is not sufficiently independent from the Church, nor sufficiently transparent or subject to scrutiny.
- 17 There are, for example, no public reports of the numbers of people coming to *Towards Healing*, nor any comprehensive public data on the outcomes of the process, or the amounts of financial assistance or reparation paid to victims. In part this reflects the private nature of the process, with

<sup>350</sup> G Rooney and M Ross, ‘Mediating between victims of sexual abuse and religious institutions’ (2007) 18 ADRJ 10 at 17

its emphasis on confidentiality for victims, as well as the absence of any reporting requirements for this kind of program.<sup>351</sup>

- 18 Moreover, to the extent that information exists about *Towards Healing* outcomes, it is incomplete, and not compiled centrally. In the initial stages of *Towards Healing* there was no central electronic system for recording cases. State offices kept their own separate case files. Work is proceeding to compile and incorporate basic case information into a central database accessible by the national office. However, most State Directors have not historically compiled or maintained case data in a database. In any event, in many cases the outcome of a case, including the amount paid in reparation, is known only to the victim and the Church Authority involved, but not to the State Director or PSO.
- 19 This absence of information is not only an issue for those who seek greater public transparency for the process, including victims. It also suggests a weakness in the process itself, in that the various Church Authorities in Australia do not have available to them any formal mechanism for information sharing as to the comparative nature and levels of redress provided by other Church Authorities. Where the outcomes are relatively similar this may be more a product of commonality of advisers – lawyers and insurers – than formal information shared among Church Authorities.
- 20 The Church is conscious of the need for improvement in this area. The NCPS has commenced a process of updating and improving the quality of the information it holds. That should provide an increased ability to identify variations in outcomes (and the reasons for them) among the many separate Church Authorities. It may also make it possible for aggregated and de-identified reports of this information to be released publicly.
- 21 An alternative perspective is one which sees *Towards Healing* as intended to be a private and confidential process, reflecting a primarily pastoral response which involves a direct engagement between victims and the Church. Such a perspective would suggest that the process should remain private, and is not properly a subject for public scrutiny.
- 22 Similar considerations arise on the issue of independence. On one view, the process might be criticised as lacking independence from the Church. That is, because *Towards Healing* is a process run by the Church, with the direct involvement of Church leaders who decide the outcome offered to the victim, the victim does not receive a fair hearing or outcome. Having an “arm’s length” process, it is said, would ensure that the outcome for the victim was motivated by fairness to that person, and not by factors such as the views of the Church Authority.
- 23 The alternative view is that *Towards Healing* was never intended to be an independent process, where an arbitrator makes a decision binding on two parties, but was rather intended to be a process bringing two parties together, to try to agree on a mutual outcome. Taking the element of decision-making in relation to the level of any reparation away from the Church Authorities would fundamentally change the character of the process, from one of pastoral engagement (as a primary objective) with reparation (as something separate), to a quasi-legal determination of compensation. In this context it should be remembered that counselling and pastoral support may extend well beyond any financial payment as reparation.

<sup>351</sup> For information regarding *Towards Healing* cases in Victoria, see *Facing the Truth*, section 9.4.4 and Appendices 3 and 4

- 24 Moreover, in its current form, *Towards Healing* does contain various procedures to help ensure an element of independence in the process. For example, assessors must be independent of the Church Authority, the victim and the accused.<sup>352</sup> (In practice, assessors are often private investigators, lawyers or former police officers.) The PSRGs also include persons independent from the Church, and the National Review Panel provides a level of independent external scrutiny of the process.
- 25 On this question, the Church believes that separation of the pastoral aspects of *Towards Healing* from the reparation aspects is a possible change which needs to be considered. This might involve the introduction of independent commissioners to decide upon the appropriate monetary payment in each case, while the essential pastoral features of the process would remain within the Church.
- 26 The Church welcomes discussion of whether changes should be made to *Towards Healing* to address the issues of transparency and independence, what changes might be introduced, and how that might affect the integrity and purpose of the process.

#### Inadequate Enforcement?

- 27 Another criticism that has been made, also related to the issue of inconsistency of implementation, is that *Towards Healing* does not include any mechanism for supervision and enforcement of the process.
- 28 The decentralised implementation of the national model, with no over-arching supervisory body responsible for the overall operation of the process, does mean there is no entity responsible for identifying or reporting on non-compliance, or enforcing the procedures. If there are Church Authorities which do not apply the process at all, or which do so in a partial or idiosyncratic manner, there is no requirement or formal means for the NCPS to be informed of the issue, and in any event, the NCPS holds no formal authority which would enable it to take steps to remedy it.
- 29 The Church is open to suggestions for ways in which the process could be more strongly and uniformly enforced without detracting from its flexibility and adaptability to a wide variety of cases and settings.

#### Personnel

- 30 Sometimes the criticism is made that individuals involved in dealing with a particular case have been poorly chosen, or are insufficiently skilled or trained.
- 31 It is no doubt true that some contact persons, some assessors, some facilitators, and so on, are better than others. And the Church certainly recognises that the qualities and attributes of the people implementing the process in each case – their compassion, their empathy, their communication skills, and their ability to connect meaningfully with often highly distressed individuals – are vital to the success and effectiveness of the process for each individual victim.<sup>353</sup>
- 32 The Church is committed to ensuring that the various personnel engaged in *Towards Healing* on its behalf across the country have the appropriate training and skills to equip them for their very important roles. Reviews of the process to date have not identified any deficiencies of skill, but

<sup>352</sup> Clause 40.1.1, *Towards Healing*

<sup>353</sup> See transcript of evidence of P Murnane before the Victorian Parliamentary Inquiry on 3 May 2013, p 20



the Church would ensure that any need for further training, or a review of the necessary qualifications required for the roles, would be addressed should there be some such recommendation from the Royal Commission.

### A Mere Device to Avoid Criminal Prosecutions?

- 33 Allegations have been made that the Church does not report complaints of criminal conduct to the police.
- 34 Such allegations are far from the truth.
- 35 Sometimes, for a variety of reasons, people against whom a crime has been committed do not want to, and choose not to, report the matter to the police. As a result, criminal behaviour is not investigated or punished. Victims of crime have the right to adopt that course if they wish.
- 36 Notwithstanding the gravity of the crime of sexual abuse of a child by a priest or religious or other Church personnel, victims of such crimes who are now adults also have that right.
- 37 On the other hand, it may be argued that children with whom the offender may later come into contact have the right to be protected from future offending, and that for this reason offenders should be prosecuted in all circumstances.
- 38 Clause 37.1 of *Towards Healing* explicitly states the Church's strong preference that any complaint concerning an alleged crime be referred to the police so that it can be dealt with appropriately through the justice system.<sup>354</sup>
- 39 However, for the reasons discussed in section 8, many victims are adamant that they do not want to go to the police and do not want to engage the criminal process.
- 40 *Towards Healing* aims to strike an appropriate balance between the rights of an adult victim to privacy and confidentiality when seeking assistance from the Church, and the public interest in ensuring that the police are put in a position to investigate and prosecute crimes should they decide that such a course is appropriate. *Towards Healing* encourages victims to report alleged crimes to police and, where victims do not do so, recommends that Directors make reports without identifying the victim. The matter is discussed in this Submission at section 4, paragraphs 25 to 31, and in section 8.5.

### A Mere Device to Avoid Civil Litigation?

- 41 Similarly, it has been argued by some that *Towards Healing* is a device by which the Church encourages or persuades victims to adopt an internal Church process, so that the Church will not be exposed to civil litigation where the amount of damages is likely to be much higher.
- 42 As discussed in section 7, such claims fail to recognise the benefits that *Towards Healing* offers to victims compared with traditional contested litigation, as well as assisting those for whom civil litigation is not an option.
- 43 Most victims face serious obstacles in relation to bringing civil proceedings. Litigation is a public, adversarial and often traumatic process for victims. There are evidentiary difficulties arising from

<sup>354</sup> Clause 37.1, *Towards Healing*

the fact that claims are normally made many years after the abuse, and there are difficulties with respect to the assessment of damages (especially in connection with causation). Litigation is, for most victims, particularly ill-suited to the resolution of claims of sexual abuse, and this was one reason why a more victim-focused, non-adversarial, restorative approach was adopted when designing the *Towards Healing* process.

- 44 *Towards Healing* does not seek in any way to prevent or deter victims from obtaining redress for the harm they have suffered. Rather, it enables and simplifies one way forward towards that outcome.
- 45 Moreover, the payments made in *Towards Healing* by way of reparation are not intended to equate to amounts calculated by courts in personal injury damages cases: see section 7 and below. Such a comparison is conceptually flawed: it does not compare like with like.
- 46 As noted in section 4, it is sometimes claimed that it is not appropriate to expect a victim to relinquish the right to bring future legal proceedings, when the financial payment being made under *Towards Healing* may not and is not intended to equate to the amount of compensation which might be awarded in such proceedings. An alternative view is that a victim who has chosen the *Towards Healing* option is one for whom the pastoral focus of *Towards Healing* is of particular importance. In any event, not all Church Authorities require a release.
- 47 Each victim is free to choose the process that will enable him or her better to achieve the objectives which he or she seeks and, as noted in section 7, increasing numbers of victims now choose to engage in civil mediation rather than pastoral facilitation within *Towards Healing*.
- 48 This Royal Commission provides an opportunity for consideration of the merits of, on the one hand, the availability of a range of processes including but not limited to *Towards Healing*, each of which has different features and some of which are likely to be better suited to the needs and wishes of some victims than others with, on the other hand, a single, uniformly applied process that attempts to meet the needs of all victims – whether they be pastoral, financial, or other. In areas of psychological damage, the concept of “one size suits all” may have problems.

#### Designed or Dominated by CCI?

- 49 Questions have been raised about whether the design of *Towards Healing* reflects influence or pressure from CCI, and whether the process was devised to divert victims into *Towards Healing* (with suggested lower reparation payments) and away from civil litigation (with potentially higher damages awards).
- 50 Such claims are quite wrong. First of all, CCI's involvement in the early years from 1987 to 1996 reflected its concern to ensure that insurance cover would be available to Church bodies in relation to the issue of child sexual abuse. CCI assisted to bring about such a result. Such conduct is entirely inconsistent with any suggestion that CCI's motive had been to minimise its own financial risk. Because of the steps taken by CCI, insurance funds have been available to satisfy claims made by victims.
- 51 Secondly, the assumption behind this criticism, that proceeding under *Towards Healing* would necessarily lead to a lower payment to a victim than if civil proceedings had been brought, is unsound, for the reasons discussed in section 7. In fact the existence of *Towards Healing*

actually has the result that there are, and have been, many more victims who have received a financial payment from the Church, than would otherwise have been the case.

- 52 A further and different concern is sometimes expressed to the effect that CCI dominates *Towards Healing* now, in its implementation, by having its representative present at facilitations and thereby intimidating victims. Any suggestion that the presence of CCI at facilitations has a sinister purpose is misconceived. CCI plays a supportive role only, and its representative attends to work with the Church Authority to facilitate an outcome acceptable to the victim, as discussed in section 4 paragraphs 169 and 170.

### Does the Process Involve Too Many Lawyers?

- 53 A criticism sometimes levelled against the Church in relation to *Towards Healing* is that the Church makes it too legalistic, thereby causing victims to feel intimidated or overwhelmed.
- 54 From the Church's perspective it is actually the increasing reliance on lawyers by victims which has brought about the increase in significance of the roles played by lawyers generally in the process. The increased interposition of lawyers has tended to result in an emphasis on monetary payments rather than the pastoral support that is at the heart of *Towards Healing*. This is not said by way of criticism of either victims or their lawyers, but merely to record how this change has come about. Victims are, of course, entitled and encouraged to have the benefit of whatever support they need, including legal support, to enable them to cope with the challenge of surviving child sexual abuse.
- 55 *Towards Healing* was not initially envisaged as one in which lawyers would play a significant part either on behalf of the victim or the Church Authority. Its emphasis was (and still is) pastoral.
- 56 Thus *Towards Healing* provides, for example, that where a victim does not have a lawyer at a facilitation, there should not be a lawyer present for the Church Authority either.<sup>355</sup>
- 57 However, as public awareness of the issue of child sexual abuse has risen, and plaintiff law firms specialising in the area have emerged, victims who go through the *Towards Healing* process are increasingly represented by legal counsel (including in some cases, by both solicitors and barristers).
- 58 The presence of lawyers can be constructive, for example by helping the victim to feel that his or her interests are safeguarded, and that another person is advocating for them.
- 59 However, the increased presence of lawyers on behalf of both the victims and the Church Authority has also had other effects. Where the same law firms represent a large number of victims, there tends to be an increased amount of standardisation in the process. In particular, there tends to be a greater emphasis placed on financial payment in cases where lawyers are present, with a corresponding reduction in emphasis on the pastoral aspect, rendering the process little different from a civil mediation.

<sup>355</sup> Clause 41.4.2, fn 3, *Towards Healing*

## Are Financial Payments Insufficient?

- 60 The two main criticisms of reparation payments made in *Towards Healing* are:
- (a) that the amounts of such payments are inconsistent, from diocese to diocese and religious institute to religious institute, and
  - (b) that the amounts of such payments are low when compared with awards of damages in civil litigation or various statutory compensation schemes.
- 61 The quality and the quantity of the available data, as to the number of individuals to whom payments have been made, the amounts of such payments, and the individual circumstances leading to such payments, is not as good as it could be: see paragraphs 17 to 20 above. This makes a detailed analysis of these criticisms difficult.
- 62 However, it needs to be remembered that in most cases it would be very difficult for a plaintiff to succeed in civil proceedings against a Church Authority in respect of sexual abuse which occurred when he or she was a child many years ago. The reasons are discussed in section 7. Yet in many such cases the victim is able to achieve an outcome that includes financial reparation through *Towards Healing*.
- 63 Even if such a plaintiff did manage to succeed in a civil claim there are many factors that could affect the assessment of damages, up or down, in such a civil suit: see Annexure F.
- 64 However, the fundamental point is that the process was never intended to be one for, or centred on, monetary compensation. No guidelines or templates have ever existed as to the circumstances in which, or how much, reparation should be paid. The *Towards Healing* process is fundamentally pastoral, and any payment made in *Towards Healing* is by way of reparation, not compensation. Those victims whose main focus is compensation generally choose another means of dealing with the complaint, such as civil mediation, rather than initiating a *Towards Healing* complaint.
- 65 Further, as noted elsewhere in this Submission, *Towards Healing* addresses individual needs. These will naturally vary between victims. Some victims may experience terrible abuse, yet suffer less adverse effects on their lives than others who experience lesser forms of abuse but experience far more deleterious outcomes. A process that recognises that reality will have a wide variety of outcomes, which cannot be compared with compensatory outcomes.
- 66 Apart from civil litigation, there are two other kinds of process which are sometimes seen as possible comparators for processes such as *Towards Healing*, namely:
- (a) victims compensation schemes under the legislation of the various States and Territories
  - (b) various redress schemes both State and Commonwealth.
- 67 Both of these types of scheme, which are referred to briefly below, represent attempts to codify levels of payments by way of compensation for harm. Accordingly, they are (as are civil proceedings for damages) conceptually different from *Towards Healing*, which, as outlined earlier, makes payments not by way of compensation but by way of reparation. There is no cap on the amount of reparation that may be paid under *Towards Healing*.

### *Victims Compensation Schemes*

- 68 It is acknowledged that these schemes provide compensation to victims of crime, in circumstances where, as is obvious, the provider of the compensation (the State) has no legal liability, or moral responsibility, for the acts of criminal third parties. On the other hand, in the case of the Church and victims of child sexual abuse, the Church does bear moral responsibility for the acts of the perpetrators. In that sense as well, these schemes are not truly analogous to *Towards Healing*.
- 69 A summary of the schemes is provided in Annexure G.
- 70 As set out in detail in Annexure G, while the caps on awards vary from State to State, the highest maximum award is \$75,000 in relation to a single offence (in Queensland and Western Australia). In Victoria, the highest maximum award is \$60,000 while in South Australia and the ACT the maximum award is \$50,000. In New South Wales, the victim of a serious sexual assault could receive a “recognition payment” of up to \$15,000 to acknowledge the violence and trauma, in addition to payments of up to \$30,000 for economic loss. In the Northern Territory, the maximum award is \$40,000 while in Tasmania it is up to \$30,000 for a single offence.
- 71 The schemes, and the making of payments, involve no pastoral element. They are an administrative procedure. Speaking somewhat generally, they focus on the severity of the offence (ie the accused’s behaviour) more than the severity of the consequences (ie the position of the victim).

### *Redress Schemes*

- 72 Various state governments have in recent times provided redress schemes in respect of the institutional abuse and neglect of children. The Commonwealth Government has also set up a redress scheme for victims of sexual abuse in the Australian Defence Force.
- 73 A summary of these schemes is set out in Annexure H.
- 74 As with the victims compensation schemes, these redress schemes are administrative in character and pay capped, graded, amounts depending on the ‘category’ of abuse. The range is between \$4,000 and \$50,000. (In some schemes larger amounts had been initially allowed for but were reduced to reflect greater than expected numbers of applicants.) Timeframes within which claims may be made are specifically limited.
- 75 There are variations within these schemes as to whether legal rights are waived upon payment and whether apologies are available. Some provide greater opportunity for the victim to engage than do the victims compensation schemes, but certainly not at the same level as in the *Towards Healing* process.

## 11.3 Options for Reform

- 76 The Church is pursuing and will continue to pursue refinements to *Towards Healing* so that it more effectively meets the objective of assisting victims to achieve healing. However, the developing trend whereby *Towards Healing* is being sidelined as an increasing number of victims

seek redress through other mechanisms may call for more fundamental reform of the Church's approach.

- 77 As it considers various options for reform, the Church is also conscious that the conclusions and recommendations of the Victorian Parliamentary Inquiry and the current NSW Special Commission of Inquiry,<sup>356</sup> as well as this Royal Commission, may have implications for the most appropriate, effective models that might be adopted for dealing with these issues and therefore require careful consideration before any final recommendations are made.

### Compensation Scheme

- 78 Ultimately, it may be more appropriate to move to arrangements where *Towards Healing* continues to operate as a scheme for providing a pastoral response and assistance to victims of any kind of abuse (including sexual abuse) by Church personnel but where compensation is awarded under a national scheme which covers all institutions.
- 79 The Church appreciates that any such national scheme which the Royal Commission might recommend is likely to be many years away, and may face significant constitutional hurdles to its implementation.

### Strengthening Governance, Standards and Consistency

- 80 In the meantime, options the Church is considering include:
- (a) strengthening the governance, standards and consistency of *Towards Healing*
  - (b) appointing independent compensation commissioners
  - (c) interim appointments to strengthen the national committee
  - (d) the introduction of an independent national board to provide more rigorous assessment, monitoring, auditing and enforcement of *Towards Healing* practices
  - (e) the introduction of greater public reporting.

### Monitoring Compliance and Public Reporting

- 81 A further matter to which the Church will give consideration to enhance *Towards Healing* is to develop a more proactive, preventative focus. One way this might be addressed is to extend the jurisdiction of the proposed new board to include responsibilities for preventing and responding to abuse through developing and administering national standards, monitoring adherence to these standards and publicly reporting on compliance.<sup>357</sup>
- 82 The Church will participate in, and contribute to, the work of the Royal Commission in a spirit of openness. It will listen with particular respect and humility to the experiences of victims who have experienced the *Towards Healing* process. The Church is very willing to consider, and respond constructively to, criticisms and suggestions for change.

<sup>356</sup> Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle

<sup>357</sup> This would capture the kind of responsibilities currently exercised by the National Board for Safeguarding Children in the Catholic Church which operates in Ireland ([www.safeguarding.ie](http://www.safeguarding.ie))

## Annexures

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## Annexure A

### Supervisory Group Members

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- Archbishop Denis J Hart  
Archbishop of Melbourne and President of the Australian Catholic Bishops Conference
- Sister Annette Cunliffe  
Congregational Leader of the Sisters of Charity and President of Catholic Religious Australia
- Very Rev Tony Banks OSA  
Provincial of the Order of St Augustine
- Archbishop Mark B Coleridge  
Archbishop of Brisbane
- Archbishop Timothy Costelloe  
Archbishop of Perth
- Sister Anne Derwin  
Congregational Leader of the Sisters of St Joseph
- Bishop D Eugene Hurley  
Bishop of Darwin
- Bishop Peter W Ingham  
Bishop of Wollongong
- Cardinal George Pell  
Archbishop of Sydney
- Bishop Christopher C Prowse  
Bishop of Sale
- Archbishop Philip E Wilson  
Archbishop of Adelaide



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## Annexure B

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### Catholic Church Services in Australia

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- 1 The Catholic Church provides a range of pastoral, educational and human services, across Australia.
- 2 There are currently 3,208 priests and deacons, 847 religious brothers and 5,058 religious sisters in the Church in Australia.
- 3 There are over 1,300 parishes.

#### Education

- 4 In education, in 2012, the Church in Australia operated:
  - 1,274 primary schools
  - 330 secondary schools
  - 162 combined schools, and
  - 12 special schools.<sup>358</sup>
- 5 Catholic schools are educating:
  - 402,584 primary school students, and
  - 333,104 secondary students.<sup>359</sup>
- 6 Catholic education employs 85,306 staff, including:
  - 57,558 lay teachers and specialist staff, and
  - 27,748 general staff.<sup>360</sup>
- 7 The Church operates two universities:
  - the University of Notre Dame, and
  - the Australian Catholic University,and residential colleges at a number of universities.
- 8 The Church also operates a number of Catholic adult educational centres, seminaries and theological colleges across Australia.

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<sup>358</sup> *The Official Directory of the Catholic Church in Australia, 1 July 2013-30 June 2014*, p 784

<sup>359</sup> *The Official Directory of the Catholic Church in Australia, 1 July 2013-30 June 2014*, p 784

<sup>360</sup> National Catholic Education Commission, *Australian Catholic Schools 2012*, p 1

<[http://www.ncec.catholic.edu.au/index.php?option=com\\_docman&task=doc\\_download&gid=221&Itemid=53](http://www.ncec.catholic.edu.au/index.php?option=com_docman&task=doc_download&gid=221&Itemid=53)>

## Social Services

- 9 The Catholic Church is an extensive social services provider, with Church organisations providing social services to over 1 million Australians each year.<sup>361</sup> Centacare and CatholicCare are extensive providers of services nationally, together with over 40 other organisations operating in different parts of Australia.<sup>362</sup>
- 10 Throughout Australia the Church is providing an extensive range of services, including disability services, ageing and dementia support services, services to Aboriginals and Torres Strait Islanders, children's welfare services, youth and family services, advocacy, employment relations and job seeker services, marriage and family counselling, grief counselling, drug and alcohol services, adoption and foster care services, homeless support services, migrant and refugee support services, prison ministry, and employment services.

## Health and Aged Care

- 11 In health and aged care, the Church has around 35,000 employees, and is operating:
- 9,500 beds in 75 health care facilities including 7 teaching hospitals
    - 21 public hospitals
    - 54 private hospitals<sup>363</sup>
  - 8 dedicated hospices with palliative care services<sup>364</sup>
  - major medical research institutes including The Garvan Institute, The Mater Medical Research Institute and St Vincent's Institute of Medical Research
  - 5 bioethics centres
  - 550 aged care facilities, nursing and convalescence homes, respite care and community care,<sup>365</sup> including:
    - 19,000 residential aged care beds
    - 6,253 retirement and independent living units and serviced apartments
    - 14,000 Home and Community Care (HACC), Extended Aged Care at Home (EACH) and Community Aged Care (CACAP) services and packages.<sup>366</sup>
- 12 Major health care services providers in the Church include Little Company of Mary Health Care, Mercy Health, St Vincent's Health Australia and St John of God Health Care.

<sup>361</sup> Catholic Social Services Australia, Annual Report 2012-13

<<http://www.cssa.org.au/storage/CSSA%20Annual%20Report%202012-13.pdf>>

<sup>362</sup> For a non-exhaustive list of Catholic social services organisations see Catholic Social Services Australia, Annual Report 2012-13, pp 34–35 <<http://www.cssa.org.au/storage/CSSA%20Annual%20Report%202012-13.pdf>>

<sup>363</sup> Snapshot: The Catholic Health and Aged Care Sector <<http://www.cha.org.au/about/the-sector.html>>

<sup>364</sup> Snapshot: The Catholic Health and Aged Care Sector <<http://www.cha.org.au/about/the-sector.html>>

<sup>365</sup> *The Official Directory of the Catholic Church in Australia, 1 July 2013-30 June 2014*, p 783

<sup>366</sup> Snapshot: The Catholic Health and Aged Care Sector <<http://www.cha.org.au/about/the-sector.html>>

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## Charities

- 13 The Catholic Church also supports many charitable endeavours both in Australia and overseas through organisations including Caritas Australia, Catholic Mission and the St Vincent de Paul Society.

## Annexure C

### *Towards Healing* Positions and Officeholders

#### Members of the National Committee for Professional Standards

##### 1996 to 2013

Name	Relevant Dates	Additional Information
Archbishop Frank Carroll	1996	
Bishop Geoff Robinson	1996–2003	Co-Chair July 1997–July 2003
Bishop Peter Connors	1996	
Bishop Kevin Manning	1996–1997	Chair Aug 1996–July 1997
Bishop Bede Heather	1996	
Bishop Michael Malone	1996–1999	
Sister Helen Clarke	1996	
Father Brian Gallagher	1996	
Father Kevin Dance	1996–2000	Co-Chair July 1997–April 1999
Brother Michael Hill	1996–2007	Co-Chair July 2002–November 2004
Ms Myolene Carrick	1996–1999	
Sister Evelyn Woodward	1996–2000	
Sister Angela Ryan	1996–1999	
Father Brian Lucas	1996–1999	
Father John Usher	1996–1998	
Mr Paul Serong (CCI)	1996–2000	
Mr Laurie Rolls	1996–2010	
Archbishop Philip Wilson	1997–2012	Co-Chair July 2003–July 2006 July 2011–July 2012
Ms Mary Gow	1998–2003	
Sister Margaret Cassidy	1998–2000	Co-Chair October 1998–July 2000
Mr Michael Salmon	1999–present	
Mr Peter Rush (CCI)	2000–present	
Bishop Ted Collins	2000–2003	
Mrs Therese O'Brien	2000–2001	

Name	Relevant Dates	Additional Information
Brother Michael Godfrey	2000–2002	Co-Chair February 2001–February 2002
Sister Anne Dalton	2000–2003	Co-Chair February 2002–July 2002
Father Gerry Iverson	2000–2008	
Sister Bernadette Keating	2003	
Sister Margaret Robertson	2003	
Bishop James Foley	2003–2005	
Sister Majella Kelly	2003–2010	
Father Denis Travers	2003–2004	
Bishop Bill Morris	2003–2011	Co-Chair July 2006–July 2011
Brother Peter Burke	2004–2007	Co-Chair November 2004–November 2007
Sister Caroline Ryan	2004	
Sister Edna Mary McDonald	2004–2005	
Sister Megan Brock	2005–2010	
Bishop Brian Finnigan	2006–2012	
Sister Veronica Hoey	2008–2010	
Father Tim Brennan	2007–2011	Co-Chair November 2007–February 2011
Ms Sue Cain	2010–present	
Sister Annette Cunliffe	2010–2012	Co-Chair February 2011–November 2012
Sister Moya Hanlen	2010–present	
Father John Hannon	2010–present	
Mrs Beverley Patterson	2010–present	
Father Graeme Duro	2011–2012	
Sister Clare Condon	2012–present	Co-Chair November 2012–present
Father Steve Curtin	2012–present	
Bishop Les Tomlinson	2012–present	
Bishop Bill Wright	2012–present	Co-Chair July 2012–present

Executive Officers of the National Committee for Professional Standards

Name	Relevant Dates	Additional Information
<b>Executive Officers (1996 to 2013)</b>		
Father David Cappelletti	1996–1999	BA in Social Work; Qualified Social Worker
Sister Angela Ryan	1999–2012	BA, BSc; Dipl. Education; Honorary Doctorate (ACU)
Brother Julian McDonald	2003–2007	BA Dip Ed (Sydney) Cert Religious Formation (St Louis University, USA), Grad Dip in Language in Education (Charles Sturt), PhD <i>honoris causa</i> (Divine Word University, PNG), <i>Doctor of the University</i> (Australian Catholic University)
Brother Phil Mulhall	2006–2011	B Sc, MA Psychology
Father Tim Brennan	2011–present	BA (ANU), BTh (MCD), JCL (USP), MCL (Ottawa), Provincial of Missionaries of the Sacred Heart (2005–2010); Vicar General of Diocese of Darwin (1990–2004)
Sister Denise Fox	2012–present	BA (Victoria), B Ed (Massey), MRe (Chicago), Dip Tchg
<b>Protection and Prevention Officers</b> (until 2012 this position was part of the duties of the Executive Officers)		
Andrew Biro	2012	
Narelle McMahon	2012–present	B Ed, Dip Tchg, Cert RE, Cert IV Assessment and Workplace Training, Cert in Corporate Investigations

## National Review Panel Members

### 2005 to 2013

Name	Relevant Dates	Additional Information
Mr Gerald Gleeson AC	2005–present	Chairperson. Former Head of NSW Premier's Department
Mrs Diane Armstrong	2005–present	BA, author and journalist
Mr Garth Blake SC	2005–present	Barrister
Hon John Hannaford	2005–present	Former Attorney General NSW
Mr Leonard Levy SC	2005 to 2008	Barrister
Dr Di Sansom	2005–present	B.A. M. Psych (Clin). PhD. Psychologist
Mr Michael O'Dea	2006–2011	BA LLM (Sydney). Solicitor. Special Counsel, Carroll & O'Dea
Mr David Landa OAM	2005–present	Former NSW Ombudsman
Mr Tim Unsworth	2006–present	BA LLB. Solicitor. Director, Unsworth Legal
Brother Julian McDonald cfc AO	2007–present	BA Dip Ed (Sydney) Cert Religious Formation (St Louis University, USA), Grad Dip in Language in Education (Charles Sturt), PhD <i>honoris causa</i> (Divine Word University, PNG), <i>Doctor of the University</i> (Australian Catholic University). Deputy Provincial Leader of the Christian Brothers
Mr John Wakefield	2012–present	Former police officer with 39 years experience, licensed private inquiry agent since 2000
Mr Tim O'Hearn	2012–present	BA (Monash), Dip Ed (Melbourne) BEd (Melbourne), MA (Macquarie), MA (Sydney), PhD (Macquarie). Retired, previously Dean of Students and Director of Ministry at Australian Catholic University
Brother Phil Mulhall	2012–present	B Sc; MA Psychology. Provincial Leader of the Patrician Brothers
Sister Maree Marsh	2012–present	BA (UQ) Dip. Teach. (Catholic Teachers College, North Sydney), MA Counselling, (Macquarie), MA Theology (Boston College), D.Ministry - Pastoral Psychology, (Boston University). Psychologist

## Professional Standards Office Directors

Name	Relevant Dates	Additional Information
<b><i>New South Wales / ACT</i></b>		
Michael Salmon	May 2003–present	BA (Hons), B.Legal Studies
John Davoren	June/July 1997– April 2003	Bachelor of Arts and Social Work, Master of Science in Social Administration
<b><i>Victoria</i></b>		
Alan Spencer	1996–1998	Magistrate
Jennifer Moloney	1998–1999	Psychologist
Sister Angela Ryan	1999–2001	Religious
Lucy Molony	2001–2004	Teacher
Penny Lakey	2004–2006	Counsellor
Kerry Buchecker	2006–present	Psychotherapist. BAppSci, BSW, MSW, Grad Dip Psych
<b><i>Queensland</i></b>		
Dr Ken Robertson	March 1997– June 2003	Retired Deputy Director General of Queensland Department of Education
Howard Murray	June 2003– September 2006	Retired Police Inspector
Rowena McNally	September 2006– November 2009	Lawyer
Pat Mullins	November 2009– April 2013	Solicitor. Partner in Mullins Law
Bernadette Rogers	April 2013–present	Lawyer, and Member, Queensland Civil and Administrative Tribunal
<b><i>South Australia</i></b>		
Pauline Verity	2001–2002	Bachelor of Arts, Adelaide University, Bachelor of Social Administration, Flinders University
Sue Cain	September 2002– present	Bachelor of Arts, Flinders University, Bachelor of Social Administration, Flinders University



Name	Relevant Dates	Additional Information
<i>Western Australia</i>		
Desmond O'Sullivan	1 January 1996– 31 December 2004	Associateship in Mathematics & Physics (WAIT); Dip. Ed (WAIT) Deputy Director Catholic Education Educationalist
Peter Messer	1 January 2005– February 2012	Associateship in Accounting (WAIT) Member Institute of Chartered Accountants Member Institute of Chartered Secretaries & Administrators Accountant and Volunteer
Christopher Waddell	February 2012– March 2013	BA (UWA), Grad.Dip. of Tch (ECU/WA Secondary Teachers College)
Nuala Keating	8 April 2013–present	B.Juris (UWA); LL.B (UWA); BA (UWA) Lawyer and Policy Maker
<i>Tasmania</i>		
Adrian Doyle	1997–1998	Canon lawyer, Judge in the Marriage Tribunal
Sister Majella Kelly	1998–present	MEd (Pastoral guidance), mediator, teacher
<i>Northern Territory</i>		
Ms Judy Stacey	1996–1997	Convenor of the Professional Standards Resource Group in 1996 and early 1997. Social work qualification.
Dr Sharon McCallum	1997–present	MAASW. Convenor from 1997 until 2005, then Director of the NT Professional Standards Office. Bachelor, Masters and PhD in social work; Certificate III in workplace investigations; Certificate III in government investigations; almost completed Masters of Dispute Resolution and Masters of Business Administration.

## Annexure D

### Developing Awareness of Child Sexual Abuse

#### Initial International Awareness

- 1 The Church's response to the issue of child sexual abuse in Australia was relatively contemporaneous with that of the Church in other countries, as well as with local legislative responses to growing public concern with the issue.
- 2 In many communities around the world, there was little recognition of the existence, extent or impact of child sexual abuse before the 1970s. During the 1970s, there were significant movements advocating for the recognition of the rights of women and children. These movements were acknowledged by the General Assembly of the United Nations, which declared the following:
  - (a) 1975: International Women's Year
  - (b) 1976 to 1985: United Nations Decade for Women, and
  - (c) 1979: International Year of the Child.
- 3 This decade of awareness raising led to the United Nations Convention on the Rights of the Child, which opened for signature and ratification on 20 November 1989.
- 4 In the United States, the *Child Abuse Prevention and Treatment Act* was passed by Congress in 1974.
- 5 In Canada, there was an observable increase in the number of reports of child sexual abuse to provincial child services. A Committee on Sexual Offences Against Children and Youth was established in 1980, and reported in 1984. In 1997, the Law Commission of Canada began to consider the ways in which the Canadian government should respond to institutional child abuse, and reported in March 2000. In 1988 to 2001, several significant pieces of legislation were introduced in relation to child abuse offences, reporting, and improved court procedures.<sup>367</sup>
- 6 In the United Kingdom, 18 enquiries into child abuse, 17 of which concerned the death of children, were conducted between 1973 and 1982. In 1988, the first English inquiry into child sexual abuse was conducted: the Cleveland Inquiry, by Lord Chief Justice Elizabeth Butler-Sloss. This inquiry focused upon care institutions in Staffordshire. A Committee of Inquiry was then established in 1991, to examine the selection and recruitment of staff in children's homes. A further review of safeguards was conducted by Sir William Utting for the Department of Health in 1996.<sup>368</sup>
- 7 In Wales, an inquiry into care of children in two county councils was established in 1996, and in Scotland, an inquiry into procedures for removal of children was held in 1992. This inquiry led to

<sup>367</sup> Elizabeth M. Delaney sgs, "Canonical Implications of the Response of the Catholic Church in Australia to Child Sexual Abuse", a dissertation submitted to the Faculty of Canon Law, Saint Paul University, Ottawa, Canada at pp 17–20

<sup>368</sup> Delaney, pp 22–23

the introduction of the *Children (Scotland) Act 1995*, which addressed, among other issues, the care of children by parents and local authorities.<sup>369</sup>

- 8 In Northern Ireland, a review of residential care by the Social Services Inspectorate led to the report *Children Matter* in 1998, and the Committee for Health, Social Services and Public Safety reported on residential accommodation for children in 2000.<sup>370</sup>
- 9 In Ireland, an awareness of child abuse that developed in the 1980s began to be addressed by legislation in the 1990s. The Department of Health began to develop guidelines relating to child abuse in the 1980s, resulting in *Children First - National Guidelines for the Protection and Welfare of Children* in 1999. Several significant pieces of legislation relating to child protection were passed between 1991 and 1998, including the *Child Trafficking and Pornography Act 1998* and the *Protection for Persons Reporting Child Abuse Act 1998*.<sup>371</sup>
- 10 In New Zealand in 1986, an advisory committee reviewed the investigation, detection and prosecution of child sexual abuse, and reported in 1988.<sup>372</sup>

## Australian Developments

### New South Wales

- 11 In 1976 the *Child Welfare (Amendment) Act 1977* (NSW) imposed significant mandatory reporting requirements in relation to children who were 'assaulted, ill-treated, or exposed'<sup>373</sup> on medical practitioners and other professionals, in conjunction with additional protections provided to children with respect to their interaction with police.
- 12 In 1982, the *Community Welfare Act 1982* (NSW) instituted major reforms to the treatment of foster children and to the provision of licenced care services for children in need.
- 13 The *Children (Care and Protection) Act 1987* (NSW) (Care and Protection Act) constituted the first legislation which dealt systematically with the detection and prosecution of child abuse in NSW. The Care and Protection Act defined the statutory powers of the Department of Community Services, as well as the Children's Court. Within the criminal law, the *Crimes (Child Assault) Amendment Act 1985* (NSW) inserted provisions within the *Crimes Act 1900* (NSW) relating to child sexual assault.<sup>374</sup>
- 14 In 1993, the *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) established a framework for the resolution of complaints about community services, and provided additional functions to the NSW Ombudsman pursuant to the *Ombudsman Act 1974* (NSW).
- 15 In 1994, the Royal Commission into the New South Wales Police Service (the Wood Royal Commission)<sup>375</sup> was extended to include an investigation into the activity and protection of paedophiles in NSW.<sup>376</sup> The result of the investigation was a report released in August 1997.

<sup>369</sup> Delaney, pp 25–26

<sup>370</sup> Delaney, p 25

<sup>371</sup> Delaney, pp 29–30

<sup>372</sup> Delaney, p 35

<sup>373</sup> *Child Welfare (Amendment) Act 1977* (NSW) Schedule 5(4)

<sup>374</sup> See *Crimes Act 1900* (NSW) ss 66A-66F

<sup>375</sup> Royal Commission into the New South Wales Police Service (The Wood Royal Commission), *Final Report Volume IV: The Paedophile Inquiry*, August 1997

<sup>376</sup> See Rachel Simpson, 'Initial Responses to the Wood Royal Commission Report on Paedophilia' in *NSW Parliamentary Library Research Service* (Briefing Paper No8/98)

The report found “a very disturbing picture of neglect, indifference and concealment” extending to “almost every aspect of the preventative, investigative and prosecution process”.<sup>377</sup>

- 16 The Royal Commission recommended a separate Children’s Commission be established, with responsibility for coordinating child protection activities, but with investigative functions vested in other agencies. The *Children and Young Persons (Care and Protection) Act 1998* was enacted as the principal mechanism for dealing with child and youth welfare and safety. In December 1998, the *Commission for Children and Young People Act 1998*, the *Child Protection (Prohibited Employment) Act 1998*; and the *Ombudsman Amendment (Child Protection and Community Services) Act 1998* were passed.
- 17 In 2000, the *Child Protection (Prohibited Employment) Act 1998* commenced, and the *Child Protection (Offenders Registration) Act 2000* was passed. These reforms culminated in the establishment of the Commission for Children and Young People, which is responsible, amongst other things, for monitoring screening for child-related employment, including auditing compliance and the development of the Working With Children Check.
- 18 The *Child Protection (Prohibited Employment) Act 1998* aimed to prevent certain persons from gaining or remaining in specific types of employment, including religious organisations and educational institutions. The *Child Protection (Offenders Registration) Act 2000* established a system of monitoring and reporting obligations of persons who had been sentenced in relation to certain offences involving children.<sup>378</sup>

### Victoria

- 19 By the 1980s with a growing awareness of child sexual abuse in the community, there were over 10 different Acts of the Victorian parliament governing guardianship, custody, access, maintenance, and welfare of children in Victoria.<sup>379</sup> The Australian Law Reform Commission Report into Child Welfare in 1981, was followed in Victoria by the *Victorian Report: Equity and Social Justice for Children, Families and Communities* (1984). This report, chaired by legal academic Terry Carney (known as the Carney Report), contained 343 recommendations, including the recommendation of a ‘dual track’ approach to child protection, which involved the Community Services Victoria Department, and Victoria Police.<sup>380</sup>
- 20 In 1984 the government commissioned a Victorian Law Reform Commission *Report on Sexual Offences Against Children*. The report, released in 1988, contained 42 recommendations, including the implementation of an independent review of the child protection system. Before the final report was published, the Government launched an inquiry into the Victorian Child Protection System, headed by Justice Fogarty.<sup>381</sup> The interim report, published in 1989, strongly criticised the ‘dual track’ approach, observing that “as a matter of principle it seems to be unsatisfactory that child protection services should be delivered by two systems which have fundamentally different underlying philosophies and modes of operation”.<sup>382</sup>

<sup>377</sup> Royal Commission into the New South Wales Police Service (The Wood Royal Commission), *Final Report Volume IV: The Paedophile Inquiry*, August 1997, 12

<sup>378</sup> *Child Protection (Offenders Registration) Act 2000* s 3A

<sup>379</sup> Child Welfare Practice and Legislation Review, *Report: Equity and Social Justice for Children, Families and Communities* (1984) Vol 1-2

<sup>380</sup> Justice Fogarty, *Protective Services for Children in Victoria: An Interim Report* (1989) 17

<sup>381</sup> Justice Fogarty, *Protective Services for Children in Victoria: An Interim Report* (1989)

<sup>382</sup> Justice Fogarty, *Protective Services for Children in Victoria: An Interim Report* (1989) 60-1

- 21 In 1989 the *Children and Young Persons Act 1989* (Vic), was passed creating more stringent conditions for the forced removal of children from their families, and set down the Children's Court as a more specialist court. The Victorian system did not require mandatory reporting of suspected child abuse until 1993 with the passage of the *Children and Young Persons (Further Amendment) Act 1993* (Vic), which introduced mandatory reporting of suspected serious physical or sexual abuse of children by medical practitioners, nurses, and police, and later for teachers and school principals.<sup>383</sup>
- 22 In the 2000s, further legislative reforms increased the organisation and coherence of the Child Safety legislative scheme. On 25 August 2004, the Victorian Law Reform Commission's *Sexual Offences: Final Report* was tabled in Parliament. It contained 201 recommendations, a number of which have subsequently been implemented by the Victorian Parliament.<sup>384</sup>
- 23 The *Child Wellbeing and Safety Act 2005* (Vic) provided a 'legislative framework', which codified principles relating to the provision of services to Children in Victoria, and established the Victorian Children's Council.
- 24 In April 2006, working with children checks were introduced in Victoria by the *Working with Children Act 2005* (Vic). The *Children, Youth and Families Act 2005* (Vic), which came into operation in 2007, further refined procedures and approaches relating to child welfare and Children's Court practice.
- 25 In January 2011, the Victorian Government set up an inquiry into Protecting Victoria's Vulnerable Children (the Cummins Inquiry). The Victorian Government received the Report of the Cummins Inquiry on 27 January 2012.<sup>385</sup> The Report addressed the scale and extent of child abuse, and contained 82 recommendations to strengthen protection and services.

### Queensland

- 26 In Queensland legal immunity for reporting suspect child abuse was introduced by an amendment to the *Children's Services Act 1965* in 1979.<sup>386</sup> However, there was no express recognition of child sexual abuse in the *Children's Services Act 1965*.
- 27 The 1990s saw a rapid increase in child protection notifications,<sup>387</sup> resulting in the Queensland State Cabinet creating the Coordinating Committee on Child Abuse, which established an important inquiry into child abuse within Queensland institutions, known as the Forde Inquiry.<sup>388</sup>
- 28 Additionally, in 1997 the Children's Commission released a report, 'Paedophilia in Queensland'.<sup>389</sup> This report was followed by the Inquiry into Allegations of Misconduct in the Investigation of

<sup>383</sup> *Children and Young Persons (Further Amendment) Act 1993* (Vic)

<sup>384</sup> Victorian Law Reform Commission, *Sexual Offences: Final Report*, July 2004 <<http://www.lawreform.vic.gov.au/projects/sexual-offences/sexual-offences-final-report>>. See also section 6.4, *Facing the Truth*.

<sup>385</sup> P Cummins, D Scott and B Scales, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, 27 January 2012 <<http://www.childprotectioninquiry.vic.gov.au/report-pvvc-inquiry.html>>. See also section 6.6, *Facing the Truth*, including as to the Church's response to the Report.

<sup>386</sup> *Children's Services Act Amendment Act 1979* no 75 (Qld)

<sup>387</sup> Commission of Inquiry Order (No 1) 1998, *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions* (31 May 1999), 111

<sup>388</sup> Commission of Inquiry Order (No 1) 1998, *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions* (31 May 1999), 111

<sup>389</sup> 'Paedophilia in Queensland' (Children's Commissioner of Queensland, 1997).

Paedophilia in Queensland, known as the Kimmins Report.<sup>390</sup> Both of these reports drew greater attention to child protection mechanisms in Queensland.

- 29 In 1998, the Government announced a review of the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*, which culminated in the enactment of the *Commission for Children and Young People Act 2000*. This Act established the Commission for Children and Young People, replacing the Children's Commission.<sup>391</sup>
- 30 In 1999, the *Child Protection Act 1999* repealed the entirety of "the out-dated and severely limited *Children's Services Act 1965*".<sup>392</sup> The Act introduced more clarification with respect to the removal of children from their parents, included a 'charter of rights' for children in care, and addressed concerns relating to the protection of traditions and cultures of Aboriginal and Torres Strait Islander children. Mandatory reporting requirements were imposed on officers of the Department (now the Department of Communities, Child Safety and Disability Services).
- 31 Importantly, the *Child Protection Act 1999* addressed the issue of sexual abuse of children, and included provisions relating to the investigation of criminal history in relation to persons granted custody or guardianship of a child.<sup>393</sup>
- 32 Additionally, in June 1999, the Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Report) was tabled in the Queensland Parliament.
- 33 The Inquiry found that there were incidents of unsafe, improper or unlawful treatment of children in many institutions, including sexual abuse. Following the tabling of the Report, a formal apology was issued by the Premier and a number of institutions and individuals, including the Catholic Archbishop of Brisbane. A redress scheme was established in 2007.<sup>394</sup>

### South Australia

- 34 Prior to the 1980's legislative responses to child protection issues in South Australia focused on issues of neglect and physical abuse. In 1984 the Minister for Health, Dr John Cornwall, established a Task Force on Child Sexual Abuse. The Task Force recommended the establishment of a State Council for Child Protection. The Task Force recommended the continuation of mandatory reporting, along with the expansion of training for professionals dealing with child sexual abuse.<sup>395</sup> Major legislative change followed a review conducted by a Parliamentary Select Committee in 1993 which recommended the current system be reformed, and the welfare and justice functions separated.<sup>396</sup> The resulting legislation the *Children's Protection Act 1993* and the *Young Offenders Act 1993* represents the current regime in South Australia.
- 35 In 2002 Robyn Layton QC reviewed child protection laws in South Australia. The review<sup>397</sup> recommended the establishment of an Office of Commissioner for Children and Young Persons,

<sup>390</sup> 'Inquiry into Allegations of Misconduct in the Investigation of Paedophilia in Queensland', (Criminal Justice Commission, 1997)

<sup>391</sup> *Commission for Children and Young People Act 2000* (Qld).

<sup>392</sup> Explanatory Memorandum, *Child Protection Bill 1998*

<sup>393</sup> *Child Protection Act 1999* s 95

<sup>394</sup> See Annexure H

<sup>395</sup> Robyn Layton QC 'Our Best Investment: A State Plan to Protect and Advance the Interests of Children', (Government of South Australia, 2003) 4.6

<sup>396</sup> Joy Wundersitz and Nichole Hunter, 'Juvenile Justice in South Australia: where are we now' in *Information Bulletin of the Office of Crime Statistics and Research*, (January 2005, No 40)

<sup>397</sup> *Review with Keeping Them Safe: South Australian Government's Child Protection Reform Program*

along with a more comprehensive review process of guardianship and Department of Community Services processes.<sup>398</sup>

- 36 In 2005 Part 2 Division 3 of the *Children's Protection Act 1993*, inserted by the *Children's Protection (Miscellaneous) Amendment Act 2005*, instituted mandatory criminal history checks on persons employed in organisations which provide health, welfare, education, sporting, religious or spiritual services to children. The same Act inserted Part 7A which provided for the development of a 'Charter of Rights for Children', and a Council for the Care of Children. The Council is a statutory body tasked with the review of the operation of the *Children's Protection Act 1993*, and providing advice to government.<sup>399</sup> The Child Death and Serious Injury Review Committee was also instituted to investigate children who "die or suffer serious injuries with a view to identifying legislative or administrative means or preventing similar cases ... in the future".<sup>400</sup>
- 37 In 2002, the Australasian Police Ministers' Council established an 'inter-jurisdictional working party',<sup>401</sup> which developed a national child sex offender registration scheme, which was completed in 2003.<sup>402</sup> According to the Victorian Law Reform Commission report into Sex Offenders Registration, the scheme developed to address 'the extremely serious nature of sex and sex-related offences against children, and the recidivist risks associated with such offending'.<sup>403</sup> South Australia subsequently developed legislation and enacted the *Child Sex Offenders Registration Act 2006*. The Act institutes a register of 'child sex offenders'.<sup>404</sup> Part 3 Division 3 of the Act requires persons who are 'registrable offenders' to report annually to the Commissioner of Police. The Act requires a person to inform the Commissioner if they intend on leaving South Australia for more than 14 consecutive days, or if they intend on travelling out of Australia.

### Northern Territory

- 38 In 1984, the *Community Welfare Act 1983* (NT) was the first Australian legislation to mandate reporting of suspected child abuse and neglect by all members of the population.<sup>405</sup> It imposed an obligation on all members of the community to report the suspected "maltreatment" of a child to the Minister or a member of the Police Force. "Maltreatment" included sexual abuse or exploitation, or a substantial risk of sexual abuse or exploitation, where the child's "parents, guardians or persons having the custody of children are unable or unwilling to protect him or her from such abuse or exploitation".<sup>406</sup>

<sup>398</sup> Robyn Layton QC 'Our Best Investment: A State Plan to Protect and Advance the Interests of Children', (Government of South Australia, 2003) 2.20-2.25

<sup>399</sup> *Children's Protection Act 1993* s 52J

<sup>400</sup> *Children's Protection Act 1993* s 52S

<sup>401</sup> Inter-jurisdictional Working Party, *Child Protection Offender Registration with Police: A National Approach*, Report to the Australasian Police Ministers' Council (2003) cited in Victorian Law Reform Commission, *Sex Offenders Registration: Final Report* (tabled 18 April 2012) 20

<sup>402</sup> NSW Ombudsman, *Review of the Child Protection Register: Report under s 25(1) of the Child Protection (Offenders Registration) Act 2000* (May 2005)

<sup>403</sup> Joint Committee on the National Crime Authority, Parliament of Australia, *Organised Criminal Paedophile Activity* (tabled 5 February 1997) cited in Victorian Law Reform Commission, *Sex Offenders Registration: Final Report* (tabled 18 April 2012) 20

<sup>404</sup> *Child Sex Offenders Registration Act 2006* s 60

<sup>405</sup> The Hon M Scrymgeour MLA, Second Reading Speech, *Care and Protection of Children Bill*, 22 August 2007, Parliament of the Northern Territory

<sup>406</sup> *Community Welfare Act*, s 14

- 39 In the 1990s and 2000s the Northern Territory experienced a crisis in child protection in relation to the incidence of child sexual abuse within Aboriginal communities. Since the 1990s concerted efforts have been made to address the problem by government agencies.<sup>407</sup>
- 40 In August 2006, the Northern Territory Government established a Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, co-chaired by Patricia Anderson and Rex Wild QC.<sup>408</sup> On 15 June 2007, the Board of Inquiry released its report, *Ampe Akelyernemane Meke Mekarle* “Little Children are Sacred”.
- 41 In 2008, the *Care and Protection of Children Act 2007* commenced implementation of the child protection reforms endorsed in the *Little Children are Sacred* Report.<sup>409</sup> Significantly, the *Care and Protection of Children Act 2007* introduced a screening system for child-related employment (SAFE-NT), and established a Commissioner for Children. The *Care and Protection of Children Act 2007* also went beyond the scope of previous legislation, being concerned with the “immediate protection and safety of children” to promoting “the wellbeing of children”, including maximising “opportunities for children to reach their full potential”.<sup>410</sup>
- 42 The *Care and Protection of Children Act 2007* retained previous reporting obligations on all persons in the Northern Territory who had reasonable grounds to believe that a child was in need of protection. However, under the new legislation, reporting would be mandatory whether or not the child’s parents were able to protect the child from abuse.<sup>411</sup>
- 43 In November 2009 the Northern Territory Government commissioned an inquiry to “review the child protection system and make recommendations which will substantially strengthen and improve the system to ensure that it meets the needs of Northern Territory children.”<sup>412</sup> Dr Howard Bath, Professor Muriel Bamblatt AM and Dr Rob Roseby were appointed to the Board of Inquiry.
- 44 In October 2010, the Board of Inquiry handed down its report: *Growing Them Strong, Together: Promoting the Safety and Wellbeing of the Northern Territory’s Children* (the Bath Report).<sup>413</sup> Key recommendations of the Bath Report included the Northern Territory Families and Children Division of the Department of Health and Families undertaking a process of engaging its entire workforce to commit to a strategic plan, and the Northern Territory Government developing a clear framework for the inclusion of Aboriginal people in child welfare.<sup>414</sup> The Northern Territory government accepted each recommendation and announced funding of \$130 million over five years to implement the reforms, and established the Department of Children and Families to oversee and implement the reforms.<sup>415</sup>

<sup>407</sup> Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007, *Ampe Akelyernemane Meke Mekarle* “Little Children are Sacred” (2007), p 40

<sup>408</sup> Northern Territory Government Australia, *Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, available at: <http://www.inquirysaac.nt.gov.au/>, accessed 10 September 2013

<sup>409</sup> Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007, *Ampe Akelyernemane Meke Mekarle* “Little Children are Sacred” (2007), p 22

<sup>410</sup> The Hon M Scrymgeour MLA, Second Reading Speech, *Care and Protection of Children Bill*, 22 August 2007, Parliament of the Northern Territory

<sup>411</sup> *Care and Protection of Children Act 2007* (NT), s 26

<sup>412</sup> Board of Inquiry into the Child Protection System in the Northern Territory 2010, *Growing them strong, together: Promoting the Safety and Wellbeing of the Northern Territory’s Children* (Summary Report) (2010), p 5

<sup>413</sup> Board of Inquiry into the Child Protection System in the Northern Territory 2010, *Growing them strong, together: Promoting the Safety and Wellbeing of the Northern Territory’s Children* (Summary Report) (2010)

<sup>414</sup> Board of Inquiry into the Child Protection System in the Northern Territory 2010, *Growing them strong, together: Promoting the Safety and Wellbeing of the Northern Territory’s Children* (Summary Report) (2010), p 67

<sup>415</sup> Northern Territory Government, *Child Protection Reform: Progress Report* (Volume 2) (April 2012)



### Western Australia

- 45 The *Child Welfare Act 1947* provided for maintenance of children by their relatives, the committal of children to private care or 'approved societies', or placement in foster care. By the 1970s, the *Child Welfare Act 1947* had been amended several times to allow for state intervention in circumstances of abuse and neglect.<sup>416</sup> The Child Welfare Department was given authority to 'enter, visit and inspect' any facility which cared for children.<sup>417</sup>
- 46 The 1980s saw the creation of the Community Services Advisory and Co-Ordinating Committee on Child Abuse in 1985,<sup>418</sup> and the report of the Child Sexual Abuse Task Force, chaired by Dr Carmen Lawrence in 1987.<sup>419</sup> The Advisory Coordinating Committee on Child Abuse was established in 1989 to 'oversee the implementation' of the recommendations of the Task Force.<sup>420</sup>
- 47 In 2004 the *Children and Community Services Act 2004* was passed. This Act consolidated the *Child Welfare Act 1947*, the *Welfare and Assistance Act 1961*, and the *Community Services Act 1972*.
- 48 The *Community Protection (Offender Reporting) Act 2004* established a scheme of 'reportable offenders' who are convicted of child sexual offences and who have reporting obligations imposed on them upon application of the Commissioner of Police.<sup>421</sup> In 2008 the *Children and Community Services Act 2004* was amended to include mandatory reporting by certain professionals of suspected occurrences of child sexual abuse.<sup>422</sup>
- 49 The *Working with Children (Criminal Record Checking) Act 2004* was introduced to mandate criminal history checks for those working with children, and prohibit employment of persons who were convicted of offences relating to child abuse and other offences.<sup>423</sup>
- 50 In April 2005, the West Australian Government issued an apology to people who were harmed in institutional care.<sup>424</sup> In 2007, the Government of Western Australia established Redress WA for children abused and neglected in state institutions.<sup>425</sup>

### Tasmania

- 51 Prior to the 1990s the child protection regime in Tasmania consisted of a child rescue model where appointed protection officers investigated and reported suspected child abuse with reporting requirements.<sup>426</sup>
- 52 In the 1990s there was an increasing recognition that this model was outdated and required reform.<sup>427</sup> A Joint Select Parliamentary Committee research paper into child protection reform and a wide process of consultation resulted in the *Children, Young Persons and Their Families Act 1997*. The Act established mandatory reporting requirements for a wide class of persons

<sup>416</sup> *Child Welfare Act 1947* (WA) s 30

<sup>417</sup> *Child Welfare Act Amendment Act 1976* s 18

<sup>418</sup> *Government Gazette, Western Australia* (10 January 1986), 151

<sup>419</sup> Carmen Lawrence, *Child Sexual Abuse Task Force: A report to the Government of Western Australia* (Perth, December 1987)

<sup>420</sup> Maria Harries and Professor Mike Clare, *Mandatory Reporting of Child Abuse: Evidence and Options* (Report for the Western Australian Child Protection Council, July 2002)

<sup>421</sup> *Community Protection (Offender Reporting) Act 2004* ss 6-14A

<sup>422</sup> *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008*

<sup>423</sup> See Schedule 1 and 2 of the *Working with Children (Criminal Record Checking) Act 2004*

<sup>424</sup> See WA Parliament, Hansard, 7 April 2005

<sup>425</sup> See Annexure H

<sup>426</sup> *Child Protection Act 1974* ss 8-11

<sup>427</sup> Hansard of the Tasmanian Legislative Assembly, Wednesday 1 October 1997, 41-89

where they suspected, on reasonable grounds, that a child was being abused or neglected, or there was a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child was likely to reside.<sup>428</sup> The Act remains the principal statute addressing child abuse and neglect in Tasmania.

- 53 The *Community Protection (Offender Reporting) Act 2004* introduced a 'reportable offence' regime and an offender's register. Section 13 provides a court with the power to make an order to submit to a reporting regime if 'satisfied that the offender poses a risk of the lives or the sexual safety of one or more persons, or persons generally'.<sup>429</sup> A 'reportable offence' includes sexual offences against children, and other sexual offences.<sup>430</sup>
- 54 In 2006, Alison Jacob and David Fanning published the '*Report on Child Protection Services in Tasmania*', which made recommendations relating to the development of professional practice within the child protection authorities and recognised a 'lack of cohesive and professionally sound practice framework to provide the foundation for their work and the basis for decision-making and professional standards'.<sup>431</sup>
- 55 A 2011 report of the Select Committee on Child Protection of the Parliament of Tasmania observed that there remained numerous issues to be improved upon, and recommending a strengthening of the powers and functions of the Commissioner for Children, together with other measures.<sup>432</sup>

#### *Australian Capital Territory*

- 56 In 1979, the Commonwealth Attorney-General asked the Australian Law Reform Commission (ALRC) to review and report on law and practice relating to child welfare in the ACT.<sup>433</sup>
- 57 In 1981 the ALRC recommended that a new Child Welfare Ordinance be introduced to replace the *Child Welfare Ordinance 1957*, and to include new procedures and obligations to deal with the physical and sexual abuse of children.<sup>434</sup>
- 58 In 1986, the *Children's Services Ordinance 1986*, introduced mandatory reporting of child abuse by health professionals, teachers, school counsellors, persons employed by the Department of Territories or ACT Health Authority and persons providing care at licenced premises.<sup>435</sup>
- 59 The *Children's Services Ordinance 1986* became the *Children's Services Act 1986* in 1992, and then the *Children and Young People Act 1999*. The mandatory reporting laws remained largely untouched by these transitions.
- 60 In 2005, the *Crimes (Child Sex Offenders) Act 2005* introduced a child sex offender register to the ACT, to "reduce the likelihood of offenders ... reoffending by requiring that they keep police informed of their whereabouts and other personal dealings for a period of time".<sup>436</sup> This

<sup>428</sup> *Children, Young Persons and their Families Act 1997* (Tas) Part 3

<sup>429</sup> *Community Protection (Offender Reporting) Act 2004* (Tas) s 13

<sup>430</sup> See *Community Protection (Offender Reporting) Act 2004* (Tas) Schedule 1

<sup>431</sup> Alison Jacob and David Fanning, *Report on Child Protection Services in Tasmania* (Commissioner for Children and the Department of Health and Human Services, October 2006) 67

<sup>432</sup> Parliament of Tasmania, Select Committee on Child Protection, Final Report, No. 44, 2011

<sup>433</sup> Terms of Reference, Australian Law Reform Commission, *Child Welfare*, ALRC Report 18, 12 November 1981

<sup>434</sup> Australian Law Reform Commission, *Child Welfare*, ALRC Report 18, 12 November 1981, p xv

<sup>435</sup> *Children's Services Ordinance 1986*, clauses 103(2) and 138–142

<sup>436</sup> Explanatory Statement, *Crimes (Child Sex Offenders) Bill 2005*, available at: [http://www.legislation.act.gov.au/b/db\\_16459/default.asp](http://www.legislation.act.gov.au/b/db_16459/default.asp)

legislation was developed in consultation with other jurisdictions, who were developing child protection registers at around the same time.<sup>437</sup>

- 61 In 2008, the *Children and Young People Act 2008* was introduced and restructured the ACT care and protection scheme in light of the introduction of the *Human Rights Act 2004*, as well as the findings and recommendations of various reports and reviews of the early 2000s.<sup>438</sup> The Act retained existing mandatory reporting requirements.

### National

- 62 Although child protection remains primarily a State and Territory responsibility, in the 1990s and 2000s, it drew increasing attention as an issue of national concern and inquiry in Australia.
- 63 In the late 1990s, the British Department of Health conducted an inquiry into child migration, which took evidence in Australia, and reported on “The welfare of former British child migrants” in July 1998.<sup>439</sup> The Australian Government responded in January 2000, with the *Australian Government response to the British Government response to the recommendations of the British House of Commons Health Committee’s report of its inquiry into the welfare of former British child migrants*.<sup>440</sup>
- 64 Between 2000 and 2001, the Senate Community Affairs Reference Committee investigated the issue of child migration, and in August 2001 published the report “Lost Innocents: Righting the Record – Report on child migration” (The Lost Innocents Report).
- 65 Between 2003 and 2004, the Senate Community Affairs References Committee conducted an “Inquiry into Children in Institutional Care”, and in 2004, released the report “Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children” (the Forgotten Australians Report). The terms of reference of the Committee included that it should examine “the extent and impact of the long-term social and economic consequences of child abuse and neglect on individuals, families and Australian society as a whole, and the adequacy of existing remedies and support mechanisms”.<sup>441</sup>
- 66 The Committee reported that it had received “hundreds of graphic and disturbing accounts” which “outlined a litany of emotional, physical and sexual abuse, and often criminal physical and sexual assault ... across institutions, across States and across the government, religious and other care providers”.<sup>442</sup> Among the Committee’s recommendations were that the Commonwealth Government consider establishing a Royal Commission into State, charitable, and church-run institutions and out-of-home care during the last century.<sup>443</sup>

<sup>437</sup> The Hon J Stanhope MP, ACT Legislative Assembly, Hansard, 7 April 2005, p 1504

<sup>438</sup> Standing Committee on Community Services and Social Equity, Inquiry into the Rights, Interests and Wellbeing of Children and Young People (August 2003); Commissioner for Public Administration, The Territory as Parent: Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management (May 2004) (Vardon Report); and The Territory’s Children: Ensuring safety and quality care for children and young people, Report on the Audit and Case Review, Independent Review for the Commissioner for Public Administration (July 2004) (the Murray Report)

<sup>439</sup> Great Britain, House of Commons, Select Committee on Health, *The welfare of former British child migrants*, 30 July 1998

<sup>440</sup> Coral Dow and Janet Phillips, Social Policy Section, Parliamentary Library, “*Forgotten Australians’ and ‘Lost Innocents’: child migrants and children in institutional care in Australia*”, 11 November 2009, available at: [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/0910/ChildMigrants#intro](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0910/ChildMigrants#intro)

<sup>441</sup> Australian Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, (August 2004), p 1

<sup>442</sup> Australian Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, (August 2004), p xv

<sup>443</sup> Australian Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, (August 2004), p xxii

- 67 In March 2005, the Committee published a second report, “Protecting vulnerable children: A national challenge”. This second report examined the early responses to the Forgotten Australians Report, and described child protection issues arising in the context of out-of-home care.
- 68 In June 2009, the Senate Community Affairs References Committee reported on the progress of implementing the recommendations of the Lost Innocents and Forgotten Australians Reports.<sup>444</sup> The Committee recommended that the Ministerial Council for Police and Emergency Management “develop and implement a national policy on the prosecution of, and data collection and sharing about, historical crimes of sexual and physical abuse of children in care”.<sup>445</sup>
- 69 The primary recommendation of the Committee was that the Commonwealth Government issue a formal statement of acknowledgment and regret or apology to the people whose experiences were the subject of the report.<sup>446</sup> On 16 November 2009, the Australian Parliament offered an apology to the Forgotten Australians and former child migrants for their placement and suffering in institutions.<sup>447</sup>
- 70 In November 2012, the federal government announced this Royal Commission into Institutional Responses to Child Sexual Abuse.

<sup>444</sup> Australian Senate Community Affairs References Committee, *Lost Innocents and Forgotten Australians Revisited*, June 2009

<sup>445</sup> Australian Senate Community Affairs References Committee, *Lost Innocents and Forgotten Australians Revisited*, June 2009, Recommendation 15, p xii

<sup>446</sup> Australian Senate Community Affairs References Committee, *Lost Innocents and Forgotten Australians Revisited*, June 2009, Recommendations 1 and 2, p xi

<sup>447</sup> Transcript of address at the apology to the Forgotten Australians and former child migrants, Great Hall, Parliament House, 16 November 2009, available at: <http://pandora.nla.gov.au/pan/110625/20091116-1801/www.pm.gov.au/node/6321.html>

## Developing International Awareness of Clergy Sexual Abuse

### *Church Response in the United States*

- 71 In 1975, the *National Catholic Reporter* in the United States published the names of priests involved in child sexual abuse, who had already been named in court reports or by other media outlets.<sup>448</sup>
- 72 Between 1982 and 1984 in the United States, the National Conference of Catholic Bishops (NCCB) was engaged in advising the dioceses and bishops as requested about cases of child sexual abuse. In 1985 the NCCB advised the dioceses that an accused should be removed from his or her position and referred for professional medical evaluation. Further, the NCCB advised that the dioceses should deal promptly with the victim and offer the support of the church, as well as protecting the confidential nature of the claim and complying with obligations of civil law. With the advice of the NCCB, each diocese continued to develop their own policies and procedures.<sup>449</sup>
- 73 In 1985, an American priest and canon lawyer, Rev Thomas Doyle published a confidential report titled, "The Problem of Sexual Molestation by Roman Catholic Clergy", extracts of which were later disseminated to Church Authorities in Australia.
- 74 As more allegations of child sexual abuse continued to be received in the United States in the late 1980s to early 1990s, the NCCB advised dioceses to consider the pastoral needs of the victim.<sup>450</sup>
- 75 However, due to the limitation of actions in canon law, there was no process available for the removal of priests available to the US Bishops as there had often been a significant lapse of time between the conduct and the complaint. In 1992, the NCCB Canonical Affairs Committee issued the *Draft of Special Norms for Administrative Removal of a Cleric from Clerical State*, which were never adopted.
- 76 In November 1992 a series of principles known as *The Five Principles* were adopted by the NCCB as the recommended course of action to respond to an allegation of sexual abuse by a priest. The Five Principles were:
1. Respond promptly to all allegations of abuse where there is reasonable belief that abuse has occurred.
  2. If such an allegation is supported by sufficient evidence, relieve the alleged offender promptly of his ministerial duties and refer him for appropriate medical evaluation and intervention.
  3. Comply with the obligations of civil law as regards reporting of the incident and cooperating with the investigation.
  4. Reach out to the victims and their families and communicate sincere commitment to their spiritual and emotional well-being.
  5. Within the confines of respect for privacy of the individuals involved, deal as openly as possible with the members of the community.

<sup>448</sup> Delaney, p 16

<sup>449</sup> Delaney, p 39–40

<sup>450</sup> Delaney, p 41

- 77 In 1993, the NCCB established the Ad Hoc Committee on Sexual Abuse, which presented in 1994 a volume of material titled *Restoring Trust*, containing resources on prevention, education, administration, victims, accused and media. The committee did not challenge the fact that all dioceses maintained their own policies, but recommended that all policies be public documents and pastoral in tone.<sup>451</sup> Further volumes of this publication were issued: *Restoring Trust Vol. II* (1995), and *Restoring Trust Vol. III* (1996) containing recommendations about prevention and education, administrative guidelines, policy review and information about dealing with victims, accused and the media, which were designed to provide guidance to Church authorities to respond to allegations of sexual abuse against clergy. Many archdioceses and dioceses instituted changes to their policies based on these resources.
- 78 In the same year, the NCCB approved for three years *Proposed Guidelines on the Assessment of Clergy and Religious for Assignment*. The NCCB recommended that all bishops and religious leaders use the guidelines when appointing or transferring priests and religious, as well as after the appointment.<sup>452</sup>
- 79 In 1995, the Bishops Committee on Women in Society and in the Church released *Walk in the Light: A Pastoral Response to Child Sexual Abuse*, which encouraged persons who had been abused to seek support from their parish. Most dioceses had developed their own policies by around 2000.<sup>453</sup>
- 80 In 2002, the NCCB, by then renamed the United States Conference of Catholic Bishops (USCCB) approved the *Charter for the Protection of Children and Young People*, and established a National Review Board which, among other functions, would “approve the report on the implementation of the Charter in each diocese and eparchy”.<sup>454</sup>
- 81 Following this, in June 2002 the USCCB adopted the *Charter for the Protection of Children and Young People* (Charter), which sets out the responsibilities in combating the crisis of sexual abuse of children in the Church. The Charter was the first comprehensive policy that all bishops in the United States agreed to implement. The Charter has subsequently been reviewed, most recently in 2011.
- 82 In the same year the USCCB renewed the mandate of the Ad Hoc Committee on Sexual Abuse and reconstituted it as the Committee for the Protection of Children and Young People, a standing committee of the USCCB, and established the National Review Board (NRB) a board of lay experts to collaborate with the USCCB in preventing the sexual abuse of minors in the United States by persons in the service of the Church.
- 83 The Charter specifically created the Secretariat of Child and Youth Protection within the USCCB as a resource for dioceses/eparchies that are responsible for implementing safe environment programs and for suggesting training and development of diocesan personnel responsible for child and youth protection programs.
- 84 The Ad Hoc Committee also developed the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, which received

<sup>451</sup> Delaney, p 43–44

<sup>452</sup> Delaney, p 45

<sup>453</sup> Delaney, p 46

<sup>454</sup> Delaney, 47

*recognitio* from the Holy See on 8 December 2002, and therefore form Church law for the dioceses/eparchies of the Church in the United States.

- 85 Under the Essential Norms, each diocese was to have a written policy on the sexual abuse of minors, which was to comply fully with the requirements of canon law, and each diocese was to designate a competent person to coordinate assistance and pastoral care for any person claiming to have been sexually abused by a priest or deacon. Each diocese was to have a review board to function as a confidential consultative body to the bishop or eparch in discharging his responsibilities, constituted in the majority by lay persons. Complaints were to be dealt with through a preliminary investigation in harmony with canon law. Each diocese was required to comply with all applicable civil laws with respect to reporting, and to advise and support a person's right to make a report to public authorities. No priest or deacon who had committed an act of sexual abuse of a minor was permitted to be transferred for ministerial assignment to another diocese or province.
- 86 The USCCB has also conducted detailed research into the incidence and reasons for child sexual abuse by priests and religious, through its commissioning of two reports from the John Jay College of Criminal Justice of the City University of New York.
- 87 The first report was a study on a national basis across the United States of the extent of the sexual abuse crisis in the Catholic Church from 1950 to 2002. That report was released in February 2004.<sup>455</sup> The second examined the causes of the child sexual abuse crisis, and was released in May 2011.<sup>456</sup> The findings from these reports have formed the basis for prevention policies implemented in the Church in the United States.
- 88 These policies focus on three factors: (a) *Education* - A clear delineation of behavioural expectations appropriate to a life of celibacy must be part of formation goals during seminary education and also throughout priests' time in ministry; (b) *Situational prevention models* - these include implementing mandatory safe environment training programs; periodic evaluations within dioceses of the performance of their priests; ensuring priests have outlets to form social friendships and suitable bonds with age-appropriate persons; reducing provocations by reducing the factors that may lead priests to abuse (such as stress); and (c) *Oversight and accountability* - commitment to a specific and public timeline for the implementation of structures of accountability and transparency under which diocesan leaders are transparent about their actions and ensure that the immediate and appropriate responses to abuse become routine.
- 89 Each year, the USCCB releases a report of the Secretariat of Child and Youth Protection on the implementation of the Charter by dioceses and eparchies in the United States. The report details steps taken by the Church in relation to child protection and the outcome of audits undertaken of the implementation of the Charter by dioceses and parishes across the United States. The report

<sup>455</sup> John Jay College of Criminal Justice, City University of New York (February 2004) *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States 1950-2002* <<http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/The-Nature-and-Scope-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-and-Deacons-in-the-United-States-1950-2002.pdf>>

<sup>456</sup> John Jay College of Criminal Justice, City University of New York (May 2011) *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010* <<http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/The-Causes-and-Context-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-in-the-United-States-1950-2010.pdf>>

also provides statistics about the number of allegations of child sexual abuse received and the cost associated with those allegations.<sup>457</sup>

- 90 The current iteration of the Charter was adopted by the USCCB in 2011. The current iteration of the Essential Norms received *recognitio* from the Holy See on 1 January 2006, and were promulgated 5 May 2006. The Charter and the Essential Norms have been integrated into Church life and form the basis of Church procedures in relation to child protection and the handling of allegations of child sexual abuse by members of the clergy and others within the Church in the United States.
- 91 The NRB produced a review report in June 2012 highlighting what had been achieved and what remained to be done in the 10 years after the adoption of the Charter.<sup>458</sup> The report noted a striking improvement in the Church's response to, and treatment of, victims, its creation of safe environments for children and action taken to remove offenders from ministry.<sup>459</sup>
- 92 The Charter and Essential Norms do not deal specifically with payment of financial compensation to victims of child sexual abuse by priests and religious in the United States.
- 93 However, despite these national efforts to formulate guidelines for responding to allegations of child sexual abuse, there remains no national process in the United States. To this day, each diocese applies its own procedures.

#### *Church Response in Canada*

- 94 In 1987, the Canada Conference of Catholic Bishops (CCCCB) distributed the *Policies and Procedures Regarding Complaints of Sexual Abuse*, which was to form a basis for each diocese to develop its own process for responding to complaints.<sup>460</sup> In 1989, the CCCC created an Ad Hoc Committee on Child Sexual Abuse.
- 95 In Canada, public revelations of child sexual abuse by the clergy occurred in 1989 to 1990, when four priests pleaded guilty to sexual offences and, in a separate incident, when offences committed by religious brothers that had been reported to the Department of Social Services 14 years previously became public.<sup>461</sup>
- 96 In May 1989, following the investigation and arrest of several priests on child sexual abuse charges, the Archbishop of St John's Newfoundland instituted a Commission of Enquiry into allegations of child sexual abuse by priests in the Archdiocese. The Commission produced the *Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy* (the Winter Report)<sup>462</sup> which is credited with being the first major investigation into child sexual abuse in the Church.
- 97 The Winter Report recommended a multi-faceted approach to prevention of child sexual abuse. It found that the Church needed to respond primarily to the victims and others affected by abuse

<sup>457</sup> The 2012 report was released in May 2013: *Findings and Recommendations: The 2012 Annual Report on the Implementation of the Charter for Children and Young People* <<http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/annual-report-on-the-implementation-of-the-charter-for-the-protection-of-children-and-young-people-2012.pdf>>

<sup>458</sup> National Review Board, USCCB (June 2012) *A Ten Year Progress Report* <<http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/10-year-report-2012.pdf>>

<sup>459</sup> *Ibid*, p 1

<sup>460</sup> Delaney, 51

<sup>461</sup> Delaney, p 18–19

<sup>462</sup> Winter, Gordon A. (Chairman) (June 1990) *Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy* (Winter Report) <<http://traumaandtransformation.org/canada>>



- and to the situations that enabled the offences to occur. The Winter Report also acknowledged the need for further education about sexuality and sexual abuse, to improve communication and for work to be done to repair damage done by secrecy and poor communication structures.<sup>463</sup>
- 98 In 1992 the Ad Hoc Committee on Child Sexual Abuse published *From Pain to Hope, Report from the CCCB Ad Hoc Committee on Child Sexual Abuse*,<sup>464</sup> a detailed document which expanded on and completed the 1987 guidelines.
- 99 *From Pain to Hope* was the result of a systematic study by the CCCB into the prevention of child sexual abuse, care of victims and administrative procedures to be used in cases of sexual abuse by clergy and the formation of priests and religious. It made recommendations in relation to, and sought to more comprehensively address, the issue of sexual abuse of minors by members of the clergy. In 1989, the Archbishop of St John in Newfoundland Canada appointed a Special Archdiocesan Committee of Enquiry to enquire into why and how such conduct had occurred, and to make recommendations about the healing of victims and strategies for prevention.<sup>465</sup>
- 100 When it was issued, *From Pain to Hope* was voluntary, and was not adopted as an official policy of the CCCB. However, most Canadian dioceses adopted *From Pain to Hope* and developed protocols, prevention measures for priests, religious and the laity, and formation programs for seminarians which drew on the 50 recommendations in *From Pain to Hope* which related to: the need to break the silence,<sup>466</sup> ongoing pastoral care of the victim and others affected by the abuse,<sup>467</sup> concern for all priests in the diocese,<sup>468</sup> respect for the requirements of canon law<sup>469</sup> and civil law,<sup>470</sup> and the need for more defined structures and roles.<sup>471</sup>
- 101 In 2005 a Special Taskforce established by the CCCB to review *From Pain to Hope* released its report. The Taskforce terms of reference were to review *From Pain to Hope* in the light of Canadian experience and international developments and specifically examine the creation of safe pastoral environments, how to improve transparency, how to establish accountability without reducing diocesan autonomy and to make recommendations for changes to policies and development of resources.
- 102 In its report,<sup>472</sup> the Taskforce identified a number of concerns with the implementation of the approach in *From Pain to Hope* in dioceses, including:
- (a) there was in practice a reluctance by religious authorities to acknowledge sexual abuse problems and a lack of communication and information from bishops/dioceses to victims and parish communities. This tainted the credibility of the bishop and created the impression that the Church had something to hide
  - (b) rather than caring for victims, the Church was more focused on preservation of its financial and pastoral integrity, challenging victims and protecting even known abusers. Protection

<sup>463</sup> Delaney, p 51

<sup>464</sup> Canadian Conference of Catholic Bishops (June 1992) *From Pain to Hope, Report from the Ad Hoc Committee on Child Sexual Abuse* <[http://www.cccb.ca/site/Files/From\\_Pain\\_To\\_Hope.pdf](http://www.cccb.ca/site/Files/From_Pain_To_Hope.pdf)>

<sup>465</sup> Delaney, 49

<sup>466</sup> *From Pain to Hope*, Recommendations 1, 13

<sup>467</sup> *From Pain to Hope*, Recommendations 2, 10, 11, 12, 19

<sup>468</sup> *From Pain to Hope*, Recommendations 5, 11, 19

<sup>469</sup> *From Pain to Hope*, Recommendations 6, 14, 15

<sup>470</sup> *From Pain to Hope*, Recommendations 4, 16

<sup>471</sup> *From Pain to Hope*, Recommendations 6, 7, 8, 9, 13, 17

<sup>472</sup> Canadian Conference of Catholic Bishops (September 2005) *Report of the Special Taskforce for the review of From Pain to Hope* <[http://www.cccb.ca/site/Files/TaskForceGroup\\_A.pdf](http://www.cccb.ca/site/Files/TaskForceGroup_A.pdf)>

of victims, particularly children, was relegated to secondary importance. Where victims sought reparations they were faced with reliving the abuse they suffered and with a feeling of exclusion, with some dioceses prolonging the legal process even when the abusive situation was known and accepted

- (c) that with the knowledge of the bishop, priests who sexually abused minors were sometimes allowed to continue/reintegrate into ministry and to continue to minister to children, and
- (d) it had not been possible for all dioceses to implement all recommendations in *From Pain to Hope*. Diocesan protocols existed but information was not well publicised or readily accessible, and protocols were often not well known among diocesan authorities, employees and the faithful in general. In some cases, fewer new cases and resolution of older cases had meant that while the policies and procedures still existed, they were used so infrequently that their effectiveness may have been compromised.

103 The review made a number of significant recommendations:

- (a) processes for access to information and services should be consistently implemented in all dioceses via a personal commitment made by each bishop, especially those relating to care for victims
- (b) effective measures for prevention of sexual abuse of minors should be fully implemented and publicised in all dioceses
- (c) the protection of children and vulnerable persons so as to enable them to practise their faith in a safe environment should be a pivotal element. This developed from the evolution within society of the need to protect children from violence, including the passage of child protection legislation and the necessity for the Church to take concrete measures to avoid child sexual abuse and protect children participating in its activities, including legally mandated screening of persons working with children
- (d) convicted abusers and those facing credible allegations should be removed from public ministry and all contact with children
- (e) bishops should be accountable for their acts to the community. When sexual abuse by a member of his clergy occurs, bishops should acknowledge responsibility, express remorse and a willingness to settle the matter in a pastoral manner, to contribute to the healing process
- (f) the Church should make information about sexual abuse concerns public: including case statistics, implementation of preventative and corrective measures and evaluation of their effectiveness.

104 Following the review of *From Pain to Hope*, in 2007 the CCCB released *Orientations for updating a diocesan protocol for the prevention of the sexual abuse of minors and the pastoral response to complaints regarding abuse* (Orientations).<sup>473</sup>

<sup>473</sup> Canadian Conference of Catholic Bishops (October 2007) *Orientations issued by the Canadian Conference of Catholic Bishops for updating a diocesan protocol for the prevention of the sexual abuse of minors and the pastoral response to complaints regarding abuse* <[http://www.cccb.ca/site/images/stories/pdf/orientations-diocesan\\_protocols.pdf](http://www.cccb.ca/site/images/stories/pdf/orientations-diocesan_protocols.pdf)>

- 105 The Orientations repeat, clarify or strengthen the approach outlined in *From Pain to Hope*. In particular, the Orientations require that, within each diocese, a diocesan protocol is prepared in relation to child protection and responding to issues of child sexual abuse which:
- (a) requires that protection of children is key and all other aspects are secondary
  - (b) recognises the canonical autonomy of each bishop and the legal and civil distinction of each diocese, but requires that the creation of a safe environment for pastoral activities is made an imperative. By adopting a diocesan protocol adapted to the particular diocesan situation, resources and history, the bishop's responsibility to initiate, support and maintain a means for preventing sexual abuse and for responding to abuse complaints in his diocese is reinforced
  - (c) requires the appointment of a Bishop's Delegate, Deputy Delegate and Advisory Committee to assist the bishop in matters relating to prevention of sexual abuse and responding to complaints of sexual abuse
  - (d) includes a mechanism to promote greater transparency concerning clergy sexual abuse, via the transmission of information and publication of diocesan policies and protocols regarding child safety and responding to allegations of child sexual abuse
  - (e) provides for the reporting of allegations in accordance with civil law, cooperation with police investigations, investigation of allegations in accordance with canon law, and the canonical management of accused priests
  - (f) provides for pastoral care and support to be offered to victims/survivors
  - (g) ensures that programs are in place for the initial and ongoing formation and support of priests, and
  - (h) provides for the development of measures for the prevention of sexual abuse, including an obligation for the diocese to engage in appropriate screening of those working with children and to participate in a program for the prevention of sexual abuse comprising information programs, risk management and training, in line with the requirements of Canadian society.
- 106 In contrast to the approach in the United States, the Church in Canada does not audit or publish national compliance data. Rather, the implementation of the Orientations and the approach to the issue of child safety is the responsibility of individual bishops. The archdioceses and dioceses of Canada have implemented *From Pain to Hope* and the Orientations into their safe environment policies, which deal with both responses to, and investigation of, allegations of child sexual abuse, and the creation of child safe environments in the archdiocese/diocese.<sup>474</sup>
- 107 As in the United States, each Canadian diocese remains responsible for the design, review and implementation of its own procedures for responding to allegations of child sexual abuse.

<sup>474</sup> See examples of these policies in force in the Archdiocese of Toronto <[http://www.archtoronto.org/events\\_news/safe\\_environment.html](http://www.archtoronto.org/events_news/safe_environment.html)> and <<http://www.archtoronto.org/safeenvironment/safeenvironmentpolicy2010.pdf>> and the Archdiocese of Vancouver <[http://www.rcav.org/About\\_Us/Default.aspx?id=5420](http://www.rcav.org/About_Us/Default.aspx?id=5420)>

### Church Response in the United Kingdom

- 108 In 1992, the Committee for Social Welfare of the Bishops' Conference for England and Wales (BCEW) commissioned a paper, *The Sexual Abuse of Children*, which recommended that each diocese develop a policy relating to personal and social education, as well as sex education and abuse. In 1994, the BCEW published guidelines for dealing with allegations of sexual abuse about priests, religious and church personnel, titled *Child Abuse: Pastoral and Procedural Guidelines*.<sup>475</sup>
- 109 In 1996, a working party of the Committee for Social Welfare reported on *Healing the Wound of Child Abuse: A Church Response*, which did not provide recommendations but sought to educate Church personnel about the impact of child abuse upon the victim.<sup>476</sup>
- 110 In 2001, an independent review committee chaired by Lord Nolan was established on behalf of the BCEW to design a framework for the prevention of abuse and how the Church should respond to such allegations in the future (the Nolan Report).<sup>477</sup>
- 111 In its final report dated 17 September 2001, the Nolan Report made 20 recommendations relating to:
- (a) key structures and action required at each parish, diocese and religious institute and at a national level to create as safe an environment as possible for children and those who work with them, and
  - (b) action needed to strengthen arrangements for responding to allegations of abuse.<sup>478</sup>
- 112 Key to the recommendations of the Nolan Report was that the whole church in England and Wales, through the individual bishops and religious superiors, should commit to:
- (a) a single set of policies, principles and practices and guidelines based on the principle that the welfare of the child is paramount
  - (b) effective and speedy implementation in parishes, dioceses and religious orders, including a comprehensive programme to raise awareness and train those involved in implementing child protection policies
  - (c) an organisational structure in each parish, supported by the Child Protection Co-ordinator and teams at the diocese and in religious orders
  - (d) the establishment of a National Child Protection Unit, a national capability to advise the dioceses and orders on child protection policies, maintain databases, hold training, liaise and co-ordinate where necessary, and monitor and report on progress, and
  - (e) the provision of adequate resources to support these arrangements.<sup>479</sup>

<sup>475</sup> Delaney, p 54–55

<sup>476</sup> Delaney, p 58

<sup>477</sup> BCEW (2001) *The Nolan Report – A Programme for Action* Introduction, para 1.2

<<http://www.cathcom.org/mysharedaccounts/cumberlege/finalnolan1.htm>>

<sup>478</sup> BCEW (2001) *The Nolan Report – A Programme for Action* Introduction, para 1.6

<<http://www.cathcom.org/mysharedaccounts/cumberlege/finalnolan1.htm>>

<sup>479</sup> BCEW (2001) *The Nolan Report – A Programme for Action* Chapter 3 – Recommendations

<<http://www.cathcom.org/mysharedaccounts/cumberlege/finalnolan3.htm>>

- 113 On 15 November 2001, the BCEW resolved to implement the recommendations of the Nolan Report, and stressed the importance of acting in concert with religious congregations to put in place a single set of policies and practices across the Church.<sup>480</sup>
- 114 The final recommendation of the Nolan Report was that a review of the progress should be undertaken in five years. A Commission was established in 2006 under the chairmanship of Baroness Cumberlege (Cumberledge Commission) to undertake this review, with the following terms of reference:
- (a) to review the implementation of the Nolan Report both nationally and locally in the dioceses and religious congregations
  - (b) to make any recommendations for change taking account of statutory and good practice developments since the publication of the Nolan Report
  - (c) to consider the role of the central office (the Catholic Office for the Protection of Children and Vulnerable Adults, COPCA) in delivering these and any outstanding Nolan recommendations.
- 115 The Cumberledge Commission released its report *Safeguarding with Confidence* in 2007. The Cumberledge Commission found that although significant progress had been made in implementing the recommendations of the Nolan Report, there was room for improvement. Four priorities were identified:
- (a) embedding a One Church approach to safeguarding in religious congregations and dioceses, including moving to ensure that the outreach of safeguarding processes is extended to parishes, where the support, training and advice is most needed
  - (b) extending and adapting the Church's policies and practices for protecting children to the protection of vulnerable adults
  - (c) implementing procedures for investigating and managing allegations of abuse that are effective, fair and transparent, and that continue to be based on the principle that the welfare of the child is paramount
  - (d) disseminating safeguarding policies that are readily understandable, and ensuring that these are followed throughout the Church.<sup>481</sup>
- 116 To address these priorities, the Cumberledge Commission recommended:
- (a) national safeguarding structures and local arrangements, including the establishment of a new independent National Safeguarding Commission, spanning the BCEW and Conference of Religious in England and Wales, to strengthen and set the strategic direction, provide for discussion and ensure that national policies are followed

<sup>480</sup> BCEW (15 November 2001) *Bishops: We now commit ourselves to implementing the Final Report*  
<<http://www.cathcom.org/mysharedaccounts/cumberlege/nolanresponse.htm>>

<sup>481</sup> The Cumberledge Commission Report (2007) *Safeguarding with Confidence – Keeping Children and Vulnerable Adults Safe in the Catholic Church* pp3–4  
<[http://www.cathcom.org/mysharedaccounts/cumberlege/report/downloads/CathCom\\_Cumberlege2.pdf](http://www.cathcom.org/mysharedaccounts/cumberlege/report/downloads/CathCom_Cumberlege2.pdf)>

- (b) renewal of the role of COPCA, including renaming it the Catholic Safeguarding Advisory Service (CSAS): to place greater emphasis on raising awareness and on identifying and sharing good practice and to make the organisation genuinely part of the Church's mainstream thinking
  - (c) more emphasis on safeguarding of vulnerable adults (but not at the expense of safeguarding children), and
  - (d) reform and strengthening of Church processes for investigation and managing allegations of abuse, to ensure a process that accords with Church laws and natural justice and is quicker, more efficient and transparent, serving the victims of abuse and those accused of perpetrating the abuse.<sup>482</sup>
- 117 In July 2008, following the acceptance by the BCEW and Conference of Religious of England and Wales of the recommendations of the Cumberlege Commission report, the National Catholic Safeguarding Commission (NCSC), an independent body, was formed. The NCSC is responsible for settling the strategic direction of safeguarding policy in the Church, and for monitoring compliance, ensuring that standards are met and policies implemented in the Church nationally.
- 118 The NCSC directs the work of the CSAS, which is responsible for driving best practice in safeguarding children, young people and vulnerable adults.<sup>483</sup> The CSAS provides advice and has developed resources for safeguarding children and vulnerable adults, including a procedures manual which provides clear guidance to Church organisations in relation to the creation of safe environments, responding to concerns and allegations and records management.<sup>484</sup>
- 119 The NCSC released its fifth annual report on 25 July 2013. This report described the work of the safeguarding teams that now operate in dioceses, parishes and congregations and provided statistics about child protection allegations and complaints received during 2012. The report outlines improvements in responding to victims. Major achievements for 2012–13 included the establishment of national arrangements to support safeguarding in religious congregations, roll-out of safeguarding training modules and completion of a rewrite of the national safer recruitment procedures following changes to legislation.<sup>485</sup>
- 120 In Scotland, a working party commissioned by the Bishops Conference of Scotland (BCS) produced a report in 1996 containing a number of recommendations, entitled *Child Sexual Abuse*.<sup>486</sup> Also in 1996, Diocesan Child Protection Advisors developed guidelines for use in each diocese, parish and church organisation called *Keeping Children Safe*.<sup>487</sup>
- 121 In 2005, the BCS established the National Office for the Protection of Children and Vulnerable Adults (NOPCVA) to develop, coordinate and review safeguarding policy and practice across the Church in Scotland. Using standards developed by government in 2004,<sup>488</sup> NOPCVA has

<sup>482</sup> The Cumberlege Commission Report (2007) *Safeguarding with Confidence – Keeping Children and Vulnerable Adults Safe in the Catholic Church*

<[http://www.cathcom.org/mysharedaccounts/cumberlege/report/downloads/CathCom\\_SafeguardingwithConfidence.pdf](http://www.cathcom.org/mysharedaccounts/cumberlege/report/downloads/CathCom_SafeguardingwithConfidence.pdf)>

<sup>483</sup> National Catholic Safeguarding Commission <<http://www.catholicsafeguarding.org.uk/>>

<sup>484</sup> Catholic Safeguarding Advisory Service (July 2013) *Procedures Manual*

<<http://www.csasprocedures.uk.net/chapters/contents.html>>

<sup>485</sup> Catholic Church in England and Wales (2013) *Safeguarding: Annual Report 2012–13* <[http://www.catholic-ew.org.uk/Home/News/Safeguarding-Report/\(language\)/eng-GB](http://www.catholic-ew.org.uk/Home/News/Safeguarding-Report/(language)/eng-GB)>

<sup>486</sup> Delaney, p 62

<sup>487</sup> Delaney, p 62

<sup>488</sup> Scottish Government (2004) *Protecting Children and Young People: Framework for Standards* <<http://www.scotland.gov.uk/Publications/2004/03/19102/34605>>

developed a policy manual, *Awareness and Safety in Our Catholic Communities* to provide a comprehensive and unified approach to safeguarding of children and vulnerable people in the Church in Scotland.<sup>489</sup> Additionally, the Scottish Catholic Safeguarding Service, an agency of BCS, is responsible for policy development and implementation, training for Church personnel, the development of safeguarding resources and advice regarding policy implementation in the Church in Scotland.<sup>490</sup>

### *Church Response in Ireland*

- 122 The 1980s saw the emergence of a national awareness of child sexual abuse in Ireland, as the media began to release reports about individual cases of abuse and abuse in residential institutions.
- 123 In March 1994, the Irish Catholic Bishops Conference (ICBC)<sup>491</sup> convened the Irish Catholic Bishops Advisory Committee on Child Sexual Abuse, with the following terms of reference:
- (a) to consider and advise on an appropriate response by the Catholic Church in Ireland where there is an accusation, suspicion or knowledge of a priest or religious having sexually abused a child, and
  - (b) to identify guidelines for Church policy in this area and suggest a set of procedures to be followed in these circumstances.<sup>492</sup>
- 124 The outcome of the Committee's work was the release in 1996 of a document entitled, *Child Sexual Abuse: Framework for a Church Response* (the Framework document).<sup>493</sup> The Framework document was recommended by the ICBC and Conference of Religious in Ireland (CORI) for implementation by individual dioceses and religious institutes.
- 125 The Framework document recommended that each diocese and religious institute develop policies and protocols for addressing the issue of child sexual abuse by priests and religious embodying eight guidelines. The safety and welfare of children should be the first and paramount consideration following an allegation of child sexual abuse. The other guidelines were:
- (a) a prompt response should be given to all allegations of child sexual abuse
  - (b) in all instances where it is known or suspected that a priest or religious has sexually abused a child, the matter should be reported to the civil authorities
  - (c) care should be given to the emotional and spiritual wellbeing of those who have suffered abuse and their families
  - (d) there should be immediate consideration, following a complaint, of all child protection issues which arise, including whether the accused priest or religious should continue in ministry during the investigation

<sup>489</sup> Bishops' Conference of Scotland (2007 and as amended) *Awareness and Safety in Our Catholic Communities* <<http://www.scottishcatholicsafeguarding.org.uk/AwarenessandSafety/tabid/100/Default.aspx>>

<sup>490</sup> BCS, Scottish Catholic Safeguarding Service <<http://www.scottishcatholicsafeguarding.org.uk/AboutUs/tabid/56/Default.aspx>>

<sup>491</sup> The Irish Catholic Bishops Conference includes the bishops of the Republic of Ireland and the bishops of Northern Ireland

<sup>492</sup> Irish Catholic Bishops Conference (1996) *Child Sexual Abuse: Framework for a Church Response*, Veritas p 3 <[http://www.bishop-accountability.org/reports/1996\\_Irish\\_Catholic\\_Bishops\\_Advisory\\_Committee\\_Framework.pdf](http://www.bishop-accountability.org/reports/1996_Irish_Catholic_Bishops_Advisory_Committee_Framework.pdf)>. Although this committee was convened by ICBC, it comprised representatives of both ICBC and the Conference of Religious of Ireland (CORI)

<sup>493</sup> Irish Catholic Bishops Conference (1996) *Child Sexual Abuse: Framework for a Church Response*, Veritas <[http://www.bishop-accountability.org/reports/1996\\_Irish\\_Catholic\\_Bishops\\_Advisory\\_Committee\\_Framework.pdf](http://www.bishop-accountability.org/reports/1996_Irish_Catholic_Bishops_Advisory_Committee_Framework.pdf)>

- (e) the rights under natural justice, civil law and canon law of an accused priest or religious should be respected
  - (f) an appropriate pastoral response to the parish and wider community should be provided, with due regard to the right of privacy of those directly involved, and to the administration of justice, and
  - (g) adequate positive steps should be taken to restore the good name and reputation of a priest or religious who has been wrongly accused of child sexual abuse.<sup>494</sup>
- 126 The Framework document recognised the rights of the child to bodily integrity and physical and emotional privacy, to enjoy physical and mental health and to grow and develop in an environment which recognises their inherent dignity, in order that they might realise their full potential.<sup>495</sup> It also recognised the harmful and lasting effects of sexual abuse on victims and their families.<sup>496</sup>
- 127 At the same time, the Framework document sought to protect the rights of the accused to privacy, protection of their reputation, and the ability to know the case against them. The Framework document did not recommend a leave of absence when an accusation was first being investigated. Rather, when the bishop or religious superior was satisfied that child sexual abuse had occurred, they were then required to consider all the factors of the case to ensure that the accused did not remain in a ministry that provided access to children.<sup>497</sup>
- 128 In addition, the Framework document affirmed the pastoral role of the bishop or religious superior. In general terms, the Framework provided that the bishop or religious superior was required to consider the needs of those who had suffered abuse and their families, the accused priest or religious and their family, the parish or other place of ministry in which the accused person has served and the wider Church community.<sup>498</sup> Each diocese and institute however remained responsible for formulating its own policy and procedure.<sup>499</sup>
- 129 In 2000, the Commission to Inquire into Child Abuse (Laffoy Commission) was established to inquire into children in institutions since 1940. The Laffoy Commission reported on 20 May 2009.
- 130 Since then, several very significant inquiries have examined the Church response to allegations and incidents of child sexual abuse, including:
- (a) the inquiry into the Diocese of Ferns, County Wexford in 2003 to 2005 (Ferns Inquiry)<sup>500</sup>
  - (b) the Commission to Inquire into Child Abuse, which inquired into the experiences of children in institutions since the 1940s and reported in 2009 (Ryan Report)<sup>501</sup>

<sup>494</sup> Irish Catholic Bishops Conference (1996) *Child Sexual Abuse: Framework for a Church Response*, Veritas, para 3.3 pp 23–24  
<[http://www.bishop-accountability.org/reports/1996\\_Irish\\_Catholic\\_Bishops\\_Advisory\\_Committee\\_Framework.pdf](http://www.bishop-accountability.org/reports/1996_Irish_Catholic_Bishops_Advisory_Committee_Framework.pdf)>

<sup>495</sup> Irish Catholic Bishops Conference (1996) *Child Sexual Abuse: Framework for a Church Response*, Veritas p [ii]  
<[http://www.bishop-accountability.org/reports/1996\\_Irish\\_Catholic\\_Bishops\\_Advisory\\_Committee\\_Framework.pdf](http://www.bishop-accountability.org/reports/1996_Irish_Catholic_Bishops_Advisory_Committee_Framework.pdf)>

<sup>496</sup> Irish Catholic Bishops Conference (1996) *Child Sexual Abuse: Framework for a Church Response*, Veritas p [iii]  
<[http://www.bishop-accountability.org/reports/1996\\_Irish\\_Catholic\\_Bishops\\_Advisory\\_Committee\\_Framework.pdf](http://www.bishop-accountability.org/reports/1996_Irish_Catholic_Bishops_Advisory_Committee_Framework.pdf)>

<sup>497</sup> Irish Catholic Bishops Conference (1996) *Child Sexual Abuse: Framework for a Church Response*, Veritas paras 7.3 pp 43–45  
<[http://www.bishop-accountability.org/reports/1996\\_Irish\\_Catholic\\_Bishops\\_Advisory\\_Committee\\_Framework.pdf](http://www.bishop-accountability.org/reports/1996_Irish_Catholic_Bishops_Advisory_Committee_Framework.pdf)>

<sup>498</sup> Irish Catholic Bishops Conference (1996) *Child Sexual Abuse: Framework for a Church Response*, Veritas para 3.7 p 24  
<[http://www.bishop-accountability.org/reports/1996\\_Irish\\_Catholic\\_Bishops\\_Advisory\\_Committee\\_Framework.pdf](http://www.bishop-accountability.org/reports/1996_Irish_Catholic_Bishops_Advisory_Committee_Framework.pdf)>

<sup>499</sup> Delaney, 63

<sup>500</sup> The Ferns Report – Presented to the Minister for Health and Children, October 2005



- (c) the Commission of Investigation into the Archdiocese of Dublin, which also reported in 2009 (Murphy Report),<sup>502</sup> and
- (d) the Dublin Archdiocese Commission of Investigation, which examined conduct in the Diocese of Cloyne and reported in December 2010 (Cloyne Report).<sup>503</sup>

#### National Board for Safeguarding Children

131 In January 2001, the ICBC commissioned an independent research study into child sexual abuse in the Irish context and the impact of child sexual abuse by clergy on all those affected. This included victims and their families, convicted members of the clergy, their families and colleagues, and members of the wider Church community. The resulting study, *Time to Listen, Confronting Child Sexual Abuse by Catholic Clergy in Ireland* (Time to Listen)<sup>504</sup> was released in 2003. The recommendations to prevent child sexual abuse by Church personnel as developed in Time to Listen related to prevention of child sexual abuse by clergy, management of complaints of sexual abuse by clergy and professional development of clergy.<sup>505</sup>

132 Broadly, the recommendations were:

- (a) the Church in Ireland should develop a model of best practice for child protection and protection of vulnerable people, based on ongoing review of current guidelines
- (b) in the interests of child protection the Church should cooperate with other agencies
- (c) prevention strategies should be communicated to all Church personnel, to the wider Church community and to the general public
- (d) a clearly defined protocol for managing formal complaints, based on a standardised approach, should be in place and should be widely communicated to the general public. The protocol should provide for:
  - (i) clear and practical instructions for responding to disclosures of child sexual abuse for all Church personnel
  - (ii) onward referral of the complaint to a national central body/Child Protection Office (CPO)
  - (iii) mandatory training in complaints procedures for all Church personnel
  - (iv) complaints of child sexual abuse by clergy to be referred promptly to the civil authorities, as required by the Framework document
  - (v) notification by the national central body/CPO to the bishop in the diocese where the abuse is alleged to have occurred, of complaints received. This notification should

<sup>501</sup> Final Report of the Commission to Inquire into Child Abuse, 20 May 2009

<<http://www.childabusecommission.ie/publications/index.html>>

<sup>502</sup> Commission of Investigation - Report into the Catholic Archdiocese of Dublin, July 2009

<<http://www.justice.ie/en/JELR/Pages/PB09000504>>

<sup>503</sup> Commission of Investigation – Report into the Catholic Diocese of Cloyne, December 2010

<[http://www.justice.ie/en/JELR/Pages/Cloyne\\_Rpt](http://www.justice.ie/en/JELR/Pages/Cloyne_Rpt)>

<sup>504</sup> Goode H., McGee H., O'Boyle C., (2003) *Time to Listen: Confronting Child Sexual Abuse by Catholic Clergy in Ireland*, Dublin, The Liffey Press. Executive Summary <<http://epubs.rcsi.ie/cgi/viewcontent.cgi?article=1030&context=psycholrep>>

<sup>505</sup> Goode H., McGee H., O'Boyle C., (2003) *Time to Listen: Confronting Child Sexual Abuse by Catholic Clergy in Ireland*, Dublin, The Liffey Press. Executive Summary pp9-12 <<http://epubs.rcsi.ie/cgi/viewcontent.cgi?article=1030&context=psycholrep>>

- initiate a pastoral response from the local clergy/bishop in liaison with the national central body/CPO
- (vi) the formation by each diocese or religious institute of an advisory panel to deal with complaints of sexual abuse by clergy and religious, and
  - (vii) the development of policy for the procedures to be followed to 'protect the good name and reputation of a priest or religious who has been wrongly accused'
- (e) a code of professional conduct should be developed to clarify roles and boundaries for clergy
  - (f) training for clergy and religious should be developed, along with support structures, including personal development and spiritual support, and management and leadership training for those in management and leadership roles
  - (g) programs for ongoing supervision and support of convicted clergy and religious should be developed in conjunction with professionals working with sex offenders
  - (h) Church procedures for prevention, education and training should be audited at appropriate intervals, by the Church or by an external agency using a quality assurance approach.<sup>506</sup>
- 133 Acting on the recommendations in *Time to Listen*, the ICBC, CORI and the Irish Missionary Union (IMU) commissioned a further report in 2005, entitled *Our Children, Our Church – Child Protection Policies and Procedures for the Catholic Church in Ireland* (Our Children, Our Church).<sup>507</sup>
- 134 *Our Children, Our Church* provided a comprehensive and unified approach to child protection across the Church in Ireland. By proposing a 'One-Church', single, national structure for monitoring and managing child protection issues and a single set of policies and procedures for child protection, *Our Children, Our Church* brought greater clarity and consistency to the Church's child protection procedures.
- 135 Included in *Our Children, Our Church* was consideration of the investigation of, and response to, allegations of child sexual abuse, within a broader framework covering all forms of abuse – sexual, physical and emotional. A core recommendation of *Our Children, Our Church* was the establishment of a National Board for Safeguarding Children, which would assist those implementing safeguarding policy and procedures throughout the Church to achieve consistent standards of best practice in child protection and responding to allegations of abuse.
- 136 Following the release of *Our Children, Our Church*, in 2006 the ICBC, CORI and IMU established an independent incorporated body, the National Board for Safeguarding Children in the Catholic Church (National Board) to provide best practice advice and to monitor the safeguarding of children in the Church in Ireland. The National Board is responsible for ensuring that the Church's policies and procedures for child protection are implemented, monitored and publicised.

<sup>506</sup> Goode H., McGee H., O'Boyle C., (2003) *Time to Listen: Confronting Child Sexual Abuse by Catholic Clergy in Ireland*, Dublin, The Liffey Press. Executive Summary pp 9-12 <<http://epubs.rcsi.ie/cgi/viewcontent.cgi?article=1030&context=psycholrep>>

<sup>507</sup> ICBC, CORI & IMU (2005) *Our Children, Our Church – Child Protection Policies and Procedures for the Catholic Church in Ireland* Veritas <[http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco\\_publications/Safeguarding/ourchildrenourchurch.pdf](http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco_publications/Safeguarding/ourchildrenourchurch.pdf)>

- 137 Relevantly, the National Board's specific functions are to:
- (a) liaise regularly with the civil agencies responsible for child protection and with professional bodies, other churches and other national offices for child protection to ensure awareness of developments in legislation, policy and practice
  - (b) advise the ICBC, CORI and IMU on best practice for child protection policies and procedures
  - (c) establish a Professional Practice Committee
  - (d) give professional advice and moral support to Church organisations
  - (e) serve as a national training resource for Church personnel and organisations
  - (f) maintain a central and confidential database of all cases of child abuse involving Church personnel and maintain and publish national statistics in relation to child abuse involving Church personnel
  - (g) review and audit the implementation of the policies and procedures of *Our Children, Our Church*
  - (h) publish an annual report on the implementation of the policies and procedures contained in *Our Children, Our Church*.<sup>508</sup>
- 138 The functions and decisions of the National Board are implemented by the National Office for Child Protection.
- 139 In 2008, the National Board released *Safeguarding Children – Standards and Guidance Document for the Catholic Church in Ireland* (Standards and Guidance).<sup>509</sup> The Standards are intended to reflect best practice in safeguarding children, including developments that had occurred since the release of *Our Children, Our Church*.
- 140 The National Board has prescribed seven standards which represent the expected level of performance that all parts of the Church should reach, as follows:
1. A written policy on keeping children safe
  2. Procedures – how to respond to allegations and suspicions in the Republic of Ireland and Northern Ireland
  3. Preventing harm to children:
    - recruitment and vetting
    - running safe activities for children

<sup>508</sup> ICBC, CORI & IMU (2005) *Our Children, Our Church – Child Protection Policies and Procedures for the Catholic Church in Ireland*, Veritas p 11 <[http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco\\_publications/Safeguarding/ourchildrenourchurch.pdf](http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco_publications/Safeguarding/ourchildrenourchurch.pdf)>

<sup>509</sup> National Board for Safeguarding Children in the Catholic Church (2008) *Safeguarding Children – Standards and Guidance Document for the Catholic Church in Ireland*, Veritas <[http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco\\_publications/Safeguarding/safeguarding\\_children\\_standards.pdf](http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco_publications/Safeguarding/safeguarding_children_standards.pdf)>

- codes of behaviour
4. Training and education
  5. Communicating the Church's safeguarding message:
    - to children
    - to parents and adults
    - to other organisations
  6. Access to advice and support
  7. Implementing and monitoring the Standards
- 141 Each Standard also has a list of criteria which set parameters for deciding whether this Standard has been met, providing details of the steps that Church organisations must take to meet the Standard, and ways of evidencing their compliance with each Standard.<sup>510</sup>
- 142 Complaints of child sexual abuse remain the responsibility of each individual diocese and religious institute. However, this occurs against the background of the Standards and Guidance, which are designed to be used by all dioceses, parishes, religious institutes and seminaries. They recognise the differences in legislation and protection systems between the Republic of Ireland and Northern Ireland,<sup>511</sup> and some of the particular issues arising for Irish missionaries working overseas, while the National Board is also able to provide guidance to Church bodies seeking to comply with the Standards and Guidance in the context in which they are operating.
- 143 The National Board then operates to benchmark the processes in place, via annual audits and public reporting of results. The audit processes of the National Board are designed to ensure consistency in child protection across the Church.<sup>512</sup>

#### *Church Response in New Zealand*

- 144 In New Zealand, the protocol *Te Houhanga Rongo A Path to Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse by Clergy and Religious of the Catholic Church in New Zealand* was approved in 1998, and signed by six dioceses and religious institutes. The New Zealand document was developed by drawing upon the protocols and guidelines already in existence, including *Towards Healing*.<sup>513</sup>

<sup>510</sup> National Board for Safeguarding Children in the Catholic Church (2008) *Safeguarding Children – Standards and Guidance Document for the Catholic Church in Ireland*, Veritas, p 11 <[http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco\\_publications/Safeguarding/safeguarding\\_children\\_standards.pdf](http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco_publications/Safeguarding/safeguarding_children_standards.pdf)>

<sup>511</sup> The Standards note that some Church organisations come under the direct responsibility of government departments which already have procedures for reporting allegations and suspicions of child abuse, and states that where such procedures exist, they should be followed: National Board for Safeguarding Children in the Catholic Church (2008) *Safeguarding Children – Standards and Guidance Document for the Catholic Church in Ireland*, p 6 <[http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco\\_publications/Safeguarding/safeguarding\\_children\\_standards.pdf](http://www.catholicbishops.ie/wp-content/uploads/images/stories/cco_publications/Safeguarding/safeguarding_children_standards.pdf)>

<sup>512</sup> The most recent report of the National Board is the Annual Report for 2012: National Board for Safeguarding Children in the Catholic Church (2013) *Annual Report 2012*, Veritas <[http://www.safeguarding.ie/wp-content/uploads/2013/05/NBSCCI\\_Report\\_2012.pdf](http://www.safeguarding.ie/wp-content/uploads/2013/05/NBSCCI_Report_2012.pdf)>

<sup>513</sup> Delaney, p 66

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- 145 *Te Houhanga Rongo A Path to Healing* remains in use, having been revised in 1998 and 2001. In 1999, the New Zealand Catholic Bishops Conference was granted permission by the NCPS to adapt and use *Integrity in Ministry*.<sup>514</sup>

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<sup>514</sup> Delaney, 67 to 68

## Annexure E

### Summary of Mandatory Reporting Requirements

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH
<b>Legislation</b>	<i>Children and Young People Act 2008 (ACT)</i> , Part 11.1	<i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i> , Chapter 3, Parts 2 & 3	<i>Care and Protection of Children Act 2007 (NT)</i> , Part 2.1, Divisions 3 and 4	<i>Public Health Act 2005 (Qld)</i> , Chapter 5 ( <b>Act A</b> ) <i>Education (General Provisions) Act 2006 (Qld)</i> , Chapter 12, Part 10 ( <b>Act B</b> ) <i>Child Protection Act 1999 (Qld)</i> ( <b>Act C</b> )	<i>Children's Protection Act 1993 (SA)</i> , Part 4, Divisions 1 and 3	<i>Children, Young Persons and Their Families Act 1997 (Tas)</i> , Part 3	<i>Children, Youth and Families Act 2005 (Vic)</i> , Parts 4.1 and 4.4	<i>Children and Community Services Act 2004 (WA)</i> , Part 4, Division 9A ( <b>Act A</b> ) <i>Family Court Act 1997 (WA)</i> , s160 ( <b>Act B</b> )	<i>Family Law Act 1975 (Cth)</i> , Part VII, Division 8
<b>Who is mandated to report?</b>	Any person may report (s 354), but reporting is mandatory for: <ul style="list-style-type: none"> <li>■ doctors;</li> <li>■ dentists;</li> <li>■ nurses, enrolled nurses, midwives;</li> <li>■ teachers at schools;</li> <li>■ persons authorised to inspect education programs, materials or other records used for home</li> </ul>	Any person may report (s 24), but reporting is mandatory for: <ul style="list-style-type: none"> <li>■ a person who in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement, wholly or partly,</li> </ul>	Reporting is mandatory for all persons: s 26(1) Registered health professionals also have particular mandatory reporting obligations for suspected sexual abuse of a child aged at least 14 years (but less than 16 years): s 26(2)	Reporting is mandatory for: <ul style="list-style-type: none"> <li><b>Act A</b></li> <li>■ doctors and registered nurses: s 158.</li> <li><b>Act B</b></li> <li>■ staff members of a State school: ss 365 and 365A.</li> <li>■ staff members of non-State schools: ss 366 and 366A.</li> <li><b>Act C</b></li> <li>■ authorised officers, officers or employees of</li> </ul>	Any person may report (s 12), but reporting is mandatory for: <ul style="list-style-type: none"> <li>■ medical practitioners;</li> <li>■ pharmacists;</li> <li>■ registered and enrolled nurses;</li> <li>■ dentists;</li> <li>■ psychologists;</li> <li>■ police officers and community corrections officers;</li> <li>■ social workers;</li> <li>■ ministers of religion and people who are</li> </ul>	Any person may report (s 13), but reporting is mandatory for: <ul style="list-style-type: none"> <li>■ medical practitioners;</li> <li>■ nurses and midwives;</li> <li>■ dentists, dental therapists, dental hygienists and oral health therapists;</li> <li>■ psychologists;</li> <li>■ police officers and probation officers;</li> <li>■ principals and teachers;</li> <li>■ persons who provide child care</li> </ul>	Any person may report (s 183), but reporting is mandatory for: <ul style="list-style-type: none"> <li>■ registered medical practitioners;</li> <li>■ midwives and nurses;</li> <li>■ persons registered as teachers or granted permission to teach;</li> <li>■ principals of government or non-government schools;</li> </ul>	Reporting is mandatory for: <ul style="list-style-type: none"> <li><b>Act A</b></li> <li>■ doctors;</li> <li>■ nurses and midwives;</li> <li>■ teachers; and</li> <li>■ police officers: s 124B(1).</li> <li><b>Act B</b></li> <li>■ the Principal Registrar, a registrar or a deputy registrar;</li> <li>■ family consultants; family counsellors,</li> </ul>	Reporting is mandatory for: <ul style="list-style-type: none"> <li>■ the Registrar or Deputy Registrar of a Registry of the Family Court of Australia;</li> <li>■ the Registrar or Deputy Registrar of the Family Court of Western Australia;</li> <li>■ the Registrar of the Federal Circuit Court</li> </ul>

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH
	<p>education of a child or young person under the <i>Education Act 2004</i> (ACT);</p> <ul style="list-style-type: none"> <li>■ police officers;</li> <li>■ persons employed to counsel children or young people at a school;</li> <li>■ persons caring for children at a child care centre; persons coordinating or monitoring home-based care for a family day care scheme proprietor;</li> <li>■ public servants who, in the course of their employment, work with, or provide services personally to, children and young people or families;</li> <li>■ public advocates or official visitors;</li> <li>■ persons prescribed by regulation who, in the course of their employment, have contact</li> </ul>	<p>to children, and</p> <ul style="list-style-type: none"> <li>■ a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children: s 27(1).</li> </ul>		<p>the department involved in administering Act C, people employed in a departmental care service or licensed care service: s 148(6).</p>	<p>employed by or volunteer in an organisation formed for religious or spiritual purposes;</p> <ul style="list-style-type: none"> <li>■ teachers in educational institutions including kindergartens;</li> <li>■ approved family day care providers;</li> <li>■ employees of and volunteers in a government or non-government organisation that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children, and who actually deliver those services to children or who are responsible for or supervise the provision of those services to children.</li> </ul> <p>S 11(2).</p>	<p>or a child care service for fee or reward;</p> <ul style="list-style-type: none"> <li>■ persons concerned in the management of an approved education and care service, within the meaning of the Education and Care Services National Law (Tasmania), or a child care service licensed under the <i>Child Care Act 2001</i>;</li> <li>■ any person who is employed or a volunteer in: a government agency that provides health, welfare, education, child care or residential services wholly or partly for children; and an organisation that receives any funding from the Crown for the provision of such services; and</li> <li>■ any other person of a class determined by the Minister by notice in the Gazette to be prescribed</li> </ul>	<ul style="list-style-type: none"> <li>■ members of the police force; and</li> <li>■ other categories yet to come into effect: s 182.</li> </ul>	<p>family dispute resolution practitioners and arbitrators; and</p> <ul style="list-style-type: none"> <li>■ legal practitioners independently representing the child's interests: s 160(1).</li> </ul>	<p>of Australia;</p> <ul style="list-style-type: none"> <li>■ family consultants, family counsellors, family dispute resolution practitioners and arbitrators;</li> <li>■ lawyers independently representing a child's interests: s 67ZA(1).</li> </ul>

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH
	with or provide services to children, young people and their families: s 356(2).					persons: s14(1).			
<b>What must be reported?</b>	A belief, on reasonable grounds, arising from information obtained by the person in the course of, or because of, the person's work (whether paid or unpaid), that a child or young person has experienced or is experiencing, sexual abuse or non-accidental physical injury: s 356(1).	Reasonable grounds for suspecting that the child is at risk of significant harm*, if the grounds arise during the course of, or from, the person's work: s 27(2). *A child or young person is at risk of significant harm if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent of certain circumstances, including: <ul style="list-style-type: none"> <li>■ neglect;</li> <li>■ physical or sexual abuse or ill-treatment;</li> <li>■ exposure to domestic violence;</li> <li>■ psychological harm:</li> </ul> s 23.	A belief, on reasonable grounds, that: <ul style="list-style-type: none"> <li>■ a child has suffered or is likely to suffer harm* or exploitation^;</li> <li>■ a child aged under 14 years has been or is likely to be a victim of a sexual offence; or</li> <li>■ a child has been or is likely to be a victim of an offence against section 128 of the Criminal Code:</li> </ul> s 26(1). *Harm to a child is any significant detrimental effect caused by any act, omission or circumstance on the physical, psychological or emotional wellbeing or development of the child: s 15(1).	<b>Act A</b> Awareness or reasonable suspicion, formed during the practise of his or her profession, that a child has been, is being, or is likely to be harmed: s 191(1). <b>Act B</b> Awareness or reasonable suspicion, in the course of the staff member's employment at the school, that the child or young person has been or is likely to be sexually abused: ss 365–366A. <b>Act C</b> Awareness or reasonable suspicion that harm* has been caused to a child placed in the care of an entity conducting a departmental care service or a	A suspicion formed on reasonable grounds in the course of the person's work (whether paid or voluntary) or carrying out official duties, that a child has been or is being abused or neglected*: s 11(1) *Abuse or neglect means: <ul style="list-style-type: none"> <li>■ sexual abuse of the child; or</li> <li>■ physical or emotional abuse of the child, or neglect of the child, to the extent that the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing, or the child's physical or psychological</li> </ul>	A belief or suspicion on reasonable grounds, or knowledge held, in carrying out official duties or in the course of his or her work (whether paid or voluntary) that: <ul style="list-style-type: none"> <li>■ a child has been or is being abused or neglected, or is an affected child within the meaning of the <i>Family Violence Act 2004</i>; or</li> <li>■ there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides:</li> </ul> s 14(2).	A belief on reasonable grounds, formed in the course of practising his or her profession or carrying out the duties of his or her office, position or employment, that a child is in need of protection because the child has suffered or is likely to suffer, significant harm as a result of physical injury or sexual abuse, and the child's parents have not protected, or are unlikely to protect, the child from harm of that type: ss 184(1), 162(1)(c) and (d).	<b>Act A</b> A belief on reasonable grounds, formed in the course of the person's work (whether paid or unpaid), that a child has been the subject of sexual abuse that occurred on or after 1 January 2009 or is the subject of ongoing sexual abuse: s 124B(1). <b>Act B</b> Reasonable grounds for suspecting that a child has been, or is at risk of being abused: s 160(2).	Reasonable grounds for suspecting that a child has been, or is at risk of being abused: s 67ZA(2).



	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH
			^Exploitation of a child includes sexual and other forms of exploitation of the child: s 16(1).	licensee: s 148(1). *Harm is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing: s 9(1).	development is in jeopardy: ss 6(1) and 10.				
<b>Exceptions / Defences</b>	<p>A mandated reporter need not report if the person believes on reasonable grounds that:</p> <ul style="list-style-type: none"> <li>■ someone else has made a report about the same child or young person in relation to the same abuse or neglect and the other person has reported the same reasons for their belief: s 357 (1).</li> <li>■ the non-accidental physical injury is caused by another child or young person, and the person with parental responsibility for the injured person is willing and able to protect the</li> </ul>	Nil	Nil	<p><b>Act A</b> The doctor or registered nurse is aware that another doctor or registered nurse has notified the chief executive of the relevant department under section 191 of Act A about the harm or likely harm: s 191(1)(b).</p> <p><b>Act C</b> The reporter has a reasonable excuse: s 148(1). Self-incrimination is a reasonable excuse: s 148(3). The reporter knows or reasonably supposes that the chief executive is aware of the harm or suspected harm: s 148(4).</p>	A priest or other minister of religion is exempt from reporting information received during a confession made in accordance with the rules and usages of the religion: s 11(4).	The person charged can prove that he or she honestly and reasonably believed that the Secretary or a Community-Based Intake Service had been informed of all the reasonable grounds on which his or her belief, suspicion or knowledge was based by another person: s 14(6)(a). The person charged has complied with the relevant guidelines: s 14(6)(b).	The person charged can prove that he or she honestly and reasonably believed that all of the reasonable grounds for his or her belief had been the subject of a report to the Secretary made by another person: s 184(2).	<p><b>Act A</b> The person charged can prove that he or she honestly and reasonably believed that: all of the reasonable grounds for his or her belief had been the subject of a report made by another person; the CEO has caused or was causing inquiries to be made about the child's wellbeing; or the CEO had taken or was taking action in respect of the child's wellbeing: s 124B(3).</p> <p><b>Act B</b> If the reporter knows that the CEO has previously been notified that a child has been abused</p>	If the reporter knows that the authority has previously been notified about the abuse or risk, the person need not notify the authority of a suspicion that the child has been abused or is at risk of being abused, but the person may notify the authority of the suspicion: s 67ZA(4).

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH
	injured person from further injury: s 357(2).							or is at risk of being abused, the person need not notify the CEO of a suspicion that the child has been abused or is at risk of being abused, but the person may notify the CEO of the suspicion: s 160(4).	
<b>Reporting body</b>	<p>The report must be made to the Director-General: s 356.</p> <p>Voluntary reports may be made to the Public Advocate, who must pass a copy of the report to the Director-General: s 359.</p>	Director-General: ss 24 and 27(2)	CEO or a police officer: s 26	<p><b>Act A</b> Chief executive of the department in which the Act is administered: ss 191(2) and 158.</p> <p><b>Act B</b> School's principal, principal's supervisor or the director of the school's governing body, who must immediately provide the report to the police and the chief executive's nominee: ss 365–366A. If the reporter is the school's principal, the principal must immediately report to a police officer and to a director of the school's governing body:</p>	The Department of Family and Community Services: s 11(1)	The Secretary or a Community-Based Intake Service: s 14	The Secretary, Department of Human Services: s 184(1).	<p><b>Act A</b> The CEO or a person approved by the CEO: s 124B(2).</p> <p><b>Act B</b> The CEO: s 160.</p>	The prescribed child welfare authority: ss 67ZA(2) and (3).

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH	
				ss 365–366A. <b>Act C</b> Chief executive: s 148(1). The chief executive must give a copy of the report to the children's commissioner to help the commissioner perform the commissioner's monitoring functions under the <i>Commissioner's                      Act</i> : s 148(5).						
<b>Action following receipt of report</b>	The Director-General must conduct an initial assessment to decide if the child or young person may be in need of care and protection and take the action that he or she considers appropriate: s 360.	The Director-General makes such investigations as considered necessary to determine whether a child or young person is at risk of significant harm: s 30.	<ul style="list-style-type: none"> <li>■ Police officer must notify the CEO, who must record the report: ss 28 and 29.</li> <li>■ CEO may make inquiries and decide whether any further action should be taken for the child: s 32.</li> <li>■ Police officer may make inquiries about a child and provide a report of the inquiries to the CEO: s 33.</li> </ul>	<b>Act C</b> If the chief executive becomes aware of alleged harm or alleged risk of harm to a child and reasonably suspects the child is in need of protection, the chief executive must immediately: have an authorised officer investigate the allegation and assess the child's need of protection; or take other action the chief executive considers appropriate:	Chief Executive may cause an assessment of or investigation into the circumstances of the child: s 19. See also s 14.	The Secretary may refer a risk notification to a Community-Based Intake Service, if satisfied that it is an appropriate organisation to take action in respect of the notification: s 17A. See also s 17.	The Secretary may: provide advice to the person who made the report; determine that the report is a protective report; or determine that the report should be dealt with as a report to the Secretary under s 28: s 187. If the Secretary receives a report under section 28, the Secretary may: provide advice to the person who made the report; provide advice and assistance to the	<b>Act A</b> The CEO is to give a copy of the report to the Commissioner of Police as soon as practicable after the report is received by the CEO: s 124D(2).	Nil	

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH
				s 14(1). If the chief executive reasonably believes alleged harm to child may involve the commission of a criminal offence relating to the child, the chief executive must immediately give details of the alleged harm to the police commissioner: s 14(2).			child or the family of the child; refer the matter to a community-based child and family service or a service agency to provide advice, services and support to the child or the family of the child; or make a determination, under section 34, that the report is a protective intervention report: s 28.		
<b>Offences</b>	<ul style="list-style-type: none"> <li>■ False or misleading reports: ss 355 and 358.</li> <li>■ Mandated reporter fails to report: s 356.</li> </ul>	False or misleading statements: s 253.	Failure to report without reasonable excuse: s 26.	<p><b>Act A</b> Failure to report: s 193.</p> <p><b>Act B</b> Failure to report: ss 365 and 366.</p> <p><b>Act C</b> Failure to report: s 148(1).</p>	<ul style="list-style-type: none"> <li>■ Failure to report: s 11(1).</li> <li>■ Threatening or intimidating, or causing damage, loss or disadvantage to, a person because they have discharged or propose to discharge, their reporting obligation: s 11(6).</li> </ul>	Failure to report: s 14(2).	Failure to report: s 184(1).	<p><b>Act A</b> Failure to report: s 124B(1).</p> <p><b>Act B</b> Nil</p>	Nil

## Annexure F

### Factors Affecting the Assessment of Damages in Court Proceedings

- 1 Sexual assault within institutions may result in a victim seeking to recover damages for personal injury from two types of defendants:
  - (a) the offender (if still alive), for his deliberate acts: the cause of action is likely to be the intentional torts of trespass to the person or battery
  - (b) the institution, where it knew or ought to have known of the risk of such offences and failed to take reasonable steps, for example, to remove the offender from the relevant position: the cause of action here is in negligence.

#### Heads of Damage

- 2 Where a victim successfully sues the offender, for the intentional torts of trespass to the person or battery, such a claim usually sounds in awards of some or all of a number of heads of damages:
  - (a) general damages for pain and suffering
  - (b) aggravated and exemplary damages
  - (c) past incurred expenses
  - (d) costs of future treatment
  - (e) past and future losses of earning capacity
  - (f) past and future loss of superannuation contributions by an employer,
  - (g) less usually the need for past and future domestic services.
- 3 Where the victim sues the institution for negligence, the likely heads of damage are broadly the same, with the only exceptions being aggravated and exemplary damages which may not be available or which may have been expressly abrogated by statute: see for example, s 21 *Civil Liability Act 2002* (NSW).
- 4 These typical heads of damages may be capped, modified or abrogated by statute in different jurisdictions at different times.<sup>515</sup>
- 5 With the exception of exemplary damages, the above heads of damages are all compensatory damages. The principle underlying compensatory damages is that the plaintiff “*should be awarded such a sum of money as will, as nearly as possible, put him in the same position as if he had not sustained the injuries.*”<sup>516</sup>

<sup>515</sup> For example ss 12, 13, 15, 15A, 15B, 15C and 16, *Civil Liability Act 2002* (NSW)

<sup>516</sup> *Todorovic v Waller* (1981) 150 CLR 402 at 412

- 6 The award of damages must, however, represent what is reasonable and necessary, not what is ideal or perfect.<sup>517</sup>
- 7 Within these broad guiding principles there is a large body of case law addressing the approach to each of the above heads.

### General Damages

- 8 General damages (for non-economic loss) are awarded as consolation for the pain and suffering and loss of enjoyment of life caused by the wrongdoer.<sup>518</sup> Whilst the law recognises the need for some sort of consistency in such awards<sup>519</sup> it also recognises that such awards will vary considerably, based on factors such as age and aggravating or mitigating factors peculiar to the plaintiff.<sup>520</sup>
- 9 The common law in Australia does not permit reference to amounts awarded in other cases.<sup>521</sup> Accordingly each decision on general damages is peculiar not only to the evidence but to the judicial officer's own impressions of proportionality and general experience. In some jurisdictions statute now does permit reference to comparable awards.<sup>522</sup>
- 10 Seemingly similar acts of abuse can produce quite variable effects, depending on the relative vulnerabilities of each victim and factors such as the time between the abuse and the time of initial complaint. For that reason among others, the range of damages can vary. There is little uniformity in such awards. Rather there is a broad range, in which different judicial officers can and do reasonably form different views, having regard to the particular facts of each separate case. These views can differ from jurisdiction to jurisdiction.
- 11 It has been accordingly remarked that "*to say a determination of non-economic loss involves more art than science might be to overstate the degree of logic and precision with which such an assessment is performed.*"<sup>523</sup>

### Exemplary and Aggravated Damages

- 12 Exemplary damages are not compensatory. They are punitive in nature reflecting the court's desire both to express its abhorrence at the impugned conduct, and to deter others.<sup>524</sup> Such awards can be significant and are largely determined by factors such as the severity of the offences, the extent of any abuse of a position of trust and attempts to silence, coerce or intimidate the victim.
- 13 Aggravated damages, on the other hand, are compensatory. They are awarded essentially for mental suffering caused by the defendant's actions either at the time of the offence or thereafter.
- 14 The remaining heads of damages are determined by reference to the particular harm caused to each individual by the assault and its sequelae. Each is proved by evidence particular to the victim.

<sup>517</sup> *Lee Transport Co Ltd v Watson* (1940) 64 CLR 1; *Sharman v Evans* (1977) 138 CLR 563; *Arthur Robinson (Grafton) v Carter* (1968) 122 CLR 649

<sup>518</sup> *Skelton v Collins* (1966) 115 CLR 94

<sup>519</sup> *Faulkner v Keffalinos* (1970) 45 ALJR 80

<sup>520</sup> *Haines v Bendall* (1991) 172 CLR 60; *Reece v Reece* (1994) 19 MVR 103; *Thurston v Todd* [1965] 1 NSW 321 (CA)

<sup>521</sup> *Planet Fisheries Pty Ltd v Rosa* (1968) 119 CLR 118

<sup>522</sup> For example s 18 *Civil Liability Act 2002* (NSW); s 99 *Civil Law (Wrongs) Act 2002* (ACT)

<sup>523</sup> *McDougall J in Jopling v Isaac* [2006] NSWCA 299

<sup>524</sup> *Lamb v Cotongo* (1987) 164 CLR 1

### Past Losses and Treatment

- 15 Past treatment costs are proved by evidence of monies paid for counselling or medical treatment resulting from the harm. Similarly past loss of earning capacity is assessed by establishing that periods of work were missed or jobs lost and the cause was the harm and its sequelae. These losses will be individual to each case.

### Future Losses and Treatment

- 16 Future loss of earning capacity is not assessed simply by reference to whether the person has lost a job or periods of work as a result of the harm. Rather the test is whether the harm has been or will be productive of economic loss.<sup>525</sup>
- 17 Accordingly the courts approach future loss of earning capacity by analysing the prospects of what the victim may have earned but for the harm, and what prospects there are of some partial or complete loss into the future, and adjusting the award within those parameters.<sup>526</sup> That exercise is peculiar to the circumstances of the victim, and involves the resolution of competing expert evidence as to the consequence of that harm. No two cases are the same.
- 18 The same principles apply to the assessment of future treatment needs.
- 19 A further factor affecting any comparison between overall awards is the different discount rates that may apply to the calculation of future losses.
- 20 Damages for future losses are discounted to reflect the fact that damages are awarded as a lump sum, in advance of the expected loss. If that amount were invested, as the law assumes, without an appropriate discount, the victim could be overcompensated.
- 21 The common law has approached this issue by discounting all future losses by 3%.<sup>527</sup> Some jurisdictions have legislated a higher discount rate (eg NSW 5%, s14 *Civil Liability Act*). The higher the discount rate the lower the sum awarded.

### Intentional Torts and Negligence

- 22 Damages for intentional torts are not subject to the same statutory caps and limitations as negligence claims. Thus, for example, in New South Wales damages for intentional torts are excluded from the operation of the *Civil Liability Act* insofar as it governs the assessment of damages.
- 23 There can therefore be quite disparate awards as between the two types of defendants, and the two types of cause of action, arising out of the same sexual assault.

### Other Factors Affecting Quantification of Damages

- 24 The amount of compensation received by plaintiffs in litigated matters, including where there is a compromise or settlement, can be influenced by numerous factors specific to each individual case, such as:

- (a) the range of defences available (which can vary case to case)

<sup>525</sup> *Graham v Baker* (1960) 106 CLR 340

<sup>526</sup> *Malec v J C Hutton Pty Ltd* (1990) 169 CLR 638; *Medlin v State Government Insurance Commission* (1995) 182 CLR 1

<sup>527</sup> *Todorovic supra*

- (b) the availability of a limitation defence or bar
  - (c) the presentation of the victim in the stressful environment of litigation
  - (d) the quality and type of expert evidence obtained by the parties
  - (e) the competence of legal representation on either side, and
  - (f) the impression made by the evidence at trial on the particular judicial officer, in exercising the generally broad discretions applicable to the awarding of damages.
- 25 In addition, in litigated claims (unlike *Towards Healing*), the assessment of damages can be significantly affected by such factors as the age of the victim at the time of the assessment, and the time period between the conduct and that assessment. For example:
- (a) Where, at the time of the assessment, the victim is younger and/or the period between the conduct and the trial is relatively short, a claim over a long prospective future lifetime can give rise to a substantial claim for future needs.
  - (b) Where, on the other hand, a person comes forward decades after the abuse, having lived his or her life over that period in the meantime, such a person may have a much smaller claim for future needs. The future, for such a person, will necessarily be a shorter period.
- 26 Moreover, in the second example, other causal factors will have intervened, whether for better and for worse, or perhaps both. A victim might come forward after many decades, having lived a life most adversely affected in the meantime, in terms of both mental and physical health, by other factors quite apart from the effects of the abuse.



## Annexure G

### Statutory Victims Compensation Schemes

- 1 Between the 1960s and 1980s, various state-based compensation schemes were introduced in Australia to compensate victims of crime.<sup>528</sup> These schemes are either administrative (ie compensation is determined by a government appointed assessor or commissioner: NSW, Qld, WA, NT and Tasmania) or court based (ACT, Vic and SA).
- 2 Initially, a discretionary model was adopted, with the exception of Queensland.<sup>529</sup> Under this model, the awards ranged from a maximum of \$10,000 in Tasmania to \$75,000 in Queensland.<sup>530</sup>
- 3 In the 1990s, as costs escalated and governments sought to reduce the costs of the schemes, there was a shift to a tariff-based model. For example, in New South Wales, under the 1996 Act, three levels of compensation were tied to specific sexual offences, ordered according to the criminal seriousness of each.<sup>531</sup> The award range was \$2,400 to \$50,000.
- 4 More recently, in 2013 that NSW scheme has been the subject of a change in the types of compensation payable without any significant change to overall totals potentially recoverable. The *Victims Rights and Support Act 2013* (NSW) makes available limited payments for counselling, immediate financial assistance for urgent needs arising from the act of violence, financial assistance for economic loss, and a recognition payment (for violence and trauma).<sup>532</sup> These amounts are capped by regulation as follows:
  - (a) counselling – for the victim of initially up to 10 hours but no more than 22 hours except in exceptional circumstances and at rates fixed by the regulations – \$1,200 to \$5,632<sup>533</sup>
  - (b) immediate financial assistance – not more than \$5,000<sup>534</sup>
  - (c) financial assistance for economic loss – not more than \$30,000<sup>535</sup>
  - (d) recognition payments – between \$1,500 up to \$15,000.<sup>536</sup>

<sup>528</sup> *Criminal Injuries Compensation Act 1967* (NSW); *Criminal Code Amendment Act 1968* (Qld); *Criminal Injuries Compensation Act 1969* (SA); *Criminal Injuries Compensation Act 1970* (WA); *Criminal Injuries Compensation Act 1972* (Vic); *Criminal Injuries Compensation Act 1976* (Tas); *Criminal Injuries Compensation Act 1983* (ACT)

<sup>529</sup> Queensland adopted a tariff-based model

<sup>530</sup> Queensland has the highest maximum award of \$75,000: *Criminal Offence Victims Act 1995* (Qld), s 25(2). The maximum award is \$60,000 in Victoria: *Victims of Crime Assistance Act 1996* (Vic), s 8; \$50,000 in ACT, NSW and SA: *Criminal Injuries Compensation Act 1983* (ACT), s 7(1); *Criminal Injuries Compensation Act 1978* (SA), s 7; *Victims Compensation Act 1996* (NSW), s 19(1); \$25,000 in the NT: *Crimes (Victims Assistance) Act* (NT), s 13; and \$10,000 in Tasmania: *Criminal Injuries Compensation Act 1976* (Tas), s 6(10)

<sup>531</sup> *Victims Compensation Act 1996* (NSW), Schedule 1. Category One includes indecent assault or assault with violence in the course of attempted unlawful sexual intercourse. The award range is \$2,400 to \$10,000. The second category includes unlawful sexual intercourse or the infliction of serious bodily injury in the course of attempted unlawful intercourse. The award range is \$10,000 to \$25,000. The third category includes a pattern of abuse involving category one or two sexual assault; unlawful sexual intercourse in which serious bodily injury is inflicted; unlawful sexual intercourse in which two or more offenders are involved; or unlawful sexual intercourse in which the offender uses an offensive weapon. The award range is \$25,000 to \$50,000.

<sup>532</sup> ss 26, 32, 33 & 36 *Victims Rights and Support Act 2013* (NSW)

<sup>533</sup> Regs 5(1), 5(3) & 6 *Victims Rights and Support Regulation 2013* (NSW)

<sup>534</sup> Reg 8 (1) *Victims Rights and Support Regulation 2013* (NSW)

<sup>535</sup> Reg 8(2) *Victims Rights and Support Regulation 2013* (NSW)

<sup>536</sup> Reg 12 *Victims Rights and Support Regulation 2013* (NSW)

- 5 The range of compensation available in NSW is, subject to any exceptional circumstances warranting further counselling, between \$1,500 and \$55,632. The legislation also makes provision for claims by close relatives of the victim that are also capped by similar regulations.<sup>537</sup> However a payment of financial assistance to a relative reduces the amount recoverable by the victim.<sup>538</sup>
- 6 Other jurisdictions also award compensation by reference to similar compositional categories and maximum limits:
- (a) **Western Australia:** *Criminal Injuries Compensation Act 2003* (WA) – up to \$75,000 maximum for one offence, \$150,000 for multiple unrelated offences.<sup>539</sup> For older offences there is a much-reduced amount, for example, 1971 to 1976: \$2000 maximum for one offence.<sup>540</sup> Offences after 23 September 2003 causing mental but not physical harm are not compensable<sup>541</sup>
  - (b) **South Australia:** *Victims of Crime Act 2001* (SA) – up to \$50,000 maximum with awards made on 50 point system<sup>542</sup>
  - (c) **Victoria:** *Victims of Crime Assistance Act 1996* (Vic) – up to \$60,000 maximum with further payments of between \$130–\$10,000 for significant adverse effects<sup>543</sup>
  - (d) **Queensland:** *Victims of Crime Assistance Act 2009* (Qld) – up to \$75,000 maximum<sup>544</sup>
  - (e) **Northern Territory:** *Victims of Crime Assistance Act 2006* (NT) – up to \$40,000 maximum<sup>545</sup>
  - (f) **Tasmania:** *Victims of Crime Assistance Act 1976* (Tas) – up to \$30,000 for a single offence and \$50,000 for more than one offence,<sup>546</sup> and
  - (g) **Australian Capital Territory:** *Victims of Crime (Financial Assistance) Act 1983* (ACT) – up to \$50,000 maximum.<sup>547</sup>
- 7 All jurisdictions have time limits for claims,<sup>548</sup> and the appropriate authority can refuse claims if the victim does not report to police, doctor or counsellor or does not cooperate in any investigation.<sup>549</sup>

<sup>537</sup> ss 27–29 *Victims Rights and Support Act 2013* (NSW)

<sup>538</sup> s 26(2) *Victims Rights and Support Act 2013* (NSW)

<sup>539</sup> ss 31–34 *Criminal Injuries Compensation Act 2003* (WA)

<sup>540</sup> s 31(1) *Criminal Injuries Compensation Act 2003* (WA)

<sup>541</sup> s 35 *Criminal Injuries Compensation Act 2003* (WA)

<sup>542</sup> s 20 *Victims of Crime Act 2001* (SA)

<sup>543</sup> ss 8, 8A *Victims of Crime Assistance Act 1996* (Vic)

<sup>544</sup> s 38 *Victims of Crime Assistance Act 2009* (Qld)

<sup>545</sup> s 38 *Victims of Crime Assistance Act 2006* (NT)

<sup>546</sup> s 6A(1) *Victims of Crime Assistance Act 1976* (Tas) and Reg 4 *Victims of Crime Assistance Regulations 2010* (Tas)

<sup>547</sup> ss 10, 14 *Victims of Crime (Financial Assistance) Act 1983* (ACT)

<sup>548</sup> s 40 *Victims Rights and Support Act 2013* (NSW); s 9 *Criminal Injuries Compensation Act 2003* (WA); s 18 *Victims of Crime Act 2001* (SA); s 29 *Victims of Crime Assistance Act 1996* (Vic); s 54 *Victims of Crime Assistance Act 2009* (Qld); s 31 *Victims of Crime Assistance Act 2006* (NT); s 71A-1C *Victims of Crime Assistance Act 1976* (Tas); s 27 *Victims of Crime (Financial Assistance) Act 1983* (ACT)

<sup>549</sup> s 44 *Victims Rights and Support Act 2013* (NSW); s 38 *Criminal Injuries Compensation Act 2003* (WA); s 20(7) *Victims of Crime Act 2001* (SA); s 52 *Victims of Crime Assistance Act 1996* (Vic); ss 21, 81 *Victims of Crime Assistance Act 2009* (Qld); s 43 *Victims of Crime Assistance Act 2006* (NT); s 5(3A) *Victims of Crime Assistance Act 1976* (Tas); s 12 *Victims of Crime (Financial Assistance) Act 1983* (ACT)

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- 8 These schemes achieve some degree of consistency of outcome by:
- (a) determining the grade of compensation by broad categorisations of the type and severity of the offences
  - (b) paying little regard to the individual effects of the offence on the victim over time
  - (c) reducing and capping the extent of compensation at arbitrary limits, and
  - (d) giving little access to the victim to be heard in the process.

## Annexure H

### Redress Schemes in Australia

- 1 Several Australian States have operated *ex gratia* redress schemes in recent years, which seek to compensate people who suffered abuse as children while in State care.
- 2 The schemes are not uniform in eligibility requirements, and it is not always clear how levels of compensation are arrived at or calculated in any given case.
- 3 Redress schemes generally have limited timeframes and limited publicity given to them, which can mean that some people who may have been entitled to apply do not find out about them until after they have closed.

#### Queensland

- 4 Following the report of the Forde inquiry,<sup>550</sup> a State redress scheme operated from May 2007 to provide compensation to people who had been abused or neglected whilst a child in institutional care in Queensland. Applications were accepted until 30 September 2008 (Level 1 payments) and 27 February 2009 (Level 2 payments).<sup>551</sup>
- 5 To qualify for a Level 1 payment of \$7,000, applicants needed to establish they had been placed in a detention or licensed government or non-government children's institution, had been released from care and turned 18 years of age on or before 31 December 1999, and had experienced institutional abuse or neglect. If that abuse or neglect was more serious, applicants qualified for an additional Level 2 payment of up to \$33,000.
- 6 Abuse and neglect suffered by individuals while in foster care or while in an adult institution (such as a mental institution) were excluded from the scheme.
- 7 The scheme received over 10,200 applications during the period it operated. 7,385 applicants received a Level 1 payment and 3,525 were offered a Level 2 payment (varying between \$6,000 and \$33,000).<sup>552</sup>
- 8 Under the scheme, applicants were required to sign a deed of release preventing them from further claiming against the Queensland Government in relation to their treatment in State care.
- 9 When the scheme was finalised on 30 June 2010, the Queensland Government had made payments totalling over \$100.7 million to over 7,300 applicants.<sup>553</sup>

<sup>550</sup> *The Commission of Inquiry into Abuse of Children in Queensland Institutions*, chaired by Ms Leneen Forde, which released its final report on 31 May 1999

<sup>551</sup> Department of Communities Queensland 2009–10 Annual Report p 207  
<<http://www.communities.qld.gov.au/resources/corporate/annual-reports/2009-10/annual-report.pdf>>

<sup>552</sup> Department of Communities Queensland 2009–10 Annual Report p207  
<<http://www.communities.qld.gov.au/resources/corporate/annual-reports/2009-10/annual-report.pdf>>

<sup>553</sup> Inclusive of compensation, legal fees, application fees and funeral assistance. Department of Communities Queensland 2009–10 Annual Report p 58 <<http://www.communities.qld.gov.au/resources/corporate/annual-reports/2009-10/annual-report.pdf>>

## Western Australia

- 10 The Redress WA scheme commenced in December 2007 and accepted applications until 30 April 2009. It operated to provide assistance and compensation to people who had been abused or neglected whilst a child in state care, whether foster care or in an institution.<sup>554</sup>
- 11 The Western Australian Government allocated \$114 million to the scheme. The scheme was open to individuals who had been harmed by sexual, physical or emotional abuse or neglect. Under the scheme applicants received an apology, support and counselling, and an *ex gratia* payment of between \$5,000 and \$45,000 depending on their circumstances.<sup>555</sup> The maximum payment was initially set at \$80,000 but this had to be reduced when the scheme received many more applications than first anticipated.<sup>556</sup>
- 12 Recipients were not required to waive their legal rights to further legal redress.
- 13 The scheme was finalised in November 2011, having made compensation payments totalling \$117.7 million to over 5,900 claimants.<sup>557</sup>
- 14 In 2012, following a Special Inquiry into sexual abuse at the St Andrews Hostel in Katanning,<sup>558</sup> the Western Australian Government announced a further limited Redress Scheme for people abused as children boarding as secondary school students in WA hostels.<sup>559</sup> Claims of up to \$45,000 could be made.
- 15 Anyone who was subjected to abuse while boarding at one of the 28 facilities run by the Country High School Hostels Authority between 1960 and 2006 could apply for an *ex gratia* payment of up to \$45,000, with applications closing in May 2013.

## South Australia

- 16 South Australia has operated a redress scheme limited to compensating people who were sexually abused while in State care. Any other forms of abuse are not covered. Applicants are compensated via the *Victims of Crime Act 2001 (SA)*. The maximum payment made under this scheme is usually \$30,000, but in exceptional circumstances amounts of up to \$50,000 have been awarded.
- 17 Under the scheme, applicants sign a deed of release indemnifying the State Government against claims arising from “abuse of any kind” while in State care.

<sup>554</sup> Department of Local Government – Communities Western Australia 2007–2008 Annual Report p 7  
<<http://www.communities.wa.gov.au/Documents/About%20us/Department%20for%20Communities%20Annual%20Report%202007-2008.pdf>>

<sup>555</sup> Department of Local Government – Communities Western Australia 2010–2011 Annual Report p 45  
<<http://www.communities.wa.gov.au/Documents/About%20us/Department%20for%20Communities%20Annual%20Report%202010-2011.pdf>>

<sup>556</sup> Department of Local Government – Communities Western Australia 2007–2008 Annual Report p 41-42  
<<http://www.communities.wa.gov.au/Documents/About%20us/Department%20for%20Communities%20Annual%20Report%202007-2008.pdf>>

<sup>557</sup> Department of Local Government – Communities Western Australia 2011–2012 Annual Report p 57  
<<http://www.communities.wa.gov.au/Documents/About%20us/Department%20for%20Communities,%20Annual%20Report%202011-2012.pdf>>

<sup>558</sup> St Andrew's Hostel Katanning: How the system and society failed our children A Special Inquiry into the response of government agencies and officials to allegations of sexual abuse, 2012

<sup>559</sup> Country High Schools Hostels Ex Gratia Scheme

- 18 The decision making process is entirely within the discretion of the Attorney-General and is not subject to any review mechanism.<sup>560</sup>

### Tasmania

- 19 Tasmania has operated two relevant redress schemes. The first operated between 15 January and 15 June 2007, to provide redress to members of the Stolen Generation and children of deceased Stolen Generation members. The scheme operated under the *Stolen Generations of Aboriginal Children Act 2006* (Tas), which established a \$5 million stolen generations fund to be divided among eligible claimants.
- 20 Under the scheme, 106 members of the Stolen Generation were assessed to be entitled to receive \$58,333 each in compensation, while 22 children of deceased members of the Stolen Generation received \$4,000 or \$5,000 each.<sup>561</sup>
- 21 The second scheme provided redress for people abused as children in State care in Tasmania. It closed on 15 February 2013 after operating for nine years. People who established an entitlement received up to \$35,000 in compensation. The maximum payment was initially set at \$60,000 under this scheme, but was subsequently reduced. Applicants were also entitled to an apology, official acknowledgement that the abuse most likely occurred, assurance that such abuse was not continuing today, guided access to personal departmental files and professional counselling.
- 22 People placed into State care voluntarily by parents or relatives were excluded from the scheme.<sup>562</sup>
- 23 Over the nine years that it operated, the Tasmanian government received over 2,300 claims and paid more than \$52 million in compensation.<sup>563</sup>

### NSW and Victoria

- 24 Redress schemes have not been established in NSW or Victoria. Claims for compensation for abuse suffered while in State care in those states have been managed on a case-by-case basis, without the establishment of any formal redress schemes.<sup>564</sup>

### Commonwealth – Defence Abuse Reparation Scheme

- 25 The Defence Abuse Response Taskforce (DART) has been established in response to the DLA Piper report into sexual and other abuse in the Australian Department of Defence (Defence)

<sup>560</sup> South Australian Attorney-General's Department (2010) *Application Guidelines for ex gratia payments for former residents in state care who experienced sexual abuse as children*  
<<http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Initiatives%20Announcements%20and%20News/2010-guidelines-former-residents-sexual-abuse-whilst-in-state-care.pdf>>

<sup>561</sup> Department of Premier and Cabinet Tasmania (2008) *Report of the Stolen Generations Assessor* pp 2, 7 and 8  
<[http://www.dpac.tas.gov.au/\\_data/assets/pdf\\_file/0004/53770/Stolen\\_Generations\\_Assessor\\_final\\_report.pdf](http://www.dpac.tas.gov.au/_data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf)>

<sup>562</sup> Department of Health and Human Services Tasmania *Abuse in State Care Information Sheet*  
<[http://www.dhhs.tas.gov.au/\\_data/assets/pdf\\_file/0003/75081/ABUSE\\_IN\\_CARE\\_-\\_INFORMATION\\_SHEET.pdf](http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0003/75081/ABUSE_IN_CARE_-_INFORMATION_SHEET.pdf)>

<sup>563</sup> Media Release, Michelle O'Byrne, Minister for Children, Tasmania (5 January 2013) *Abuse in care program*  
<[http://www.premier.tas.gov.au/media\\_room/media\\_releases/abuse\\_in\\_care\\_program](http://www.premier.tas.gov.au/media_room/media_releases/abuse_in_care_program)>

<sup>564</sup> (1) Evidence of Ms Mallett, Acting Deputy Director-General, Service System Development, NSW Department of Community Services, (7 April 2009) Official Committee Hansard, Standing Committee on Community Affairs, Australian Senate *Implementation of the recommendations of the Lost Innocents and Forgotten Australians reports* p 69

<[http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/11857/toc\\_pdf/6716-3.pdf](http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/11857/toc_pdf/6716-3.pdf)>

(2) Community Affairs Committee, Australian Senate (2009) *Lost Innocents and Forgotten Australians Revisited* pp 36-37, 43  
<[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=clac\\_cte/completed\\_inquiries/2008-10/recs\\_lost\\_innocents\\_forgotten\\_aust\\_rpts/report/report.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_cte/completed_inquiries/2008-10/recs_lost_innocents_forgotten_aust_rpts/report/report.pdf)>

and in the Australian Defence Force (ADF).<sup>565</sup> Although the DLA Piper inquiry included abuse of cadets who may have been under 18, most victims of abuse in this context were adults.

- 26 The DART administers the Defence Abuse Reparation Scheme (Scheme). Under the Scheme, applicants who suffered one or more instances of abuse before 11 April 2011 while employed by Defence or as a serving member of the ADF, provided they registered by the 31 May 2013 cut-off date, may be entitled to a reparation payment.
- 27 The payment is seen as an acknowledgement by Defence that the abuse was wrong and can have a serious and lasting impact, and that the mismanagement by Defence of verbal/written complaints of abuse is unacceptable. Payments are not related to physical, psychological, emotional or financial injury sustained as a result of the abuse.
- 28 2,410 complaints of abuse were lodged under the Scheme by its closing date of 31 May 2013. These complaints are now subject to assessment. Under the Scheme, four payment categories have been established in recognition of increasingly serious abuse, as follows:
  - (a) Category 1 Abuse \$5,000
  - (b) Category 2 Abuse \$15,000
  - (c) Category 3 Abuse \$30,000
  - (d) Category 4 Abuse \$45,000
- 29 In addition, applicants may also be entitled to a further (Category 5) payment of \$5,000 where there has been mismanagement by Defence of their complaints in relation to the abuse. The payment recognises that mismanagement by Defence of verbal/written complaints of abuse is unacceptable and can significantly exacerbate a person's experience of abuse.
- 30 To qualify for payment, an applicant must be able to establish that while an employee of Defence or a serving member of the ADF, they suffered sexual or physical abuse, sexual harassment or workplace harassment and bullying at the hands of another employee of Defence or ADF member.

<sup>565</sup> Law firm DLA Piper was engaged by the Department of Defence in April 2011 to conduct an external investigation into management of allegations of sexual and other abuse in Defence and the ADF. The report of the investigation was provided to the Minister for Defence on 11 October 2011, with a supplementary report provided on 17 April 2012. DLA Piper (2011–12) *Report of the Review of allegations of sexual and other abuse in Defence – Facing the problems of the past* <<http://www.defence.gov.au/pathwaytochange/Docs/DLAPiper/Background.htm>>