



Submission from the
Truth Justice and Healing Council

Royal Commission into Institutional Responses to Child Sexual Abuse

Issues Paper 8 | Police and Prosecution Responses

27 August 2015



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

Via email: solicitor@childabuseroyalcommission.gov.au

Dear Justice McClellan

As you know, the Truth Justice and Healing Council (the Council) has been appointed by the Catholic Church in Australia to oversee the Church's response to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

We now provide the Council's submission in response to the Royal Commission's eighth Issues Paper, on Police and Prosecution Responses.

Yours sincerely

Neville Owen
Chair
Truth Justice and Healing Council

27 August 2015



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:

- Sexual abuse of a child by a priest or religious is a crime under Australian law and under canon law.
- Sexual abuse of a child by any Church personnel, whenever it occurred, was then and is now indefensible.
- 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.
- The Church fully and unreservedly acknowledges the devastating, deep and ongoing impact of sexual abuse on the lives of the victims and their families.
- The Church acknowledges that many victims were not believed when they should have been.
- 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.
- 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.
- In such ways, Church leaders betrayed the trust of their own people and the expectations of the wider community.
- 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.

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 Ss Peter & Paul Melbourne
Diocese of Armidale	Diocese of Parramatta	Maronite Catholic Diocese of St Maroun
Diocese of Ballarat	Diocese of Port Pirie	Military Ordinariate of Australia
Diocese of Bathurst	Diocese of Rockhampton	Personal Ordinariate of Our Lady of the Southern Cross
Diocese of Broken Bay	Diocese of Sale	

Religious Institutes

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

Other Entities

Australian Catholic Bishops Conference
Catholic Religious Australia
Catholic Church Insurance Limited
National Committee for Professional Standards
Professional Standards Office Tasmania
Professional Standards Office NSW/ACT
Professional Standards Office NT
Professional Standards Office Qld
Edmund Rice Education Australia
Good Samaritan Education
Kildare Ministries
Loreto Mandeville Hall Toorak
Trustees of Mary Aikenhead Ministries



The Truth Justice and Healing Council

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.

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

In February 2013 the Australian Catholic Bishops Conference (ACBC) and Catholic Religious Australia (CRA)¹ jointly established the Truth Justice and Healing Council (the Council) to coordinate and oversee the Church's overall response to and appearance at hearings of the Royal Commission.

The Council is a body of 12 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. Three 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 the advice.

The Supervisory Group endorses this Submission. The members of the Supervisory Group are listed on the TJHC website [here](#).²

The Council is chaired by the Hon Neville Owen, former judge of the Supreme Court of Western Australia and former HIH Royal Commissioner. Mr Owen's appointment follows the death of the Council's inaugural Chair, the Hon Barry O'Keefe in April 2014.

The other members of the Council are:

- Archbishop Mark Coleridge, Archbishop of Brisbane
- Professor Maria Harries AM, Adjunct Professor at Curtin University and Research Fellow in Social Work and Social Policy at the University of Western Australia
- Mr Jack Heath, CEO of SANE Australia
- Associate Professor Rosemary Sheehan AM, Department of Social Work, Faculty of Medicine, Nursing and Health Sciences, Monash University
- Hon Greg Crafter AO, former South Australian Minister of Education
- Sr Maree Marsh, former Congregational Leader of the Brigidine Sisters and psychologist with Anti-Slavery Australia at the University of Technology Sydney, Faculty of Law

¹ CRA is the peak body, previously known as the Australian Conference of Leaders of Religious Institutes, for leaders of religious institutes and societies of apostolic life resident in Australia.

² <http://www.tjhcouncil.org.au/about-us/members-of-supervisory-group.aspx>

- Bishop Bill Wright, Bishop of the Diocese of Maitland-Newcastle
- Professor Greg Craven, Vice-Chancellor of the Australian Catholic University
- Ms Elizabeth Proust AO, former Secretary to the Victorian Department of Premier and Cabinet, Chairman of the Bank of Melbourne and Nestlé Australia and member of other boards
- Mr 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
- Dr Marian Sullivan, child and adolescent psychiatrist.

The CEO of the Council, Mr 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 an Adjunct Professor at the Australian Catholic University.

The Council oversees the Church's engagement with the Royal Commission, including by:

- speaking for the Church in matters related to the Royal Commission and child sexual abuse
- coordinating the Church's legal representation at, and the Church's participation in, the Royal Commission.

The Council's role extends to:

- initiating research into best practice procedures, policies and structures to protect children
- assisting in identifying any systemic institutional failures that have impeded the protection of children
- 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
- seeking to promote lasting healing for the victims and survivors of abuse.

To date, 32 dioceses and 97 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.

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.

Pursuant to these arrangements, the Council 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).

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.

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.³

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.

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.

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.

The Council seeks to fulfil that role, on behalf of the Church, in a spirit of honesty, openness and genuine humility.

³ See Annexure B, TJHC Submission to Royal Commission Issues Paper No 2: Towards Healing, 30 September 2013
<http://tjhcouncil.org.au/media/39435/30549468_2_TJHC-Towards-Healing-submission-30-Sep-2013.pdf>

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1 Introduction

- 1 This submission responds to the invitation extended by the Royal Commission in its issues paper to people who have experience in a professional capacity of police and prosecution responses to allegations of child sexual abuse in an institutional context to provide observations on processes for receiving those allegations and investigating and responding to them.
- 2 In preparing the submission, the Council invited views from the bodies it represents. The comments and views expressed below draw on the experience of those who responded to the Council's invitation. Individual responses are summarised in the Schedule. Some of those responses draw attention to matters relating to the experience of particular Church entities with police and prosecution processes that may or may not be the experience of other Church entities.

2 Submission

- 1 The overall picture that emerges from those entities which provided comments to the Council about relations between Church entities and the police is that the vast majority of interactions are positive, with the police responding professionally to reports of alleged child sexual abuse and with relationships being respectful and productive. One theme which emerges is that, over more recent years, the police have become more active in prosecuting historic cases of child sexual abuse.
- 2 On the basis of comments made to the Council, the Council submits that there may be scope for improvement in relation to police responses in the following areas:
 - In NSW different Local Area Commands (LACs) can have different views on whether historic cases of child sexual abuse should be reported to the LAC in which the victim lives or the LAC in which the abuse occurred. Some LACs can also be very slow in conducting investigations.
 - Some police investigations can be drawn out, resulting in anguish for victims and their families and for persons under investigation. For many victims, the historic reality is that disclosing to authority achieves nothing. Consequently, the importance of reliable, consistent communication from the investigating officer may be significantly greater for victims of child sexual abuse than for many other victims of crime.
 - Drawn out investigations can be costly for the employing institution which has had to stand a person under investigation aside. More streamlined police processes would assist in reducing the cost burden and the personal anguish for individuals involved and their families.
 - If and when the police issue public media releases in relation to investigations are matters for the police. In issuing media releases, however, it is important that the police give consideration to the matter of prior consultation with the diocese, school or other institution which may be affected. Appropriate consultation will enable the institution to have in place any necessary support for abuse survivors and their community before the media release issues.
- 3 The existence of a legislative obligation in NSW to report certain kinds of criminal conduct to the police has led to different practices amongst Church entities in relation to the reporting of historic child sexual abuse allegations. In NSW, the view taken in the recent report of the Police Integrity Commission about the effect of section 316 of the *Crimes Act 1900* (NSW) has led to the NSW/ACT Professional Standards Office abandoning its practice of 'blind' reporting.
- 4 In response to the report of the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, the *Crimes Act 1958* (Vic) was amended in 2014 to introduce a provision for the reporting to police of possible sexual offences against children. Section 327 of that Act makes it an offence for an adult (whether in Victoria or elsewhere) who has information leading him or her to form a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child to fail to disclose the information to a member of the Victoria Police.

- 5 The offence is subject to a number of exceptions, including:
- Where the information is given by the victim of the alleged abuse and that person is over 16 at the time of providing the information, is not suffering from an intellectual disability and requests that the information not be disclosed;
 - Where the information comes solely through the public domain.
- 6 While the provision does not prevent a person reporting to the police information from a person over 16 about a child sexual abuse offence allegedly perpetrated against the person, it respects the position of a victim who does not want details of the offending disclosed and is sufficiently mature to make that judgment. However, the Council has concerns whether the provision is adequate. The fact that an obligation to report child sexual abuse does not apply in circumstances where the victim is now mature and requests that the information not be disclosed means that the section does not fully meet the interests of child safety in a case where the alleged perpetrator may still be alive.
- 7 The Council is of the view that there should be a nationally consistent criminal law provision in Australia requiring a person who has information leading the person to form a reasonable belief that a sexual offence has been committed against a child to disclose that information to the police unless the person has a reasonable excuse for not doing so.⁴ The Council considers that nationally consistent legislation relating to reporting to the police would enhance a nationally consistent, trauma informed approach to survivors of child sexual abuse.
- 8 In relation to prosecution matters, the Council considers that there are elements of court practice that have made a survivor's experience of the trial process less daunting than it might have been in the past. Those elements include the predominance of closed courts, the use of non-publication orders and the use of CCTV rooms from which survivors are able to give evidence. However, trial processes will inevitably be challenging for many survivors. It is particularly important, therefore, that prosecuting authorities provide survivors with timely, accurate and consistent updates in relation to the trial process. Witness assistance services within offices of Directors of Public Prosecutions also need to be properly resourced to ensure constant and full communication with witnesses, including communications to explain court delays and adjournments, what will be involved in sentencing hearings and assistance for witnesses who are asked to give evidence in locations away from their home base.

⁴ The legislation may, for example, indicate that a person has a reasonable excuse if he or she believes on reasonable grounds that the information has already been the subject of reporting under mandatory reporting laws

SCHEDULE

REPORTING TO POLICE IN NSW AND THE ACT

- 1 In New South Wales a failure to report to the police a sexual offence against a child has for many years been a crime, although the relevant provision, section 316 of the *Crimes Act 1900* (NSW), has not often been used by the prosecuting authorities to prosecute failures to report child sexual offences. In its present form, that section provides that, if a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension or prosecution of the offender, it is an offence if he or she fails without reasonable excuse to bring that information to the attention of the police. The section goes on to say that a prosecution of certain categories of person for an offence against the section cannot be commenced without the approval of the Attorney-General. Members of the clergy are amongst the categories which require a prosecution to proceed only with the approval of the Attorney-General.
- 2 Church authorities and personnel in New South Wales comply with the reporting requirements of section 316. The practice is set out clearly in a publication of the Sydney Archdiocese, *Sexual abuse: The Response of the Archdiocese of Sydney* (2012):

The police are best placed to investigate allegations of sexual abuse and sexual assault, not the church. Sexual abuse has no place in the church and the best way to investigate it is to report criminal conduct to the police. The law requires serious crimes to be reported to the police and the policy of the archdiocese is to report allegations of sexual abuse to the police... (p 5).

NSW/ACT Professional Standards Office

- 3 It is the practice of the NSW/ACT Professional Standards Office for all allegations of sexual abuse of children which are made pursuant to the Towards Healing protocol or otherwise and which have not previously been reported to the police to be reported promptly to relevant Local Area Commands of the NSW Police or, in relation to offences relevant to other jurisdictions, to the Child Protection and Sex Crimes Squad of the NSW Police.
- 4 The reports include details of the time, place and circumstances of the alleged offence as disclosed by the informant, and any subsequent admissions disclosed by the accused person.
- 5 In the past notifications to the NSW Police were made under a longstanding arrangement between the Professional Standards Office and the police for so-called 'blind reports' to be provided without initially disclosing the name of the victim. If the victim indicated an intention not to go to the police with his or her complaint, or the wishes of the victim were uncertain, notifications to the police were routinely made using a pro forma document approved by the police.
- 6 However, following consideration of the recent findings of the NSW Police Integrity Commission in relation to Operation PROTEA, the Professional Standards Office has ceased the practice of 'blind reporting' and now routinely provides to police at the time of initial notification the name and contact details of the apparent victims of sexual abuse brought to the knowledge of the Professional Standards Office.

- 7 The Professional Standards Office works cooperatively with the police so that any request in writing from the police for particular information is always fully complied with.
- 8 The Professional Standards Office has worked closely with the NSW Police over many years and believes there exists between them a mutually respectful, cooperative and trusting relationship in terms of the exchange of information.
- 9 With the move, which occurred in September 2014, from a single central police unit (the Child Protection and Sex Crimes Squad) to multiple units (Local Area Commands) to receive reports, the Professional Standards Office has, however, sometimes noticed variations in practice by the different sections of the police.
- 10 It is the experience of the Professional Standards Office that over more recent years the NSW Police have become appreciably more active in prosecuting historic cases of child sexual abuse. Requests by police for information from the office have increased markedly as a result.

Archdiocese of Canberra and Goulburn

- 11 The general experience of the Archdiocese of Canberra and Goulburn in its dealings with police has been positive. Whenever it is considered that a complaint describes criminal behaviour, the complainant is so advised. In further discussion the person is assisted and supported to make a report to the relevant Local Area Command or, in the Australian Capital Territory, the Sex Crimes Unit. Should the person not wish a police investigation, the Archdiocese fully reports the matter to the police but advises them that the complainant does not wish them to investigate.
- 12 The expanse of the archdiocese is a complicating factor in relation to police reporting. For example, Pambula and Bega are part of the Batemans Bay Local Area Command. Complaints are reported to through Batemans Bay but at times the detectives are not able to respond immediately due to their workload and the distances involved. This can result in delays.
- 13 It has been the experience of the archdiocese that most police respond in a professional manner. The Archdiocesan Professional Standards Office has encountered isolated instances in NSW where police appeared not to understand the nature of Chapter 16 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and the ability of agencies to share information. In these instances, the assistance of the NSW Ombudsman in explaining and ensuring that information is shared has been invaluable.
- 14 However, the vast majority of interactions between police and the archdiocese have been positive, with police responding quickly and professionally to concerns and keeping the archdiocese informed on developments with the case. The Archdiocesan Professional Standards Office has found the police investigation process to be thorough, transparent, conscientious and complete. If the police decide not to investigate or if after a police investigation a decision is made not to prosecute, the archdiocese conducts its own investigation. If a criminal prosecution in NSW results in a not guilty verdict, the archdiocese seeks to review available evidence. If a criminal prosecution in the ACT results in a not guilty verdict, the archdiocese conducts further inquiries before making a decision whether or not a complaint should be sustained.
- 15 While the police response to reports has always been positive, the time taken for investigations is subject to workload and priorities. Although an investigation inevitably takes some time, an investigation that is drawn out can present complications for the archdiocese in terms of risk

management, when the police request that the alleged offender not be informed. In some instances people have been stood aside from ministry for extended periods or left in ministry with the allegation hanging over their head for a considerable time while the investigation is completed. Whether or not the allegation is sustained or charges are preferred, the delay can have adverse consequences for both the victim and the alleged offender.

- 16 When interacting with prosecutors, again the experience of the archdiocese has been positive. The Archdiocesan Professional Standards Office has had cases in higher and lower courts of both the ACT and NSW. The experience of the Archdiocesan Professional Standards Office has been that prosecutors, with their police counterparts, have listened to the archdiocesan position, worked carefully and diligently and made timely decisions as to appropriate cases for prosecution. The archdiocese has been asked in several cases to provide additional evidence and for archdiocesan personnel to testify. The prosecutors have taken time and care with potential witnesses to prepare them for the process and their offices have been extremely flexible, where possible, in calling witnesses at a convenient time. All of the archdiocesan personnel who have been asked to testify have reported they felt prepared and ready to proceed with a task that can often be confronting.
- 17 The archdiocese also maintains a strong and collaborative relationship with the Office of the NSW Ombudsman. All reportable matters are notified and the archdiocese has appreciated the guidance and support that has been provided. Importantly the archdiocese complies with the Ombudsman Guidelines on the Investigation of Allegations against Employees. As a result nothing done during the investigation would impact on the admissibility of evidence should the matter ever become a police/criminal investigation.

NSW dioceses generally

- 18 In respect of child sexual abuse and sexual misconduct involving children, many of the operations of the dioceses in NSW come under the reportable conduct scheme in NSW, in which the NSW Ombudsman and the NSW Children's Guardian are key statutory authorities for institutions and personnel working with children in the State.
- 19 If an alleged victim of child sexual abuse is a child or if a child is at risk of significant harm, there is a mandatory reporting requirement to make a report as soon as practicable to NSW Family and Community Services. Reports are made using the Child Protection Helpline which refers matters of suspected crime to the appropriate area of the NSW Police Force through the relevant Joint Investigation Response Team.
- 20 If the alleged victim is no longer a child, then, in accordance with the NSW Police Force reporting protocol (*Suggested protocol/process for providing information to the NSWPF*), the victim is encouraged to speak with the police immediately and dioceses will assist the victim to approach the Local Area Command. If the victim of a suspected crime does not wish to speak with the police or if the identity of the victim is not known, the dioceses will report promptly to relevant Local Area Commands of the NSW Police or, in relation to offences relevant to other jurisdictions, to the Sex Crimes Squad of the NSW Police. The dioceses report using a form called Incident Report to NSW Police by a Non-Government Organisation.
- 21 In accordance with s. 316 of the *Crimes Act 1900* (NSW), dioceses report to the NSW Police criminal conduct (including child sexual abuse) which could constitute a serious indictable offence. The reporting includes details of the victim if known, irrespective of the wishes of the complainant or

alleged victim. However, if the victim does not wish to be contacted by the police, the police are so informed.

- 22 It is also the practice of dioceses to report to the police historical allegations of child sexual abuse even if the alleged perpetrator is now deceased.

Diocese of Maitland-Newcastle

- 23 The Diocese of Maitland-Newcastle reports that it has the highest regard for the integrity, professionalism and commitment of NSW Police and the Office of the Director of Public Prosecutions in their pursuit of justice for those who have been the victims of institutional child sexual assault.
- 24 The diocese has had a particularly troubled history of child sexual abuse by individual clergy and laity and of past diocesan leaders being made aware of abuse and failing to prevent it. As a consequence of this past, the findings of an Ombudsman investigation and the advent of clause 6, Ombudsman Regulations 2005, the diocese established a centralised 'whole of diocese' child protection service (Zimmerman Services), which is answerable directly to the Bishop of Maitland-Newcastle.
- 25 One of the functions of Zimmerman Services is to capture, record, report to the relevant authorities and, where appropriate, investigate allegations of abuse or neglect against members of the diocese. Zimmerman Services maintains appropriate, professional relationships with the Offices of the NSW Ombudsman and the Children's Guardian, Family and Community Services and NSW Police. The diocese relates to six Local Area Commands (LAC) of the Northern Region; Central Hunter, Hunter Valley, Lake Macquarie, Manning Great Lakes, Newcastle City and Port Stephens.
- 26 Zimmerman Services' *Healing and Support Team* works with survivors of institutional child abuse to support and promote their personal and unique journeys towards healing. The Healing and Support Team supports people who were abused to pursue their rights through the criminal justice system, which includes supporting people to make statements to police or other statutory authorities and providing ongoing support to the survivor, their family and friends through the investigation and criminal trial (should that occur). The service provided by the Healing and Support Team is open ended, in that it is primarily a matter for survivors to determine the nature and duration of the Team's involvement with them and their families.
- 27 It is diocesan policy to report criminal allegations of child abuse to the NSW Police, irrespective of the wishes of the interested parties. The diocese reports all relevant information known to it, including all demographic information about the alleged abuser, the person who was abused and witnesses. Allegations of abuse where the alleged abuser is deceased are reported to the State Crime Command, for the purposes of providing possible intelligence.
- 28 The diocese's experience of reporting to the NSW Police varies according to:
- whether the alleged abuse occurred recently (i.e. a "contemporary allegation") or occurred in the past (i.e. an "historic allegation");
 - the readiness and ability of the person who was abused to pursue a criminal complaint against their abuser; and

- the LAC and Crime Manager to which the report is made.
- 29 For the most part, local crime managers are supportive of diocesan reporting. However, there have been occasions where some reluctance has been demonstrated by crime managers when the person who was abused is not making a formal complaint. This may be a consequence of changes of personnel in the role of crime manager.
- 30 Zimmerman Services has supported the work of two police strike forces (Georgiana and Lantle). Both strike forces have set an exemplary standard for dedication to the pursuit of justice and capacity to engage with and support survivors. To varying degrees these sentiments hold true for general duties officers and detectives.
- 31 Investigation of historic allegations can be particularly difficult for the victim and their families. The importance of clear and consistent communication cannot be overstated. Whilst the protection of an investigation's integrity obliges the police to maintain operational confidentiality, there is a particular need for survivors of institutional abuse to know that they have been heard and believed and that something is being done to address their allegations. For many, their historic reality is that disclosing to authority achieves nothing. Consequently, the importance of reliable, consistent communication from the investigating officer may be significantly greater for victims of child sexual abuse than for other victims of crime.
- 32 Often police will ensure that survivors are advised prior to charges being laid or, at least, prior to the media being advised. However, this is not always the case. Some officers do not understand that some survivors have not disclosed their abuse or the details of their abuse to their families or friends and it is potentially harmful for survivors to be confronted unawares by their abuser's name (and often some particulars as to the institution where the abuse was perpetrated) in the media. Conversely, a frail aged cleric within the diocese has experienced the media posting an online story of his being charged prior to his discharge from custody, potentially robbing him of the ability to advise family and friends of his circumstance before they became aware through the media.
- 33 The diocese acknowledges that most investigating officers are circumspect and thorough in their decision making to charge persons of interest. However, this decision is fraught. For some survivors, the action heightens their anxiety and expectations, knowing that they will be required to give evidence in court. There is the potential for significant and lasting adverse effects on survivors when matters are dismissed by courts during the pre-trial phase. Survivors may internalise the process as being a repudiation of their allegations and it may reinforce and increase pre-existing damage caused by the abuse and the institution's failure to protect and believe the survivor. Also, where the accused is a public figure, the mere act of being charged can have significant and permanent adverse consequences, irrespective of the outcome of the court process (or findings of administrative investigations conducted by the diocese).
- 34 The experience of Zimmerman Services in supporting survivors through the criminal courts is particular to the individual police and solicitors of the Office of the Director of Public Prosecutions (ODPP) involved. This individualization extends to Zimmerman Services' experiences with the Witness Assistance Service.
- 35 Zimmerman Services believes that there are many elements of court practice that have made a survivor's experience of the trial process significantly less daunting than it might have been in the

- past, most notably, the predominance of “closed courts”, the adjunct use of non-publication orders during the trial and the availability of CCTV rooms from which survivors are able to give evidence.
- 36 Nevertheless, the trial process can be challenging for survivors. A perceived pattern of constant adjournments and “false starts” where witnesses are called to give evidence on a particular day only to be delayed or rescheduled can contribute to survivors feeling a sense of uncertainty, powerlessness and being “lost in the system”. The provision of timely, accurate and consistent updates by the prosecuting authorities is of particular importance to survivors to lessen the potential adverse impact caused by changes in trial schedules.
- 37 The preparatory work undertaken by the ODPP, particularly the Witness Assistance Service, is commendable and is of great assistance to many survivors. However, it is often necessary to reinforce key messages with people who are stressed and anxious. Giving survivors more than one opportunity to undertake the guided visits to the court as well as repetition of key messages at timely points in the trial process (e.g. sentencing hearings), could be of significant benefit.
- 38 Holding trials outside the region in which the alleged abuse occurred places particular strains on those who were abused. A significant number of survivors have remained in the Hunter region and there is a lack of understanding amongst many as to why the trials in which they are witnesses are relocated to Sydney. Zimmerman Services are aware of some survivors experiencing a form of regression when they are going to give evidence, feeling as though they are a powerless child again about to confront the adult who abused them. This can be an extraordinarily painful and debilitating experience, which is amplified when the survivor is geographically isolated, having been obliged to leave their usual environment and support structures. Add the likelihood of a survivor’s evidence being delayed or rescheduled and the survivor having to manage these stresses for a year, often more, and real potential arises for significant cumulative harm to be experienced by some survivors.
- 39 It is Zimmerman Services’ experience that a majority of survivors choose to give evidence via use of a CCTV room rather than appearing in the courtroom. Some of the parents of survivors who give evidence are frail aged and find the experience particularly daunting. Often these witnesses had prior relationship with the accused. If the accused is a priest, the parents may have felt subservient to him and there may be a residual sense of inferiority experienced by them. However, Zimmerman Services is unaware of survivor’s parents being afforded the use of a CCTV room for giving evidence.
- 40 The sentencing hearing can be a particularly confronting experience for survivors and those close to them. As previously noted, many survivors have not disclosed their abuse or only disclosed the barest outline of what occurred. Whilst the sentencing hearing is explained as part of a witnesses’ preparation, many survivors are unprepared for the judge reading out their names and a detailed recital of the indictments related to their abuse. Particular attention should be afforded to preparing survivors and their families for the sentencing phase of a trial.
- 41 It would also assist an efficient prosecution process in relation to child sexual abuse matters if specialist instructing solicitors were appointed within the Office of the Director of Public Prosecutions for the indictment and trial of alleged perpetrators of institutional child abuse.

Diocese of Wollongong

- 42 The Diocese of Wollongong seeks to cooperate fully with the police at all times. Overall the experience of the diocese with reporting to police and with dealing with police regarding alleged child

sexual abuse has been positive. In some instances police officers have seemed genuinely surprised at the high level of assistance and cooperation given by the diocese to the police investigation.

- 43 However, there are inconsistencies between police Local Area Commands, with some police investigations being slow and protracted and others where follow-up by the diocese has drawn no response at all from the police. For victims especially, delays can be distressful.
- 44 There have also been problems at times when the central police media unit in Sydney has issued a police media statement in apparent isolation from what is happening at the local level with a police investigation that involves several school communities. Premature press releases can adversely affect the orderly management of victim/community impact and can be unhelpful to further enquiries that may be taking place.
- 45 While fully accepting of the need for the confidentiality of police processes to be observed, there is potential for improving capacity to support victims if the diocese is given advance notice of relevant public media statements and is consequently able to put in place what needs to be done adequately to support victims when the media statements are made.

Diocese of Parramatta

- 46 The Office for Safeguarding and Professional Standards of the Diocese of Parramatta reports that it enjoys a positive relationship with the NSW Police.
- 47 However, having completed a comprehensive review of archival information in early 2014, the office has experienced some difficulty in reporting to the police information contained in historic records that it has assessed as relating to, or constituting, allegations of criminal conduct. This has been due to the fact that changes to intake procedures adopted by the police have required the office to duplicate reporting processes. In some cases it appears that the revised Standard Operating Procedures adopted by the NSW Police in 2014 have not been well understood by all police personnel and have not been uniformly implemented.

Diocese of Broken Bay

- 48 The Diocese of Broken Bay reports that, when reporting historical matters, there has sometimes been reluctance from a Local Area Command to take the report. Also, different Local Area Commands seem to have different views as to where historical matters should be reported: some consider that the appropriate Local Area Command to receive the report is the Local Area Command in which the victim lives; others consider that the appropriate Local Area Command is the one in which the abuse occurred.
- 49 Nonetheless, the diocese considers that the collaborative working relationship that now exists between it and the NSW Police is positive and that there is room for even greater consultation and collaboration.

Diocese of Lismore

- 50 The Catholic Schools Office of the Diocese of Lismore reports that that the NSW Police have been approachable and receptive when reports of allegations of child sexual abuse have been made to them.

Diocese of Wagga Wagga

- 51 The Diocese of Wagga Wagga reports that over time there have been improvements in the processes and knowledge of the police in relation to child sexual abuse matters and that recent experience is that police have provided clear and timely advice when allegations have been reported to them.
- 52 The diocese mentions one Towards Healing case some years ago when the complainant wished to report the matter to the police but decided not to proceed when no female police officer was available to deal with the complaint.

Catholic Education Office, Sydney

- 53 The operations of the Catholic Education Office (CEO), Sydney are subject to the reportable conduct scheme in NSW. If information is received at any CEO school relating to an historical allegation of child sexual abuse or a current allegation of child sexual abuse in which the alleged offender is an adult, the CEO makes a written report to the NSW Police. The report is made to the Sex Crime Squad as per the police protocol for such reports released in 2015, or to the Local Area Command. These reports are made regardless of the CEO's other reporting obligations, such as under Part 3A to the NSW Ombudsman or reports to the Department of Community Services.
- 54 Full details of relevant persons are provided to the police. The CEO does not engage in blind reporting nor support such a practice. If an adult complainant or adult victim of child sexual abuse does not wish to have contact with the police, the CEO informs the police accordingly. It is the experience of the CEO that the NSW Police generally use discretion and work sensitively when adult victims or complainants indicate that they do not seek contact from the police.
- 55 If the CEO has a responsibility to undertake its own internal investigation, the process is placed on hold until the police or court processes are finalised.
- 56 The CEO advises that the NSW Police have experienced a substantial increase in reports of child sexual abuse, particularly of an historical nature, since the Royal Commission began. The CEO has also received a substantial increase in such reports and therefore has regular contact in making reports with numerous Local Area Commands. The CEO has experienced varying understanding and response to those reports, depending on the particular Local Area Command.
- 57 The CEO advises that the efficiency of responses in different locations varies when the CEO engages with the NSW Joint Investigation Response Team (JIRT) of which the NSW Police are a component. The CEO has experienced confusion and miscommunications between the relevant Local Area Command and the JIRT. The engagement of the police arm of the JIRT with the CEO in matters involving children in CEO schools can at times be problematic and inefficient. The CEO understands that protocols are being developed relating to the involvement of the JIRT with allegations of child sexual abuse.
- 58 The partnership with the NSW Police Local Area Commands and the CEO has improved greatly. The police engagement with the CEO is positive. The CEO has experienced an improved commitment from the police to work with CEO officers on matters in which the police are investigating persons engaged by the CEO, assisting the CEO to manage risk while the police complete enquiries and supporting the CEO's risk management for school communities when they move to charge a person within a school community.

59 The CEO has a good relationship with the police in respect of media releases involving school communities. Generally, the CEO is informed in advance if the police propose to release information or charge someone within a school community so that the CEO can have support available for the school community.

Marist Brothers

60 The Marist Brothers Province of Australia co-operates fully with the police and other authorities around child protection issues. Where there is a conflict with Australian Privacy Principles, the Marist Brothers believe that the work that the police do, and the powers they have in protecting children through investigating complaints and taking action in the courts against offenders, outweighs any privacy issue.

61 The Professional Standards Office of the Marist Brothers is based in Sydney and has dealings with Police and other authorities in all States and Territories except Tasmania.

62 An internal audit of the records of the Marist Brothers has been completed to ensure that all allegations of child sexual abuse have been reported to police, including those involving deceased or former members of the Marist Brothers and staff employed by the Marist Brothers.

63 The Marist Brothers changed their process of reporting historical matters of child abuse to NSW Police in September 2014 in response to a new protocol developed by the Sex Crimes Squad for the reporting of sexual assault matters by non-government organisations.

64 This new reporting process required reports to be forwarded to the Local Area Command, Crime Manager responsible for the geographic area where the alleged offence was committed. Reports were completed on the new standardised incident form and included the name and particulars of the alleged victim.

65 Previously the Marist Brothers had reported all matters to the NSW & ACT Church Professional Standards Office who had submitted “blind reports”, excluding the name of the alleged victim.

66 The Marist Professional Standards Office has found the change in reporting to be beneficial for all parties and has strengthened the established relationship between the Marist Brothers and NSW Police.

67 The NSW Sex Crimes Squad has remained the point of contact for the reporting of all alleged offences which occurred outside New South Wales.

De La Salle Brothers

68 The De La Salle Brothers query whether reporting to the police in NSW might be handled more efficiently if there were a single portal for reporting, rather than requiring those making a report to identify the appropriate LAC to receive the report or, in a case where the possible child sexual abuse offence occurred outside NSW, to report the matter to the Child Protection and Sex Crimes Squad of the NSW Police.

69 Indeed, the De La Salle Brothers comment that there might be merit in a single national portal for the reporting to the police of allegations of child sexual abuse.

Presentation Sisters, Wagga Wagga

- 70 Comments made by the Presentation Sisters, Wagga Wagga, include that variations between States as to obligations to report possible child sexual abuse offences are undesirable and open up potential risk to children.

Centacare Southwest NSW

- 71 Centacare Southwest NSW (located in Wagga Wagga) basically follows the process of police reporting that is used in the NSW/ACT Professional Standards Office (referred to above). In relation to adult allegations of childhood sexual abuse which occurred in an institutional context, Centacare Southwest NSW reports to the police, while keeping the client fully informed.

REPORTING TO POLICE IN VICTORIA

Victorian parliamentary inquiry and its outcome

- 1 In Victoria, the crime of misprision of felony was abolished by statute in 1981.⁵ Therefore, unlike in NSW, until the enactment of section 327 of the *Crimes Act 1958* (Vic) in 2014, there was no statutory requirement to report a complaint of a sexual offence against a child if it was brought when the victim was an adult. Without a statutory compulsion, competing legal obligations as to privacy apply.
- 2 Since its inception in 1996, the Melbourne Response has sought to emphasise to victims the benefits of reporting criminal offences to police, as the most appropriate organisation to investigate and prosecute offenders. The Melbourne Response has sought to do this sensitively in circumstances where it could not otherwise pass on the information to police without consent.
- 3 The Independent Commissioner's Terms of Appointment require Independent Commissioners to:
 - inform victims that they have a continuing and unfettered right to report the offence to police, and
 - encourage victims to exercise that right.⁶
- 4 The Independent Commissioners have also sought to facilitate cooperation and assistance with Victoria Police. From time to time, an Independent Commissioner has been approached by the police in relation to a particular matter, and has provided all knowledge and information available. In the late 2000s Independent Commissioner Peter O'Callaghan QC together with representatives of the Archdiocese of Melbourne engaged in discussions with the police and particularly the Sexual Offences Unit to establish a formal protocol of cooperation and assistance. In 2010 a draft protocol was exchanged, but a wider policy shift within Victoria Police meant that all such protocols were not pursued.
- 5 In its submission to the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, entitled *Facing the Truth*, the Catholic Church in Victoria observed that:

*The balance to be struck in regard to this difficult and sensitive issue will undoubtedly be an important question for this Inquiry. This Inquiry needs to weigh carefully the rights of the individual to privacy and choice and the rights of the community to punish criminal conduct.*⁷
- 6 In *Facing the Truth*, the Catholic Church in Victorian advocated for a reform in which all allegations of serious crimes would be reported to the police in a way that avoided infringing the confidentiality and privacy of victims who came forward on a confidential basis.⁸

⁵ *Crimes (Classification of Offence) Act 1981* (Vic)

⁶ See for example, clause 5 of the Terms of Appointment, *Appointment of Independent Commissioner to Enquire into Sexual and Other Abuse*, February 2011.

⁷ *Facing the Truth*, submission by the Catholic Church in Victoria to the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, 119.

⁸ *Facing the Truth*, 119.

7 In its final report, the Victorian Parliament's Family and Community Development Committee considered the issue of reporting child criminal abuse to the police under the Melbourne Response.⁹

8 The conclusion reached by the parliamentary committee was:

The Committee considers that complaints of criminal child abuse, whether current or historical, should be referred to, and investigated by, the police. Whether this leads to the successful prosecution of the offender depends on many factors, including the preparedness and ability of victims to participate. The Committee accepts that police must approach incidents of this kind with sensitivity, but considers that police are the most appropriate organisation to use the information in order to protect children from criminal abuse within organisations.¹⁰

9 In response to the report of the parliamentary committee, the *Crimes Act 1958* (Vic) was amended in 2014 to introduce a new provision for the reporting to police of possible sexual offences against children. Section 327 makes it an offence for an adult (whether in Victoria or elsewhere) who has information leading him or her to form a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child to fail to disclose the information to a member of the Victoria Police.

Case Study 16 of the Royal Commission

10 On the issue of police reporting, the terms and conditions of appointment of the Independent Commissioners under the Melbourne Response provide as follows:

The Commissioner immediately upon there being made or referred to him a complaint of sexual or other abuse (which may constitute criminal conduct), shall inform the complainant that he or she has an unfettered and continuing right to make that complaint to the police, and the Commissioner shall appropriately encourage the exercise of that right.¹¹

11 The terms and conditions of appointment go on to say that, except where the alleged offender is dead, the complaint has already been reported to the police and any police action is complete or no police action has been taken in the two years immediately preceding the making of the complaint to the police, the Independent Commissioner must supply complainants with an information sheet about their right to report to the police.¹²

12 In his written statement dated 11 August 2014 to the Royal Commission in Case Study 16 relating to the Melbourne Response,¹³ Independent Commissioner Mr O'Callaghan said that he advises virtually all who complain of conduct which might constitute sexual conduct that they have a continuing and unfettered right to report their complaint to the police and that he encourages them to exercise that right.

⁹ *Betrayal of Trust*, Victorian Parliament, Family and Community Development Committee, section 23.5.2, November 2012

¹⁰ Page 496

¹¹ Cl 2 iii

¹² Cl.5

¹³ Para 9 (x)

- 13 There was evidence before the Royal Commission about the extent to which Independent Commissioner Mr O'Callaghan encourages victims to report to the police and the Royal Commission is yet to make any findings in that regard.
- 14 The Independent Commissioners' reporting obligations are now subject to the new section 327 of the *Crimes Act 1958* (Vic). Because it has always been their practice to encourage reports to the police except where adults declined to report, the new section has effected little if any change in practice.

Contemporary experience of Melbourne Archdiocese in relation to reporting

- 15 It is relevant to note that a significant proportion of adult victims who report abuse to the Melbourne Response indicate that they do not wish to report allegations to the police.
- 16 For present purposes, what is important is the experience of Church authorities and entities in Victoria when they do report to the police allegations of child sexual abuse in a Church context.
- 17 Following discussions with the Victoria Police in 2013/2014, Victoria Police prepared a flyer in August 2014 outlining the options available to victims. The Independent Commissioners under the Melbourne Response now hand a copy of the brochure to each new complainant.
- 18 Senior personnel of the Melbourne Archdiocese meet periodically with senior police. There is an arrangement in place with the SANO Taskforce of the police for it to contact the Executive Director Administration of the Melbourne Archdiocese for any documents held by the Archdiocese in relation to matters the subject of investigation.
- 19 The Archdiocese believes that current arrangements with Victoria Police operate effectively.

Professional Standards Victoria

- 20 The Office of Professional Standards in Victoria is responsible (relevantly) for the management of complaints of sexual abuse lodged against clergy, religious and other employees and volunteers of the Church through the Towards Healing framework. All Victorian dioceses and religious institutes other than the Archdiocese of Melbourne are signatories of Towards Healing.
- 21 The Office of Professional Standards frequently receives complaints from adults of historic sexual abuse which occurred during the time the complainants were children. While not excluded from making a complaint, since the establishment of Towards Healing in 1996, there have been no complaints received in Victoria from a complainant under the age of 18.
- 22 The Director of Professional Standards in Victoria advises that personnel in the office comply with reporting legislation, including the new section 327 of the *Crimes Act 1958* (Vic). Complainants are encouraged by Towards Healing personnel to report their allegations to police at several stages of the Towards Healing process. Complainants are provided with written information regarding the Victoria Police SANO taskforce, and the privacy statement and police reporting statement currently in use are in the process of being amended to reflect more clearly the new provision.
- 23 The Office of Professional Standards Victoria has developed an excellent relationship with the Victoria Police SANO and ASTREA taskforces. Representatives from both taskforces regularly meet with the Director of Professional Standards Victoria and a member of the Professional Standards Resource Group to review reporting processes as well as to review complaints that are subject to

ongoing police investigation. A formal reporting mechanism has been implemented over the last two years. This is an integral part of the approach of the Office of Professional Standards to continually improve communication between organisations, to support complainants who report allegations of sexual abuse to the police, and to streamline the complaints process for victims of sexual abuse.

Catholic Education Melbourne

- 24 The Office of Professional Conduct, Ethics and Investigation (OPCEI) of Catholic Education Melbourne is responsible for professional standards and investigation of breaches in schools throughout the Archdiocese. Through a service level agreement, it provides a similar service in relation to employees of Catholic Education in Ballarat.
- 25 All staff misconduct, including the sexual abuse of children and young people, allegedly perpetrated by an adult engaged by a Catholic school is required to be reported to OPCEI.
- 26 The advice provided to Catholic schools is that any allegation of sexual abuse is to be immediately reported to Victoria Police.
- 27 A significant issue relating to police reporting is the financial burden placed on the school. Typically, once allegations are made to Victoria Police, the staff member is stood down from service with pay. The matter can take more than 12 months to be investigated and come before the courts (if in fact a prosecution ensues), which results in the school paying both the staff member for this period and also a replacement staff member.
- 28 More streamlined police investigation processes would assist in reducing the cost burden and reducing the personal anguish for individuals involved and their families.
- 29 The OPCEI considers that the establishment by Victoria Police of the SANO Taskforce to investigate historical claims of child sexual abuse has been beneficial in creating a good line of communication in the provision of information to the police. The OPCEI has also had good engagement with the Victoria Police Sexual Offences Units in relation to any current sexual abuse matters.

Catholic Education Office Ballarat

- 30 The Catholic Education Office of the Ballarat Diocese (CEOB) oversees 64 schools. At the level of the diocese, the practice and protocol for reporting allegations of child sexual abuse to the police is set out in the diocesan Code of Conduct for Caring for Children. That code also requires a report to be made under Towards Healing. At the school level, the Ballarat Diocesan Schools' Advisory Council's Interim Protocol for Managing Allegations of Abuse of Students by Employees in Catholic Education 2015 requires all allegations of sexual abuse to be reported to the Victoria Police.
- 31 In responding to the Council's request for information made in connection with the preparation of this submission, the CEOB reports that thirteen principals and one teacher indicated that they had experienced contact with Victoria Police as a result of an allegation of child sexual abuse in the previous five years. All interactions with the police have been positive.
- 32 A suggestion was made that communication from the police following the making of a report can be patchy and that one solution might be for the local Sexual Offences and Child Abuse Investigations Team (SOCIT) to nominate a member to perform a liaison role to keep school principals who make reports informed of developments.

33 The Diocesan Code of Conduct for Caring for Children also applies to the CEOB.

Jesuit Social Services

34 Jesuit Social Services report that they have found SOCIT very helpful in working with them to improve their response to people who disclose sexual abuse. In all their dealings with SOCIT, Jesuit Social Services have found SOCIT to be responsive, professional and considered.

35 However, in relation to one case involving a sexual assault incident in one of its programs, Jesuit Social Services report a concern that raises a broader challenge for the Victoria Police. In that case, Jesuit Social Services consider that members of the police exhibited a racist attitude towards the alleged perpetrator of the abuse.

REPORTING TO POLICE IN QUEENSLAND

Professional Standards Queensland

- 1 In Queensland, there is no legislated requirement to report a criminal offence. Nevertheless, various pieces of legislation do impose a mandatory obligation to report harm or abuse to a child (for example the *Child Protection Act 1999* (Qld) and the *Education (General Provisions) Act 2006* (Qld)). This legislation applies only in circumstances where the victim is presently a child/student (under 18 years) and does not apply to historic abuse where the victim is now an adult. An adult survivor of child abuse is considered able to independently report the matter to the police.
- 2 When disclosures/complaints of child abuse that may amount to a criminal offence are received, the Professional Standards Office ensures that the victim/complainant clearly understands that the Church's preference is that the matter be reported to the police as the most appropriate agency for investigating such matters. The office offers assistance to victims/complainants to make a police report. As a matter of course, the office also provides all victims/complainants with a document which instructs how to make a police report including the contact details for the Child Safety and Sexual Crime Group and the Alternative Reporting Options (ARO) system.
- 3 In the case of an alleged criminal offence, the Towards Healing process may only be invoked where the complainant confirms in writing that they do not intend to report the matter to the police for investigation or where the police/criminal justice process has been finalised (see clause 37.6). This negates any potential interference in a police investigation.
- 4 Where the complainant confirms that he or she does not intend to report the matter to the police for investigation, the Director of Professional Standards is required to provide information to the police other than giving details that could lead to the identification of the complainant (ie a 'blind' notification) (see clause 37.4). A blind notification is intended to protect the privacy of the victim/complainant if they confirm that they do not intend to report or have the matter investigated by the police. As an alternative, the office has implemented an option for the victim/complainant to authorise the office to provide full information to the police, including their name and contact details, but indicate that they do not wish to have the matter investigated.
- 5 The Professional Standards Office has an established communication protocol with the Qld Police Child Safety and Sexual Crime Group and the NSW Police Child Abuse Squad. (see Towards Healing, clause 37.7). Unfortunately, there is no direct protocol established with the relevant child abuse/protection units of the other State police agencies. Nevertheless, where information is received in which the abuse occurred interstate and the victim/complainant resides in Queensland, the information is sent to the Queensland Police.
- 6 The Professional Standards Office has also had cause to liaise with the Australian Federal Police where it has come to light that an accused person is thought to be the subject of a police investigation for child abuse allegedly committed outside Australia. In this case, the provisions of section 272 of the *Criminal Code Act 1995* (Cth) applied (sexual offences against /activity with children outside Australia).
- 7 The office regularly liaises with police from different jurisdictions in relation to current child abuse investigations. The office provides assistance wherever possible but does not provide information unless the relevant Church Authority has given express permission to do so and/or the appropriate

legal document (warrant/subpoena) to obtain that information is produced. Investigating officers are often referred to the appropriate contact for the relevant Church Authority.

- 8 In general, the relationships between the Professional Standards Office and the various police officers and agencies it engages with are respectful and productive. In particular, the Queensland Police Child Safety and Sexual Crime Group demonstrate that they are prepared to work with the office in a spirit of partnership.

Directors of Catholic Education in Queensland

- 9 Diocesan Catholic education authorities in Queensland administer 265 schools, with more than 3,500 staff employed and more than 130,000 students enrolled.
- 10 As indicated above, the main reporting requirement affecting schools in Queensland is contained in the *Education (General Provisions) Act 2006* (Qld). It requires that, if a school staff member (the first person) reasonably suspects, in the course of his or her employment at the school, that a student under 18 years of age attending the school has been sexually abused or is likely to be sexually abused by another person, the first person must immediately give a written report to the Principal or a director of the governing body (or nominated delegate) who must immediately provide a copy of the report to the Queensland Police. While the legislation refers to a student under the age of 18 years, the Catholic Education authorities apply the mandatory reporting obligation to all students attending Catholic schools, irrespective of age.
- 11 Any report about an allegation of historical sexual abuse of a student may also be referred to the Queensland Director of Professional Standards under Towards Healing if the alleged perpetrator is a teacher, volunteer, priest or religious.
- 12 When an allegation involves a situation within the school environment, ongoing liaison takes place with the police. The circumstances can be challenging; the police and prosecution processes must not be compromised but the school authorities will also have to consider:
 - The safety of the school environment
 - Support to affected students, families and staff members
 - Employment issues, particularly when the allegation is made against an employee.
- 13 There have been cases where a complaint has led to the standing down of a staff member and, after a long period of time, the police investigation concludes with no prosecution action being taken but the school authority is unable to commence its own internal investigation until that point is reached.
- 14 More streamlined police processes would assist in reducing the cost burden and reducing the personal anguish for individuals involved and their families.
- 15 Nonetheless, Catholic education authorities in Queensland report positive improvement over time in their dealings with police in relation to allegations of child sexual abuse and consider that the police generally demonstrate promptness and professionalism in their response to the reports they receive. The involvement of Queensland Police in school staff training initiatives and the consequent enhanced knowledge with regard to police investigation and prosecution processes have led to improved working relationships between the police and education systems.

REPORTING TO POLICE IN WESTERN AUSTRALIA

- 1 In Western Australia, reporting of alleged sexual abuse to the police is not mandatory, except in certain circumstances under the *Children and Community Services Act 2004 (WA)* part 4 division 9A and the *Family Court Act 1997 (WA)* section 160. These provisions do not apply to the personnel of the WA Professional Standards Office (WAPSO).
- 2 Towards Healing (clause 37) imposes certain requirements on the Director of the Professional Standards Office in relation to reporting to police which are over and above those required by mandatory reporting legislation.
- 3 In Western Australia it is and always has been the standard practice of the WAPSO to explain to complainants that the Church strongly prefers allegations of child sexual abuse to be reported to the police and to advise and support complainants to do so. If the complainant does not wish to report the matter to the police, it is the standard and general practice of the WAPSO to ensure that this is recorded in writing.
- 4 If a complainant does not wish to provide a report of an allegation of child sexual abuse to the police and the accused person is still alive, the WAPSO will, where details of the complaint can be provided to the police without identifying the complainant, make a de-identified report to WA Police in line with the requirements of Towards Healing clause 37.4. In 2013 WAPSO was informed by the police that the police did not wish to receive de-identified reports but this position has now been revised.
- 5 The WAPSO has a good working relationship with the WA Police. The Inspector of the Sex Crime Division is a referral point for the WAPSO and has been of great assistance to it.

Catholic Education, Western Australia

- 6 The Catholic Education Commission of Western Australia (CECWA) is responsible to the bishops of Western Australia. The Catholic Education Office Western Australia (CEOWA) issues policies and procedures on behalf of CECWA, coordinates and delivers training and gives advice and assistance to school principals on child protection.
- 7 The Child Protection Policy and the Child Protection Procedures contain provisions governing the reporting of child abuse to police and other authorities. Teachers are subject to the mandatory reporting requirements of the *Children and Community Services Act 2004 (WA)* and details of those requirements are set out in the policy and procedures.
- 8 Mandatory reports are made to the Department for Child Protection and Family Support which in turn may inform the police. Principals are required to report any criminal behaviour directly to the police.
- 9 The police may also request records and other information from the CEOWA or a principal relating to an investigation into a child protection matter. Unlike government schools, Catholic schools are subject to the *Privacy Act 1988 (Cth)* and its limitations on disclosure of personal information. Prior to the amendments in March 2014 of the Privacy Act which provided for exemptions covering disclosure for law enforcement purposes, principals asked the police to provide a notice to produce that would formalise the request and overcome potential Privacy Act issues involved in simply

providing the requested information. Sometimes a police officer would query this requirement, citing the general cooperation given by government schools and imply that the request for such a formal notice to be given amounted to the school not cooperating with the particular inquiry.

- 10 The amendments made to the Privacy Act have overcome this difficulty. Information is now provided to the police once the police confirm in writing that the information is being sought as part of the prevention, detection, investigation, prosecution or punishment of a criminal offence.
- 11 The overall relationship between Catholic schools and the police is positive. The majority of officers understand that schools and the CEOWA share their concern for the safety and well-being of children.

REPORTING TO POLICE IN SOUTH AUSTRALIA

- 1 In South Australia the requirement for organisations to put in place policies and procedures to establish and maintain child safe environments is set out in the *Children's Protection Act 1993* (SA). That Act sets out certain requirements for mandatory notification in relation to child sexual abuse.
- 2 South Australia has no legislative requirement for the reporting of historical cases of child sexual abuse and indeed, up until 2003, a time limit existed on the prosecution of historical sexual offences. A consequence of the abolition of the time limit in 2003 is that it is now possible for a person to be charged with historical sexual offences and therefore reporting of these offences has been facilitated. The Professional Standards Office (PSO) encourages adult survivors of child sexual abuse to take their matters to the police.
- 3 The PSO has an informal agreement with the South Australia Police (SAPOL) on reporting of historical allegations of child sexual abuse (Towards Healing, cl 37.7). When a disclosure of historical child sexual abuse is made to the PSO it is the policy of the office to ensure that the complainant understands the Church's preference that the matter be reported to the police (Towards Healing, cl 37.1). Complainants are encouraged by PSO staff to report their allegations to police as a matter of priority and this invariably occurs when they first bring their matter to the attention of the office. In addition, complainants are offered the opportunity to be supported by the PSO in taking their matter to the police.
- 4 In cases where the complainant does not wish to make a report to police, or otherwise wish to ensure their claims are kept confidential, complainants are also informed that PSO policy includes 'blind reporting' to SAPOL. The usual practice is that complainants are required to confirm in writing whether or not they consent to their name being provided to police.
- 5 Complainants are informed that the Towards Healing process will be suspended if a police investigation is being undertaken, and that they can resume the Towards Healing process once the police investigation is completed.
- 6 The PSO considers that consideration should be given to a national approach to responding to complaints of historical child sexual abuse and that differences in legislation across the country inhibit a national approach. Nationally consistent legislation relating to reporting to the police would enhance a nationally consistent, trauma informed approach to complaints from adult survivors of child sexual abuse

Diocese of Port Pirie

- 7 The practice of the Diocese of Port Pirie in relation to child sexual abuse allegations is to refer the person making the allegations to SAPOL. If the complainant indicates that he or she will not be reporting to SAPOL, a de-identified version of the complaint is provided to SAPOL. If the complainant does not wish to report to SAPOL and the accused is deceased, the Diocese refers the complainant to Towards Healing.
- 8 The diocese reports that, generally speaking, relations with the South Australia Police (SAPOL) in relation to the reporting of child sexual abuse matters are excellent.

Catholic Education South Australia (CESA)

- 9 The process that is followed within schools when an allegation of child sexual abuse involving a member of staff or a volunteer is made involves the principal of the school reporting the allegation to the Principal Consultant. The Principal Consultant is an office within CESA. The Principal Consultant is the intake point for all allegations of child sexual abuse, regardless of the source of the allegation. The Principal Consultant advises the school principal on how to respond. In cases of child sexual abuse, the preliminary steps would typically involve making a report to SAPOL and to Families SA on the Child Abuse Report Line (CARL).
- 10 CESA reports that its relationship with SAPOL is strong, with the police being very responsive to allegations of child sexual abuse. The relationship operates in accordance with a document called the Information Sharing Guidelines, which stipulates the nature and context of sharing relevant information between the two bodies.
- 11 While from time to time there are minor differences in the SAPOL response to child sexual abuse allegations, these seem to arise more from varying interpretations by individuals of processes and procedures within SAPOL than from systemic issues.

REPORTING TO POLICE IN TASMANIA

Tasmanian Professional Standards Office

- 1 The current Director of Professional Standards in Tasmania advises that the legislated reporters of child abuse in Tasmania include teachers and others listed in the *Children, Young Persons and their Families Act 1997* (Tas). The Act specifies that the report is made to State Child Protection Services or a Community-Based Intake Service, but does not specify the police. This reporting is managed by the Catholic Education Office (see below).
- 2 When the Towards Healing protocol was established the Professional Standards Office made application to the Police Commissioner of the day to have a senior officer nominated as a contact person for reporting and advising with respect to abuse allegations. As these officers are transferred to other duties from time to time, requests are made for a successor to be appointed. The collaboration extends beyond notification and reporting to the provision of 'intelligence' and information and access to records, provision of advice by police as to the appropriate time to begin the Towards Healing protocol and the provision by the Professional Standards Office of support to complainants through the police processes.
- 3 There are no formal policies or protocols in place between the Professional Standards Office and the police. A useful development would be the formalisation of the position with the police, such that there is automatic replacement of the relevant senior officer when the position becomes vacant, with the police notifying the Professional Standards Office, rather than the current practice of having to request a replacement when it is discovered that the incumbent had been transferred to other duties.
- 4 The relationship between the Professional Standards Office and the police has been professional, respectful and collaborative and reported matters are attended to by police without undue delay.

Tasmanian Catholic Education Office

- 5 The Tasmanian Catholic Education Office of the Archdiocese of Hobart advises that the reporting by school personnel of sexual abuse matters to the Tasmanian police is rare and occurs only in cases of immediate significant concern in conjunction with a mandatory report. The great bulk of reporting of child sexual abuse matters is to the State's Child Protection Services under the mandatory reporting regime of the *Children, Young Persons and their Families Act 1997* (Tas).

REPORTING TO POLICE IN THE NORTHERN TERRITORY

- 1 The Northern Territory Professional Standards Office reports that it reports all complaints of child sexual abuse to the police if the name of the accused is known, whether or not the accused is alive or deceased. If the complainant does not wish the police to be told their name, then the name is withheld.
- 2 The current Director of Professional Standards reports that, in her 17 years as Director, the office has had to notify the police on perhaps six occasions. The police have always been responsive.