

Response to the Royal Commission Into Institutional Responses to Child Sexual Abuse Issues Paper 8 - Experiences of Police and Prosecution Responses

The Anglican Church Southern Queensland (“Diocese”) welcomes the opportunity to make a submission in response to Issues Paper 8 released by the Royal Commission Into Institutional Responses to Child Sexual Abuse.

The Diocese is committed to cooperating fully with the Royal Commission, without reservation or qualification.

Background

Professional Standards Canon 2009

The Professional Standards Canon is a canon¹ (of the Diocese) dealing with professional standards within the Diocese and for other purposes. The Professional Standards Canon provides for the approval and adoption of:

1. A code of conduct for observance by church workers in the Diocese;
2. A protocol for implementation in relation to information.

Director of Professional Standards

The Professional Standards Canon establishes:

1. The Professional Standards Committee to deal with the mechanisms to process information in its possession; and
2. The position of the Director of Professional Standards to receive information and manage the implementation of the protocol.

Protocol and policy dealing with complaints of child sexual abuse within the Diocese

The Diocese has a Protocol in place for dealing with complaints of sexual harassment, sexual assault or sexually inappropriate behaviour (“Protocol”).

If a complaint contains allegations of child sexual abuse or assault, the Director of Professional Standards will immediately refer the allegations to the Police. It is not relevant when the alleged offence(s) occurred or whether the respondent is deceased; or whether the complainant does not wish the Police to be informed.

¹ A Canon is an ecclesiastical law or code of laws established by a church council.

Once the allegations are referred to the Police, the matter will not be investigated further by the Diocese until the Police have completed their investigations and/or advised that the Police have no objection to the Diocese proceeding with its own processes. This is so that any actions by the Diocese do not jeopardise any investigation by the Police.

Royal Commission's interest

The Royal Commission is particularly interested to hear from those people who have experience in a professional capacity of police and prosecution responses in relation to allegations of child sexual abuse in an institutional context as to the following:

1. What are your observations of, and suggestions for improvements or reforms to, police processes for receiving reports of allegations, and investigating and responding to reports in relation to allegations of child sexual abuse in an institutional context?
2. What are your observations of, and suggestions for improvements or reforms to, prosecution processes in relation to charges relating to child sexual abuse in an institutional context?

Diocese's Submission

Internal investigation stops

Following notification to the Police of an allegation of child sexual abuse, the Diocese:

1. Does not carry out its own internal investigations until such time that the Police have completed theirs (whether or not it proceeds to a prosecution) and advised the Diocese that the Police have no objection to the Diocese proceeding with its own processes; and
2. Is usually requested by the Police not to alert the church worker who is the subject of the allegation ("respondent").

Children at risk

If the respondent works with children, it potentially places other children at risk or the complainant to further abuse.

The Diocese is committed to providing a safe environment for children.

The balance between different legislations

The Diocese faces the need to balance cooperation with the Police investigation (by not notifying the respondent) on the one hand (criminal legislation) and the Diocese's duty of care to children (protection of children legislation) on the other hand.

Depending on the nature of the complaint, the Diocese may need to stand down a church worker with or without pay, during the Police investigation. If the Diocese cannot inform the respondent of the reason for standing him or her down, the respondent may accuse the Diocese of not observing the rules of natural justice².

Standard of Proof

The standard of proof for a criminal case is beyond reasonable doubt.

The respondent may not be:

1. Charged by the Police following a Police investigation; or
2. Convicted at trial,

due to lack of corroborative evidence, lack of witnesses or other factors.

Under the Protocol, where an allegation is to be investigated, it will be referred to an independent professional investigator. At the conclusion of the investigation, the investigator will provide a report to the Director of Professional Standards. The findings are based on the balance of probabilities³.

Therefore, there may be circumstances whereby the Diocese may find that the respondent has a case to answer even though under the criminal process the respondent was not charged or convicted.

In circumstances where a criminal prosecution did not proceed or did not result in a conviction and the Diocese subsequently conducts its own investigation, the respondent will be subjected to a second round of investigation.

A respondent might challenge that such treatment is unfair on the basis that he or she is subjected to two investigations for one and the same allegation or on a principle akin to double jeopardy.

² The rules of natural justice have been developed to ensure that decision making is fair and reasonable.

³ Under the Protocol, the test is based on all the available information and taking into account the seriousness of the allegations, would a reasonable person consider that the alleged behaviour did occur or did not occur.

Skills of Police investigators

It takes a lot (both emotionally and mentally) for a survivor of child sexual abuse to come out and make a complaint. The survivor should be applauded for being so courageous. Often, a survivor has to be treated delicately and with compassion.

Therefore, for child sexual abuse complaints, the Police officers taking the statement from the complainant or investigating the complaint should be persons who are trained with the necessary skills in the area of child sexual abuse. Those specialised officers should always be engaged to handle child sexual abuse complaints in the whole of Australia, not just in the major cities.

It is recommended that there be a special unit within the Police force for the handling of child sexual abuse cases, as there is a special unit to handle explosives.

Time taken for police investigation

The time taken by the Police to carry out investigations and the prosecution case can sometimes be quite lengthy. This poses a significant financial burden on the Diocese as well as prolonged pastoral disruption especially if the church worker is stood down for a considerable period and fully remunerated during that time.

It may be beneficial to consider a special process for the investigation and prosecution of offences relating to child sexual abuse so that they would be dealt with expeditiously.